

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Laurens County
Donald B. Hocker, Circuit Court Judge

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S.C. Supreme Court

BRIAN KEITH STEPHENS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000471

A P P E N D I X

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State of South Carolina)
County of Laurens) Court of General Sessions
) 2010-GS-30-460, 461, 493,
) 2009-GS-30-1585, 1586, 1587

State of South Carolina)
) vs.) Transcript of Record
)
Brian Keith Stephens)
) DEFENDANT)

January 26, 2011
Laurens, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Jack Hammack, Assistant Solicitor
Attorney for the State

Bill Mayer, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1

EXHIBITS

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(No exhibits were introduced.)

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1 THE COURT: Are you ready, Solicitor?

2 MR. HAMMACK: Yes sir, Your Honor. Your Honor,
3 before you is Brian K. Stephens. He is pleading guilty on
4 indictments, 2009-GS-30-1586 for a hit and run with death.
5 Indictment 2009-GS-30-1587 for possession of a stolen
6 vehicle. Indictment 2009-GS-30-1585 for felony DUI with
7 death. Indictment 2010-GS-30-460 for felony DUI with
8 great bodily injury. Indictment 2010-GS-30-461 for hit
9 and run with great bodily injury. And indictment
10 2010-GS-30-493 for a hit and run with a minor personal
11 injury. Your Honor, he is pleading for a cap of 25 years.
12 There are two charges being dismissed on, one of them is
13 felony DUI with great bodily injury and hit and run with
14 great bodily injury. It appears based on the facts of the
15 case, Mr. St. Pierre is not here to answer the question.
16 But it looks like after the case was reviewed it appears
17 Ms. Connie Williams did not suffer the type of injuries
18 that would be consistent with those charges. And it was
19 indicted for minor, or excuse me, minor personal injury on
20 her and the other two were to be dismissed when that case
21 was disposed of. Her injuries did not arise to the level
22 of great bodily injury.

23 THE COURT: You are Brian Keith Stephens?

24 MR. STEPHENS: Yes, sir.

25 THE COURT: You have been in jail for 540 several

1 days?

2 MR. STEPHENS: Yes, sir.

3 THE COURT: I have six indictments and I will try to
4 keep them together, I think. Indictment, 10-GS-30-460,
5 indictment for felony DUI, great bodily injury. And that
6 indictment reads in part, that you while in Laurens County
7 on or about the 1st day of August of 2009 while under the
8 influence of alcohol or drugs or a combination thereof did
9 drive a vehicle and neglect any duty imposed by law while
10 driving with reckless disregard for the safety of others
11 and did approximately cause great bodily injury to one
12 Ally, A-L-L-Y M. Williams in violation of 56-5-2945. And
13 upon presentment it is my understanding that you wish to
14 plead guilty to that charge upon indicted.

15 Indictment 10-GS-30-461, indictment for hit and run
16 with great bodily injury. Indictment reads in part that
17 you while in Laurens County on or about the 1st day of
18 August of 2009 did unlawfully drive a motor vehicle
19 involved in an accident resulting in great bodily injury
20 to one Ally Williams and did fail to immediately stop and
21 render aid and remain at the scene as required under the
22 common law and statutory law 56-5-1210(a). It is my
23 understanding upon presentment you wish to plead guilty to
24 that indictment also as indicted.

25 MR. STEPHENS: Yes, sir.

1 THE COURT: Indictment 10-GS-30-493. Indictment for
2 hit and run with minor personal injury. It reads in part,
3 that you while in Laurens County on or about the 1st day
4 of August 2010, 2009 did unlawfully drive a motor vehicle
5 resulting in injury to one Connie Williams and did fail to
6 immediately stop and render aid as required under
7 56-5-1210(a). Upon presentment it is my understanding you
8 wish to plead guilty to that indictment as submitted?

9 MR. STEPHENS: Yes, sir.

10 THE COURT: Indictment 09-GS-30-1585 for felony DUI
11 of a death results. Indictment reads in part that you
12 while in Laurens County on or about the 1st day of August
13 of 2009 did while under the influence of alcohol or drugs
14 or a combination thereof drive a motor vehicle, neglect
15 any duty used imposed by law and drove in reckless
16 disregard for the safety of others and proximately caused
17 the death of one David Michael Williams. That being in
18 violation of code section 56-5-2945. Upon presentment it
19 is my understanding that you wish to plead guilty to that
20 offense as indicted.

21 Indictment 09-GS-30-1586 for hit and run with death.
22 The indictment reads in part that you while in Laurens
23 County on or about the 1st day of August 2009 did
24 unlawfully drive a motor vehicle resulting in an accident
25 and caused the death of David Michael Williams and did

1 fail to immediately stop and render aid and remain at the
2 scene as required under 56-5-1210. And upon presentment
3 it is my understanding that you wish to plead guilty to
4 that charge also as indicted.

5 And lastly indictment 09-GS-30-1587, possession of a
6 stolen vehicle. That indictment reads in part that you
7 while in Laurens County on or about the 1st day of August
8 of 2009 did willfully and unlawfully while not being
9 entitled to the possession of the motor vehicle
10 particularly a 1987 BMW. It was stolen or converted under
11 circumstances constituting a crime of more than a thousand
12 dollars, particularly property of one Wendell Waldrop
13 being in violation of 16-21-80. And upon presentment it
14 is my understanding that you wish to plead guilty to that
15 offense as indicted also.

16 MR. STEPHENS: Yes, sir.

17 THE COURT: Is that correct?

18 MR. STEPHENS: Yes, sir.

19 THE COURT: Mr. Mayer, you represent Mr. Stephens?

20 MR. MAYER: Yes sir, I was appointed, Your Honor.

21 THE COURT: Did you explain to your client the
22 elements of these six offenses as well as the potential
23 punishment?

24 MR. MAYER: Yes sir, Your Honor, I have.

25 THE COURT: And do you believe after examining your

1 file provided to you by the State and conducting an
2 examination of your own and counseling with your client
3 that if he proceeded to trial he would more probably than
4 not receive a conviction?

5 MR. MAYER: I have always not always agreed with
6 jurys but there is certainly enough evidence that if the
7 jury, the jury could certainly return a verdict on him as
8 guilty.

9 THE COURT: Do you agree with his decision to plead
10 with the negotiations of a cap?

11 MR. MAYER: Yes, sir.

12 THE COURT: And it is my understanding that the
13 negotiations are, Solicitor, in exchange for these six
14 pleas of guilt that the sentence imposed would be no more
15 than 25 years.

16 MR. HAMMACK: Yes, sir.

17 THE COURT: Is that your understanding?

18 MR. MAYER: Yes, sir.

19 THE COURT: Is that your understanding?

20 MR. STEPHENS: Yes, sir.

21 THE COURT: Madam Clerk, place him under oath.

22 Brian Keith Stephens, after being duly sworn,
23 testified as follows:

24 THE COURT: Mr. Stephens, in the last twenty-four
25 hours have you had any drugs, alcohol or any type of

1 medication?

2 MR. STEPHENS: No, sir.

3 THE COURT: Are you clearheaded right now?

4 MR. STEPHENS: Yes, sir.

5 THE COURT: Do you suffer from any type of
6 disability, mental, physical or emotional disability which
7 would cause you not to be able to understand what I am
8 telling you or my questions to you?

9 MR. STEPHENS: No.

10 THE COURT: You understand what I am saying?

11 MR. STEPHENS: Yes, sir.

12 THE COURT: Have you ever been treated for mental
13 illness?

14 MR. STEPHENS: No, sir.

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

16 MR. STEPHENS: I received a GED, went to the ninth
17 grade.

18 THE COURT: What type of work do you do?

19 MR. STEPHENS: Construction, forklift driver.

20 THE COURT: How long has Mr. Mayer been your lawyer?

21 MR. STEPHENS: A couple of months.

22 THE COURT: Okay. Now, I am certain he has explained
23 to you that you have a right to a jury trial in these
24 matters. And I am certain that he explained to you that
25 during a jury trial a jury is selected randomly, from a

1 group of disinterested people. By that I mean you can't
2 know anything about the case and twelve people will listen
3 to the case and the case must be proved by the State. The
4 State has to call witnesses and present evidence through
5 witnesses and through physical evidence. They have the
6 burden of proving your guilt beyond a reasonable doubt.
7 All twelve jurors must agree unanimously of your guilt
8 after the State presents its case. You have absolutely
9 nothing to prove nor anything to disprove. You have
10 absolutely no duty or responsibility to testify in your
11 own defense. You can remain silent throughout the trial.
12 The State calls the witnesses and presents the evidence.
13 Your attorney can cross-examine the State's witnesses, he
14 can challenge and contest evidence presented by the State.
15 And he is even allowed to present defenses that you have
16 available to you under our laws during this presentation
17 while you remain silent. And if you were to choose to
18 remain silent the State couldn't argue to the jury during
19 closing or any time that your silence is proof of your
20 guilt. I would instruct all twelve jurors that they could
21 not even discuss your silence during the deliberations,
22 that they would have to decide the case based on what the
23 State told you, not on your failure to tell them anything.
24 Now, you could testify and tell your side if you wanted
25 during the trial. That would be your decision, the State

1 can't call you as a witness and say, well, you know he
2 refused when you asked him. They can't mention that. Do
3 you understand your right to remain silent?

4 MR. STEPHENS: Yes, sir.

5 THE COURT: Do you understand the State's burden of
6 proof by calling the witnesses?

7 MR. STEPHENS: Yes, sir.

8 THE COURT: Do you understand that you have a right
9 to confront all of those witnesses that are your accusers.

10 MR. STEPHENS: Yes, sir.

11 THE COURT: Are you willing to give up these rights
12 to a trial on these six matters in order to plead guilty
13 this afternoon?

14 MR. STEPHENS: Yes, sir.

15 THE COURT: And Mr. Mayer has explained all of this
16 to you?

17 MR. STEPHENS: Yes, sir.

18 THE COURT: And you understand how he has explained
19 it to you?

20 MR. STEPHENS: Yes, sir.

21 THE COURT: And he didn't explain it to you just a
22 moment ago, he explained to you a while back, you have had
23 an opportunity to think about it?

24 MR. STEPHENS: Yes, sir.

25 THE COURT: And you are waiving your rights to trial?

1 MR. STEPHENS: Yes, sir.

2 THE COURT: Freely and voluntarily?

3 MR. STEPHENS: Yes, sir.

4 THE COURT: Listen carefully while Solicitor Hammack
5 tells me what happened.

6 MR. HAMMACK: Your Honor, back on August the 1st of
7 2009 Trooper Salter with the South Carolina Highway Patrol
8 was dispatched to a collision on I-26, near the 55 mile
9 marker in Laurens County. Upon arrival he observed a
10 silver in color Mazda SUV with damage on its left side and
11 rollover damage. EMS was working on two patients lying in
12 the roadway. The second vehicle involved appeared to be,
13 was a gray BMW with tag number 28, no excuse me, 2186AE
14 from South Carolina. It appeared to have left the scene
15 headed East on I-26. Spoke to a witness of Paul Cohen who
16 stated that a white male had left, gone the wrong way
17 after he had lost control and hit the SUV causing it to
18 overturn several times. A female occupant of the vehicle,
19 Ms. Ally Williams, was ejected from the vehicle and was
20 transported to Greenville Memorial Hospital for treatment
21 where she received extensive injuries. Mr. Wiltshire has
22 spoken with her, she is still having to undergo facial
23 reconstruction type surgery. She was extremely injured
24 and still undergoing surgery for that. The male driver
25 was transported to Spartanburg Memorial Hospital and he

1 died as a result of his injuries. A short time later
2 officers located the suspect vehicle on Highway 121 in
3 Newberry County at the Citgo Station at I-26. Trooper
4 Sinclair was in the area, SLED and the MAIT team were
5 called out to assist. At approximately 6:18 Mr. Brian
6 Keith Stephens was located in the woods behind the Citgo.
7 He was taken into custody and transported to the emergency
8 room for treatment and to receive blood and urine tests.
9 He was arrested and charged with the offenses. It appears
10 that the vehicle that he was driving was stolen out of
11 Greenville County on July 31st of 2009. The vehicle was
12 processed by SLED and by the MAIT Team, Your Honor. DNA
13 was recovered from the vehicle, was tested by SLED and
14 came back linked to Mr. Stephens, inside of the stolen
15 vehicle found at the Citgo in Newberry. Also paint
16 analysis was done on the vehicle, came back matching paint
17 that was found on the vehicle that the victims were
18 injured and died in. Also Mr. Stephens' blood alcohol
19 came back a .157. He also tested positive for marijuana
20 and cocaine. Your Honor, he has had an extensive prior
21 record including a prior felony DUI with death. I can
22 start on his record for you. Housebreaking and grand
23 larceny in '83, safe cracking in '84, looks like another
24 DUI first it looks like in '85, forgery in '85, stealing
25 in '87, leaving the scene in '88, driving under suspension

1 in '91, burglary third degree in '92 along with grand
2 larceny. It looks like another grand larceny in Oconee
3 County in '92, grand larceny and burglaries of Spartanburg
4 in '92, felony DUI with death which he received, looks
5 like a ten year sentence back in '96, assault and battery
6 with a high and aggravated nature around that same time
7 period out of Greenville County in 1996. It appears he
8 was serving, excuse me, grand larceny in 2009, I missed
9 that one. Third or subsequent property offense in '08.
10 And as I recall he was serving time on, it looks like 18
11 counts of fraudulent checks and had only been out of jail
12 a matter of hours as I recall when this incident occurred.
13 Your Honor, Mr. Wiltshire has spoken with the victims
14 family. As you know Mr. Williams was killed in that
15 accident, his daughter was severely injured. They are
16 actually in Tennessee and are not present today. Your
17 Honor, we did negotiate a cap of 25. Mr. Wiltshire
18 understood it to be a 25 year sentence. It is not, I
19 explained to him it was a negotiation for a cap. But
20 quite frankly with that prior record and prior felony DUI
21 we would obviously ask for the max.

22 THE COURT: All right. The facts represented by Mr.
23 Hammack, are those true and correct to your knowledge as
24 to the basis for the six pleas you are making?

25 MR. STEPHENS: Yes, sir.

1 THE COURT: Do you understand that whatever time I
2 give you, this is, any crime carries more than 20 years,
3 you serve eighty-five percent of the time.

4 MR. STEPHENS: Yes, sir.

5 THE COURT: Do you understand that?

6 MR. STEPHENS: Yes, sir.

7 THE COURT: Also you will have a conviction of all of
8 these offenses and for the sake of this plea, when you get
9 out, let's be assumed, you will not be allowed to have a
10 drivers license.

11 MR. STEPHENS: Yes, sir.

12 THE COURT: The State will give you a lifetime
13 revocation or a permanent suspension. That used to be the
14 rule. For the sake of this plea, assume that you were
15 refused to have a license lawfully ever again. I am
16 confident you have already provided a sample of your DNA
17 for the State DNA data base. If not you will have to do
18 that.

19 MR. STEPHENS: Yes, sir.

20 THE COURT: Other than the cap of 25 years and the
21 dismissal of two related charges have you been made any
22 other promises by the State in the handling of this plea?

23 MR. STEPHENS: No, sir.

24 THE COURT: If they are I need to know about it,
25 because if they have made you any other promise and it is

1 not mentioned to me on the record then I don't know about
2 it so that promise to you is gone as soon as I accept the
3 plea. Do you understand that?

4 MR. STEPHENS: Yes, sir.

5 THE COURT: As I understand it you are pleading to
6 hit and run to personal injury, hit and run great bodily
7 injury, hit and run of death, felony of DUI of death,
8 felony DUI with great bodily injury and then one count of
9 possession of a stolen vehicle.

10 MR. STEPHENS: Yes, sir.

11 THE COURT: Now, I want to ask you again, have you
12 had enough time to discuss all of these matters with Mr.
13 Mayer?

14 MR. STEPHENS: Yes, sir.

15 THE COURT: He has explained to you your rights to a
16 trial, potential punishment. And, Solicitor, the cap of
17 25 would mean that these would run concurrent with one
18 another and not be any consecutive time?

19 MR. HAMMACK: Yes, sir. Your Honor, in essence that
20 is what, the maximum sentence is 25 years. It is just
21 agreeing that it wouldn't be consecutive time basically.

22 THE COURT: That was represented to you?

23 MR. STEPHENS: Yes, sir.

24 THE COURT: Are you satisfied with his representation
25 of you?

1 MR. STEPHENS: Yes, sir.

2 THE COURT: Has he answered all of your questions and
3 gone over everything that the State has in that file box,
4 reports, SLED analysis, everything?

5 MR. STEPHENS: Yes, sir.

6 THE COURT: Do you need any more time with him?

7 MR. STEPHENS: No, sir.

8 THE COURT: Are you pleading guilty to these six
9 offenses I have just recited because you did in fact
10 commit them as described by Mr. Hammack?

11 MR. STEPHENS: Yes, sir.

12 THE COURT: The prior record that he gave me a
13 summary of, is that accurate as far as you heard?

14 MR. STEPHENS: Yes, sir.

15 THE COURT: The prior record is pretty extensive. He
16 may of left something out or added something in but you
17 have got kind of a shotty prior record.

18 MR. STEPHENS: Yes, sir.

19 THE COURT: You are entering this plea before me this
20 afternoon freely and voluntarily?

21 MR. STEPHENS: Yes, sir.

22 THE COURT: Regarding indictment, 10-GS-30-493,
23 indictment 10-GS-30-461 and 10-GS-30-460, addition,
24 09-GS-30-1585, 1586 and 1587. Those six indictments, I
25 find the defendant, Brian Keith Stephens has made a free,

1 knowing and intelligent plea of guilt to the offense of
2 hit and run minor personal injury, hit and run of great
3 bodily injury, hit and run death results, felony DUI great
4 bodily injury, felony DUI death results and possession of
5 a stolen vehicle. He has entered all of these pleas with
6 advice of counsel, a competent attorney of whom he states
7 upon the record while under oath that he is completely
8 satisfied. The State has provided ample facts for which
9 to base these six pleas. All right, Mr. Mayer, I will be
10 glad to hear from you.

11 MR. MAYER: Your Honor, Mr. Stephens, second attorney
12 in this case. He had Mr. Howe before. I have had it for
13 a few months and been through the report and talked with
14 him on several occasions. There are some arguments that
15 are easier to make than others. This is a tough one,
16 there are no winners in this. What the report doesn't say
17 is a lot of what was going on in Mr. Stephens life at the
18 time. He did the DUI, he did the eight and a half years
19 on that. When he came out, that was in '96. When he came
20 out he pulled his life together for the most part, we
21 don't see the problems that we had earlier in his life
22 before the prison sentence. He lost his mother is a
23 problem he ran in to. He tried to cope with that with a
24 little bit of alcohol and lost his income supply and ended
25 up with some bad checks. He ended up in Magistrate Court

1 without a lawyer and sentenced to two years in the
2 Department of Corrections for bad checks where they string
3 thirty days on and on and on. He did a year. When he was
4 released he was out, as Mr. Hammack says, less than a day.
5 He had no where to go, no job, no way to feed himself and
6 was just kicked out. He was spending time under a bridge,
7 trying to figure out what to do. I don't think friends is
8 a good word, we will say acquaintances in situations
9 similar and they started drinking and had been locked up
10 for a year. He has not been charged with taking the car,
11 he has only been charged with having had it in his
12 possession and he is going down the interstate. The
13 accident, while its results were horrific the accident
14 itself, if you read the report, it seems almost benign.
15 It was a pass at speed that clipped the back corner the
16 way that the police spin cars out that they are chasing
17 and then the van rolled. The young lady with the facial
18 injuries was not seat belted and she came forward. And
19 the driver, the father, had the window down, he didn't
20 have a seatbelt on and he actually ended up apparently
21 coming out, at least to the shoulder and part of his head
22 out of the car as it went. And he clipped and he pulled
23 over into Newberry, got out and panicked and just hid in
24 the woods. There is no way to apologize for that. He
25 should not have been driving. Obviously he shouldn't have

1 been in a stolen car. The law requires him to stop, he
2 didn't do that, he didn't have a license. And the car was
3 stolen, he had just gotten out and he continued in what in
4 his younger days had been a series of very, very poor
5 judgments and this follows along that position. Your
6 Honor, he is 44 years old, he has gotten his GED, he has
7 tried to pull his life together and he had great hopes for
8 himself when he got out of prison, he was kind of dumped
9 on the street with a minimum number of options and finds
10 himself in the position that he is in. He was not
11 cooperative with law enforcement when he was arrested in
12 that he just clammed up and said he wanted to talk to a
13 lawyer before he did anything. I think that is well
14 within his rights. He has been very open with me about
15 his involvement. He has now been in the county jail for
16 well over 500 days. He knows that this is not going to be
17 an easy thing for him. He knows the Court is going to
18 give him a substantial amount for the rest of life that he
19 has to be locked up. He understands that, I have talked
20 with his parents, with his father. I have talked to them
21 on the phone as recently as I think last Wednesday. And
22 they understand that he has by his own actions gotten
23 himself in a position that he never intended. It doesn't
24 minimize the result of what he did. We would ask that the
25 Court take what charity and compassion it can in his

1 situation and sentence him accordingly.

2 THE COURT: Would you like to say something?

3 MR. STEPHENS: I would like to apologize to the
4 family. I wish I could take it back.

5 THE COURT: Does your dad come to see you here in
6 Laurens?

7 MR. STEPHENS: Yes, sir.

8 THE COURT: Have you got any siblings?

9 MR. STEPHENS: One daughter.

10 THE COURT: Where does she live?

11 MR. STEPHENS: Spartanburg. One grandchild.

12 MR. MAYER: For what it is worth, Your Honor, we were
13 in this business on both sides, seen a whole lot of tears
14 in this room. And this room makes a lot of things very
15 real to people. Mr. Stephens, his voice cracked a moment
16 ago and I can stand next to him, his eyes are starting to
17 tear. This has been the result he has had every time I
18 have talked to him. I have seen crocodile tears before
19 and I have seen people get a jail house remorse. For what
20 it is worth, when he says he wishes he can change this, I
21 think that is about as truthful a statement as I have
22 heard anybody make.

23 THE COURT: There is no issue of restitution in this
24 matter?

25 MR. HAMMACK: No sir, Your Honor. Quite honestly,

1 Mr. Wiltshire will speak in a moment.

2 THE COURT: The victim with the reconstruction done
3 on her face. I doubt it would be under \$100,000.00
4 dollars?

5 MR. WILTSHIRE: I think it is more.

6 VICTIIM'S ADVOCATE: It is a matter of the loss, not
7 the financial. Insurance took care of a great deal of it.
8 We did get an application from the State office for some
9 burial expenses, things of that nature.

10 THE COURT: How old is she?

11 VICTIIM'S ADVOCATE: Ally is 21.

12 MR. WILTSHIRE: 1989, Your Honor.

13 MR. HAMMACK: 21, yes sir.

14 THE COURT: So her dad is the one that is deceased
15 and it was her sister or her mother got better?

16 MR. MAYER: Her mother.

17 THE COURT: Mother.

18 MR. MAYER: The parents were in the front seat.

19 MR. HAMMACK: Your Honor, just briefly, for the past
20 27 years Mr. Stephens has seen little or no time out of
21 prison. His record is this thick since he was 17 and they
22 started keeping an adult record. He has not done more
23 than a matter of months outside of prison in 27 years. He
24 served time for felony DUI with death. Just gets out of
25 prison less than a day prior to this on other charges,

1 killed another person in a car, in a stolen car. Again as
2 I said, that is why we would ask for a maximum sentence in
3 this. It is, some people you just can't rehabilitate.

4 MR. WILTSHIRE: If I may, Your Honor. Mr. David
5 Michael Williams who we stand here for today would be 56
6 on the 16th of January, just eight days ago or nine days
7 ago. He was a proud father to Ally and to a grandson
8 named Jackson who is five years old in April of this year.
9 Luckily for him the little Jackson was well fastened into
10 the baby seat. Ms. Alley is the one that is having facial
11 reconstruction. The family is immensely grateful that she
12 is still with them. Thanks to the miraculous work by the
13 surgeons in Tennessee she has almost all of that being
14 back in place. There is obviously an extreme amount of
15 scarring. She will continue to have for a considerable
16 period of life continuing reconstruction. She will have
17 pain and difficulties of other injuries as well as the
18 ongoing surgeries. If you will phone up to the house Mr.
19 David Michael Williams voice is still on the answering
20 machine. Every time I speak to Ms. Williams she cries on
21 the phone. She says very clearly to me today that Mr.
22 Stephens cannot hurt them anymore which is why she didn't
23 want to be here, she didn't want to see him. They believe
24 that this is a closure. I would ask absolutely for the 25
25 years in the most strongest possible terms so that we

1 don't have to have other people suffering because of Mr.
2 Stephens' actions. I did miss one aspect of the crime.
3 Is that the son of Mr. David Michael Williams, Mr. Jake
4 Tyler Williams was following behind and saw the whole
5 thing. He has not been able to go on an interstate in a
6 car since this occurred.

7 THE COURT: Anything else?

8 MR. HAMMACK: Not from the State, Your Honor.

9 THE COURT: Mr. Mayer?

10 MR. MAYER: Nothing, Your Honor.

11 THE COURT: Mr. Stephens?

12 MR. STEPHENS: No, sir.

13 THE COURT: I accept the plea. Mr. Stephens, I will
14 tell you before I read, they put all of this stuff
15 together, that would be much more difficult because there
16 is so many different things. I think you probably owe
17 your attorney the biggest thing in representing you in
18 negotiating this cap. That would be my advice to you.
19 But anyway, regarding hit and run minor personal injury,
20 10-GS-30-493. The sentence of the Court is one year,
21 credit for the time you have already served. You have met
22 that sentence.

23 The 10-GS-30-460, felony DUI, great bodily injury.
24 The sentence of the Court is fifteen years and a
25 \$10,100.00 dollar fine. Credit for 534 days for time

1 served.

2 10-GS-30-461. Hit and run with great bodily injury.
3 The sentence of the Court is ten years. Credit for 534
4 days of time served.

5 Possession of stolen vehicle. Indictment
6 09-GS-30-1587. The sentence of the Court is five years.
7 Credit for the 534 days.

8 09-GS-30-1585. Felony DUI with death. The sentence
9 of the Court you be confined for twenty-five years and pay
10 a fine of \$10,100.00 dollars. Credit for 534 days on both
11 of those.

12 09-GS-30-1586, hit and run with death. The sentence
13 of the Court is that you be confined to the Department of
14 Corrections for 25 years and pay a \$10,000.00 dollar fine.
15 The fines imposed is not discretionary to me. Given
16 credit for 534 days you have served. And all five of
17 those sentences all run concurrent with one another just
18 as the negotiations. Good luck to you.

19 MR. HAMMACK: Thank you, Your Honor.

20 MR. MAYER: Thank you, Your Honor.

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

22

23

24

25

1 CERTIFICATE OF REPORTER

2

3

4 State of South Carolina)

5 County of Newberry)

6

7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Laurens, South
14 Carolina on January 26, 2011.

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

17

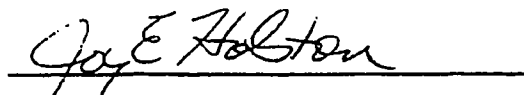
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July 15, 2011

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Joy E. Holston, Court Reporter

23

My Commission expires: March 13, 2016

24

25

FORM 5

STATE OF SOUTH CAROLINA

County of LAURENSBRIAN KEITH STEPHENS
Full name and prison number (if any) of Applicant

v.

State of South Carolina

LAURENS COUNTY
COURT

IN THE COURT OF COMMON PLEAS

27 D 12-2011 -CP30- 407

APPLICATION FOR

POST-CONVICTION RELIEF

A TRUE COPY OF ORIGINALLynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GSINSTRUCTIONS - 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 Broad Corr. Inst. Columbia S.C.
2. Name and location of Court which imposed sentence LAURENS County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09G530 - 1585, 09G530 - 1586, ~~10G530 - 0490~~
 - (b) 09G530 - 1587, 10G530 - 0493, ~~10G530 - 0491~~

- (c) 10G530 - 0460 , 10G530 - 0461
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 09G530 - 1586 - 25 YEARS , 09G530 - 1585 25 YEARS
- (b) 10G530 - 0460 15 YEARS , 10G530 - 0461 10 YEARS
- (c) 09G530 - 1587 5 YEARS , 10G530 - 0493 1 YEAR
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. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

JAN 26
2011

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) CONFLICT OF INTEREST
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) INVOLUNTARY PLEA INADEQUATE DEFENSE
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ACCOMPANYING BRIEF
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

_____ *No* _____

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) _____
 (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? _____
 (c) your sentencing? YES
 (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 "yes" to one or more parts of (17), list:

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

i. BILL MAYER LAW FIRM
116 W. MAIN ST. LAURENS S.C. 29360

ii. _____

iii. _____

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

i. ATTORNEY AT SENTENCE

ii. _____

iii. _____

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

NEW TRIAL
Acquittal because of lack of Material Evidence

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

NO

STATE OF SOUTH CAROLINA)

County of

LAURENS

) VERIFICATION

I, BRIAN KEITH STEPHENS, 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.

Brian Stephens

SWORN to and subscribed before me this 26th day of April, 2011.

Susan H. Frye (L.S.)
 Notary Public

My Commission Expires
 March 5, 2018

My Commission Expires: _____

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

I, BRIAN KEITH STEPHENS, 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.

Brian Stephens
Applicant

SWORN or affirmed to and subscribed before me this
26th day of April, 2011.

Susan R. Dye
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	
	)	2011-CP-30-0407
	)	
Brian Keith Stephens, #131066.	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 27, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Laurens County. He was indicted by the Laurens County Grand Jury for Felony DUI, Death Results (2009-Gs-30-1585), Hit and Run with Death (2009-GS-30-1586), Possession of Stolen Vehicle (2009-GS-30-1587), Felony DUI with Great Bodily Injury (2010-GS-30-0460), Hit and Run with Great Bodily Injury (2010-GS-30-0461), and Hit and Run with Minor Personal Injury (2010-GS-30-0493). He was represented by Bill Mayer, Esquire.¹ On January 26, 2011, he appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted to all of the aforementioned charges with a negotiated cap of twenty-five (25) years.² He received the following sentences, all concurrent: twenty-five (25) years and a \$10,100.00 fine for felony DUI with death; twenty-five (25) years a \$10,000.00

¹ The plea transcript indicates the Applicant was previously represented by "Mr. Howe." (Tr. 17).

² The plea transcript indicates the State also dismissed two additional charges against the Applicant for felony DUI with great bodily injury, and hit and run with great bodily injury. (Tr. 3).

fine for hit and run with death; five (5) years for possession of a stolen vehicle; fifteen (15) years and a \$10,100.00 fine for felony DUI, great bodily injury; ten (10) years for hit and run with great bodily injury; and one (1) year, or time served, for hit and run with minor personal injury. He did not appeal his convictions or sentences.

Attached herewith and incorporated herein by reference are the records of the Laurens County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel
2. Conflict of interest
3. Involuntary plea
4. Inadequate defense

III.

Respondent interprets each of these claims to be allegations of ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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 questions of fact that are not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on these allegations. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HARRISON D. BRANT
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

August 22, 2011.

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF LAURENS	)	Case No(s) : 2011CP3000721
	)	
Brian Keith Stephens,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

March 14, 2012
Laurens, South Carolina

B E F O R E:

HONORABLE FRANK R. ADDY, Judge.

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

J. RUTLEDGE JOHNSON, Esquire
Attorney for the State

GARY WILLIAMS, Esquire
Attorney for the Applicant

Recorded by: Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

Transcribed by: Teresa B. Johnson, CVR-M
Circuit Court Reporter

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motions	4			
Brian Stephens				
by Mr. Williams	8			
by Mr. Johnson		16		
by Mr. Williams			20	
William Mayer				
by Mr. Johnson	25			
by Mr. Williams		32		
Argument of Counsel	37			
Certificate of Reporter	39			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 14th day of March, 2012 at approximately 11:44 a.m.)

THE COURT: All right, Mr. Johnson.

MR. JOHNSON: Yes, sir. Your Honor, this is the case of Brian Keith Stephens versus the State of South Carolina, case number 2011-CP-30-0407. Mr. Stephens was indicted by Laurens County Grand Jury for Felony DUI Death Resulting, Hit and Run with Death, Possession of Stolen Vehicle, Felony DUI with Great Bodily Injury, Hit and Run with Great Bodily Injury and Hit and Run with Minor Personal Injury.

He pled guilty on January 26th, 2011. He appeared before the Honorable Eugene C. Griffith, Jr. Plead guilty as indicted to all the asforementioned charges with a negotiated cap of 25 years. The plea transcript indicates the State also dismissed two additional charges against the applicant for Felony DUI with Great Bodily Injury and another Hit and Run with Great Bodily Injury. It's a negotiated sentence to run concurrent, 25 years for Felony DUI with death resulting, 25 years for Hit and Run with Death Resulting, 5 years for

Motions

1 Possession of Stolen Vehicle, 15 years for
2 Felony DUI with Great Bodily Injury, 10 years
3 for Hit and Run with Great Bodily Injury, one
4 year with time served for Hit and Run with
5 Minor Personal Injury.

6 There was no direct appeal filed. There
7 was a timely PCR application filed on April
8 27th, 2011. The State made its return on
9 August 22nd, 2011. The applicant is
10 represented today here by Mr. Gary Williams.

11 **THE COURT:** All right. Mr. Williams, you
12 ready to proceed, sir?

13 **MR. WILLIAMS:** Your Honor, I would
14 respectfully move for a continuation. That
15 continuation is based on, primarily, my client
16 would like more time to contemplate what he
17 should do. I've had an opportunity to go over
18 this case this morning. My usual -- I usually
19 see my client the night before. I called
20 Laurens County thinking that he was in Laurens
21 County Detention Center. They indicated that
22 he did not, uh, -- did not come to, uh, the
23 detention center last night. So I was unable
24 to meet with my client. But I met with him this
25 morning, but that is pretty much right before

1 this trial.

2 Based on our discussions, he would like
3 respectfully to have a little bit more time to
4 determine what he would need to do in this
5 situation. He did receive a 25-year sentence.
6 The decision that he now makes, uh, could grant
7 him a new trial but that could, uh, -- could,
8 uh, -- he could be looking at more time. He
9 just wants to make sure that he is making the
10 right decision. I would ask just for the next
11 available date. Not a lengthy continuation but
12 just for the next available date.

13 **THE COURT:** My concern here, Mr. Williams,
14 in all honesty is we have everybody here. We
15 have everybody ready to go. He needs to decide
16 what he wants to do. He's had a long time to
17 think about this. Apparent, the plea,
18 according to the transcript I was provided,
19 apparently the plea took place on January the
20 26th of last year. So he's had a year to
21 ponder -- over a year to ponder how he wanted
22 to proceed.

23 **MR. WILLIAMS:** Yes, sir. I sent him the
24 transcript back in August of last year. And,
25 uh, I just have not had an opportunity to talk

Motions

1 to him until today.

2 **THE COURT:** All right. Mr. Williams, I
3 hate to delay this case any further. I'm
4 receiving indications from you that you are
5 ready to proceed if we went forward today, am I
6 correct?

7 **MR. WILLIAMS:** Yes, sir. I would be if we
8 went forward today.

9 **THE COURT:** What I can do, if your client
10 needs additional time to perhaps think about
11 this, I'd be more than happy since we have all
12 the witnesses present right now, we can proceed
13 with the hearing today and, uh, I would be more
14 than happy to delay ruling until maybe Monday
15 of next week. You can contact me and let me
16 know. That will give your client some
17 additional time. We can have the hearing and
18 then wait. That way, if he wants to withdraw
19 it, I would allow him to -- basically, what I
20 would do is when he takes the stand here today,
21 if he takes the stand, I would simply ask him
22 to confirm that you would have authority to
23 withdraw that on his behalf if he chose to go
24 that route. If not, I would simply rule by
25 Monday of next week. Would that be acceptable

1 to everybody? That would give him the weekend
2 to think about it.

3 **MR. WILLIAMS:** May I have one moment?

4 **THE COURT:** Yes, sir.

5 (WHEREUPON, there is a pause.)

6 **MR. WILLIAMS:** Your Honor, we are prepared
7 to go forward. We would ask that you, uh, ---

8 **THE COURT:** Delay ruling?

9 **MR. WILLIAMS:** --- delay ruling. Yes,
10 sir.

11 **THE COURT:** Very good.

12 Call your first witness then, Mr. Williams.

13 **MR. WILLIAMS:** I call Brian Stephens.

14 **THE COURT:** Sir, if you would, come
15 forward please.

16 **BRIAN STEPHENS**

17 having first been duly sworn, testifies as follows:

18 **THE COURT:** Mr. Williams?

19 **MR. WILLIAMS:** Thank you, Your Honor.

20 **DIRECT EXAMINATION**

21 **BY MR. WILLIAMS:**

22 **Q** State your name.

23 **A** Brian Keith Stephens.

24 **Q** And you are Brian Keith Stephens who pled
25 in Laurens county to six charges?

1 **A** Yes, sir.

2 **Q** And that was last year, is that correct?

3 **A** Yes, sir. No, 2010.

4 **Q** And, uh, today, are you asserting that your
5 counsel was ineffective?

6 **A** Yes, sir.

7 **Q** Who was your counsel?

8 **A** Bill Mayers [sic].

9 **Q** And, uh, in your petition to the court, you
10 indicated that your allegations of ineffective was
11 based first on a conflict of interest. Can you tell
12 the court why Mr. Mayer had a conflict of interest?

13 **A** I think that was kind of an understatement
14 because we had discussed -- the day before, uh, I
15 explained to Mr. Mayers that I was offered somewhere
16 between two officers for my statement, which I would
17 not give at the beginning of the day, they would go
18 and recommend a 15-year sentence. So I gave a
19 statement which I did not have an attorney, I did not
20 have an attorney present at the time. I advised Mr.
21 Mayer of that the day of the guilty plea my
22 understanding, I was going in with a 0 to 25. If I
23 pled, if I pled no contest or if I pled the Alford
24 that I would probably get a judge that I couldn't
25 plead that. But then if I didn't plead guilty and if

1 I told him I was promised something, he would dismiss
2 my case and I would end up getting a judge that would
3 be more harsh on me than Mr. Griffith.

4 Q Than Judge Griffith?

5 A Yes, sir.

6 Q That is what Mr. Mayer told you?

7 A Yes, sir.

8 Q Do you believe that Mr. Mayer, when you
9 told him about the 15-year sentence offer, did you
10 believe that Mr. Mayer was a witness?

11 A No, there was not a -- I didn't have an
12 attorney present at the time that could witness that.

13 Q When you relayed to Mr. Mayer that someone
14 had relayed to you that there was a 15-year sentence
15 offer, do you believe that Mr. Mayer became a witness
16 and therefore had a conflict ---

17 A Yes, sir.

18 Q --- in representing you?

19 A Yes, sir.

20 Q Is that what you indicate to the court?

21 A Yes, sir.

22 Q Now, you feel by Mr. Mayer not presenting
23 that 15-year sentence before Judge Griffith that he
24 became ineffective, is that so?

25 A Yes, sir.

1 Q You also indicate in your allegations that
2 it was an involuntary plea, how was it involuntary?
3 Someone forced you to plea?

4 A No, sir. But I knowed I was going to get
5 25 years, I sure wouldn't have went in there and just
6 jumped in the first tub I come to.

7 Q So by you receiving 25 years -- is it your
8 testimony that because you received 25 years, you
9 wouldn't have done it if thought you would have
10 received 25 years, therefore, it was involuntary?

11 A Yes, sir.

12 Q How did Mr. Mayer -- in your allegations,
13 you indicate an inadequate defense. How did Mr.
14 Mayer not prepare a good defense for you?

15 A As of -- like today, I've not spoke to you
16 but once in over a year since you have been in my
17 case, I did not talk to Mr. Mayer but once or twice.
18 He come to me and asked me would I take 20. I would
19 have took the 20 but he said we were going for the
20 cap of 0 to 25, I wouldn't probably get no more than
21 18 to 20. So that was my understanding when I went
22 in there.

23 Q Did you and Mr. Mayer go over your
24 discovery materials ---

25 A No, sir.

1 Q --- given by the prosecution?

2 A No, sir.

3 Q Did Mr. Mayer discuss the case against you?

4 A No, sir.

5 Q He did not?

6 A No, sir.

7 Q And the reason you didn't indicate it to
8 the trial judge is because of what?

9 A I was coerced into saying that I was not
10 promised anything. There's not a judge or an
11 attorney that's not never told their client that they
12 can go in there and say that they were promised
13 anything.

14 Q And you are saying that you were coerced by
15 who?

16 A Mr. Bill Mayers [sic]. He told me that if
17 I told the judge that, the judge would dismiss my
18 case and he wouldn't hear it and I would get a judge
19 that would give me the whole sentence.

20 Q Now, your background pretty much, uh, you
21 have been addicted to various drugs, ---

22 A Yes, sir.

23 Q --- is that correct? You never received
24 rehabilitation or any type of counseling for that
25 abuse, is that correct?

1 **A** No, sir.

2 **Q** Was that presented in your plea by Mr.
3 Mayer?

4 **A** Not of my knowledge. He has told -- he
5 said I had an addiction but I -- you know, it's kind
6 of vague.

7 **Q** Do you feel that he should have told the
8 trial judge that in order to possibly lessen the
9 sentence that you received?

10 **A** Yes, sir.

11 **Q** Did you feel he was ineffective for not
12 doing that?

13 **A** Yes, sir.

14 **Q** Previous to the sentence you pled, you had
15 a sentence of Felony DUI with Death, previous to that
16 sentence, you had another one, correct?

17 **A** (No response.)

18 **Q** Is that correct?

19 **A** What are you talking about?

20 **Q** In '96, '95 or '96, you also had a similar
21 case, is that correct?

22 **A** Yes, sir.

23 **Q** Apparently that was presented to the trial
24 judge, is that correct?

25 **A** Yes, sir.

1 Q Were there different circumstances that you
2 would have liked the judge to be aware of concerning
3 the '95, '96 plea?

4 A Yes, sir.

5 Q Was that presented to the trial judge?

6 A No, sir.

7 Q You think if those different facts were
8 presented to the trial judge, your sentence would
9 have been a different one?

10 A Possibly.

11 Q Do you think that because Mr. Mayer did not
12 present the facts associated with the '95, '96
13 conviction, he was ineffective?

14 A Yes, sir.

15 Q So if all of these issues were presented to
16 the trial judge, do you feel that your case would
17 have had a different resolution? Would that be your
18 testimony?

19 A Yes, sir.

20 Q So because these issues were not presented
21 to the trial judge, you believe that Mr. Mayer
22 prejudiced your case to the extent that you received
23 a harsher sentence?

24 A Yes, sir.

25 Q Is that correct?

1 **A** Yes, sir.

2 **Q** Do you have any other item that you would
3 like to present to the judge today?

4 **A** No, not right now. We have a limited time
5 in the law library. You don't get to go but once a
6 week. Some weeks, you don't get to go to the law
7 library. I spent three months at the R&E. So I did
8 not have adequate time to appeal the case within the
9 10 days or file for reconsideration.

10 **Q** And you wanted a lenient sentence, correct?

11 **A** Yes, sir.

12 **Q** You felt going in to the plea on that
13 particular day that based on what Mr. Mayer had
14 advised you, you were going to get less time, is that
15 correct?

16 **A** That was the feeling I had.

17 **Q** You understand that we discussed this case
18 and you understand that this court could give you a
19 new trial, is that correct?

20 **A** Yes, sir.

21 **Q** But not reduce your sentence?

22 **A** Yes, sir.

23 **MR. WILLIAMS:** No further questions.

24 **THE COURT:** Mr. Johnson?

25 **MR. JOHNSON:** Just briefly, Your Honor.

1 **THE COURT:** Yes, sir.

2 **CROSS-EXAMINATION**

3 **BY MR. JOHNSON:**

4 **Q** Mr. Stephens, your attorney brought up the
5 fact that, uh, this is not the first time you have
6 done this, is it?

7 **A** No, sir.

8 **Q** Killed somebody in a car?

9 **A** No, sir.

10 **Q** Matter of fact, you have got a pretty long
11 RAP sheet, don't you?

12 **A** Yes, sir.

13 **Q** That was bought out in your plea, wasn't
14 it?

15 **A** Yes, sir.

16 **Q** Okay. During this plea, the judge advised
17 you of your constitutional rights ---

18 **A** Yes, he did.

19 **Q** --- your right to a trial by jury and the
20 right to present defenses?

21 **A** Yes, sir.

22 **Q** You waived those rights, didn't you?

23 **A** Yes, I did.

24 **Q** You pled freely and voluntarily, isn't that
25 right?

1 **A** Yes, sir.

2 **Q** As the solicitor read the facts, you agreed
3 to them, isn't that correct?

4 **A** Yes, sir.

5 **Q** You understood that, uh, if you go out and
6 do this again, the state will seek life without
7 parole, isn't that right?

8 **A** Yes, sir.

9 **Q** Third strike. There were no other promises
10 other than the 25-year cap, isn't that right?

11 **A** Yes, there was.

12 **Q** You said to the court that day that you had
13 enough time to speak with your attorney, isn't that
14 right?

15 **A** I did at the moment.

16 **Q** You also said you were satisfied with his
17 representation, didn't you?

18 **A** I was told to say that by Mr. Mayer. I was
19 coerced.

20 **Q** Are you face in about 90 years if you go
21 back?

22 **A** Yes, I am.

23 **Q** And the State did drop a couple of charges
24 against you, didn't they?

25 **A** Yes, sir.

1 Q So you want to go back and give the 25
2 years of life away and face up to 90 or 100 years in
3 prison?

4 A If that's the case.

5 Q You also said your attorney answered all
6 the questions you had, isn't that right?

7 A Do what?

8 Q You said that the attorney answered all the
9 questions you had for him, isn't that correct?

10 A Yes, he answered them all.

11 Q You pled guilty because you were guilty,
12 isn't that right?

13 A To an extent.

14 Q That's what you told the court?

15 A Yes, sir.

16 Q There was DNA evidence linking you to the
17 crash scene, isn't that right?

18 A I'm not arguing that I was not there.

19 Q Are you arguing that you did this?

20 A No, I'm arguing that I was not the driver
21 of the car at the moment of that car wreck. It was
22 four and a half hours after that car wreck that the
23 car was found. Yes, I had been in that car.

24 Q Okay, but you didn't present that to the
25 court that day, did you?

1 **A** It was not in my best interest Mr. Mayer
2 said.

3 **Q** When the judge asked you if you wanted to
4 say anything else, your statement was I would like to
5 apologize to the family. I wish I could take that
6 back.

7 **A** Yes, sir. And I still do. I wish that had
8 not happened to the family but there's nothing I can
9 change about that now.

10 **MR. JOHNSON:** Beg the court's indulgence.

11 **THE COURT:** Yes, sir.

12 **(WHEREUPON, there is a pause.)**

13 **BY MR. JOHNSON:**

14 **Q** Just a few more questions, Mr. Stephens. I
15 understand that today you are saying that you want a
16 new trial, you want to go face it another time. But
17 at the time, did you want a trial?

18 **A** Yes, sir.

19 **Q** You relayed that to your attorney?

20 **A** To Chip Howe, the first attorney I had.

21 **Q** Did you relay that to Mr. Mayer?

22 **A** At the beginning of the conversation, the
23 first time I spoke with him.

24 **Q** Okay. You said something about you were
25 promised 15-year offer or promised a 20-year offer?

1 **A** The two officers that come and tried to
2 interrogate me told me if I would give a statement,
3 they would go to the solicitor's office and asked for
4 a 15-year sentence.

5 **Q** Okay. But you said at the guilty plea that
6 you were offered nothing else, no promises other than
7 the 25-year cap?

8 **A** Yes, sir.

9 **Q** So you lied to the judge?

10 **A** Yes, sir. I did.

11 **MR. JOHNSON:** No further questions.

12 **MR. WILLIAMS:** If I may, Your Honor.

13 **THE COURT:** Please.

14 **REDIRECT EXAMINATION**

15 **BY MR. WILLIAMS:**

16 **Q** You are saying that you lied to him. But
17 what was the background in your representation to the
18 court? Well, what did you base that representation
19 to the court on?

20 **A** From my attorney.

21 **Q** What, specifically, did he relay to you?

22 **A** He told me that I could not tell the judge
23 that I was promised.

24 **Q** What did he relate to you that made you
25 represent that there were no promises to you and then

1 you indicated that to the court?

2 **A** What'd you say?

3 **Q** What did Bill Mayer tell you to make you
4 represent to the court that there were no promises?

5 **A** He said if I told the judge I was promised
6 anything that he would not hear my case and that I
7 would get a judge that would give me the whole 25.

8 **Q** The fact of the matter is you were promised
9 something?

10 **A** Yes, sir.

11 **Q** And that promise was 15 years from the two
12 police officers?

13 **A** Yes, sir.

14 **Q** The Attorney General was indicating about
15 the case that in your allegations you said you feel
16 you should be acquitted because of lack of material
17 evidence?

18 **A** Yes, sir.

19 **Q** Would you tell the judge what you mean by
20 that?

21 **A** Well, there is no one that can identify me
22 as being the driver of that car at the point of the
23 car wreck. I'm not arguing that I was not in the car
24 but I was not the driver. I was found with the car
25 four and a half hours later but it was because the

1 suspect that was with me had left the scene when the
2 car gave out on us. And I had sat at the store
3 waiting on my father to come pick me up when the
4 officers had arrived and found me there.

5 **MR. WILLIAMS:** No further questions.

6 **THE COURT:** Any reply?

7 **MR. JOHNSON:** That's all, Your Honor.

8 **THE COURT:** All right. Mr. Stephens, just
9 a couple of questions from the Court. A moment
10 ago before you took the stand, your lawyer told
11 me that you were wanting a little bit more time
12 to decide exactly how to proceed with this case.
13 I indicated to you that I'd be more than happy
14 to give you til at least Monday of next week
15 before ruling on this and that if you wanted to
16 withdraw this PCR application, if you decided to
17 withdraw this PCR application between now and
18 Monday, that you could communicate with Mr.
19 Mayer and give him instructions to be authorized
20 to withdraw this. Is that acceptable to you?

21 **MR. STEPHENS:** Yes, sir.

22 **MR. WILLIAMS:** Mr. Williams.

23 **THE COURT:** I'm sorry. Mr. Williams. I
24 apologize, sir.

25 So you can communicate with Mr. Williams

1 and he can withdraw your PCR application for
2 you. Is that all right?

3 **MR. STEPHENS:** Yes, I can -- if there is
4 some way I can contact him.

5 **THE COURT:** Okay. Which prison?

6 **MR. STEPHENS:** Broad River.

7 **THE COURT:** Broad River?

8 **THE COURT:** Okay. I mean, they have phones
9 there, right?

10 **MR. STEPHENS:** Yes, sir. But I don't have
11 his number or nothing.

12 **THE COURT:** Mr. Williams will be more than
13 happy to give you his number.

14 **MR. STEPHENS:** Yes, sir.

15 **THE COURT:** In all honesty, I'll be in
16 Abbeville next week. So it might not -- you
17 might have a little bit extra time but you need
18 to try to communicate with him by Monday.

19 **MR. STEPHENS:** Yes, sir.

20 **THE COURT:** I think he does have an answer
21 machine in his office. You can leave a message
22 for him if need be. But you understand if I get
23 word from Mr. Williams that you want to withdraw
24 the application, I'm simply going to dismiss
25 this and you realize you cannot bring another

1 PCR application, you understand that?

2 **MR. STEPHENS:** Yes, sir.

3 **THE COURT:** What that means, Mr. Stephens,
4 is that if you withdraw the application,
5 obviously you go back to prison and you have to
6 serve the rest of the 25 years. You understand
7 that?

8 **MR. STEPHENS:** Yes, sir.

9 **THE COURT:** You understand if I allow you
10 to withdraw the application, again you won't be
11 able to bring another one. You will simply have
12 finished serving out that time.

13 **MR. STEPHENS:** Yes, sir.

14 **THE COURT:** Are those terms understood and
15 acceptable by you?

16 **MR. STEPHENS:** Yes, sir.

17 **THE COURT:** Very good. Thank you. Step
18 down.

19 Your next witness?

20 **MR. WILLIAMS:** Your Honor, that's all we
21 would have.

22 **THE COURT:** Mr. Johnson?

23 **MR. JOHNSON:** Yes, sir. We will call Mr.
24 Bill Mayer to the stand.

25 **THE COURT:** Mr. Mayer, come up please.

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WILLIAM MAYER

having first been duly sworn, testifies as follows:

THE COURT: Mr. Johnson.

MR. JOHNSON: Yes, sir. Thank you, Your Honor. May it please the court.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Mayer, how long have you been practicing law?

A Uh, I think I was licensed in '97. I was a solicitor for a couple of years. I've been in private practice since late '99 or 2000.

Q What percentage of your practice is criminal?

A Probably about half. Criminal and family is all that I do.

Q Were you retained or appointed in this case?

A Appointed. The, uh, -- I believe there was a conflict with, uh, Mr. Howe having the case.

Q About how many times did you meet with Mr. Stephens?

A Not many. Two, maybe three.

Q Did you receive discovery from the state?

1 **A** A box of it.

2 **Q** Did you provide a copy of that to Mr.
3 Stephens?

4 **A** I did not. It is a large, voluminous
5 thing. I tell people in jail, as a rule, that I will
6 bring it over for them to look at it but I don't like
7 giving copies of discovery. What I have learned in
8 Laurens is people pass it around and have large
9 discussions and would basically throw any sort of
10 lawyer/client communication out of the window as they
11 get advice from everybody who their runs and tells
12 the jailers everything, theories and plans of what
13 the defense are. So I tend to discourage that. Though
14 if people insist, then I give it to them.

15 **Q** Did you cover what the charges and the
16 penalties were thereof?

17 **A** Yes, we did.

18 **Q** Did you ever think this case was going to
19 trial?

20 **A** Pretty much from the time we started
21 talking about it, this was more of a damage control
22 situation more so than trial. We talked about the
23 potential risk. I've got a little speech that I give
24 everybody when we talk about trials or pleas. The
25 number one rule of gambling anything is you don't

1 risk what you can't afford to lose. We talked about
2 what he was facing if he was convicted at trial and,
3 uh, what we could get in offers or pleas.

4 Q And based on those conversations, what was
5 your client's take on that? What was his stance on
6 the trial?

7 A He was talking about 15 years and that he
8 would do that. I brought that to the solicitor's
9 office and I got laughed at. I came back to him.
10 The 15 wasn't a go. The solicitor's office wouldn't
11 even entertain it. I don't remember if I talked to
12 them about a police officer having said something or
13 not. I've run into that in the past that Laurens
14 County Law Enforcement makes all kinds of promises
15 they have no authority to make. Again, there was no
16 written agreement or anything to him. The 15 years,
17 the solicitor would not even entertain because of his
18 prior history and because of the damages involved.

19 Q Were there ever any other offers besides
20 the 25-year cap?

21 A I'm not sure. I think at one point I was
22 kicking it around in the solicitor's office. They
23 were talking about 20 as opposed to the 25-year cap.
24 But if memory serves, the only offer presented to me,
25 as I recall, was the cap of 25. If the 20 was

1 presented, we discussed it and we got a no. Mr.
2 Stephens was really looking at the 15 or maybe a
3 couple of more.

4 Q 25 was the only real offer that the
5 solicitor entertained?

6 A Yeah. There's a lot of pushing and shoving
7 you do in negotiations where people don't actually
8 make an offer but they let you know they are at least
9 thinking about things and back and forth. It is
10 likely that the 25 -- the 25 cap was the only offer
11 ever officially tendered.

12 Q There has been testimony here today that
13 you advised him to go along with the plea and tell
14 the judge whatever he wanted to hear so he would
15 accept a plea. Is there any truth to that?

16 A I listened to testimony and I think about
17 what it is. Because you do this for a long time, you
18 end up giving the exact same speech client after
19 client after client. You pretty much know what your
20 routine, what your script is. I heard testimony to
21 the fact that Mr. Stephens said that he had to do
22 this or they'd throw his case out and bring back an
23 evil judge or something. I think, uh, I can assure
24 the court that that was not my intention to have ever
25 told him that.

1 What I think I told him and what I think he
2 misconstrued was I tell people if you are going to
3 take the plea, these are the questions that are going
4 to be asked. One of them is were you promised
5 anything. The only thing you are being promised is
6 the 25 cap. If you say you're promised something
7 else, there is not a deal and that plea will stand
8 out and that's where we are. If we go to trial, we
9 go to trial with either this judge or another judge.
10 I never told the client to lie to the court.

11 And to my knowledge, I should not have
12 every intended to push anybody to anything, to take a
13 plea or not. My position from my discussions with
14 Mr. Stephens is that our position as the defense
15 based upon his discussions with me and beliefs is
16 that we were in it for damage control more so than to
17 go to jury trial.

18 **Q** I guess, did he ever tell you that he was
19 guilty of this crime?

20 **A** I will say that I've never heard a story
21 that there was somebody else in the car until I heard
22 him on the stand now.

23 **Q** Did you ever coerce him to plead guilty?

24 **A** I think that depends on your definition of
25 coerce. I mean, did I tell him to do it, threaten him

1 or bully him? Uh, no. Did I tell him that this was
2 the plea and the communication I got from the
3 solicitor's office was this is what you get, this is
4 not going to change, it is not going to get any
5 better, this is it, you plead to this or we go to
6 trial? If that's coercion, then so be it. Sometimes
7 we are coerced by our limited choices.

8 Q Did you feel that this plea was in his best
9 interest?

10 A I think it's in his best interest. I think
11 if he's a very lucky man, he would lose this PCR.

12 Q Whose ultimate decision was it to plead
13 guilty?

14 A It is always his. I can't make a client do
15 anything. Ultimately, they are asked the questions
16 under oath. I will tell you, there are people that I
17 wish had pled that I couldn't get to plea in my
18 career.

19 MR. JOHNSON: One second, Your Honor.

20 THE COURT: Yes.

21 (WHEREUPON, there is a pause.)

22 BY MR. JOHNSON:

23 Q Mr. Mayer, did you ever tell Mr. Stephens
24 how to answer any of the questions?

25 A As far as giving him a scripted answer, no.

1 We talked about the questions. I mean, you advise
2 clients on things. If you are asked to give up your
3 right to trial your right to confrontation, your
4 right to cross-examine witnesses. Of course, if you
5 want to plea, the answer is no. The definition of
6 the plea is that you are giving up your rights and
7 pleading. As far as telling him to lie or to tell
8 the judge that these questions were answered when
9 they weren't or something like that, no.

10 Q Do you feel like you fully prepare for this
11 case or prepared Mr. Stephens in this case to plead
12 guilty?

13 A I think we were certainly prepared for the
14 plea. As I said, from my position talking to him
15 about the circumstances, I reiterate that I never
16 heard about this other person in the car. He never
17 said anything to me about that. We recovered what
18 the state had in way of evidence that was going to be
19 put up in the guilt phase of the trial and what he
20 was facing. It was his decision to cut our losses as
21 best he can. I tried to get the 15 and then later on
22 we tried to get 18. The state was set on the cap.
23 That's what he took.

24 Q How confident are you that the state's
25 evidence would prove his guilt at trial?

1 **A** Counselor, I have been surprised by juries
2 my entire life. I will tell the court the same thing
3 I told him, they have enough evidence to convict him
4 if the jury believes their case.

5 **MR. JOHNSON:** That's all the questions at
6 this time, Your Honor.

7 **THE COURT:** Cross?

8 **MR. WILLIAMS:** Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 **BY MR. WILLIAMS:**

11 **Q** Mr. Mayer, if I were to tell you that it
12 was about 9:30 on the day of your plea that you and
13 your paralegal discussed with, uh, my client the
14 issues and he told you that there was a witness in
15 that car, would that refresh your memory as to
16 whether you knew there was an additional witness
17 indicated by Mr. Stephens?

18 **A** Mr. Williams, the first understanding I
19 have of somebody else in the car was listening to Mr.
20 Stephens on the stand. If that is a failure of my
21 memory, so be it. My discussions with him would --
22 let me choose my words carefully here. I would have
23 been surprised had I been told someone else was in
24 the car.

25 **Q** Did you receive the file, Mr. Howe's file?

1 Did you ask for it?

2 **A** Yes, I did.

3 **Q** You did?

4 **A** Uh-huh.

5 **Q** And did you discuss with --

6 **A** Excuse me. When I say I received Mr. Howe's
7 file, what I received was the discovery that the
8 solicitor had given Mr. Howe.

9 **Q** Yes, sir. Did you discuss with Mr.
10 Stephens the possibility of reconstruction of the
11 scene and angles and strategies you might use in
12 regards to a trial in this case?

13 **A** Little, if any. Pretty much, most of the
14 time I was talking to Mr. Stephens, when I first
15 talked to him, his position of ours was not trial
16 prep as much as it was damage control and seeing the
17 best plea offer that I could get him.

18 **Q** Saying damage control, did you -- during
19 the plea, did you assess the possibility of
20 addressing the judge of his background of no
21 rehabilitation, no counseling, concerning drug use,
22 uh, a long extensive background of drug use and no
23 rehabilitation?

24 **A** Yes, Mr. Williams. I have. I thought
25 about that. I didn't do it to a great extent. At

1 the problem -- at the sentencing situation, you are a
2 criminal defense attorney. You have dealt with this
3 before. A lot of your presentation in sentencing
4 phase, you have to do watch the judge's reaction to
5 things. At this point, I am watching Judge Griffith.
6 The last thing I wanted to do was bring up the fact
7 that this man has a serious drug problem in light of
8 the fact that Judge Griffith is, at this point,
9 dealing with a DUI with death resulting that he has
10 pled guilty to, voluntarily and freely pled guilty to
11 and the fact that there was a prior of the same
12 thing.

13 At this point, pointing out an extended
14 period of time with the problem of drugs and
15 intoxicants, I did not think that was going to do him
16 as well as avoiding the fact that this is somebody
17 who is repeating the same behavior over 15 or 20
18 years. That's a call I made. If it is incorrect, so
19 be it.

20 Much of what we do, we don't have a chance
21 to get graded and we would never know if that was a
22 correct decision or not. Did we expect Judge
23 Griffith to hit him with the maximum under the cap?
24 Uh, no, I didn't. I had hoped 20, 18, somewhere in
25 the middle. Judge Griffith did not.

1 Q Did you assess the idea of presenting the
2 previous charge with a different view of the facts
3 concerning the previous charge as compared to the
4 charge that was before the court?

5 A I did not.

6 Q Do you believe that in hindsight, that
7 could possibly have provided the judge with the
8 possibility of a lengthier sentence?

9 A Mr. Williams, you put a could, a possible
10 and a possibly in the same sentence. I think that
11 covers anything in the world. If you ask me -- I'm
12 not going to deal with hindsight and Monday morning
13 quarterbacking, me or anybody else. If you are
14 asking me in the courtroom did I think that would be
15 a wise thing to do, I've answered that no. From what
16 I was looking at the judge and what I was reading,
17 that was not something that I thought was a can of
18 worms that I wanted to open. If you want an answer
19 could something have possibly, probably done
20 something, yes. Most anything can possibly, probably
21 do something.

22 Q What about -- one second. (Pause.)

23 What about the idea of a potential being a
24 witness when he related to you that the officers
25 indicated 15 years? Did you feel as if you could

1 possibly have been a witness and therefore had a
2 conflict in the case?

3 **A** Under that theory of logic, no lawyer could
4 ever talk to their client. I don't know what I would
5 be a witness to. I was neither witnesses to officers
6 or conversation of other people about officers. If
7 your position, sir, is that because a client of mine
8 told me something, I then become a witness, nobody
9 could practice law.

10 **Q** Well, when he indicated to the judge that
11 no one had promised him anything, you had knowledge
12 that he had been promised the 15 years, correct?

13 **A** Mr. Stephens and I had talked about, if
14 memory serves, the fact that law enforcement had
15 talked to him about something but that the
16 solicitor's office is not bound by anything that they
17 do. We originally went to the solicitor's office and
18 the 15-year number, which probably was a number I got
19 from Mr. Stephens -- and that would certainly make
20 sense -- we originally went with them with 15 and I
21 got laughed at. As far as anything Mr. Stephens
22 does, the solicitor's office being bound by anything
23 law enforcement does, I think all the people in this
24 courtroom that have practice criminal defense have
25 run into that at one time or another that law

1 enforcement cannot bind the solicitor's office.

2 **MR. WILLIAMS:** No further questions.

3 **THE COURT:** Thank you, Sir. You can step
4 down.

5 All right, Mr. Johnson, anything further
6 from the state?

7 **MR. JOHNSON:** Nothing further from the
8 state, Your Honor.

9 **THE COURT:** Any reply from the defense --
10 from the applicant?

11 **MR. WILLIAMS:** Your Honor, I only have my
12 client Brian Stephens. I'm think his argument
13 is that when a person, any person who is charged
14 with a crime and then negotiates a sentence,
15 that person wants to walk into the courtroom as
16 if they believe that justice is going to be
17 done, that they are going to get a fair shake
18 from the solicitor.

19 Mr. Stephens' position is that he did not
20 get a fair share because he feels that Mr. Mayer
21 coerced in saying that he was not promise
22 anything. His allegation now is that he was
23 promised something and it was a 15-year
24 sentence. In doing what he was told to do by
25 Mr. Mayer, he received 10 additional years from

1 what he thought he possibly could get. I think
2 Mr. Stephens' position is he was hoping that
3 this court will right a wrong and allow him a
4 new trial so that he could, uh, have effective
5 assistance of counsel to, uh, receive possibly a
6 more -- a lesser amount of time.

7 **THE COURT:** All right. I think I
8 understand your client's position fully. Very
9 well. I will delay ruling. The earliest I will
10 rule on this will be Monday, March the 19th.

11 Mr. Williams, make sure that Mr. Stephens
12 has your card or phone number.

13 Obviously, Mr. Stephens, if you call Mr.
14 Williams and tell him that you want to withdraw
15 it, you need to also follow it up with just a
16 very brief letter acknowledging that you are
17 withdrawing. Okay. That way I have something
18 in writing.

19 **MR. STEPHENS:** Yes, sir.

20 **THE COURT:** Very well. I will delay
21 ruling on this until Monday. We are adjourned.

22
23 **(WHEREUPON,** the proceedings conclude at
24 approximately 12:38 p.m.)
25

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-30-407

BRIAN K. STEPHENS

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
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Disposition Type (Check One)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: This matter came before the court for a hearing on March 14, 2012. After a complete review of the record, consideration of the testimony presented at the hearing, and a review of the applicable law, the Court finds that Applicant's petition for post-conviction relief should be denied. [I note that the court agreed to delay ruling until Monday, March 19th to allow Applicant to consider whether he desired to withdraw his PCR, per Applicant's request. The court informed Applicant that the court would delay ruling, and only if the court received word from Applicant's counsel that Applicant wanted to withdraw would the court forego ruling. No communication was received indicating a desire to abandon PCR, hence this ruling.] As to Applicant's assertion that Mr. Mayer became a witness when Applicant informed Mr. Mayer of a purported 15 year sentence, said contention has no basis in law or reason. Similarly, Mr. Mayer was not ineffective for failing to inform the judge of a 15 year deal when there was no such deal. The court has reviewed the transcript and concludes that Applicant's plea was not involuntary simply because Applicant may have hoped for a lesser sentence. As to allegations of coercion and insufficient time to discuss case with trial counsel, I find no merit to this contention. I find all other allegations were abandoned by Applicant. Accordingly, the court finds Applicant's petition for PCR should be denied. Rutledge Johnson is to prepare a more formal order.

Order Information

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property			
JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____
Other:	\$ _____	Other:	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 2nd day of April, 2012 and a copy mailed first class this 2nd day of April, 2012 to attorneys of record or to parties (when appearing pro se) as follows:
 / Gary Williams, Esq. / Rutledge Johnson, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
)
)

Brian Keith Stephens, #131066,

) 2011-CP-30-0407
)

) Applicant,
)

) **ORDER OF DISMISSAL**
)

) v.
)

) State of South Carolina,
)

) Respondent.
)
_____)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 27, 2011. The Respondent made its Return on August 22, 2011. An evidentiary hearing into the matter was convened on March 14, 2012, at the Greenwood County Courthouse.¹ Gary Williams, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Bill Mayer, Esquire, also testified. This Court also had before it a copy of the records of the Laurens County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

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 Laurens County. He was indicted by the Laurens County Grand Jury for Felony DUI, Death Results (2009-Gs-30-1585), Hit and Run with

¹ I note that the Court agreed to delay ruling until Monday, March 19, 2012, to allow the Applicant to consider whether he desired to withdraw his PCR, per the Applicant's request. The Court informed the Applicant that the Court would delay ruling, and only if the Court received word from the Applicant's PCR counsel that the Applicant wanted to withdraw, would the Court forego ruling. No communication was received indicating a desire to withdraw

Death (2009-GS-30-1586), Possession ~~of~~ Stolen Vehicle (2009-GS-30-1587), Felony DUI with Great Bodily Injury (2010-GS-30-0460), Hit and Run with Great Bodily Injury (2010-GS-30-0461), and Hit and Run with Minor Personal Injury (2010-GS-30-0493). He was represented by Bill Mayer, Esquire. On January 26, 2011, he appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted to all of the aforementioned charges with a negotiated cap of twenty-five (25) years. He received the following sentences, all concurrent: twenty-five (25) years and a \$10,100.00 fine for felony DUI with death; twenty-five (25) years a \$10,000.00 fine for hit and run with death; five (5) years for possession of a stolen vehicle; fifteen (15) years and a \$10,100.00 fine for felony DUI, great bodily injury; ten (10) years for hit and run with great bodily injury; and one (1) year, or time served, for hit and run with minor personal injury. He did not appeal his convictions or sentences.

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

1. Ineffective assistance of counsel
2. Conflict of interest
3. Involuntary plea
4. Inadequate defense

At the PCR hearing, the Applicant proceeded on the ineffective assistance of counsel claim.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required

PCR, hence this ruling.

pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and

would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Conflict of Interest/ Plea Offer

The Applicant claims Counsel became a witness when he informed Counsel of a purported fifteen-year sentence offer. He also claims Counsel was ineffective for not presenting this 'offer' to the plea court.

Counsel testified he was never extended a fifteen-year offer. In fact, Counsel testified when he asked for such an offer, the solicitor blatantly rejected any such offer. Counsel also stated the solicitor would not even agree to a twenty-year plea bargain. Counsel further testified the only plea offer the solicitor was willing to negotiate was a twenty-five year cap.

This Court finds the Applicant's testimony regarding Counsel's conflict of interest and fifteen-year plea offer is not credible while also finding Counsel's testimony is credible. There is no factual or legal basis that Counsel became a witness when the Applicant informed him of a purported fifteen-year plea offer. Similarly, Counsel was not ineffective for failing to inform the plea court of a fifteen-year deal, when no such offer existed. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Involuntary Guilty Plea

The Applicant claims his guilty plea was involuntary because Counsel advised him that he would get a lesser sentence than what he received. The Applicant also claims he was coerced by Counsel to plead guilty.

Counsel testified he neither forced nor threatened the Applicant to plead guilty. To the



contrary, Counsel stated it was the Applicant's decision to plead guilty. Counsel testified he informed the Applicant of the charges and penalties in this case and while he did prepare the Applicant for his guilty plea, Counsel did not tell the Applicant how to answer the plea court's questions.

This Court finds the Applicant's testimony regarding the involuntariness of his plea is not credible while also finding counsel's testimony is credible. A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea are conclusive unless the defendant presents reasons why they should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). This Court has reviewed the plea transcript and concludes that the Applicant's plea was not involuntary simply because he hoped to get a lesser sentence. "Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made." Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997). There is ample evidence in the plea transcript, as well as at the PCR hearing, to find the Applicant's guilty plea was knowingly, voluntarily, and intelligently made. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Insufficient time to discuss case

As to the allegation that the Applicant had insufficient time to discuss the case with Counsel, I find no merit to this contention.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the

Strickland test – 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 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

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

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

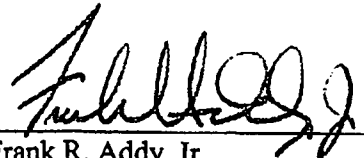
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30)

days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Frank R. Addy, Jr.
Presiding Circuit Court Judge
Eighth Judicial Circuit

April 16, 2012
Greenwood, South Carolina

DANIEL E. SHEAROUSE Clerk of Court
POST OFFICE BOX 11330
Columbia S.C. 29211

RECEIVED

MAR 15 2013

S.C. SUPREME COURT

RE: NOTICE OF APPEAL Brian K Stephens v. state...
Pursuant to Austin V. State
Case # 2011-CP-30-0407

I Brian Keith Stephens #131066 respectfully move to submit an Notice of Appral pursuant to Austin V. state due to that I was denied the right to an appeal from my PCR Application.

Sworn to and subscribed before me

This 13 day of March 2013

Eugene Feist
Notary Public for South CAROLINA

My Commission Expires April 4, 2016

Brian Stephens
Brian Keith Stephens #131066
Broad River Correctional Inst.
4460 BROAD RIVER ROAD
Columbia, S.C. 29210

Brian Keith Stephens #131066
Broad River Correctional Inst
4460 Broad River Road
Columbia, S.C. 29210

RECEIVED

MAR 13 2013

BRCI
MAILROOM

SCDC

MAR 23 2013

SCDC

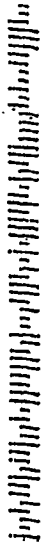
MAR 14 2013

MAIL ROOM

MAIL ROOM



DANTEL E. SHEAROUSE Clerk of Court
POST OFFICE BOX 11330
Columbia South Carolina 29211



2921181330

The Supreme Court of South Carolina

Brian K. Stevens, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000528

Lower Court Case No. 2011-CP-30-00407

ORDER

Petitioner has filed a *pro se* notice of appeal from the order of dismissal dated April 16, 2012. This notice of appeal, which is dated March 13, 2013, was served on opposing counsel on April 1, 2013. Petitioner's counsel has advised this Court that he received written notice of entry of this order on or about April 28, 2012.

The time to serve the notice of appeal on opposing counsel is a jurisdictional requirement and this time may not be extended. Elam v. South Carolina Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004); Rule 263(b) of the South Carolina Appellate Court Rules (SCACR).

Since the notice of appeal has not been served within the time specified by Rules 243(b) and 203(b)(1), SCACR, this matter is dismissed, and the remittitur will be sent as provided by Rule 221, SCACR. To the extent petitioner may be seeking a belated review under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), petitioner is advised that that relief must be sought by filing a new application for post-conviction relief in the circuit court. Cf. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) (discussing appellate procedure to be followed depending on findings of PCR judge on the *Austin* claim).

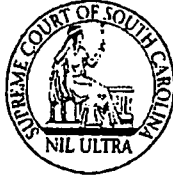


FOR THE COURT

J.

Columbia, South Carolina
April 29, 2013

cc: Gary Lewis Williams, Esquire
Salley W. Elliott, Esquire
Mr. Brian Keith Stephens, 131066



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

May 15, 2013

The Honorable Lynn W. Lancaster
PO Box 287
Laurens SC 29360-0287

REMITTITUR

Re: Brian K. Stephens v. State
Lower Court Case No. 2011CP3000407
Appellate Case No. 2013-000528

LYNN W. LANCASTER
2013 MAY 17 A 9:24
LAURENS COUNTY
CLERK OF COURT

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc: Gary Lewis Williams
Salley W. Elliott
Brian Keith Stephens, 131066
The Honorable Frank R. Addy, Jr.

FORM 5

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

County of LAURENS)

Brian K. Stephens. 131066)
 Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Laurens County Court of General Sessions
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) 2009-GS-30-1585 / 2009-GS-30-1586 / 2009-GS-30-1587
 - (b) 2010-GS-30-0460 / 2010-GS-30-0461 / 2010-GS-30-0493

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (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?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Common Pleas
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied dismissed with prejudice
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 16, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) The reason in not pursue a direct appeal is in pursuant to Austin v State 409 SE2d 395.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Trial Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Issue is pursued in pursuant to Austin v. State
- (b) 409 SE 2d 395
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? none
- (d) any other petitions, motions or applications in this or any other Court? none
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

- (c) the disposition thereof:
- i. none
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
- i. none
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. none
 - 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. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
 - ii. _____
 - iii. _____

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

(a) N/A
 (b) _____
 (c) _____

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

(a) your arraignment and plea? N/A
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? P.C.R. proceeding 2011-CP-30-00407
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. ~~N/A~~ Bill mayer Esquire
 ii. Gary L. WILLIAMS : ATTORNEY AT LAW 769 W. Laurens
ST. Laurens, S.C. 29360
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Bill Mayer Esquire / Trial Attorney
 ii. Gary L. Williams P.C.R. ATTORNEY
 iii. _____

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

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of _____)

I, BRIAN STEPHENS, 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.

Brian Stephens

SWORN to and subscribed before me this 10th
day of September, 2013.
Susan W. Frye (L.S.)
Notary Public

My Commission Expires: _____ My Commission Expires
March 5, 2013

LAURENS COUNTY
2013 SEP 16 A 10:01
1200011670/STEP

2013 SEP-22

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

I, BRIAN R STEPHENS, 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.

Brian Stephens
Applicant

SWORN or affirmed to and subscribed before me this
10th day of September, 2013.

Susan H. Frye
Notary Public

My Commission Expires
March 5, 2016

My Commission Expires: _____

CLERK OF COURT
2013 SEP 16 A 10:01
CLERK OF COURT

COUNTY OF LAURENS

Brian K. Stephens #131066

☐ Plaintiff

v.

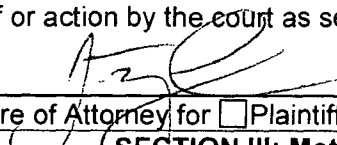
State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-30-0721

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: Carson M. Henderson, Bar No. Address: 109-B Oak Avenue Greenwood SC 29646 phone: fax: e-mail: other:	Defendant's Attorney: J. Rutledge Johnson, Bar No. 78871 Address: PO Box 11549 Columbia, SC 29211-1549 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 _____ Signature of Attorney for ☐ Plaintiff / ☒ Defendant	October 25, 2013 _____ Date submitted
SECTION III: Motion Fee	
☐ PAID – AMOUNT: _____ ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
Brian K. Stephens, #131066,	)	2013-CP-30-0721
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO
	)	DISMISS ALL CLAIMS EXCEPT
	)	<u>AUSTIN</u> REVIEW
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return and Motion to Dismiss the current application for post-conviction relief filed September 16, 2013, respectfully submits the following:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Laurens County. He was indicted by the Laurens County Grand Jury for Felony DUI, Death Results (2009-Gs-30-1585), Hit and Run with Death (2009-GS-30-1586), Possession of Stolen Vehicle (2009-GS-30-1587), Felony DUI with Great Bodily Injury (2010-GS-30-0460), Hit and Run with Great Bodily Injury (2010-GS-30-0461), and Hit and Run with Minor Personal Injury (2010-GS-30-0493). He was represented by Bill Mayer, Esquire. On January 26, 2011, he appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted to all of the aforementioned charges with a negotiated cap of twenty-five (25) years. He received the following sentences, all concurrent: twenty-five (25) years and a \$10,100.00 fine for felony DUI with death; twenty-five (25) years a \$10,000.00 fine for hit and run with death; five (5) years for possession of a stolen vehicle; fifteen (15) years

and a \$10,100.00 fine for felony DUI, great bodily injury; ten (10) years for hit and run with great bodily injury; and one (1) year, or time served, for hit and run with minor personal injury. He did not appeal his convictions or sentences.

2011-CP-30-0407

The Applicant filed his first application for Post-Conviction Relief (PCR) on April 27, 2011. In his first PCR application, he alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
2. Conflict of interest
3. Involuntary plea
4. Inadequate defense

The Respondent made its Return on August 22, 2011. An evidentiary hearing into the matter was convened on March 14, 2012, at the Greenwood County Courthouse before the Honorable Frank R. Addy, Jr. Gary Williams, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On April 16, 2012, the Honorable Frank R. Addy, Jr. denied and dismissed the application with prejudice.

II.

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

1. "Ineffective assistance of trial counsel."
 - a. "Issue is pursued in pursuant to Austin v. State, 409 S.E.2d 395."

For the purpose of this Return, the Respondent incorporates the Clerk of Court's records for the Applicant's convictions, the application and the prior PCR Order of Dismissal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Except for Applicant's claim that he was denied an appeal from his first PCR application, the Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant

bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

Except for Applicant's claim that he was denied an appeal from the denial of his first PCR application, the Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on January 26, 2011. The Applicant was therefore required to file his application before January 27, 2012. This application was filed on September 16, 2013, well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under ' 17-27-90.'" Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

VI.

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

VII.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to belated review of his first PCR application, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

ALAN WILSON
Attorney General

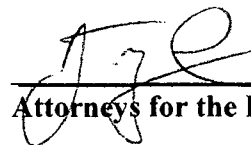
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Senior Assistant Deputy
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By:


Attorneys for the Respondents

Columbia, South Carolina

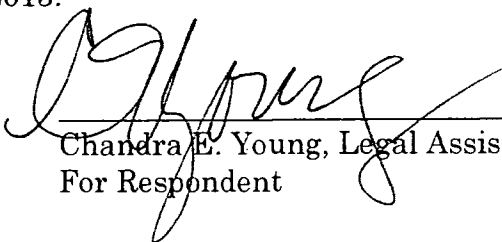
October 25, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	
	)	
	)	2013-CP-30-0721
BRIAN K. STEPHENS, #131066	)	
	)	
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 and Motion to Dismiss all Claims Except Austin Review in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Carson M. Henderson, Esquire
 109-B Oak Avenue
 Greenwood SC 29646

DATED this 25TH day of October, 2013.


 Chandra E. Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

BRIAN K. STEPHENS,)
)
PLAINTIFF,)
)
)
-VS-)
)
THE STATE OF SOUTH)
CAROLINA,)
)
DEFENDANT.)
_____)

2013-CP-30-00721

PCR HEARING
TRANSCRIPT OF RECORD

FEBRUARY 18, 2014
LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER

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

ATTORNEY FOR PLAINTIFF:

CARSON HENDERSON, ESQUIRE

ATTORNEY FOR DEFENDANT:

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
Plaintiff's 1	Gary Williams' file		
Plaintiff's 2	Lauren's County Clerk file		

1 THE COURT: All right. Are we ready?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: Okay. You want to call the next case please,
4 sir.

5 MR. JOHNSON: May it please the Court, Your Honor.

6 This is the case of Brian K. Stephens vs. The State of South
7 Carolina. It's case number 2013-CP-30-0721. Mr. Stephens
8 was indicted by the Laurens County Grand Jury for felony
9 DUI, a death resulting, a hit and run with death, possession
10 of stolen vehicle, felony DUI with great bodily injury, hit
11 and run with great bodily injury and hit and run with minor
12 personal injury. On January 26, 2011 he appeared before the
13 Honorable Eugene C. Griffith, Jr. and pled guilty as
14 indicted to all the aforementioned charges. He received
15 twenty five years for felony DUI with death, twenty five
16 years for hit and run with death, five years for possession
17 of a stolen vehicle, fifteen years for felony DUI with great
18 bodily injury and ten years for hit and run with great
19 bodily injury and one year -- or time served for hit and run
20 with minor personal injury. All to run concurrent. He did
21 not appeal these sentences. He filed his first PCR
22 application on April 27, 2011. That was case number 2011-
23 CP-30-0407. He alleged ineffective assistance of counsel.
24 The State made its return on August 22, 2011. An
25 evidentiary hearing into the matter was convened March 14,

BRIAN STEPHENS-DIRECT EXAMINATION

5

1 2012 at the Greenwood County Courthouse before the Honorable
2 Frank R. Addy, Jr. Gary Williams, Esquire, represented him.
3 I represented the State and on April 16, 2012, Judge Addy
4 denied and dismissed his application. He has filed another
5 PCR application alleging that Mr. Williams was ineffective
6 for not filing a PCR appeal on his behalf. That application
7 was filed September 16, 2013. The State filed a Return and
8 Motion to Dismiss all claims except for an Austin review on
9 October 25, 2013. And he is represented here today by Mr.
10 Carson Henderson.

11 (Whereupon, the file of Gary Williams was pre-marked
12 Plaintiff's Exhibit Number 1 for identification and the case
13 file of the Laurens' County Clerk of Court was pre-marked
14 Plaintiff's Exhibit Number 1 for identification.)

15 THE COURT: Okay. Thank you very much. Mr. Henderson.

16 MR. HENDERSON: Yes, sir, Your Honor. As a preliminary
17 matter, we have marked two Plaintiff's exhibits. I'm not
18 sure how Madam Court Reporter has marked them. Exhibit
19 number one is going to be Mr. Gary Williams' file to me by
20 cover letter dated January the 18th of this year. And
21 Plaintiff's number two is going to be the Laurens County
22 Clerk's file on 2011-CP-30-407.

23 THE COURT: Okay.

24 MR. HENDERSON: Which was my client's first PCR
25 application.

BRIAN STEPHENS-DIRECT EXAMINATION

6

1 THE COURT: Okay. Alright.

2 MR. HENDERSON: This is a complete copy of the file.

3 THE COURT: Okay. Very good.

4 MR. HENDERSON: And I would call my client, Brian
5 Stephens.

6 THE COURT: Okay. Let me just make sure that you're in
7 agreement, Mr. Henderson, that the position of the State, as
8 I understand from reading their return, is that the only
9 matter before the Court would be an evidentiary hearing in
10 line with the Austin case and that would be the only issue
11 before the Court. Are you in agreement with that?

12 MR. HENDERSON: We would agree that's the only thing the
13 Courts got to rule on, Your Honor.

14 THE COURT: Okay. Very good. I just wanted to make
15 sure. Alright, call your first witness.

16 MR. HENDERSON: I call Mr. Brian Stephens.

17 THE COURT: Come around, sir.

18 BRIAN K. STEPHENS, first being duly
19 sworn testified as follows:

20 THE COURT: Okay, you may proceed.

21 DIRECT EXAMINATION

22 BY MR. HENDERSON:

23 Q. Mr. Stephens, please state again your full name for the
24 record.

25 A. Brian Keith Stephens.

BRIAN STEPHENS-DIRECT EXAMINATION

7

1 Q. Mr. Stephens, have you previously filed a PCR action?

2 A. Yes, sir.

3 Q. And has that -- was that matter heard by Judge Addy?

4 A. Yes, sir.

5 Q. And do you remember the date of that hearing?

6 A. Not the -- No, sir. I don't remember the date.

7 Q. Okay. I will represent to you it was March the 14th of
8 2012. Does that sound right?

9 A. Yes, sir.

10 Q. And did you have representation during that PCR
11 hearing?

12 A. Yes, sir.

13 Q. And who represented you at that hearing.

14 A. Mr. Gary Williams.

15 Q. And that's Mr. Williams sitting out here?

16 A. Yes, sir.

17 Q. In the courtroom?

18 A. Yes, sir.

19 Q. Did in fact you go to trial that day? Did y'all have a
20 contested hearing?

21 A. Yes, sir.

22 Q. Did you testify that day?

23 A. Yes, sir.

24 Q. Was other witnesses called on your behalf that day?

25 A. No witnesses on my behalf.

BRIAN STEPHENS-DIRECT EXAMINATION

8

1 Q. Did the State call any witnesses?

2 A. Yes, sir.

3 Q. And I assume sometime during the day the hearing ended?

4 A. Yes, sir.

5 Q. After the hearing ended, did Judge Addy immediately
6 rule?

7 A. No, Sir.

8 Q. Okay. Did you after you -- the hearing was over, did
9 you and Mr. Williams have any conversations?

10 A. Just a brief conversation at the desk.

11 Q. At what desk was that?

12 A. Where he and I were sitting at.

13 Q. And in what County was that in?

14 A. Greenwood.

15 Q. You were in Greenwood County, not here?

16 A. No, Sir.

17 Q. But you and Mr. Williams had a conversation at the
18 desk. I guess the Plaintiff's desk that you were sitting
19 at?

20 A. Yes, sir.

21 Q. Okay. And what was -- to the best of your
22 recollection, what was the nature of that conversation?

23 A. I just told him that when the Judge ruled on my case,
24 would it -- did I have a choice to appeal and he said yes.

25 I told him I'd like to appeal it if he ruled it against me.

BRIAN STEPHENS-DIRECT EXAMINATION

9

1 Q. Did you have any idea when the ruling might come down?

2 A. He told me he was going to give me a little time to
3 think about the case.

4 Q. Now who is he?

5 A. The Judge.

6 Q. Okay. The Judge told you he was going to give you some
7 time to think about it?

8 A. Yes, sir. And to contact his office if I change my
9 mind on withdrawing my case.

10 Q. To contact whose office?

11 A. His.

12 Q. Mr. Williams' office?

13 A. The Judge told me to contact his office -

14 Q. No, keep in mind, you would have to go through your
15 lawyer.

16 A. Oh, I'm sorry.

17 Q. Okay. You'd have to contact Mr. Williams.

18 A. Alright.

19 Q. For Mr. Williams to contact the Judge's office. The
20 judge can't talk to you. You understand that?

21 A. Yes, sir.

22 Q. Okay. But again, go through your conversations with
23 Mr. Williams that afternoon or that day.

24 A. Well I explained to him that if the Judge ruled
25 against me, I would like to appeal the decision And that

BRIAN STEPHENS-DIRECT EXAMINATION

10

1 was the end of it. They took me on back to the
2 institution.

3 Q. Okay. When you got back to the institution, did you
4 and Mr. Williams have any telephone calls?

5 A. No, Sir.

6 Q. Did he call you?

7 A. No, Sir.

8 Q. Did you call him?

9 A. No, Sir.

10 Q. Okay. Is it fair to say that you ultimately got a
11 letter from Mr. Williams?

12 A. Yes, sir.

13 Q. Okay. I want to show you what's been marked as
14 Plaintiff's Exhibit Number one, which is Mr. Williams'
15 file. Now again, don't undo it. Keep these documents in
16 the order that they are.

17 MR. HENDERSON: And Your Honor, for the Court's
18 edification here are some extra copies of both.

19 THE COURT: Okay. Thank you very much.

20 MR. HENDERSON: Of each exhibit. I was just thinking
21 about that and it's going to be hard to keep up but --

22 Q. I want to show you what's been marked as -- six pages
23 into Exhibit Number one, is that a letter to you?

24 A. Yes, sir.

25 Q. And who is that letter from?

BRIAN STEPHENS-DIRECT EXAMINATION

11

1 A. Mr. Gary Williams.

2 Q. And what's enclosed with that letter?

3 A. Telling me that it's a Decision of Pretrial
4 conviction relief.

5 Q. Okay. I notice you're having a little bit of
6 difficulty reading that.

7 A. Yeah. I mean, I can't see the best.

8 Q. Okay. I got you.

9 THE COURT: You need -- sit a little closer to the
10 microphone, Mr. Stephens, so we can all hear you please.

11 A. Yes, sir.

12 Q. In that letter dated April 9th of 2012, does it
13 mention anything about appealing?

14 A. No, Sir.

15 Q. Does it mention anything about you having the right
16 to appeal?

17 A. No, Sir.

18 Q. And I want to show you a couple pages in, a letter
19 that's marked -- that's dated April 29, 2012.

20 A. Yes, sir.

21 Q. And who is that letter to?

22 A. To me from Mr. Williams.

23 Q. And what's it about? What's the nature of the
24 letter?

25 A. Enclosed is the Judge's filed order concerning the

BRIAN STEPHENS-DIRECT EXAMINATION

12

1 Post Conviction Relief.

2 Q. Okay. And that was Judge Addy's formal order?

3 A. Yes, sir.

4 Q. And I think that order was titled the Order of
5 Dismissal.

6 A. Yes, sir.

7 Q. Okay. And did Mr. Williams' letter to you indicate
8 anything about appealing?

9 A. No, sir, it didn't.

10 Q. Okay. Did you write Mr. Williams back or otherwise
11 contact Mr. Williams about appealing?

12 A. No, sir I didn't.

13 Q. And why didn't you?

14 A. I thought by the brief conversation we had in the
15 courtroom that morning that he was going to just take
16 initial steps to it, to appeal.

17 Q. And you subsequently learned that no appeal was
18 filed?

19 A. Yes, sir.

20 Q. Was an appeal actually -- what did you do next? What
21 did you file?

22 A. I fled a Motion to Appeal on my own to the Supreme
23 Court.

24 Q. And what did the Supreme Court do, if you know?

25 A. They forwarded a letter to Mr. Williams and told him

BRIAN STEPHENS-DIRECT EXAMINATION

13

1 he had a certain amount of time to file an appeal.

2 Q. Okay. Flipping over a couple more pages in packet
3 number one, Exhibit 1. I want to show you what's marked
4 as a letter dated May 25, 2013. Who is that letter to and
5 from?

6 A. It's from Mr. Williams to Brian Keith Stephens.

7 Q. And what's the nature of that letter?

8 A. Please prepare and file the enclosed PCR and you
9 should be granted an appeal.

10 Q. Okay. So Mr. Williams sent you a new PCR
11 application?

12 A. Yes, sir.

13 Q. And did you fill that application out?

14 A. Yes, sir.

15 Q. Okay

16 THE COURT: What's the date of that letter, Mr.
17 Henderson?

18 MR. HENDERSON: It is May 25, 2013. And Your Honor,
19 I can count how many pages it's in. It's the twenty first
20 page in Exhibit Number 1.

21 THE COURT: Okay. Okay. I see it now.

22 MR. HENDERSON: Okay.

23 Q. And did you in fact, Mr. Stephens, fill out that
24 application?

25 A. Yes, sir.

BRIAN STEPHENS-CROSS EXAMINATION

14

1 Q. And you filed it?

2 A. Yes, sir.

3 Q. And that's why were here today?

4 A. Yes, sir.

5 Q. Okay. And what did Mr. Williams say about the
6 appeal?

7 A. Sent me the PCR and told me to file the appeal --
8 PCR.

9 Q. I mean what's that last sentence say?

10 A. You should be granted appeal.

11 Q. And prior to filing this appeal, did you believe that
12 he had already filed an appeal?

13 A. Yes, sir.

14 Q. Okay. Had he ever told you that he wasn't going to
15 file the appeal for you?

16 A. No, Sir.

17 Q. And are you clear that you told him that you wanted
18 to appeal any adverse ruling against you?

19 A. Yes, sir.

20 Q. Let me ask you, Mr. Stephens, did you knowingly and
21 voluntarily waive your right to appeal?

22 A. No, Sir.

23 MR. HENDERSON: If I may have one minute, Your Honor.

24 THE COURT: Sure.

25 MR. HENDERSON: I don't have anything further for my

BRIAN STEPHENS-CROSS EXAMINATION

15

1 client, Your Honor.

2 THE COURT: Cross examination, Mr. Johnson?

3 MR. JOHNSON: Briefly, Your Honor.

4 CROSS EXAMINATION

5 BY MR. JOHNSON:

6 Q. Mr. Stephens --

7 A. Yes, sir.

8 Q. You testified about a letter you received in April of
9 2012; correct?

10 A. Yes, sir.

11 Q. And that was a letter that would've contained a copy
12 of the final order from your previous hearing; correct?

13 A. Yes, sir.

14 Q. And did you receive that final Order --

15 A. Yes, sir.

16 Q. Order of Dismissal?

17 A. Yes, sir.

18 Q. Okay. And are you're aware at the back of that it
19 tells you that you have thirty days from the time you get
20 that to file an appeal?

21 A. Yes, sir.

22 MR. JOHNSON: No further questions, Your Honor.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MR. HENDERSON:

GARY WILLIAMS-DIRECT EXAMINATION

16

1 Q. And were you under the belief that Mr. Williams was
2 going to file the appeal?

3 A. Yes, sir I was.

4 MR. HENDERSON: I don't have anything further, Your
5 Honor.

6 THE COURT: Okay. Thank you for your testimony, Sir,
7 you can step down. Mr. Henderson, anything on your case?
8 Any further witnesses?

9 MR. HENDERSON: And I assume the State's going to call
10 Mr. Williams. Okay, then nothing from the State's --

11 THE COURT: Okay.

12 MR. HENDERSON: Nothing from the Petitioner's case.

13 THE COURT: Alright. Petitioner rests. Okay.
14 Alright.

15 MR. JOHNSON: The State calls Mr. Williams.

16 THE COURT: Okay.

17 GARY L. WILLIAMS, first being duly
18 sworn testified as follows:

19 DIRECT EXAMINATION

20 BY MR. JOHNSON:

21 Q. Good afternoon, Mr. Williams.

22 A. Good afternoon.

23 Q. Do you remember becoming involved in this case?

24 A. I do.

25 Q. Please tell the Court how you became to be Mr.

GARY WILLIAMS-DIRECT EXAMINATION

17

1 Stephen's PCR attorney?

2 A. I found out through the Clerk of Court that I had
3 been appointed to represent Mr. Stephens.

4 Q. And did you contact Mr. Stephens concerning your
5 representation?

6 A. Yes.

7 Q. And we had a hearing.

8 A. By letter.

9 Q. And we had an evidentiary hearing March of 2012 in
10 this case?

11 A. In Greenwood, yes.

12 Q. And at that point, Judge Addy took the case under
13 advisement?

14 A. Correct.

15 Q. And gave Mr. Stephens an opportunity to decide
16 whether or not he wanted to withdraw his application?

17 A. That is correct.

18 Q. And at some point later, did you receive the Order of
19 Dismissal?

20 A. Initially I received from the Clerk of Court the Form
21 4 which detailed what the Judge was going to order and it
22 directed, I believe, it directed you to prepare a Final
23 Order. So when I received that, it must have been around
24 April, a little after filing in the Clerk's Office which
25 on the Form 4 it says April 2nd. So I should've received

GARY WILLIAMS-DIRECT EXAMINATION

18

1 that a few -- maybe that day or a few days after that
2 date. And I forwarded that Form 4 to Mr. Stephens and
3 then later that month I received the formal filed Order
4 and I forwarded that to Mr. Stephens a few days after I
5 received it April the 29th of 2012.

6 Q. Going back to just after the hearing, Mr. Stephens
7 has testified that you had a
8 conversation with him. Is that correct?

9 A. From what I recall, we did have a brief conversation.
10 What we spoke about, I'm not sure. I'm sure we spoke
11 about the idea of the Judge waiting to hear from him
12 whether he wanted to withdraw from the case or not -- his
13 case to withdraw or not. As to any appeal, I'm not sure.
14 I can't recall exactly what we spoke about. I know he
15 spoke with Mr. Mayer after the hearing or before the
16 hearing -- I think it was after the hearing after I had
17 spoken to him at counsel table. But I don't know what
18 that conversation was about but he did have the
19 opportunity to speak with Mr. Mayer.

20 Q. So if I may put it into other words, you're not sure
21 if he told you whether or not he wanted to appeal?

22 A. I can't recall that.

23 Q. Okay. Did he ever subsequently write you any
24 letters?

25 A. He did not.

GARY WILLIAMS-CROSS EXAMINATION

19

1 Q. About appealing? And did you receive any other
2 communication from him after --

3 A. I did not.

4 Q. -- you sent him the Order of Dismissal.

5 A. I did not.

6 Q. Did you have any idea that he wished to have an
7 appeal?

8 A. No. Until around March of 2013 when I received a
9 letter that he had filed an appeal through the Supreme
10 Court. I think Supreme Court.

11 Q. But you did, in fact, send him that Order of
12 Dismissal?

13 A. I did.

14 Q. And the Order of Dismissal plainly states that he has
15 thirty days from the notice of appeal -

16 A. Correct.

17 Q. -- I mean notice of the Order to file an appeal?

18 MR. JOHNSON: No further questions.

19 THE COURT: Okay. Cross Examination.

20 MR. HENDERSON: Yes, sir, Your Honor.

21 CROSS EXAMINATION

22 BY MR. HENDERSON:

23 Q. Mr. Williams, I think your testimony was, you're not
24 -- you don't recollect what the nature of y'all's
25 conversation was that day after the hearing.

GARY WILLIAMS-CROSS EXAMINATION

20

1 A. I remember speaking with him after the hearing, but
2 as

3 to the substance of that conversation, it's been awhile.

4 Q. Now you've represented a lot of people since then
5 haven't you?

6 A. I have.

7 Q. And Mr. Stephens has been sitting in prison since
8 then.

9 A. I assume so.

10 Q. Is that fair to say? I mean it's his life and
11 liberty you would agree?

12 A. I understand that.

13 Q. And you wouldn't doubt or wouldn't dispute that his
14 recollection of what y'all talked about might be more
15 clear than yours?

16 A. Well.

17 MR. JOHNSON: Objection as to speculating, Your
18 Honor.

19 THE COURT: Sustained.

20 Q. But you did send him a copy of a letter with the Form
21 4 Order, is that correct?

22 A. I sent him initially a Form 4 that was not the
23 detailed Order of Dismissal, but it showed what the Judge
24 was going have in the Order of Dismissal. I sent that
25 after I received it a couple of days or on the day of

GARY WILLIAMS-CROSS EXAMINATION

21

1 April 2. I took it from my mail box in the courthouse and
2 my letter is dated to Mr. Stephens April 9 and then the
3 Order -- the formal Order came in April the 29. I sent
4 that to Mr. Stephens.

5 Q. But going back to your letter dated April 9, 2012,
6 when you enclosed the Form 4 Order did you explain to Mr.
7 Stephens what his appellate rights were?

8 A. I did not.

9 Q. Okay. And you understood at that point in time, that
10 you would have been in a better position to understand his
11 appellant rights than he would've been as an attorney?

12 A. I would think so.

13 Q. Okay. And then when Judge Addy issued a formal
14 Order, it looks like on April 29, 2012, you mailed a copy
15 of that Order to Mr. Stephens.

16 A. I did.

17 Q. And in your letter, did you inform him of his
18 appellat rights?

19 A. The Order itself spoke of that.

20 Q. But did you inform him?

21 A. I did not.

22 Q. Okay. You understand that he's relying on you for
23 representation?

24 A. I understand.

25 Q. And not the Court's Order?

GARY WILLIAMS-CROSS EXAMINATION

22

1 A. I understand.

2 Q. Okay. So it's fair to say that you didn't file an
3 appeal for him; correct?

4 A. I did not -

5 Q. Okay.

6 A. -- because first he has to have grounds for an appeal
7 and -- but the answer to your question is no, I did not.

8 Q. And it sounds like the first time that you learned
9 about the appeal was you got something from the Supreme
10 Court. Is --

11 A. I think I got a copy of what Mr. Stephens had filed
12 at the Supreme Court, like the middle of March of 2013.

13 Q. And then --

14 A. I got a letter from the Clerk's Office of the Supreme
15 Court in the middle of March of 2013

16 Q. And then it looks like on May 25, 2013, you
17 mailed Mr. Stephens a letter with a blank PCR application.

18 A. I did.

19 Q. And then you ask -- you told him, prepare it and have
20 it filed for a new PCR.

21 A. Yeah. I thought maybe he could get an Austin appeal.

22 Q. And your express language was you should be granted
23 an appeal.

24 A. Well that's what I felt. That he probably be granted
25 an appeal.

GARY WILLIAMS-CROSS EXAMINATION

23

1 Q. And I would dare say that your professional opinion
2 on that, I assume, is the same today as it was on May 25,
3 2013?

4 A. Well -

5 MR. JOHNSON: I would object for the record that is an
6 ultimate issue that is before Your Honor and not before
7 Mr. Williams.

8 THE COURT: Well, it is an ultimate issue but I guess
9 Mr. Williams can express his opinion either way.

10 A. That was my opinion since I wrote the letter to him
11 asking him to file it.

12 Q. Let me ask, Mr. Williams, you mailed me a copy of
13 your file. Is that correct?

14 A. I did.

15 Q. I want to show you what's been marked as Plaintiff's
16 Exhibit number 1 and just leaf through that.

17 A. Okay.

18 Q. Would you agree -- I think I've reorganized your
19 file, but I'll represent to you that everything you
20 sent to me is in that package.

21 A. Okay. Alright. It appears but I'm not looking at
22 every page but it appears.

23 Q. Okay. And I didn't notice anything -- let me hang on
24 to that just so I don't get it mixed up and the Court
25 Reporter gets mad at me. I didn't notice anything in

GARY WILLIAMS-CROSS EXAMINATION

24

1 Petitioner's Number 1 from Mr. Mayer's file. Did you ever
2 get a copy of Mr. Mayer's file?

3 MR. JOHNSON: Your Honor, I'm going to have to object
4 at this point. We are not relitigating the first hearing.
5 Mr. Mayer's case was the --

6 THE COURT: Was he the trial attorney?

7 MR. JOHNSON: Yes, sir.

8 MR. HENDERSON: Your Honor. I --

9 THE COURT: What would be the relevancy to --

10 MR. HENDERSON: Your Honor, --

11 THE COURT: -- those proceedings?

12 MR. HENDERSON: --I'd like some leeway to proffer
13 some testimony.

14 THE COURT: Okay. Well I --

15 MR. HENDERSON: It's not for the Court to rule on but
16 it's -- but it goes toward some of the investigation that
17 was done in this matter or not done in this matter. And
18 again, it's not the issue before the Court but I'd like --

19 THE COURT: Well, then if it's not the issue before
20 the Court, then why bring it out?

21 MR. JOHNSON: Your Honor, I'd like --

22 THE COURT: If it's not going to aid me in making a
23 decision then why bring it out?

24 MR. HENDERSON: Your Honor, in all fairness, it may
25 aid a subsequent Court.

GARY WILLIAMS-CROSS EXAMINATION

25

1 THE COURT: Okay.

2 MR. HENDERSON: And that's why I'd like while I've
3 got one of the counsel on the stand under oath, I would
4 like to have some leeway on questioning him.

5 THE COURT: Okay. Alright.

6 MR. JOHNSON: Your Honor.

7 THE COURT: Alright, here's what I'm -- you want to
8 be heard on this Mr. Johnson?

9 MR. JOHNSON: Yes, sir. I'm just going to have to
10 protect my office and my side and I believe -- I've spoken
11 to - he's trying to go towards federal habeas and I'm
12 going to have to object to any testimony that has anything
13 to do with federal habeas.

14 THE COURT: Right. Again, if it's not going to aid
15 this Court and, with all do respect, I don't know where my
16 concern is as far -- insofar as any other actions that may
17 be entertained by you and your client. Why should that be
18 of concern to this Court?

19 MR. HENDERSON: Your Honor, it may not be concern on
20 the issue of whether or not he's entitled to an Austin
21 appeal, but it may very well be -- darn well relevant to
22 effective representation in a habeas proceeding.

23 THE COURT: Right. Well, I understand exactly where
24 you're coming from, but again, I've got to limit this
25 evidentiary record to those matters that are relevant to

GARY WILLIAMS-REDIRECT EXAMINATION

26

1 this proceeding and no other proceeding. So with that
2 said, I'll sustain the objection.

3 MR. HENDERSON: Okay. And just note my objection for
4 the record.

5 THE COURT: Sure.

6 MR. HENDERSON: I'm trying to protection my client's
7 --

8 THE COURT: Right and I understand that. I
9 understand that.

10 MR. HENDERSON: With that I wouldn't have any further
11 cross, Your Honor.

12 THE COURT: Okay. Thank you very much. Anything in
13 redirect, Mr. Johnson.

14 MR. JOHNSON: Yes, sir. Just two questions, Your
15 Honor.

16 REDIRECT EXAMINATION

17 BY MR. JOHNSON:

18 Q. Mr. Williams, so your testimony is that you sent the
19 Form 4 to Mr. Stephens in April, I believe, of 2012?

20 A. Around April 2, 2012, yes.

21 Q. And then you said you would have -- that you did send
22 him the Order of Dismissal in May of 2012?

23 A. Around April 29 -

24 Q. Okay.

25 A. -- of 2012 because that's what my letter is dated

1 April 29.

2 Q. And his testimony is that he received that and he's
3 read over the Order of Dismissal. But you did not hear
4 back on a appeal until March of the next year.

5 A. Correct.

6 Q. Almost a year.

7 A. Correct.

8 Q. After you sent the Order of Dismissal to Mr.
9 Stephens.

10 A. Correct.

11 MR. JOHNSON: No further questions.

12 THE COURT: Okay.

13 RECROSS-EXAMINATION

14 BY MR. HENDERSON:

15 Q. Did you mark your file after you mailed the Order of
16 Dismissal to Mr. Stephens? Did you mark your file or any
17 type of tickle system or whatnot to follow up with him a
18 week or two later? Say hey buddy, you've got thirty days
19 to appeal. Do you want to appeal?

20 A. No.

21 Q. Okay. Do you standard -- I mean do you typically
22 follow up with clients on -- during that appellate period
23 on whether or not you want to appeal?

24 A. Well the Order spoke -- as to whether he wanted to
25 appeal. I would have thought that he would have written me

GARY WILLIAMS-RECROSS EXAMINATION

28

1 a letter concerning what he sought. March of 2013 was the
2 first time that I received anything indicating that he was
3 going for appeal.

4 Q. I understand, but again, you would agree that as the
5 licensed attorney you're in a better position to
6 understand appellate procedure than Mr. Stephens?

7 A. Yes.

8 Q. Okay. I don't have anything further, Your Honor.

9 THE COURT: Anything in follow up to that Mr.
10 Johnson?

11 MR. JOHNSON: No, Your Honor.

12 THE COURT: Thank you, Mr. Williams for your
13 testimony, you can step down.

14 MR. JOHNSON: And that would be the State's case,
15 Your Honor.

16 THE COURT: Okay. Anything in rebuttal.

17 MR. HENDERSON: No, Sir, Your, Honor.

18 THE COURT: Let me ask the lawyers, is there any case
19 law that you're familiar with that places any obligation
20 on the part of the trial attorney to file an appeal or
21 obtain some sort of waiver from the client? I know that
22 when I practiced law, which was not too long ago, and I
23 don't know if I just did this out of abundance of caution.
24 I don't recall relying on any particular case law, but I
25 typically would try to get a waiver from the client in

1 order to file an appeal. I'm just curious if you guys are
2 familiar with any sort of case law or something that puts
3 any obligation on part of the trial attorney to do that or
4 does the trial attorney's representation of the client end
5 at the end of the trial proceedings. So I'm just kinda
6 throwing that out for some discussion.

7 MR. HENDERSON: And Your Honor, if you'll notice in
8 some of these packets, when the Supreme Court got Mr.
9 Stephens' appeal, and write -- and they write a letter
10 back to everybody including Mr. Williams. Mr. Williams,
11 you recognize you're still Mr. Stephens' lawyer.

12 THE COURT: Well I -- and I saw that. Let me go back
13 to --

14 MR. HENDERSON: And I can find it, Your Honor.

15 THE COURT: I think I can find it. I think I can
16 find it. And it refers to -- and I hadn't looked at this.
17 It says I remind you that you remain his counsel of record
18 before this Court, rule 71.1G, South Carolina Rules of
19 Civil Procedure. And I didn't know if that was just kind
20 of a directive from the Supreme Court saying, okay from
21 this point forward you remain as counsel of record or was
22 that an indication from the Supreme Court that said, okay
23 you were -- you remained counsel of record continuing from
24 the -- Judge Addy's decision forward.

25 MR. JOHNSON: Do you want me to read that to you?

1 THE COURT: Okay. Alright.

2 MR. JOHNSON: Would you like me to approach?

3 THE COURT: Yes, certainly. Mr. Johnson is faster
4 than the computer. Okay. I'll -- let me just publish a
5 portion of this rule. I'm not going to publish the whole
6 thing. It says, "The final decision entered under the act
7 shall be reviewed according to the procedure specified in
8 an appellate rule. If an applicant represented by counsel
9 desires to appeal, counsel shall so serve and file a
10 notice of appeal as required by rule 243." So then I
11 guess it goes back to whether or not the applicant in this
12 case expressed his desire to appeal and if he did, the
13 fact that he did it prior to a decision by the Court, was
14 that an affective expression of his desire to appeal
15 thereby causing Mr. Williams to be under an obligation
16 under rules 71.1G to file the appeal? Anything further
17 Mr. Johnson?

18 MR. JOHNSON: Nothing from the State, Your Honor.

19 THE COURT: Okay. Alright. From Mr. Henderson?

20 MR. HENDERSON: Your Honor, I guess it's just
21 basically -- to use a baseball analogy, I think in that
22 situation the tie ought to go to my client. Because the
23 lawyers in a better position to prevent these problems
24 from happening than my client or any other applicant is.

25 THE COURT: Right. Okay. Alright.

1 MR. JOHNSON: And Your Honor, I would just state from
2 the State's position is that the applicant has the burden
3 of proof in this case.

4 THE COURT: Right.

5 MR. JOHNSON: Mr. Williams sent him the Form 4 and the
6 Order of Dismissal which clearly states that he's got
7 thirty days to -- from that Order date that he receives
8 that Order to appeal. It's not until almost a year later
9 that he informs Mr. Williams that he wants to appeal.

10 THE COURT: Okay. Alright, thank you very much
11 gentlemen. Appreciate your hard work. I'll take this
12 under advisement and let you know my decision.

13 MR. JOHNSON: Thank you, Your Honor.

14 (End of requested transcript of record)

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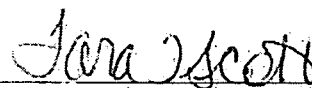
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C E R T I F I C A T E

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 18th day of February, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto. Signed on May 31, 2014.

 ORIGINAL



Tara T. Scott, CVR

Circuit Court Reporter for
the State of South Carolina

MAR 03 2014

STATE OF SOUTH CAROLINA
COUNTY OF LAURENSIN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

MAR 22 AM 11:43

Brian Keith Stephens, #131066,

2013-CP-30-00721

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 16, 2013. Respondent made its Return and Motion to Dismiss all claims except for an Austin¹ review on October 25, 2013. An evidentiary hearing into the matter was convened on February 18, 2014, at the Laurens County Courthouse. Carson Henderson, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Gary Williams, Esquire, also testified. This Court also had before it a copy of the records of the Laurens County Clerk of Court, records from the South Carolina Department of Corrections, the complete file of PCR Counsel (Williams) and Applicant's prior PCR Order of Dismissal.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Laurens County. He was indicted by the Laurens County Grand Jury for Felony DUI, Death Results (2009-GS-30-1585), Hit and Run with Death

Handwritten signature and initials, possibly reading 'H1' and 'D21A'.

(2009-GS-30-1586), Possession of Stolen Vehicle (2009-GS-30-1587), Felony DUI with Great Bodily Injury (2010-GS-30-0460), Hit and Run with Great Bodily Injury (2010-GS-30-0461), and Hit and Run with Minor Personal Injury (2010-GS-30-0493). He was represented by Bill Mayer, Esquire. On January 26, 2011, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted to all of the aforementioned charges with a negotiated cap of twenty-five (25) years. He received the following sentences, all concurrent: twenty-five (25) years and a \$10,100.00 fine for felony DUI with death; twenty-five (25) years a \$10,000.00 fine for hit and run with death; five (5) years for possession of a stolen vehicle; fifteen (15) years and a \$10,100.00 fine for felony DUI, great bodily injury; ten (10) years for hit and run with Applicant did not appeal his convictions or sentences.

2011-CP-30-0407

Applicant filed his first application for Post-Conviction Relief (PCR) on April 27, 2011. In his first PCR application, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
2. Conflict of interest
3. Involuntary plea
4. Inadequate defense

The Respondent made its Return on August 22, 2011. An evidentiary hearing into the matter was convened on March 14, 2012, at the Greenwood County Courthouse before the Honorable Frank R. Addy, Jr. Gary Williams, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent. On April 16, 2012, the Honorable Frank R. Addy, Jr. denied and dismissed the application with prejudice.

1 Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

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

1. "Ineffective assistance of trial counsel."
 - a. "Issue is pursued in pursuant to Austin v. State, 409 S.E.2d 395."

At the beginning of the PCR hearing on February 18, 2014, Counsel for Applicant agreed that the only issue before this Court was a review pursuant to Austin. Counsel for Applicant also introduced into evidence PCR Counsel's (Williams) complete file as well as the Laurens County Clerk of Court's file without objection.

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 at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of PCR counsel for failing to file an appeal from the denial of his first PCR on Applicant's behalf. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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,

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104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Under an Austin v. State review, a PCR court must conduct an "evidentiary hearing to determine whether [Applicant] requested and was denied an opportunity to seek appellate review. If the court finds this to be true the court shall review whether [Applicant] was prejudiced by the failure to obtain review of a meritorious issue. In deciding this question, we shall use an analysis akin to that of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)." Austin at 455, 409 S.E.2d at 396.

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

At the hearing, Applicant testified that after the conclusion of the first PCR hearing at the Greenwood County Courthouse he asked PCR Counsel (Williams) to file an appeal if the first PCR case was not decided in his favor while at counsel table. PCR Counsel testified he did not recall

whether or not Applicant asked him to file an appeal. It was undisputed that PCR Counsel did not file an appeal. However, Counsel testified he received a Form 4 from the Honorable Frank R. Addy Jr., explaining to PCR Counsel that Applicant's first PCR was denied. Counsel sent the Form 4 along with a typed letter to Applicant on April 9, 2012. Counsel also testified that when he received a copy of the signed and clocked Order of Dismissal, he sent Applicant a copy of the Order along with another typed letter dated April 29, 2012. Applicant admitted that he, in fact, received this letter and a copy of the Order of Dismissal. While PCR Counsel admitted that he did not advise Applicant concerning his appellate rights in the second letter, the following was included in the Order of Dismissal:

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

See Order of Dismissal 2011-CP-30-0407.

Additionally, Counsel testified it was not until March of 2013 that he received notification from the South Carolina Supreme Court regarding Applicant's desire to pursue an appeal from the denial of his first PCR case. Later, the South Carolina Supreme Court dismissed Applicant's appeal for failure to timely file the appeal. Counsel testified he sent a letter to Applicant on May 25, 2013 instructing Applicant to file another PCR application and stating, in his opinion, Applicant should be granted an Austin appeal. However, this Court finds differently.

While arguably the first prong of Strickland- that counsel failed to render reasonably effective assistance under prevailing professional norms- may have been satisfied in light of Rule 71.1(g)

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SCRCP, Applicant has failed to prove the second prong of Strickland- that he was prejudiced by PCR Counsel's performance.

Applicant failed to show resulting prejudice in this case because this Court finds the findings and holdings in the Honorable Frank R. Addy, Jr.'s Order of Dismissal in the Applicant's first PCR case are correct.

Even if this Court did not agree with the Honorable Frank R. Addy Jr.'s ruling, Applicant still has failed to show resulting prejudice. "In a PCR proceeding, the burden of proof is on the applicant to prove the allegations in his application. On appeal, the PCR court's ruling should be upheld if it is supported by any evidence of probative value in the record." Simuel v. State, 390 S.C. 267 (2010). Additionally, appellate courts "[give] great deference to a PCR judge's findings where matters of credibility are involved." Id.

There is ample evidence in the record to support Honorable Frank R. Addy, Jr.'s Order of Dismissal. Additionally, the Honorable Frank R. Addy, Jr. found trial counsel's testimony to be credible while finding Applicant testimony not credible. This Court finds PCR Counsel's testimony credible. This Court finds Applicant is not entitled to a review pursuant to Austin. Applicant admitted he received a copy of the Order of Dismissal from his first PCR application, which clearly stated that Applicant had thirty (30) days in which to file an appeal, yet decided not to inquire about the status of an appeal until almost one year after the time to file has passed. Based on Applicant's own inaction in this case, this Court denies his allegations against PCR Counsel.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

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application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!


 Donald B. Hocker
 Presiding Circuit Court Judge
 Eighth Judicial Circuit

A TRUE COPY OF ORIGINAL
 Lynn W. Lancaster
 Laurens County CCCP & GS

2-28, 2014

Laurens South Carolina

#7

WITNESSES

R S SALTER
S C Highway Patrol

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

WARRANT NUMBER

1997155

*Due bill***COURT OF GENERAL SESSIONS**

November Term, 2009

Indictment # 09-C300-1585

THE STATE

vs.

Brian Keith Stephens

IC

Foreman of the Grand Jury

Date: *11/4/09*

VERDICT**INDICTMENT FOR**

FELONY DU, DEATH RESULTS
56-03-2945

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

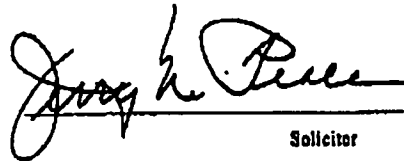
INDICTMENT FOR

FELONY DUI, DEATH RESULTS
56-05-2945

At a Court of General Sessions, convened on the 6th day of November, 2009 the Grand Jurors of Laurens County present upon their oath:

That Brian Keith Stephens, did in Laurens County, state aforesaid, on or about the 1st day of August, 2009 who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: that the said defendant drove with reckless disregard for the safety of others; and/or failed to change the course of travel to avoid causing the accident; and/or failed to slow down to avoid causing the accident; and/or failed to keep a proper lookout; and/or failed to maintain his vehicle under proper control, which act and/or acts of neglect proximately caused the death of one David Michael Williams, in violation of Section 56-5-2945 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 cases made and provided.


Solicitor

WITNESSES

R S SALTER
S C Highway Patrol

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

WARRANT NUMBER

1997156

Shaw Hill

COURT OF GENERAL SESSIONS

November Term, 2009
Indictment # 09CS30- 1586

THE STATE

vs.

Brian Keith Stephens

iii

Date: *11/6/09*

Foreman of the Grand Jury

VERDICT

INDICTMENT FOR

HIT AND RUN WITH DEATH
56-05-1210

Forfeited

ATTEST COPY OF ORIGINAL

Shawn A. Stephens

Lynn W. Lunsford

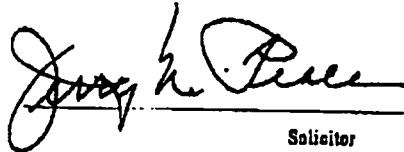
Laurens County C.C.P. & G.S.

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****INDICTMENT FOR****HIT AND RUN WITH DEATH
56-05-1210**

At a Court of General Sessions, convened on the 8th day of November, 2009 the Grand Jurors of Laurens County present upon their oath:

That Brian Keith Stephens, did in Laurens County, state aforesaid, on or about the 1st day of August, 2009 willfully and unlawfully while the driver of a vehicle involved in an accident resulting in the death of a person, David Michael Williams, fail to immediately stop the vehicle at the scene of the accident or as close thereto as possible, and remain at the scene of the accident until he/she fulfilled the requirements of Section 56-5-1230 of the South Carolina Code of Laws, 1976, as amended, in violation of the provisions of Section 56-5-1210 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 cases made and provided.



Solicitor

WITNESSES

R S SALTER
S C Highway Patrol

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

November Term, 2009
Indictment # 09CS30-1587

WARRANT NUMBER

1997157

Paul Hill

THE STATE

vs.

Brian Keith Stephens

Date: *11/6/09*

Foreman of the Grand Jury

VERDICT

INDICTMENT FOR

POSSESSION OF STOLEN VEHICLE
16-21-0080

Foreman

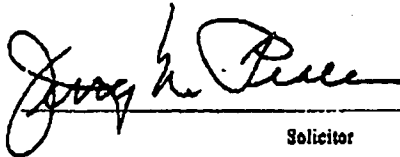
ATTEST COPY OF ORIGINAL
Clerk of Court
Tyrone W. Farnsworth
Laurens County, S.C. CP & CS

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****INDICTMENT FOR****POSSESSION OF STOLEN VEHICLE
16-21-0080**

At a Court of General Sessions, convened on the 6th day of November, 2009 the Grand Jurors of Laurens County present upon their oath:

That Brian Keith Stephens, did in Laurens County, state aforesaid, on or about the 1st day of August, 2009 willfully and unlawfully, while not being entitled to the possession of a vehicle, to wit: a 1987 BMW, received, possessed, concealed, sold or disposed of the said vehicle knowing the same to be stolen or converted under circumstances constituting a crime, the value of the said vehicle being more than One thousand (\$1,000.00) dollars, to wit: the property of one Wendell Waldrop, in violation of Section 16-21-80 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 cases made and provided.


Solicitor

WITNESSES

R S SALTER
S C Highway Patrol

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

March Term, 2010
Indictment # 10GSP-0466

WARRANT NUMBER

10-INFO-30-0066

THE STATE

vs.
Brian Keith Stephano

Tue Eric
Angie Nelson

Date: *3/24/12* Foreman of the Grand Jury

VERDICT

INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
WITH GREAT BODILY INJURY
56-05-2945

Foreman

A TRUE COPY OF ORIGINAL

Given to
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

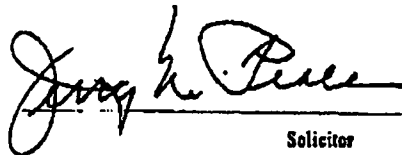
INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
WITH GREAT BODILY INJURY
56-05-2945

At a Court of General Sessions, convened on the 28th day of March, 2010 the Grand Jurors of Laurens County present upon their oath:

That Brian Keith Stephens, did in Laurens County, state aforesaid, on or about the 1st day of August, 2009 who, under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: drove with reckless disregard for the safety of others, and/or failed to change the course of travel to avoid causing the accident, and/or failed to slow down to avoid causing the accident, and/or failed to keep a proper lookout, and/or failed to maintain his vehicle under proper control, which act of neglect proximately caused great bodily injury to another person, to wit: one Ally M. Williams, in violation of the provisions of Section 56-5-2945 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 cases made and provided.



Solicitor

WITNESSES

R S SALTER
S C Highway Patrol

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

WARRANT NUMBER

10-INFO-30-0067

COURT OF GENERAL SESSIONS

March Term, 2010
Indictment # 100330-0461

THE STATE

vs.
Brian Keith Stephens

Tammy Ruth
Angie Nolan
Foreman of the Grand Jury
Date: 3/24/10

VERDICT

INDICTMENT FOR

HIT AND RUN WITH GREAT BODILY
INJURY
56-05-1210

Foreman

TRUE COPY OF ORIGINAL

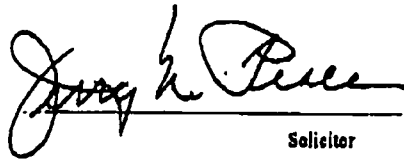
Clara M. Davis
Jimmie W. Lammert
Laurens County Clerk & OS

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****INDICTMENT FOR****HIT AND RUN WITH GREAT BODILY INJURY
56-85-1210**

At a Court of General Sessions, convened on the 26th day of March, 2010 the Grand Jurors of Laurens County present upon their oath:

That Brian Keith Stephens, did in Laurens County, state aforesaid, on or about the 1st day of August, 2008 willfully and unlawfully while the driver of a vehicle involved in an accident resulting in great bodily injury to Ally M. Williams fail to immediately stop said vehicle at the scene of the accident or as close thereto as possible, and remain at the scene of the accident until he/she had given his/her name, address, and registration number of the vehicle he/she was driving and render to the person, the said Ally M. Williams who was injured in said accident, reasonable assistance, including the carrying or making arrangements for the carrying of such person to a physician, surgeon or hospital for medical treatment when it was apparent such treatment was necessary or if such carrying was requested by the injured person.

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



George H. Reese

Solicitor

WITNESSES

R S SALTER
S C Highway Patrol

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

WARRANT NUMBER

10-INFO-30-0068

COURT OF GENERAL SESSIONS

March Term, 2010
Indictment # ROCSSO- 0493

THE STATE vs.

Brian Keith Stephens

Tammy Burt
George Melvin

Date: 3/26/10 Foreman of the Grand Jury

VERDICT

**INDICTMENT FOR
HIT AND RUN WITH MINOR
PERSONAL INJURY
56-05-1210**

Foreman

A TRUE COPY OF ORIGINAL
FILED IN 10-000000-000000
BY CLERK OF COURT
10-000000-000000

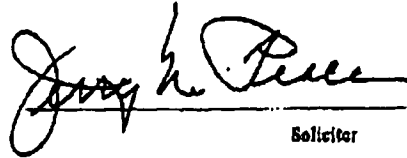
THE STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

INDICTMENT FOR
HIT AND RUN WITH MINOR
PERSONAL INJURY
56-05-1210

At a Court of General Sessions, convened on the 28th day of March, 2010 the Grand Jurors of Laurens County present upon their oath:

That Brian Keith Stephens, did in Laurens County, state aforesaid, on or about the 1st day of August, 2009 willfully and unlawfully while the driver of a vehicle involved in an accident resulting in injury to a person, Connie Williams fail to immediately stop said vehicle at the scene of the accident or as close thereto as possible, and remain at the scene of the accident until he/she had given his/her name, address, and registration number of the vehicle he/she was driving and render to the person, the said Connie Williams who was injured in said accident, reasonable assistance, including the carrying or making arrangements for the carrying of such person to a physician, surgeon or hospital for medical treatment when it was apparent such treatment was necessary or if such carrying is requested by the injured person, in violation of Section 56-5-1210 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 cases made and provided.


Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Laurens
 STATE VS.
Brian Keith Stephens

AKA:

Race: W Sex: M Age: 44DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Indian, SC 29349DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Felony DUI with Death (1-25/01 and 10/04-25/00) ☐ CONVICTED OF or ☒ PLEADSin violation of § 56-5-2945 of the S.C. Code of Laws, bearing CDR Code # 0395
☒ 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:

Hamman, Jack

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ 10,100.00; provided that upon the service of days/months/years and/or paymentof \$; 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: 09 65 30 1586-1587☒ 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. 534 days☐ 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 16-25-30 or 16-25-66 (Original 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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

§ 44-53-450(C) (Conditional Discharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

INDICTMENT/CASE#: 09GS30-1585A/W#: J997155Date of Offense: 8/1/2009S.C. Code § : 56-05-2945(A)CDR Code #: 0395

SENTENCE SHEET

A TRUE COPY OF ORIGINAL

PTUP

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 FundOther: ☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Laurens
STATE VS.Brian Keith Stephens

AKA:

Race: W Sex: M Age: 44DOB: [REDACTED]Address: [REDACTED]City, State, Zip: Inman, SC 29349

DL#:

SID#:

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

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

TO: Advised with Death 10/24/09 and 9/10/08-25, 09/10 ☐ CONVICTED OF or ☒ PLEADSIn violation of § 56-5-1210 of the S.C. Code of Laws, bearing CDR Code # 2463☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

[Signature]
Hannack, Jacq09652
SC Bar#Brian Stephens
DefendantTheresa G. Maye
Attorney for Defendant13340
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 10,000 : 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: 09 GS 30 1585-4587
☒ The Defendant is to be given credit for time served pursuant to S.C. Code 10 GS 30 460-461 § 24-13-40 to be calculated and applied
by the State Department of Corrections. 534 days☐ 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 § 56-5-1210 (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 %)		<u>10,000.00</u>
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	<u>\$ 10,760.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	<u>100.00</u>
§ 56-5-2995 (DUI Assessment)	\$12	<u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	<u> </u>
Proviso 47.9 (Public Def/Prob)	\$300	<u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	<u> </u>
§ 14-1-213 (Drug Court Surcharge)	\$150	<u> </u>
§ 50-21-114(BUI Breath Test Fee)	\$50	<u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	<u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	<u> </u>
§ 44-53-450(C) (Conditional Discharge)	\$350	<u> </u>
3% to County (if paid in installments)		<u>625.50</u>
TOTAL		<u>\$ 21,475.50</u>

Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (06/2010)

INDICTMENT/CASE#: 09GS30-1586A/W#: J997156Date of Offense: 8/1/2009S.C. Code § : 56-05-1210(A)CDR Code #: 2463

SENTENCE SHEET

INDICTMENT/CASE#: 09GS30-1586A/W#: J997156Date of Offense: 8/1/2009S.C. Code § : 56-05-1210(A)CDR Code #: 2463

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SENTENCE SHEET

INDICTMENT/CASE#: 09GS30-1586A/W#: J997156Date of Offense: 8/1/2009

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Laurens

VS.

Brian Keith Stephens

AKA:

Race: W Sex: M Age: 44

DOB:

Address:

City, State, Zip: Inman, SC 29349

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 Stolen Vehicle 8/1000.500 105411.90 Finein violation of § 16-21-80 of the S.C. Code of Laws, bearing CDR Code #☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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.

ATTORNEYS:

Hammack, Jack

SC Bar#

Defendant

William G. Meyer

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: 10620 460 & 461
☒ 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. 534 days☐ 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:

A TRUE COPY OF ORIGINAL

☐ 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	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 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	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09GS30-1587

A/W#: J997157

Date of Offense: 8/1/2009

S.C. Code § : 16-21-0080(2)

CDR Code #:

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-21-80 of the S.C. Code of Laws, bearing CDR Code #☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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.

ATTORNEYS:

Hammack, Jack

SC Bar#

Defendant

William G. Meyer

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: 10620 460 & 461
☒ 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. 534 days☐ 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:

A TRUE COPY OF ORIGINAL

☐ 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	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 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	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge

Judge Code:

Sentence Date:

PTUP

Obtain GED

Attend Voc. Rehabilitation

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:

☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
STATE VS.Brian Keith Stephens

AKA:

Race: W Sex: M Age: 44DOB: [REDACTED]

Address:

City, State, Zip: Inman, SC 29349

DL#:

SID#:

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

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

TO: DUI / Felony driving under the influence, great bodily injury resultsin violation of § 56-05-2945(A) of the S.C. Code of Laws, bearing CDR Code # 0406☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

St. Pierre, JosephSC Bar#DefendantAttorney for DefendantSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 10,100.-; 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: 10 CS 30 461
☒ The Defendant is to be given credit for time served pursuant to S.C. Code 09 CS 30 1585 1586 & 1587 § 24-13-40 to be calculated and applied by the State Department of Corrections. 534 days☐ 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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

§ 44-53-450(C) (Conditional Discharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 10GS30-0460A/W#: 10-INFO-30-0066Date of Offense: 8/1/2009S.C. Code § : 56-05-2945(A)CDR Code #: 0406

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS30 days to pay and \$100-10/100in violation of § 56-05-2945(A) of the S.C. Code of Laws, bearing CDR Code # 0406☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

St. Pierre, JosephSC Bar#DefendantAttorney for DefendantSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 10,100.-; 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: 10 CS 30 461
☒ The Defendant is to be given credit for time served pursuant to S.C. Code 09 CS 30 1585 1586 & 1587 § 24-13-40 to be calculated and applied by the State Department of Corrections. 534 days☐ 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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

§ 44-53-450(C) (Conditional Discharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

PTUP

Obtain GED ☐ days/weeks/months/yearsAttend Voc. Rehab. ☐ days/weeks/months/years

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: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
 STATE VS.
Brian Keith Stephens

AKA:

Race: W Sex: M Age: 44DOB: [REDACTED]Address: [REDACTED]City, State, Zip: Inman, SC 29349DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Traffic / Hit and run, duties of driver involved in accident with great bodily injury (0-10411.0 and 8/1/06-10/1/07)in violation of § 56-05-1210(A) of the S.C. Code of Laws, bearing CDR Code # 2462
☒ 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:

St. Pierre, JosephSC Bar#DefendantAttorney for DefendantSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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: 10 (05 30 460)☒ 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. 534 day☐ 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:

A TRUE COPY OF ORIGINAL☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>0.00</u>
TOTAL	\$	\$ <u>103.00</u>

Clerk of Court/ Deputy Clerk Lynn W. LancasterCourt Reporter: Jon 7 Tolbert

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 10GS30-0461A/W#: 10-INFO-30-0067Date of Offense: 8/1/2009S.C. Code § : 56-05-1210(A)CDR Code #: 2462

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSThe 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:

St. Pierre, JosephSC Bar#DefendantAttorney for DefendantSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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: 10 (05 30 460)☒ 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. 534 day☐ 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:

A TRUE COPY OF ORIGINAL☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>0.00</u>
TOTAL	\$	\$ <u>103.00</u>

Clerk of Court/ Deputy Clerk Lynn W. LancasterCourt Reporter: Jon 7 Tolbert

SCCA/217 (06/2010)

Presiding Judge JCP/KAZJudge Code: 2154Sentence Date: 1-26-11

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
 STATE VS.
Brian Keith Stephens

AKA:

Race: W Sex: M Age: 44DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Inman, SC 29349DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Traffic / Hit and run, duties of driver involved in accident with minor personal

in violation of § 56-05-1210(A) of the S.C. Code of Laws, bearing CDR Code # 2461

☐ 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.

ATTORNEY: St. Pierre, Joseph 69652 Brian Stephens Lynn W. Lancaster 13340
 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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. 534 days☐ 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	\$ <u>25.00</u>
§ 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	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>.90</u>
TOTAL	\$	\$ <u>30.90</u>

Clerk of Court/ Deputy Clerk Lynn W. LancasterCourt Reporter: Joy Holston

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 10GS30-0493A/W#: 10-INFO-30-0068Date of Offense: 8/1/2009S.C. Code § : 56-05-1210(A)CDR Code #: 2461

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS10-yr. 1/0 100.5000

A TRUE COPY OF ORIGINAL

PTUP Lynn W. Lancaster days/hours Public Service EmploymentObtain GED ☐ Laurens County CCCP & GS

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:

☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge J. D. [Signature]Judge Code: 2154Sentence Date: 1-26-11