

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

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S.C. Supreme Court

JOHN FOREST HAM, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001834

APPENDIX

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Plea

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2009-GS-23-9547
4)
5 State of South Carolina) TRANSCRIPT OF RECORD
6 vs)
7 John Forest Ham, Jr.)
8)

May 19, 2010
Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE EDWARD MILLER, Judge

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

12 MARK MOYER, Esquire
13 Assistant Solicitor
14 Attorney for the State

15 ALEX STALVEY, Esquire
16 Attorney for the Defendant

17 Caroline Hiskell
18 Circuit Court Reporter
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I N D E X

(There was no exhibits or witnesses presented.)

State versus Ham

P R O C E E D I N G S

1
2 THE CLERK: Your Honor, this is Indictment
3 No. 2009-GS-23-9547, John Forest Ham, Jr., indictment for
4 assault and battery with intent to kill and possession of
5 a weapon during the commission of a violent crime,
6 pleading to assault and battery with intent to kill. This
7 is a True Bill.

8 2009-GS-23-9548 indicted for pointing and
9 presenting a firearm, pleading to the same. This is a
10 True Bill. 2009-GS-23-9549, indictment for resisting
11 arrest with a deadly weapon, pleading to the same. That
12 is a True Bill. 2009-GS-23-9554, indictment for failure
13 to stop for a blue light, pleading to the same. That is a
14 True Bill. 2009-GS-23-9570, indictment for kidnapping,
15 pleading to the same. That is a True Bill.

16 Please raise your right hand.

17 JOHN FOREST HAM, JR., having been duly sworn,
18 testified as follows:

19 THE COURT: In the last 24 hours, have you
20 had any drugs, alcohol or medication?

21 DEFENDANT HAM: No, sir.

22 THE COURT: Have you ever been treated for
23 the abuse of alcohol, drugs, or for mental illness or
24 emotional problems?

25 DEFENDANT HAM: Drugs.

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1 THE COURT: For what? When and where?

2 DEFENDANT HAM: Charleston about 15 years
3 ago.

4 THE COURT: Are you sober today?

5 DEFENDANT HAM: Yes, sir.

6 THE COURT: You're up here on a bunch of
7 indictments. The first one is 09-9570 alleges that you
8 did in Greenville County, September 17, '09 unlawfully
9 seize, abduct, confine, inveigle, decoy or carry away
10 Rosalyn Phile -- am I saying that right?

11 MR. MOYER: I believe so, yes.

12 THE COURT: And Tommy Williamson without the
13 authority of law. It carries up to 30 years in prison.
14 This is a Violent offense means no parole. It is a Most
15 Serious offense with convictions for two or more Most
16 Serious offenses you are eligible for life in prison
17 without parole. Do you understand that?

18 DEFENDANT HAM: Yes, sir.

19 THE COURT: You are also up here on 09-9554
20 alleges you did in Greenville County, August 28, '09
21 unlawfully fail to stop for a police vehicle when signaled
22 to do so by blue lights or sirens. It carries three
23 years, do you understand that?

24 DEFENDANT HAM: Yes, sir.

25 THE COURT: You are also here on 09-9549

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1 alleges you did in Greenville County, September 17, '09
2 resist the efforts to arrest you by Office CA Moody, JN
3 Hawkins, MP Austin, PB Galvins with the Greenville Police
4 Department with the use or threat of a deadly weapon.
5 What is that 10?

6 MR. MOYER: It carries 2 to 10 and it can not
7 be suspended to less than six months.

8 THE COURT: 2 to 10 and can not be suspended
9 to less than six months, do you understand that?

10 DEFENDANT HAM: Yes, sir.

11 THE COURT: You're also here on 09-9548,
12 alleges you did in Greenville County, September 17, '09
13 present and point a firearm, a pistol at Rosalyn Phile and
14 officers Moody, Austin, Hawkins, Calvin and others, five
15 years, do you understand that?

16 DEFENDANT HAM: Yes, sir.

17 THE COURT: And finally you're up here on
18 09-9547 alleges you did in Greenville County, Count 1, on
19 or about August 2, '09 unlawfully with malice aforethought
20 express or implied commit an assault and battery on James
21 Scott Lewis. This carries up to 20. This is a Violent
22 Offense which means no parole. It's a Most Serious and two
23 or more convictions for Most Serious means you're eligible
24 for life in prison without parole, do you understand that?

25 DEFENDANT HAM: Yes, sir.

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1 THE COURT: Understanding the nature of the
2 charges against you and the maximum possible punishment,
3 how do you want to plead?

4 DEFENDANT HAM: Guilty.

5 THE COURT: Has anybody forced you in any way
6 or coerced you or threatened you or promised you in any
7 way to get you to enter that plea?

8 DEFENDANT HAM: No, sir.

9 THE COURT: You're doing it freely and
10 voluntarily?

11 DEFENDANT HAM: Yes, sir.

12 THE COURT: You understand you have an
13 absolute right to a trial by jury where you would be
14 presumed innocent unless and until the State can prove you
15 guilty beyond any reasonable doubt of each and every
16 element of each offense that you're charged with. You'd
17 have a right to confront and cross-examine the witnesses
18 and the evidence put up against you by the State. You'd
19 have a right to compel in court all relevant and
20 competent evidence in your own defense or you can remain
21 silent and your silence can not be held against you and
22 you can never be compelled to incriminate yourself.

23 Do you understand all those rights?

24 DEFENDANT HAM: Yes, sir.

25 THE COURT: I don't know if you made a

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1 statement in this case but if you did, you enter this
2 plea, I accept it, you give up your right to challenge the
3 Constitutional propriety of the statement, do you
4 understand that?

5 DEFENDANT HAM: Yes, sir.

6 THE COURT: Same holds true with respect to
7 any evidence seized in this case. You enter the plea and
8 I accept it, you give up your right to challenge the
9 Constitutional propriety of the seizure of any evidence,
10 do you understand that?

11 DEFENDANT HAM: Yes, sir.

12 THE COURT: Understanding all those rights,
13 you want to give them all up and plead guilty?

14 DEFENDANT HAM: Yes, sir.

15 THE COURT: Are you guilty?

16 DEFENDANT HAM: Yes, sir.

17 THE COURT: Are you totally and completely
18 satisfied with your lawyer?

19 DEFENDANT HAM: Yes, sir.

20 THE COURT: Do you have any complaints you'd
21 like to make about the way you've been treated in this
22 case?

23 DEFENDANT HAM: No, sir.

24 THE COURT: And have you had enough time to
25 review the evidence the State has against you?

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1 DEFENDANT HAM: Yes, sir.

2 THE COURT: Okay. Tell us about it.

3 MR. MOYER: Your Honor, there are three
4 separate incidents. I'll begin with Indictment NO.
5 09-9547, the assault and battery with intent to kill. The
6 incident occurred August 2nd of last year. The victim,
7 the defendant and their two girlfriends were driving
8 around. They ended up at the victim's house on Wakewood
9 Way in Greenville. The victim and defendant got into a
10 very heated argument. It resulted in the defendant firing
11 the pistol in the vicinity of the victim.

12 At that point, the victim rushed the
13 defendant. They got into a scuffle resulting in the
14 defendant stabbing the victim in the left side near his
15 rib cage. The victim was taken to the hospital where the
16 wound was closed and a chest tube was inserted. The
17 victim was kept in the hospital and monitored for four
18 days until he was released.

19 The next incident is 09-9554. This incident
20 occurred August 28, '09. Officer approached a vehicle
21 they saw stopped on a dead end street, Lakeside Drive in
22 Greenville. They found the defendant in the driver's seat
23 and there was a female in the passenger's seat. The
24 defendant gave a false name and acted very nervous. The
25 officers then saw a pistol on the floor near the

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1 defendant.

2 The officers then ordered the defendant out
3 of the vehicle but instead the defendant put the car in
4 gear and drove away. The officers chased him for a
5 distance but then they had to call off the pursuit. The
6 officers were able to identify the defendant through a mug
7 shot photograph.

8 The final incident involves the remaining
9 charges that occurred on September 17th of last year.
10 About 10:00 in the morning, the defendant and a female
11 friend of his were seen at a Greenville Auto Collision on
12 Mauldin Road attempting to steal a license plate for their
13 vehicle which they knew law enforcement was looking for.

14 They were seen by employees of the business
15 who called police. When the officers arrived, a witness
16 pointed out to the officer that they saw that the
17 defendant was armed with a pistol and that he was hiding
18 behind a nearby white van.

19 Officers saw the defendant peering around the
20 side of the van. They ordered him to the ground instead
21 the defendant ran. Officers found him hiding in some
22 woods nearby. An officer told the defendant to get to the
23 ground but instead he ran again. Some other officers saw
24 the defendant pull a pistol from his pocket and hold it by
25 his side while running away.

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1 Other officers saw the defendant walking on
2 Mauldin Road holding a pistol. They ordered him to stop.
3 He did not but instead he walked to a bus that used the
4 Greenville Community Resident to transport residents of
5 the South Carolina Department of Disabilities and Special
6 Needs.

7 The defendant pointed a pistol at the driver
8 of the bus and told her to get out. The defendant did so
9 and the defendant driver's seat. A patient with the
10 Department of Disabilities and Special Needs was still on
11 the bus.

12 The defendant started driving the bus away.
13 One officer shot out the right front tire. The defendant
14 started driving some bus at some officers. The officers
15 said that they could see he was holding the pistol and
16 pointing it in their direction. Officers fired about four
17 rounds in the front of vehicle. The defendant was not
18 hit.

19 The defendant then drove onto Mauldin Road.
20 He got on the ramp to I85. He drove a short distance
21 until the tire deflated. He pulled over on the side of
22 the road, got out holding the pistol. He attempted to run
23 away but the officers apprehended him with a K-9 unit and
24 tazer.

25 Again, at this time, we would ask the Court

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1 to accept the guilty plea and defer sentence. The
2 defendant has pled guilty in federal court on some
3 separate charges that were also related to this incident.
4 He is to be sentenced as soon as he is sentenced in
5 federal court. We are to retain jurisdiction and bring
6 him back for sentencing, Your Honor.

7 THE COURT: Is what he has told me
8 substantially true and correct?

9 DEFENDANT HAM: Yes, sir, except I didn't
10 point the pistol at the woman or the police, but pretty
11 much everything else.

12 THE COURT: You presented it, correct?

13 DEFENDANT HAM: Yes, sir.

14 THE COURT: You understand they want to defer
15 sentence?

16 DEFENDANT HAM: Yes, sir.

17 THE COURT: The purpose of that being to
18 allow him to do his time in federal custody?

19 MR. MOYER: That's correct.

20 THE COURT: Anything else?

21 MR. MOYER: No, Your Honor.

22 THE COURT: All right, I'll accept the plea
23 and defer the sentence.

24 MR. MOYER: Thank you, Your Honor.

25 MR. STALVEY: Thank you, Your Honor.

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1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 19th day of May, 2010.

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

11
12
13 January 2, 2011

14 _____
15 Caroline Hiskell
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

JOHN FORREST HAMM, JR.,)

DEFENDANT.)

2009-GS-23-09547

September 1, 2010

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

JOHN CROUT, ESQUIRE
MARK MOYER, ESQUIRE
ATTORNEYS FOR THE STATE

MILLS ARIAIL, ESQUIRE
ALEX STALVEY, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Certificate of Reporter

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EXHIBITS**(NONE)**

1 September 1, 2010

2 (WHEREUPON, Court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: Mr. Crout.

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

6 This is a sentencing for Mr. John Hamm. He is being
7 sentenced on State Grand Jury charges, as well as charges
8 from the Thirteenth Circuit Solicitor's Office that Mr.
9 Moyer is going to be handling. We'll begin with the State
10 Grand Jury charges. He previously has pled guilty to --
11 was one of the first individuals to plead guilty in this
12 case to trafficking in methamphetamine between twenty-eight
13 and a hundred grams, for which the State is recommending a
14 sentence for fifteen years; distribution of
15 methamphetamine, for which the State is recommending a
16 sentence of fifteen years; trafficking methamphetamine
17 between twenty-eight and a hundred grams, for which the
18 state is recommending fifteen years; simple possession of
19 marijuana for which the State recommended time served; and
20 trafficking in methamphetamine, between twenty-eight and a
21 hundred grams, again for which the State is recommending
22 fifteen years.

23 Subsequent to pleading guilty, Mr. Hamm testified in
24 the trail that occurred before your honor of Ms. Kimberly
25 Taylor. Following his testimony, the next morning she pled

1 guilty. I believe that it was based a large part on the
2 way that -- the testimony that he gave, not only in the
3 Court, but also appearing before the Grand Jury and
4 providing testimony there, as well.

5 The involvement of Mr. Hamm in this statewide
6 conspiracy, of course, came to light through the
7 information provided by Ms. Kim Taylor about
8 methamphetamine that he had in a shop where he was working
9 at; along with a search warrant was executed there and, of
10 course, the amounts of methamphetamine that he pled guilty
11 to possession, some of those came from that location, other
12 methamphetamine. Also, that he is charged with, being
13 involved in trafficking, is based upon testimony of other
14 individuals that are involved in the conspiracy, as well.
15 Notwithstanding that brief description, Your Honor, he
16 testified to and admitted to all of that involvement before
17 Your Honor previously when he testified in Kim Taylor's
18 trial.

19 He is pleading guilty pursuant to a written plea
20 agreement. A copy of that written plea agreement has been
21 made a part of the -- given to the Court and made part of
22 the record in this particular case, Your Honor. He is
23 serving -- he has been sentenced yesterday on a federal
24 charge. With regard to these charges, we would like for
25 them to run concurrent to that federal charge. My

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1 understanding is that the federal charge, depending on the
2 source, is between twenty-two years up to ---

3 MR. ARIAIL: Three hundred and nineteen months.
4 Twenty-six ---

5 MR. CROUT: Okay. Twenty-six years. So that
6 this sentence would be served and basically be completed in
7 the time period that he serves his federal sentence.

8 THE COURT: Thank you. Mr. Ariail, be glad to
9 hear from you and be glad to hear from your client.

10 MR. ARIAIL: Your Honor, just a little background
11 in regard to Mr. Hamm. He's forty-two years old. He's got
12 two children. In regards to this case, from the beginning,
13 he came to me, acknowledged his guilt in it in regards to
14 being tied up in this conspiracy. He actually sat down
15 after we discussed and was fully debriefed by the -- by
16 SLED. A full statement of his full involvement in regards
17 to it and everything that he had done pretty much since the
18 age of sixteen years old when he got involved in drugs.
19 And clearly, as he will acknowledge, drugs has taken a hold
20 of him. There's no question about that. But he has come
21 forth and wanted to plead guilty to this, and clearly has
22 shown that he can provide information that's helpful
23 through his testimony through Grand Jury testimony that he
24 gave. He wanted to get this behind him and understands,
25 you know, he was wrong in what he was doing.

1 It's our hope, Your Honor, that based upon all that
2 information and his help to the government in their case
3 that you would go with the recommendation and give him
4 concurrent time. He is looking at three hundred and
5 nineteen months in the federal system. And one of the
6 things about this is we've worked so that he is able to
7 serve his time in the federal system instead of having to
8 do it in the state system. And he will serve that time and
9 hopefully by the time he's out ---

10 Defendant: Sixty-five.

11 MR. ARIAIL: --- he'll be sixty-five years old.

12 And ---

13 THE COURT: What's your age now?

14 DEFENDANT: I'll be forty-three in December.

15 MR. ARIAIL: Based on that we just hope that you
16 could give him the recommendation of fifteen years and let
17 him serve that time in the federal system. Thank you.

18 THE COURT: Is his family here?

19 MR. ARIAIL: His family is here. His mama and
20 daddy just wanted to represent that they're here. They're
21 not going to say anything, but wanted you, for your
22 purposes, to know that. And I don't think -- he clearly

23 ---

24 THE COURT: Anything you want to tell me, sir?

25 DEFENDANT: No, sir.

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1 THE COURT: I believe one of the charges he's
2 pleading to is to be -- on the possession with intent to
3 distribution, carries ten years maximum; is that correct,
4 instead of fifteen?

5 MR. CROUT: Yes, Your Honor.

6 THE COURT: Count 17?

7 MR. CROUT: Yes, sir. He -- the distribution of
8 meth. I'm sorry if I misspoke. Did I say fifteen?

9 THE COURT: I think you said fifteen.

10 MR. CROUT: I'm sorry. That's ten.

11 THE COURT: I want to make sure that all the
12 recommendations were that they all be concurrent; is that
13 right?

14 MR. CROUT: Yes, sir.

15 THE COURT: I misstated that. It was -- PWID was
16 trafficking from ten to twenty-eight, I believe it carries
17 a ten year maximum. One of the charges was ten to twenty-
18 eight; is that correct? He's pleading to trafficking, ten
19 to twenty-eight ---

20 MR. CROUT: Your Honor, yes, sir, there was one
21 charge, trafficking ten to twenty-eight grams.

22 THE COURT: PWID?

23 MR. CROUT: Yes, Your Honor, that was ten years
24 on that.

25 THE COURT: He pled yesterday, you say, in

1 federal?

2 MR. ARIAIL: Yes. And James Loggin, his federal
3 public defender is here, and he can add anything in regards
4 to that case where he pled yesterday in front of Judge
5 Herlong. I mean, Judge Floyd. Excuse me.

6 THE COURT: Is there any reason we can't impose
7 sentence on these before we take the state case?

8 MR. CROUT: No.

9 THE COURT: Case 2008-GS-47-11, Count 3, the
10 sentence of the Court is the Defendant be committed to the
11 State Department of Corrections for a period of fifteen
12 years. This is to be concurrent to the federal sentence
13 effective August 31, 2010; and be given credit for time
14 served.

15 Case 2008-47-11, Count 13, Count 14, Count 16, a
16 fifteen years sentences to be concurrent to that previously
17 imposed. Court 17 to be a ten year sentence concurrent to
18 that previously imposed. Court 15 to be a thirty day
19 sentence; to be given credit for his time served. That's
20 concurrent as well.

21 All right. Mr. Moyer, be glad to hear from you on the
22 State charges.

23 MR. MOYER: Thank you, Your Honor, may it please
24 the Court. The Defendant pled guilty to the five
25 indictments that are before you. He pled guilty on May the

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1 19th, 2010 before Judge Miller and sentencing was deferred
2 at that time. We appreciate Your Honor taking care of the
3 sentencing today, now that he has been sentenced by the
4 Federal Court. The five charges that are before you stem
5 from three separate incidences. I'll take them in
6 chronological order. The first one was indictment number
7 2009-9457. That incident occurred on August the 2nd of
8 last year. The victim, the Defendant and both of their
9 girlfriends on that day drove to the victim's house on
10 Wakewood Way in Greenville. When they arrived, the victim
11 and the Defendant got into a heated argument that resulted
12 in the Defendant firing a pistol in the vicinity of the
13 victim. The victim rushed the Defendant, they got into a
14 scuffle, resulting in the Defendant stabbing the victim in
15 the left side near his rib cage. The victim was taken to
16 the hospital where the wound was closed and a chest tube
17 was inserted and the victim was monitored in the hospital
18 for four days before being released.

19 Your Honor, the next incident is indictment number 09-
20 9554. That incident occurred on August the 28th of 2009.
21 Essentially, officers stopped -- approached a stopped car
22 that they saw on Lakeside Drive in Greenville. It's a
23 dead-end street. The officers found this Defendant in the
24 driver's seat and there was a female in the passenger seat.
25 The Defendant acted very nervous. He gave a false name.

1 The officers then saw a pistol on the floor near where the
2 Defendant was seated. The officers ordered the Defendant
3 of the car, but instead the Defendant put the car in gear
4 and sped away. Officers chased the Defendant for a
5 distance but had to call off the pursuit. An officer later
6 identified the Defendant after -- in a photograph after he
7 got a tip as this Defendant's name.

8 Your Honor, the final incident occurred on September
9 the 17th of 2009 and that would be the remaining three
10 indictments of 09-9570, 9548 and 9549. It was about ten
11 o'clock in the morning. The Defendant and a female friend
12 of his went to Greenville Auto Collision on Mauldin Road
13 with the intent to steal a license plate for their vehicle.
14 They knew that law enforcement was looking for that
15 vehicle. They were actually seen by some employees of the
16 business. Those employees called the police. When
17 officers arrived, one of the employees told the officers
18 that the Defendant was armed with a pistol and that he was
19 hiding behind a nearby van. Officers saw the Defendant
20 peering around the side of the van. They ordered him to
21 the ground. Instead the Defendant ran. Officers found the
22 Defendant hiding in some nearby -- a wooded area nearby.
23 The officer told the Defendant to get on the ground, but
24 the Defendant ran again. Officers saw the Defendant
25 pulling a pistol from his pocket and holding it to his side

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1 while he was running away. Other officers then found the
2 Defendant walking on Mauldin Road. He was still holding
3 the pistol. The officers ordered him to stop, but instead
4 the Defendant approached a bus that is used by an
5 organization called the Greenville Community Residents,
6 used to transport residents of the South Carolina
7 Department of Disabilities and Special Needs. The
8 Defendant pointed the pistol at the driver of the bus, told
9 her to get out. The driver of the bus did get out of the
10 bus, and the Defendant got in at that point. A patient
11 with the Department of Disabilities and Special Needs was
12 on the bus at the time. The Defendant started up the bus
13 and began to drive away. One officer shot out the right
14 front tire. The Defendant drove in the direction of some
15 other officers, pointing his pistol at them. Two of the
16 officers fired a total of four rounds into the front of the
17 bus at the Defendant, but the Defendant was not hit. The
18 Defendant drove on to Mauldin Road and he got on the ramp
19 to get onto I-85. He drove a short distance until the tire
20 deflated. He came to a stop. He pulled over to the side
21 of the road and got out, still holding the pistol. He
22 attempted to run away, but officers apprehended him with a
23 K-9 unit and with the use of a taser.

24 Your Honor, none of the victims are present; however,
25 two relatives of the man who was on the bus, his sister and

1 his father, are present in the Courtroom. They don't want
2 to speak, but they would ask to be heard through victim
3 advocate, Brittany Roper, briefly, when Your Honor sees
4 fit.

5 THE COURT: All right. Mr. Stalvey, you
6 represent Mr. Hamm in this matter?

7 MR. STALVEY: Yes, sir, Your Honor.

8 THE COURT: Be glad to hear from you and I'll
9 certainly be glad to hear from your client.

10 MR. STALVEY: Thank you, Judge. Judge, Mr.
11 Ariail told you a little personal information about Mr.
12 Hamm, so I won't go back over that. Judge, just in
13 mitigation, I will address some of the charges that he's
14 already pled guilty to.

15 Judge, first, similar to what Mr. Ariail told you,
16 when I first met Mr. Hamm, he's always accepted
17 responsibility for his actions. He told me, and I have no
18 reason not to believe that he's suffered for a very long
19 time from a severe addiction to methamphetamine.

20 Your Honor, as far as the assault and battery with
21 intent to kill, Judge, a chaotic situation, a fight.
22 Judge, he knows he had a weapon and another individual
23 ended up getting stabbed. But he wanted me to try to tell
24 you, Your Honor, that but for his addiction to
25 methamphetamine and being under the influence that night,

1 as well as during all these incidents, he never intended to
2 harm anyone. That goes especially for the third incident
3 that you heard about involving the kidnaping, with the
4 chase. Judge, Mr. Hamm was, again, under the influence of
5 methamphetamine. He knows it's not a defense to his
6 actions. He tells me, you know, he didn't realize that the
7 gentleman was in the bus when he did steal it. But when he
8 realized it, it was too late. He was being chased by the
9 police. He truly did not intend to harm anyone in that
10 incident, Judge. Again, another chaotic situation where he
11 knew he was making a mistake. And he's pleading guilty to
12 that. He's accepting responsibility for it.

13 And Your Honor, we're going to ask that you impose a
14 fifteen year concurrent sentence on his charges. I will
15 bring it to the Court's attention that the Federal sentence
16 that he received yesterday included a carjacking. Well, he
17 pled to carjacking. And that incident arose out of this
18 situation with the bus and felony possession of a firearm.
19 He got twenty-six years on that. So he's been adequately
20 punished by the federal government. And Judge, we just
21 ask, in light of the fact that he is accepting
22 responsibility for all his actions, that you sentence him
23 to fifteen years concurrent on the kidnaping; fifteen years
24 concurrent on the assault and battery with intent to kill;
25 and the additional charges, run those concurrent, as well.

1 Thank you, Your Honor.

2 THE COURT: Thank you. Mr. Hamm, anything you
3 want to tell me about these charges?

4 DEFENDANT: Well, Your Honor, like he said, I
5 didn't -- when I got on that van, I didn't know that guy
6 was on there and stuff. And before that I had left
7 Greenville for about a month and a half, and I wasn't doing
8 no drugs or anything. And I come back to Greenville and
9 got around the same people and got back to doing drugs.
10 Every time I get to doing drugs -- when I get off of them,
11 I don't want to do it, and I get around it and go to doing
12 them, something like this will happen, Your Honor. Twenty-
13 six years, when I get out I'll be sixty-five, surely I'll
14 be able to stay away from drugs, Your Honor, if you ...

15 THE COURT: Ms. Roper, I'll be glad to hear from
16 you.

17 MS. ROPER: Yes, Your Honor. As Mr. Moyer has
18 said, the victim's father and sister is present in the
19 Courtroom and they have asked me to address the Court on
20 their behalf.

21 First of all, they would like for you to know that the
22 victim in this case, Tommy Williamson, is an adult, but one
23 of a vulnerable state. He is thirty-three years of age,
24 but has the mental capacity of a seven year old. They
25 respectfully ask that whatever sentence that Your Honor

1 imposes that it be ran consecutive to the time that he's
2 already been sentenced. And they would like to thank Your
3 Honor for your time and attention to this matter.

4 MR. MOYER: And has Your Honor been told the
5 Defendant's criminal record?

6 THE COURT: I was going to ask you for that, Mr.
7 Moyer. Just a moment. I know I did have it on the
8 previously plea I took for the State Grand Jury, but it's
9 been some time; if you can give me the prior record, Mr.
10 Moyer.

11 MR. MOYER: Yes, sir. Your Honor, in 1987,
12 possession of a controlled substance, obtaining a
13 controlled substance by fraud, and possession of marijuana;
14 in 1988, possession of a concealed weapon, trespassing,
15 distribution of marijuana; in 1994 in Florida, attempting
16 to elude a police officer; 1995, possession of marijuana,
17 unlawful possession of a pistol; 1996, receiving stolen
18 goods and burglary third degree; in 2000, assault and
19 battery of a high and aggravated nature, exploitation of a
20 vulnerable adult; 2002, possession of cocaine; 2003, public
21 disorderly conduct, trafficking in methamphetamine, PWID
22 methamphetamine within a half mile of a school; and then
23 the charges that -- his federal charges and the other drugs
24 charges that you heard about today.

25 MR. STALVEY: Judge, if Mr. Hamm may address the

1 Court one more time?

2 THE COURT: Yes, sir, be glad to hear from you.

3 Defendant: Also, Your Honor, you can see in the
4 discovery about the stuff, there wasn't a -- a bullet
5 wasn't even in the barrel of the gun. I know that don't
6 make no difference, but there wasn't even a bullet in the
7 barrel of the gun.

8 THE COURT: Thank you, sir.

9 Mr. Hamm, I'm sorry about your drug addiction. It
10 certainly has created a lot of problems for you in your
11 life, as I'm sure you're well aware. You're going to be in
12 federal prison, but you've been in prison throughout the
13 time you had those drugs and you couldn't control yourself.
14 I guess that's a self-imposed prison.

15 This is case 2009-GS-23-9554, the sentence of the Court
16 is the Defendant be committed to the State Department of
17 Corrections for a period of three years. This will be
18 concurrent to that federal sentence of August 31, 2010.

19 2009-9548, the sentence is five years, concurrent to
20 that previously imposed.

21 Case 2009-GS-23-9549, a five year sentence, concurrent
22 to that previously imposed. All these to be given credit
23 for his time served.

24 Case 2009-23-9547, the sentence is twenty years, to be
25 concurrent to that sentence previously imposed on this day.

State of South Carolina -vs- John Forrest Hamm, Jr. (2009-GS-23-09547)
Sentencing

17

1 Case 2009-GS-23-9570, the sentence is twenty-two years.

2 That to be consecutive to the previously imposed sentence.

3 Thank you very much.

4

5 (END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville8y County, South Carolina, on the 1st day of September, 2010.

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

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

February 17, 2012

Danette P. Hanks

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)John Forrest Harn 240615)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2011-CP-23- 06136

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 Lieber Correction Institution
Ridgeville S.C. 29472
2. Name and location of Court which imposed sentence Greenville Courthouse
305 E. North St. Greenville S.C. 29601
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) 2009-GS-2309547 Assault and Battery with intent to Kill
 - (b) 2009-GS-2309548 Pointing and Presenting a Firearm

Plea = 5/19/10 ✓
Miller

Sentencing = 9/4/10 ✓
Welmaker

2011-3791
ATTORNEY GENERAL'S OFFICE
RECEIVED 9-27-11
ADMINISTRATIVE INSTRUCTIONS
✓ FILE ~~X~~ OPEN _____ END
_____ HAVE _____ COPIES MADE
_____ ROUTE TO _____
ORDER: ~~X~~ TRANSCRIPT
~~X~~ PEN RECORDS _____ CLERK RECORDS
OTHER: _____
no previous cases

K
9/27

- (c) 2009-GS-2309549 Resisting arrest with a deadly Weapon.
5. The date upon which sentence was imposed and the terms of the sentence: See reverse side
- (a) 9-1-10 20 years
- (b) 9-1-10 5 years
- (c) 9-1-10 5 years
6. Check whether a finding of guilty was made: See reverse side
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I wrote my attorney 2 days after sentencing and asked him to file an appeal, he never responded.
- (b) Since my attorney didn't respond, I thought I couldn't appeal

D. 2009-GS-2309554 Failure to stop For a Blue light

E. 2009-GS-2309570 Kidnaping

D. 9-1-10 3 years

E. 9-1-10 22 years

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) See Reverse Side
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) See attached (3a)
 (b) _____
 (c) See attached (3b)
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. _____

2. I received ineffective assistance of counsel prior to and during my plea guilty, inasmuch as my attorney (Alex Stalvey) allowed knowingly or not knowingly for Mills Atrial, who was not Mr. Ham's attorney for said charges, to draw up the enclosed motion and consent order concerning charges he did not represent Mr. Ham on or have his consent to do so.

3. My plea of guilty was not voluntarily given, but was induced by an fulfilled promise from the prosecutor and my attorney.

4. I received ineffective assistance of counsel inasmuch as my attorney did not inform me of my right to appeal my guilty plea, when I wrote my attorney 2 days after sentencing and requested him to file for me an appeal. Which inquiring about an appeal makes it an extraordinary circumstance and requires attorney to inform me of my right to appeal.

5. I received ineffective assistance of counsel inasmuch as my attorney allowed the prosecutor to leave Roslyn Phyll name on the kidnapping charge. Instead of, as in S.C. Code 22-3-740, where an act is susceptible of several different offenses. The Magistrate picks which charge to refer. My attorney should have got her name off the kidnapping charge since I had already been sentenced for carjacking her in Federal Court for the same incident.

6. I received ineffective assistance of counsel inasmuch as my attorney did not advise me that I could possibly beat the charge of kidnapping, since I did not realize anyone was left in the vehicle.

7. I received ineffective assistance of counsel inasmuch as my attorney did not explore the fact that if I intended to kill Scott Lewis and had a gun and a ~~knife~~ small knife in my hands, why I stabbed him one time instead of shooting him. My attorney did not explore the possibility of self defense or at the least ABH, AN, or assault.

3a

11. a. Alex Stalvey was my court appointed Attorney For charges 2009-GS-230954, 2309548, 2309549, 2309554 and 2309570, as you can see From the enclosed Sentencing sheets. I have also enclosed copies of sentencing sheets that Mills Ariail represented me on, which are totally unrelated, and a copy of a Motion and Consent order that Mr. Ariail made up which states "the Defendant, ~~By~~ and through his counsel" and "with the consent of all Parties". This is all a lie, because Mr. Ariail was not my Counsel on those charges, and I never had any knowledge or consented to Mr. Ariail doing anything concerning these charges. Alex Stalvey never informed me of Mr. Ariail having any reason or legal right to do anything concerning these charges. The fact is that my counsel, Alex Stalvey, promised me that the Solicitor had agreed to do whatever necessary for me to be in Federal custody on my Federal sentencing date, so I could do my time in the Federal system and recommend that my State sentence run concurrent with my Federal sentence as the Judge intended it to be, as you can see From 2009-GS-2309554. Mr. Stalvey should of gotten me a recognizance bond on the charges so the U.S. Marshals would of took me into Federal custody. But 4 days before my Federal sentencing, an attorney who was not my counsel on these charges made up this motion and got the Solicitor and Judge to sign it. My Counsel should of known about this Motion and not let it go to a Judge. He should of gotten me a recognizance bond instead.

11. b. My Attorney Promised me That the Solicitor had agreed to do whatever necessary to have me in Federal custody and Free of any holds by the State or County if I would Plea guilty to these State charges. My Attorney assured me that I was going to do my time in the Federal system with my State time run concurrent with my Federal sentence. I was Promised that my 5 years of State time would be concurrent with my 26 years of Federal time, but now I have 25 years in the State then 26 years in the Feds consecutive, which is 51 years, not the Promised 25.

See Reverse Side

11.C. Two days after my sentencing I wrote my attorney and requested him to file me an appeal on my guilty plea, which in itself made it an extraordinary circumstance as in *Weathers v State* 459 SE2d 838, requiring my attorney to inform me of my right to appeal. Which I got no response from my attorney to my request. Therefore my PCR should be able to address all errors since I was not informed of my right to appeal as in *Patterson v. Lee* Kess6F2d116

11.d. My attorney should of objected to, or gotten Roslyn Phyll's name off of the indictment for kidnapping, since I had plead guilty and been sentenced for cardacking Roslyn Phyll for the same incident. Where in fact Roslyn Phyll was not kidnapped, but cardacked. Now I have to register on the sexual predator registry, because my attorney didn't object to her name being on the kidnapping indictment. I had already been sentenced for cardacking her and as S.C. Code 22-3-74C states the Magistrate picks which charge to prefer, my attorney should of gotten Roslyn Phyll's name off the indictment.

11.E. My attorney did not advise me of my chances of beating the kidnapping charge. I told my attorney I did not know there was anyone else on the bus. The victim stated on T.V. and, or to the Police that I never turned around toward him or said anything to him, as if I did not know he was there. The fact is if I told Roslyn Phyll to get out of the bus, why would I consciously leave someone else on it?

11.F. The facts are that Scott Lewis came around my truck from the passenger side to the driver side where I was urinating, saying he was going to take my gun and my money. He had saw I had a wad of money. When he got around the truck, I shot one time at the ground trying to deter him, but he continued his approach on me. I then pulled my knife from the clip on my pocket and flipped it open and stabbed him once and he stopped his approach. I then got into my truck, which my girl friend had started and was yelling for me to get in and come on because she was also scared

(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) See reverse side
 (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. Alex Stalvey ALEX Stalvey - Public Defenders Office
Gville. Courthouse, Room 123, 305 E. North St. Gville, SC, 29601

ii. _____

iii. _____

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

i. my Plea on 5-19-10

my Sentencing on 9-1-10

ii. _____

iii. _____

b. a. In 10a I stated that I received ineffective assistance of counsel, and the ground has not been previously presented because this is the first avenue I have had to present it, and I did not know what had happened until approximately 5-1-11.

b. In 10b I stated that my plea was not voluntarily given, but was induced by an unfulfilled promise, which I did not realize was unfulfilled until 3-14-11 when the Federal Bureau of Prisons ~~said~~ said they could not accept me because I never left the state's custody when I was sentenced by the Federal Court, which was six and a half months after my sentencing.

c. In 10c I stated I received ineffective assistance of counsel because my attorney didn't inform me of my right to appeal. When I wrote him and requested him to file an appeal for me, he never responded, so I was unsure if I could appeal a guilty plea in the state system or not, so this is my first chance to present it.

d. In 10d I stated I received ineffective assistance of counsel since my attorney allowed the prosecutor to leave Roslyn Phyllis name on the kidnapping indictment. I have not previously presented the issue because I did not realize her name was on it, or the consequences of it and this is my first chance to raise it.

e. In 10e I stated I received ineffective assistance of counsel due to the fact that my attorney did not advise me of my chances of beating the charge. I have not previously presented this issue because this is my first avenue.

f. In 10f I stated I received ineffective assistance of counsel in as much as my attorney did not consider the fact that if I intended to kill Scott Lewis, I should, could and would have shot him instead of stabbing him one time with a knife with a 2 inch blade. This is my first avenue to present this.

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

1. Get my State Sentences vacated and get a
Recognazance Bond, so I can go to Fed's as sentence was intended
2. Time reduction 3. Get off of the sex offender registry
4. correcting my sentence or setting it aside.

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

yes. Federal court. 319 months and it hasn't started
yet.

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, John Forrest Ham, 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.

John Forrest Ham

SWORN to and subscribed before me this

day of

August

25th
2011.

Sylvia Jones
Notary Public

(L.S.)

My Commission Expires:

1/24/2018

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

I, John Forrest Ham, 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.

John Forrest Ham
Applicant

SWORN or affirmed to and subscribed before me this
25th day of August, 2011.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-6136
COUNTY OF GREENVILLE	)	
	)	
John Forrest Ham, Jr.,	)	
S.C.D.C. No. 240615,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed September 14, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The Greenville County Grand Jury indicted the Applicant for assault and battery with intent to kill (ABIK) (2009-GS-23-9547, count 1), pointing and presenting a firearm (2009-GS-23-9548), resisting arrest with a deadly weapon (2009-GS-23-9549), failure to stop for a blue light (2009-GS-23-9554), and kidnapping (2009-GS-23-9570). Alex Stalvey, Esquire represented the Applicant.

On May 19, 2010, the Applicant pled guilty and the Honorable Edward W. Miller deferred sentencing to a later date. On September 1, 2010, the Applicant appeared before the Honorable G. Edward Welmaker for sentencing and received concurrent terms of twenty (20) years for ABIK, five (5) years for pointing and presenting a firearm, five (5) years for resisting arrest with a deadly weapon and three (3) years for failure to stop for a blue light. Judge Welmaker levied a sentence of twenty-two (22) years for kidnapping, to be consecutive to the

sentence for failure to stop for a blue light . The Applicant did not appeal.

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

II.

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

1. Ineffective assistance of counsel:
 - a. Allowed the Applicant's attorney for another set of charges to draft a motion and consent order.
 - b. Failed to inform of right to appeal.
 - c. Failed to have the kidnapping victim's name removed from the indictment "since I had already been sentenced for carjacking her in Federal Court for the same incident."
 - d. Failed to properly advise about the kidnapping charge.
 - e. Failed to properly advise about the A.B.I.K. charge, including the possibility of self-defense or a lesser-included charge.
2. Involuntary guilty plea.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d

742, 747 (1999). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record,

including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000). The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

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

Respectfully submitted,

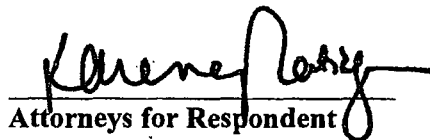
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 15, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2011-CP-23-6136

JOHN FORREST HAM, JR., 240615)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

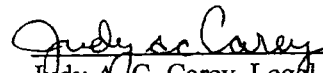
STATE OF SOUTH CAROLINA,)

Respondent.)

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

**John Forrest Ham, Jr., 240615
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472**

DATED this 15th day of March, 2012.


Judy A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2012-CP-39-0177
	)	2011-CP-23-06136
	)	
JOHN F. HAM, JR.	)	
	)	APPLICANT)
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
	)	RESPONDENT)

June 18, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

RODNEY RICHEY, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
ASHLEY A. MCMAHAN, ESQ.
Attorneys for the Respondent

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

JOHN HAM

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ALEX STALVEY

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There were no exhibits.

Certificate of Reporter 47

1 MS. RATIGAN: Your Honor, we are before you today in
2 the case of Mr. John Forest Ham, Jr. There is a case
3 filed in Greenville, that's 2012-CP-23-6136.

4 THE COURT: Yes, ma'am.

5 MS. RATIGAN: And a case filed in Pickens, that's
6 2012-CP-39-0177. We've put them both on the roster today
7 back-to-back, and we're seeking a little bit of guidance
8 in terms of whether or not they can be combined. Because
9 they are different cases. The case in Pickens is a State
10 Grand Jury case that involves a series of drug offenses.
11 The Greenville case has to do with a plea with a separate
12 attorney that stems from an entirely different set of
13 facts. There was a kidnapping involved, a weapon related
14 incidents.

15 THE COURT: Yes, ma'am.

16 MS. RATIGAN: Again, I have them on the roster filed
17 separately. They were filed in different counties
18 separately. My initial thought is that it should be done
19 separately, but I don't know if it would be more efficient
20 to somehow combine them. I don't know what Your Honor's
21 preference would be.

22 THE COURT: Okay, Mr. Richey.

23 MR. RICHEY: Can we approach?

24 THE COURT: Yeah, come on, come on.
25

1 (WHEREUPON, an off-the-record bench conference was
2 held.

3 MS. RATIGAN: Your Honor, do you mind if I put the
4 procedural history on the record first?

5 THE COURT: Yes, ma'am, that's fine.

6 MS. RATIGAN: I'll start and send it to them to make
7 your motion.

8 May it please the Court. On the -- we've discussed
9 the matter at the bench and determined that for purposes
10 of this hearing it would be easiest to consolidate the
11 Pickens case and the Greenville. The docket numbers in
12 which I've already recited. The parties have all agreed
13 that would be most expeditious. So, I will put on the
14 record the procedural history for the Greenville charges
15 that are associated with case No. 2011-CP-23-61 -- 6136.
16 Mr. Ham was indicted in Greenville County for assault and
17 battery with intent to kill, pointing and presented a
18 firearm, resisting arrest with a deadly weapon failure to
19 stop for a blue light and kidnapping. He was represented
20 on these charges by Mr. Stalvey. On May 19th of 2010 he
21 pled guilty before Judge Miller and sentencing was
22 deferred. On September 1st of 2010 he appeared before
23 Judge Welmaker for sentencing. He received concurrent
24 terms of 20 years for assault and battery with intent to
25 kill, five years for pointing and presenting a firearm,

1 five years for resisting arrest with a deadly weapon and
2 three years for failure to stop for a blue light. Judge
3 Welmaker then levied a consecutive 22 year sentence. That
4 was to be consecutive -- the kidnapping for 22 to be
5 consecutive for failure to stop for a blue light.
6 Therefore, the aggregate sentences on these criminal
7 charges was 25 years. There was no appeal.

8 I would note for Your Honor's information, the sister
9 of the kidnap victim is sitting on the front row behind
10 us, she's here to observe today. At this point I will turn
11 it over to Ms. McMahan for procedural history and I
12 believe she has a motion.

13 MS. MCMAHAN: Your Honor, this is the John Forest
14 Ham, this is the Pickens County case, 2012-CP-39-177.
15 First, let me correct the county on my amended return. I
16 put Greenville instead of Pickens but it did get filed in
17 Pickens. That was totally my bad. He was initially
18 indicted by the State Grand Jury indictment back in
19 October 2008 on a superceding indictment that came out in
20 June 2009. For six different counts of count three
21 trafficking methamphetamines. Count 13 distribution of
22 meth. Count 14 trafficking meth. Count 16 trafficking
23 meth. Let me back up, count 15 possession of marijuana
24 and count 17 trafficking cocaine. He pled to all of them
25 on April 9th, 2012. He was sentenced September 1st of

1 2012 to 15 years with the exception of possession of
2 marijuana and that was for time served for trafficking
3 cocaine for 10 years. Those were to run concurrent.

4 And the State has a motion at this time that I put an
5 amended return motion to dismiss. And I attached the
6 State's plea agreement although, I believe, Mr. Ham had
7 already attached the plea agreement to his application any
8 way. So sorry to bombard you with paper. But
9 essentially, the plea agreement, which was signed by him,
10 Mr. Ariail and John Crout who was the attorney general,
11 the assistance AG at the time that was handling this State
12 Grand Jury case which was code named, Vanilla Ice. He
13 agreed to waive his right to appeal in a PCR. In that
14 guilty plea affidavit he -- I mean, excuse me, agreement,
15 if you look at the transcript, this goes along with the
16 Sponne v. State case where Sponne had filed an agreement
17 saying that he would file a PCR. At the PCR hearing the
18 Greenville solicitor came, argued that he waived it in the
19 plea agreement. Ask that the plea agreement to be
20 enforced. I apologize I didn't bring that case with me
21 but it's cited in my return.

22 In any event, however, the Court then specifically
23 ask him if he did the Court did say, Are you aware that
24 the agreement that you signed is binding and that he's
25 pleading freely and voluntarily? And that is on Page Six,

1 Lines 3 through 11 and Page 11 lines 14 and 15.

2 Therefore, you know, the State's just asking one that
3 the plea agreement be enforced, that the PCR be dismissed
4 on the Pickens charges and that's about it.

5 THE COURT: Okay. What's the name of the case, I'm
6 sorry?

7 MS. MCMAHAN: Spoon-v-State. S-P-O-N-N-E, 379 S.C.
8 138.

9 THE COURT: All right. And it's your position that
10 in that case the Supreme Court has determined that those
11 plea agreements are binding with respect to waivers and
12 PCR appeal?

13 MS. MCMAHAN: Yes, Your Honor. The difference I was
14 pointing out was in Sponne -- I can't remember if it was
15 Judge Welmaker or not or Judge Miller has specifically
16 asked to the Defendant, Are you waiving your right to a
17 PCR? He said, Yes. While in this case, Mr. Ham's case,
18 is slightly different. There's not an explicit, do you
19 agree to waive your right to PCR and an appeal, but do you
20 agree that this plea agreement that you signed is binding?
21 And you are pleading freely and voluntarily? That's the
22 difference I just wanted to make. However, in our opinion
23 it's still binding.

24 THE COURT: State v. Sponne.

25 MS. MCMAHAN: Sponne v. State, Your Honor.

1 THE COURT: Sponne v. State.

2 All right, Mr. Richey, I'll be happy to hear from
3 you, sir.

4 MR. RICHEY: Thank you, Your Honor. Your Honor, I
5 think the motion to dismiss is an extreme measure for the
6 Court to take. I will say that the spirit of this plea
7 agreement, I think the transcript that the Attorney
8 General referenced, with numerous orders in the file. The
9 intent of this agreement was to have this gentlemen's
10 sentence be served in Federal Court. That's the intent of
11 this plea agreement, that's the spirit of it. I think the
12 transcript is echoed by Mr. Crout. The Consent Orders
13 being signed. That was the intent and the spirit of this
14 plea agreement. And I think a motion to dismiss it, I
15 think that's premature. I think the Court should hear
16 testimony as to the plea agreement to determine whether
17 it's a valid plea agreement and whether the plea
18 agreement -- did the State keep their end of the bargain
19 up? And it's our position that the State decide not keep
20 its end of the bargain up. Because the bargain in this
21 plea agreement was that my client would serve his sentence
22 in Federal Court. Federal custody. And I think that's
23 the spirit of the agreement. And the spirit of the
24 agreement, Your Honor, has been violated.

25 THE COURT: Yes, ma'am.

1 MS. MCMAHAN: Your Honor, if I may add, if you look
2 at the four corners of the plea agreement as a contract,
3 nowhere in this plea agreement does it say it's our intent
4 that your sentence run concurrent or consecutive to the
5 federal charges. It says, We're recommending 15 years.
6 There's some changes that were made, if you look in there,
7 where some times were modified. Was initialed by
8 Mr. Crout. And then signed by all the parties. So, it's
9 the State's position this is simply a matter of law. The
10 Supreme Court has held you can certainly waive your right
11 in a plea agreement when it's filed, and therefore, it's
12 our position that the PCR should be dismissed.

13 THE COURT: Okay. All right. This is what I'm going
14 to do, I'm going to take the motion under advisement in as
15 much as we're here today and everyone is prepared to
16 present evidence. I'll allow the Applicant to put
17 evidence into the record in furtherance of his
18 application. It may be that, ultimately, a finding of the
19 Court that a ruling in that case is dispositive as to his
20 ability to proceed in a post-conviction relief application
21 when there is an expressed waiver of the same through a
22 plea agreement. Having said that, let's go ahead and
23 proceed with proffering of evidence in that case. Okay.
24 So essentially, what I'm doing is I'm not denying or
25 granting at this point, I'm taking it under advisement.

1 Let's hear the evidence, everybody's here. And then it
2 may be that that's -- that the ruling is in favor of the
3 State, I don't know. I'm looking for the case, it just
4 hadn't popped up, yet, okay.

5 MR. RICHEY: Your Honor, we're going to do both of
6 these cases together, the Greenville and Pickens case?

7 THE COURT: Yes, sir. All right.

8 MR. RICHEY: We call Mr. Ham.

9 THE COURT: I presume that's the way you want to
10 proceed, is that right?

11 MR. RICHEY: Yes, sir.

12 THE COURT: Okay, good enough. You may call your
13 witness, sir.

14 THE CLERK: Mr. Ham, walk over to the witness stand,
15 place your left hand on the Bible, raise your right.

16 JOHN HAM, after being duly sworn, testified as
17 follows:

18 THE CLERK: Thank you. Please, state your full name
19 for the record.

20 THE WITNESS: John Forest Ham.

21 THE CLERK: Thank you, you may be seated.

22 DIRECT EXAMINATION

23 BY MR. RICHEY:

24 Q Sir, you were convicted in Greenville and Pickens
25 County, is that correct?

JOHN HAM-DIRECT BY MR. RICHEY

1 A Yes, sir.

2 Q And in Greenville County who represented you?

3 A Alex Stalvey.

4 Q For what charges?

5 A Kidnapping, pointing and present a firearm, resisting
6 arrest with a deadly weapon and failure to stop for a blue
7 light.

8 Q Who represented you in Pickens?

9 A Mills Ariail.

10 Q And what did he represent you on?

11 A About four or five drug charges, trafficking in 400
12 grams, conspiracy to traffic 400 grams, distribution.

13 Q You also had some federal charges at this time,
14 correct?

15 A Yes, sir.

16 Q Okay. In looking at all these charges and cases,
17 what were y'all trying to do with all of them? Because
18 there was -- there was a cohesive plan how to do this; is
19 that correct?

20 A Yes, sir.

21 Q What was that plan?

22 A Mr. Loggins had--

23 Q Who is Mr. Loggins?

24 A He was my federal attorney. He got with my two other
25 attorneys, they got with the solicitors for Greenville and

JOHN HAM-DIRECT BY MR. RICHEY

1 Pickens, and the federal and they all agreed that they was
2 going to work together. And if I would plead guilty to
3 everything they wanted me to plead guilty to, that they
4 would let me be in federal custody when I got sentenced
5 and do my time in federal prison and run all my state time
6 concurrent corn with it.

7 Q Okay, let's go back so we can kind of chop this up a
8 little bit. When you say everything, you mean the
9 Greenville prosecutor, who was who? Who was the
10 Greenville prosecutor?

11 A Was that Mark Moyer.

12 Q Mark Moyer. And you had a Pickens prosecutor?

13 A It was like John Crout from, uh.

14 Q The State Grand Jury?

15 A Yeah.

16 Q Okay. And you said all these people got together,
17 met in some form, whether it was on the phone or email to
18 do this, correct?

19 A Yeah.

20 Q Was his plan -- was his plan done prior to your
21 pleading guilty, I'm assuming, correct?

22 A Yes, sir.

23 Q Was it prior to you signing this plea agreement?

24 A Yes, sir. John Crout had come and talked to me while
25 I was at Perry. And he told me that he was going to do

JOHN HAM-DIRECT BY MR. RICHEY

1 everything -- that they was going to make that happen. If
2 I was going to plead guilty, that they was going to go
3 along and have it where I be in federal custody when I got
4 sentenced. Go to federal prison and run all my state time
5 concurrent with it. It ain't none of that. He didn't
6 nothing and put that in that plea agreement, this was
7 verbal to me and him and like two other people that came
8 with him.

9 Q So he came down to Perry --

10 A Perry while I was there --

11 Q -- to talk --

12 A -- before I got my sentence vacated for the
13 probation--

14 Q Let's not bite off too much at a time, okay. Let
15 me --

16 Can I approach the witness, Your Honor?

17 THE COURT: Sure, yes, sir.

18 BY MR. RICHEY:

19 Q This plea agreement is already a part of the record,
20 do you recognize that?

21 A Yes, sir.

22 Q And you signed this plea agreement, correct?

23 A Yes, sir.

24 Q Okay. But prior to signing this plea agreement, did
25 Mr. Crout come see you prior to you signing this?

JOHN HAM-DIRECT BY MR. RICHEY

1 A Yes, sir.

2 Q And so he came and talked to you, told you they were
3 going to be concurrent and then you signed this? You got
4 to answer.

5 A Yes, sir.

6 Q Okay. Did you sign the under the belief that you
7 were going to do your sentence in federal prison?

8 A Yes, sir.

9 Q Okay. Was that -- was that approach consistent with
10 Mills Ariail?

11 A Yes, sir.

12 Q Was it consistent with Alex Stalvey?

13 A Yes, sir.

14 Q Was it consistent with Mark Moyer?

15 A Yes, sir.

16 Q Was it consistent with John Crout?

17 A Yes, sir.

18 Q Okay. And so you pled on the disbelief -- if you had
19 known that this was not going to happen would you have
20 went to trial?

21 A Yes, sir.

22 Q Okay. Let's start with the Pickens cases. Drug
23 cases. Had you known that you were going to have to serve
24 this in state custody, would have gone to a jury trial?

25 A Yes, sir.

JOHN HAM-DIRECT BY MR. RICHEY

1 Q You would have?

2 A Yes, sir.

3 Q Did you discuss that Mr. Ariail?

4 A Yes, sir.

5 Q What did you discuss?

6 A I told him if it wasn't going to be worked out where
7 I can go to federal prison and have all my time run
8 concurrent, I was going to go to trial on the drug
9 charges.

10 MR. RICHEY: Can I approach the witness, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. RICHEY:

13 Q Do you -- okay, I'm going to -- you have attached to
14 the application this motion and Consent Order that was
15 signed by Mark Moyer and Mills Ariail. And it was dated
16 August the 27th, 2010, you got that; correct?

17 A Yes, sir.

18 Q You attached that. And this motion it says The
19 purpose is to facilitate the Defendant's sentence in
20 federal court, is that correct?

21 A Yes, sir.

22 Q So, the solicitor in Greenville and Mr. Ariail, this
23 is their intent to do that, correct?

24 A Yes, sir.

25 Q Okay. This a also an Order that -- that actually was

JOHN HAM-DIRECT BY MR. RICHEY

1 in August of 2010, it's a Consent Order to vacate your
2 probation. And why was that done, do you know?

3 A Where I can get out of state custody, out of prison,
4 Perry prison, out of that to get in federal custody
5 whenever I got sentenced. Mr. Harold told me, Harold
6 Loggins, had told me that I had to get out of Perry, get
7 that probation sentence vacated. And then, get a
8 recognizance bond on all my state charges to -- then the
9 feds would pick me up and I would be in federal custody.
10 Mr. Ariail got me a recognizance bond his charges. Then
11 like two, three days before I was supposed to go plead, I
12 think -- I told Mr. Stalvey that I had to have a
13 recognizance bond, he said he was going to find out what
14 he needed to do and do it. And I don't guess he ever did.
15 And then Mills Ariail filed that motion to get me released
16 to federal custody. Which it's on the charges that Alex
17 Stalvey represented me on. Mills Ariail shouldn't even
18 drew [verbatim] up that motion he didn't even represent
19 me on those charges. That's -- whenever I got -- went to
20 federal court after I got sentenced, whenever I got back
21 to the state, they sent me back to the state, they said
22 that's the reason why the federal bureau of prison sent me
23 back because that motion was drawn up.

24 Actually, I wasn't in federal custody, I was still in
25 state custody and that motion right there is why. And

JOHN HAM-DIRECT BY MR. RICHEY

1 they sent me back to state custody. Because I should have
2 a recognizance bond instead.

3 Q Okay. Instead of that motion you should have got a
4 recognizance bond instead of this Consent Order to vacate
5 your probation?

6 A No. Not the probation, the other one. The one that
7 I did not sign. The one that I didn't know anything about
8 him drawing it up. It was on a charge that he didn't even
9 represent me on. This right here.

10 Q This is the one with Mark Moyer and--

11 A Mills Ariail. Concerning the kidnapping and all
12 those other charges. Which Alex Stalvey is the one that
13 represented me on those charges.

14 Q Okay. So you're saying Mr. Ariail did not represent
15 you on these charges?

16 A Yes. And I had no knowledge of him drawing that up.
17 He had told me the only way you're going to get in federal
18 custody is have a recognizance bond on your charges. And
19 he give me a recognizance bond on his. Then he end up
20 drawing up this motion two days before I'm going to go
21 plead because he knows if I wasn't I was going to take the
22 drug charges to trial.

23 Q Okay. What -- tell me what your sentence is now.
24 Tell me what your sentences are right now?

25 A Well, I got 25 years state and 319 months federal.

JOHN HAM-DIRECT BY MR. RICHEY

1 Q Okay.

2 A My federal time has not run yet.

3 Q So your federal sentence has not started?

4 A Right.

5 Q So essentially, if all this goes the way it is now,
6 you have to do the 25 then start the federal?

7 A Yeah. Instead of doing 26 in the feds, I'm doing 51.

8 Q Okay. Is that your -- is that you're understanding
9 of what would happen in this case?

10 A No.

11 Q And do you believe that your lawyers, all these cases
12 were ineffective in this case?

13 A Yes.

14 Q And do you believe if they had been effective, that
15 you basically would have got the benefit of this plea
16 agreement when all your charges ran concurrent; is that
17 correct?

18 A Yes, sir.

19 Q So you're asking this Court to vacate all your state
20 convictions?

21 A Yes, sir.

22 Q Okay. Let me make this clear, prior to you signing
23 this plea agreement you talked Mr. Crout at the jail?

24 A Yes, sir.

25 MR. RICHEY: Thank you, answer any questions the

JOHN HAM-DIRECT BY MR. RICHEY

1 attorney general has for you.

2 CROSS-EXAMINATION

3 BY MS. MCMAHAN:

4 Q Mr. Ham, you said that your federal public defender
5 was Mr. Loggins; is that correct?

6 A Yes, ma'am.

7 Q Do you remember Mr. Loggins writing you at any point
8 in time telling you that he would fixed this problem for
9 you as long as you dismissed your Fourth Circuit appeal?

10 A Mr. Loggins had come to Kirkland and told me that
11 there was a motion that was messed up. And I told him I
12 wanted to see what the motion was. And he told me that --
13 he said he could go into the Judges chambers, Judge Floyd,
14 and he could maybe get him to sign a motion to make my
15 federal time start but that wouldn't get me to federal
16 prison.

17 Q Do you remember Mr. Loggins also contacting you and
18 telling you if you got resentenced in federal court it
19 would cure the problem that you currently have. And the
20 only way you could do that is that you have to dismiss
21 your appeal in federal court?

22 A He told me it would not get me to federal prison. He
23 said he wanted to get my time start run concurrent.

24 Q Would you rather have your time run concurrent and
25 serve 25 years versus 51?

JOHN HAM-CROSS BY MS. MCMAHAN

1 A I would whether get to federal prison and have it run
2 concurrent or else I'd rather take those drug charges and
3 the kidnapping charge, which I didn't know nobody was in
4 the back of the vehicle, I'd rather go to trial on that
5 stuff. Instead of -- if I wasn't going to go to federal
6 prison and have my state time run concurrent, if I'm going
7 to be stuck in the prison that I'm at now and have to have
8 kidnapping on me, where I didn't kidnap anybody, and have
9 drug charges on me that are not right, yeah, I'd rather. .

10 .

11 Q Do you remember testifying to the State Grand Jury?

12 A Yeah.

13 Q Do you remember telling the State Grand Jury all the
14 drugs you bought and all the drugs that you have?

15 A (There was no response.)

16 Q You were there for a long time in front of the Grand
17 Jury, you don't remember your conversation with them back
18 in 2008?

19 A Most of it.

20 Q So, then you remember telling them the drugs that you
21 purchased from other people?

22 A Are we on trial for that here or are we here about
23 the PCR?

24 Q I'm asking the questions, sir. Do you remember
25 telling them that you bought drugs from people?

JOHN HAM-CROSS BY MS. MCMAHAN

1 A I don't remember everything I told them. That's been
2 about six years ago, I believe.

3 Q So, you would rather going to trial knowing that all
4 that testimony, that 40, 50 something pages of testimony
5 in front of the State Grand Jury is going to come out?

6 A Yeah.

7 Q Okay.

8 MS. MCMAHAN: Nothing further.

9 CROSS-EXAMINATION

10 BY MS. RATIGAN:

11 Q Regarding the Greenville charges, what specifically
12 did Mr. Stalvey not do for you that he should have done?

13 A He didn't -- I told him I said, You got to get a
14 recognizance bond on these charges so that I will be in
15 federal custody when I get sentenced and everything by the
16 feds.

17 He said, Well I'm going to find out, I'm going to get
18 with Loggins and see what I need to do.

19 And he did not do that.

20 Q Now, when you say he did not do that, do you mean
21 that he didn't contact Mr. Loggins or that he did not get
22 you a recognizance bond?

23 A I don't know if he contacted Loggins or not. I know
24 he didn't get me a recognizance bond on those charges.
25 And also, he -- he didn't inform me of several things.

JOHN HAM-CROSS BY MS. RATIGAN

1 Like mens rea if I didn't -- the person that was in the
2 back of that van said that I never turned around, I never
3 said nothing to him. I didn't know nobody was in that
4 van. He didn't let me know that that's not kidnapping.
5 What I did was carjack somebody. I told somebody to get
6 out of the vehicle. I didn't know nobody was in the back
7 of the vehicle, that's not kidnapping.

8 Q Well, when the State recited the facts of this
9 incident at trial -- at the guilty plea, why didn't at
10 that point you tell the Judge you didn't know anyone was
11 in the vehicle?

12 A I guess because my attorney didn't really inform me
13 or anything. I didn't think if I didn't know somebody was
14 in the back, that it didn't constitute kidnapping. Just
15 like the assault and battery with intent to kill, I had a
16 gun, the guy's drunk, comes around my vehicle and I'm
17 standing between my door opened, urinating and he comes
18 around the vehicle, talking about he was going to take my
19 gun. I shoot the gun at his feet. And then, I throw the
20 gun in the vehicle because he's drunk and I don't want him
21 to take it and one of us get killed. And I had little
22 knife on my side and I poked him one time with the knife.
23 If I would have intended to kill him, assault and battery
24 with intent to kill, I would have stuck the gun to his
25 face and shot him. So, really I didn't assault and

JOHN HAM-CROSS BY MS. RATIGAN

1 battery with intent to kill, either.

2 Q So, even though the facts were recited twice, once at
3 your guilty plea and once at your sentencing, you never
4 decided to dispute these facts like you're disputing them
5 today?

6 A No, I kind of thought I was going to get the deal
7 that Alex Stalvey, Mills Ariail, James Loggins, John Crout
8 and all of them had worked up for me and I said, Yeah, if
9 I can go to federal prison and all my time be concurrent,
10 I'll plead guilty to everything y'all want me to, wrong or
11 right, I'll plea guilty to it.

12 Q So, are you saying today that you lied on these
13 charges?

14 A I pled guilty to everything that they wanted me to
15 plead guilty to.

16 Q That's not I asked you. Did you lie to the Judge
17 that day when you pled guilty on these charges? These
18 assault charges, the kidnapping charge, are you saying
19 told just to get this deal?

20 A I'm saying I wouldn't have pled guilty to them if it
21 wasn't going to be the deal that I was promised I was
22 going to get.

23 Q Why didn't you tell either the plea Judge or the
24 sentencing Judge, the only reason I'm pleading today is
25 because I'm getting this deal in federal court? That I

JOHN HAM-CROSS BY MS. RATIGAN

1 been made this promise. Why didn't you tell them you had
2 been made a promise?

3 A I mean, the attorneys and John Crout and all of them
4 when we was at my plea date and at my sentencing, John
5 Crout, Mills Ariail, Stalvey, James Loggins, all them,
6 every time I went to court they would talk about well we
7 got this deal worked up where he's going to do his time in
8 federal court and the state time will run concurrent.

9 All this and that. I mean, they went over that every time
10 I went to court all those different times.

11 Q So, you just showed up to court and answered all the
12 questions yes and just because you wanted this deal?

13 A No.

14 Q Well, you told the Judge you were guilty and you're
15 saying today you weren't guilty?

16 A (There was no response.)

17 Q You need to answer my question. You're saying today
18 you're not guilty?

19 A (There was no response.)

20 MS. RATIGAN: Your Honor.

21 THE COURT: If he choose not to respond --

22 MS. RATIGAN: All right.

23 THE COURT: -- that's fine.

24 MS. RATIGAN: I think his silence speaks volumes. I
25 have nothing further.

JOHN HAM-CROSS BY MS. RATIGAN

1 MR. RICHEY: Just a couple of questions, sir.

2 REDIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q Sir, I want to reflect to the transcript of your
5 hearing with Mr. Moyer and Mr. Stalvey on May 19th, 2010.
6 And on Line 6, 15 and Line 17, the Judge said, Is the
7 purpose of that being to allow him to do his time in
8 federal custody?

9 And Mr. Moyer says, That is correct.

10 Do you remember being in court hearing that?

11 A Yes, sir.

12 Q And after Mr. Moyer said that, the Court on 22 says,
13 All right, I accept the plea and defer the sentence.

14 So, after the Court was made aware that this plea
15 was, one of the purpose of it, was to allow you to do your
16 time in federal custody, that's when the Court accepted
17 this plea, correct?

18 A Yes, sir.

19 Q So based on this transcript, there's no dispute on
20 what was trying to be done, correct?

21 A Yes, sir.

22 Q Whether you were, in fact, guilty or not guilty or
23 whatever that is, the real issue here is you pretty much
24 was promised by everybody that you would do your time in
25 federal court?

JOHN HAM-REDIRECT BY MR. RICHEY

1 A Yes, sir.

2 Q And they went before these Judges and told these
3 Judges that too, correct?

4 A Yes, sir.

5 Q They had Judges sign Orders saying the purpose is to
6 facilitate the defendant and all this stuff in federal
7 court, correct?

8 A Yes, sir.

9 Q So, this is not something we're making up, the
10 records reflects this, correct?

11 A Yes, sir.

12 Q And you believe that it was in your best interest, in
13 light of the facts of your case, good, bad, indifferent,
14 it was in your best interest to plead guilty to these
15 charges in exchange for a federal -- be in federal
16 custody, correct?

17 A Yes, sir.

18 Q You thought that was in your best interest?

19 A Yes, sir.

20 MR. RICHEY: Thank you, answer any questions that The
21 Court or any of the Attorney Generals have for you.

22 MS. MCMAHAN: Just a follow up, Your Honor.

23 THE COURT: Yes, ma'am.

24 RECROSS-EXAMINATION

25

JOHN HAM-RECROSS BY MS. MCMAHAN

1 BY MS. MCMAHAN:

2 Q Mr. Ham, do you remember going to federal court to
3 plead guilty?

4 A Yes, ma'am.

5 Q And that was some time around May 2010, is that
6 correct?

7 A Yes, ma'am.

8 Q And you remember the Judge asking you questions,
9 similar to what they ask you in state court. Do you
10 particularly remember Judge Floyd asking you, and you
11 answering, Yes; In no way should this be construed as a
12 promise to a particular sentence to you?

13 And you said, Yes.

14 Do you remember Judge Floyd saying that to you?

15 A I can't remember. If it's on the transcript I must
16 have.

17 MS. MCMAHAN: Nothing further.

18 THE COURT: Okay.

19 All right, anything further?

20 MR. RICHEY: No, Your Honor.

21 THE COURT: All right, Mr. Ham, you may step down,
22 sir, I appreciate your being here.

23 MR. HAM: Sir, could I put on the record, I would
24 like my attorney to file a 59(e) motion so I can alter
25 amend.

JOHN HAM-RECROSS BY MS. MCMAHAN

1 THE COURT: Sure, absolutely, yes, sir.

2 THE CLERK: Place your left hand on the Bible, raise
3 your right hand.

4 ALEX STALVEY, after being duly sworn, testified
5 as follows:

6 THE CLERK: Thank you, please state your full name
7 for the record.

8 THE WITNESS: Alexander Rollings Stalvey.

9 THE CLERK: Thank you, you may be seated.

10 DIRECT EXAMINATION

11 BY MR. RICHEY:

12 Q All right, do you remember representing Mr. Ham?

13 A Yes, sir.

14 Q What county did you represent him in?

15 A Greenville County.

16 Q Do you know what charges you represented him on?

17 A Kidnapping, carjacking, I can't remember the other
18 charges, but.

19 Q Okay. Well, let's get to meat of the issue. The
20 issue, in dealing with this federal custody deal, did you
21 do anything to facilitate him being in federal custody?
22 Or that part of the case?

23 A No. I mean, when I talked to Mr. Ham, I reviewed his
24 file with him. Mr. Ham had gotten out of jail and
25 basically he was charged with carjacking a bus that

ALEX STALVEY-DIRECT BY MR. RICHEY

1 transported mentally disabled people. There were several
2 witnesses to the incident, including a bunch of law
3 enforcement and I think a lawyer with the Solicitor's
4 Office was actually out there when it happened. Mr. Ham
5 and I talked about it. We decided that he had no -- no
6 possible defense in the case and that he was going to have
7 to plead guilty. That we would argue for the best
8 sentence possible but we knew about what range that he was
9 looking at. So, I was aware that he also had federal
10 charges. And we talked about, you know, the best thing we
11 could do for him was he was looking at about 20 years on
12 my charges. We would try to help him get sentenced and do
13 his time in the Federal Bureau of Prisons instead of the
14 South Carolina Department of Corrections. So, that's what
15 we were trying to do. You know, we couldn't guarantee
16 that. We couldn't promise him that we could do that. I
17 had no control over what happened in the federal case.
18 But I mean, that was -- that was what we were going to try
19 to do to help him.

20 Q And so, is that the reason why the plea -- the
21 sentence of the plea was deferred -- y'all deferred it so
22 you can wait until you get a federal sentence?

23 A I can't recall why we deferred it. I mean, his other
24 attorney, Mills Ariail and I, we talked during the entire
25 deal. So.

ALEX STALVEY-DIRECT BY MR. RICHEY

1 Q If the plea transcript says that -- well Mark Moyer
2 was the prosecutor, correct?

3 A Yes, sir.

4 Q And if the transcript reflects that the purpose of
5 that being deferring the sentence, do you understand they
6 want to defer the sentence?

7 And Mr. Ham says, Yes, sir.

8 The purpose of that being to allow him to do his time
9 in federal custody?

10 And Mr. Moyer says, that's correct.

11 So, if that's what it says on this transcript, then
12 y'all really trying to get him to federal custody,
13 correct?

14 A Yes, sir.

15 Q So you had conversations with him, not about whether
16 it would be done or not, but just that's what we're doing?

17 A That's what we're going to try to do.

18 Q Try to do. And do you believe that -- was it
19 reasonable for him to believe that this could be achieved,
20 that it could be done?

21 A I can't -- I mean, I can't tell you what he felt was
22 reasonable or not. But I mean, it was something that we
23 were trying to do. I mean, I'm sure it's been done in the
24 past. It's -- I can tell you that, you know, I was
25 familiar, not from personal handling any cases, but I was

ALEX STALVEY-DIRECT BY MR. RICHEY

1 familiar with this being done in the past on other cases
2 where somebody is looking at doing a lot of time in the
3 federal system and state system and everybody usually
4 wants to do it in the federal system. So, we figured that
5 was pretty much the only thing we could do for him.

6 MS. RATIGAN: May I approach the witness, Your Honor?

7 Excuse me, I'm sorry.

8 THE COURT: Yes, sir.

9 BY MR. RICHEY:

10 Q Okay. Are you familiar with this consent -- Motion
11 and Consent Order -- this appears to be a Consent Motion
12 Order in your case. And it's not signed by you. Do you
13 know the purpose of that Order?

14 A You know, I'm sure I looked at this. I mean, this is
15 in the spirit of what Mr. Ariail and I were trying to do.
16 I mean, I remember Mr. Ariail and I discussed what would
17 be the best way to try to accomplish this. And we had to
18 get an Order signed. So yeah, I definitely remember
19 talking to Mr. Ariail getting something signed by a Judge
20 that would help try to get him into the federal system.

21 Q Did you ever talk to Mr. Crout, John Crout, did you
22 ever talk to him at the AG's office, John Crout?

23 A I don't remember ever talking to him.

24 Q Okay. Okay. So, did he -- did Mr. Ham ever tell
25 you, Hey, if these sentences are not going to be served in

ALEX STALVEY-DIRECT BY MR. RICHEY

1 federal custody, I'm going to trial?

2 A No, he did not tell me that.

3 Q Okay. Okay. So, he never said, Hey, if you can't
4 get this -- me in federal custody, let's just pick a jury?

5 A No.

6 Q Okay. But that was the spirit of what you all were
7 trying to do is get him into federal custody? That was
8 spirit of this plea agreement and all this, correct?

9 A Well, I don't know what plea agreement you're
10 referring to but in resolving the charges that I
11 represented him on, that's what we're trying to do.

12 Q Okay, thank you.

13 CROSS-EXAMINATION

14 BY MS. RATIGAN:

15 Q Mr. Stalvey, were you appointed or retained in this
16 case?

17 A Appointed.

18 Q And did you file the usual Brady Rule Five Discovery
19 Motions?

20 A I believe so.

21 Q And would you have reviewed those materials with
22 Mr. Ham?

23 A Well, I did review them with Mr. Ham.

24 Q Okay. And he told you his version of what happened
25 in these various incidents?

ALEX STALVEY-CROSS BY MS. RATIGAN

1 A Well, I can't remember him even telling me a version
2 of what happened. I remember going through the version of
3 what the police said happened. And I don't remember
4 Mr. Ham offering an alternative of those events.

5 Q And would you have reviewed with him both the
6 elements of these charges and the various sentence ranges?

7 A Yes, I did.

8 Q Okay. And do you recall this carjacking, this
9 kidnapping incident, did that occur while Mr. Ham was out
10 on bond for his Grand Jury case, do you remember?

11 A Yes, ma'am, it did.

12 Q Okay. And Mr. Ham testified that he wanted you to
13 get him a recognizance bond, do you remember having such a
14 conversation with him?

15 A I can't remember having that conversation with him.
16 But -- and I can't testify -- I mean, if he would have
17 asked me to get a PR bond on those charges I probably
18 would have advised him that that was not likely.

19 Q And why wouldn't it have not been likely?

20 A Because he was out on bond on some serious Statewide
21 Grand Jury charges. Then he carjacked a bus with some
22 mentally disabled people in it.

23 Q Did he also have an escape during this time, do you
24 remember?

25 A I can't remember when his escape was. I can't

ALEX STALVEY-CROSS BY MS. RATIGAN

1 remember if that took place -- I'm pretty sure --
2 actually, I'm not sure when the escape took place. I
3 mean, he was in custody the entire time that I spoke with
4 him.

5 Q Okay.

6 A I mean, I'm aware of the escape and what happened
7 with that. I mean, I know he was brought over to Pickens
8 for something that I was not involved in or I was not at
9 that hearing. But he was brought over to the courthouse
10 for a hearing and he got loose.

11 Q Okay. And I believe your testimony was you spoke
12 throughout your representation with Mr. Ariail?

13 A I did, yes.

14 Q Did you also have conversations with Mr. Loggins over
15 at the Public Defender's Office?

16 A I spoke with Mr. Loggins, I think, maybe one time
17 about it.

18 Q And Mr. Ham knew that y'all were all working towards
19 letting him serve his federal time first?

20 A Mr. Ham knew that that's what we were trying to do.

21 Q But did you ever make him any promises that this
22 would absolutely been a done deal?

23 A No, ma'am.

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

25 MR. RICHEY: No other questions.

ALEX STALVEY-CROSS BY MS. RATIGAN

1 THE COURT: Okay.

2 MR. RICHEY: I call Mr. Ariail.

3 THE COURT: All right.

4 THE CLERK: Place your left hand on the Bible, raise
5 your right.

6 MILLS ARIAIL, after being duly sworn, testified
7 as follows:

8 THE CLERK: Please be seated then state your full
9 name for the record.

10 THE WITNESS: Robert Mills Ariail, Jr.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q Mr. Ariail, do you recall representing John Ham?

14 A I do.

15 Q What county did you represent him?

16 A Pickens, it was a Statewide Grand Jury case.

17 Q And that's the drugs part of this deal, correct?

18 A Right, right. I think he had numerous drug charges,
19 part of the indictment over there in Pickens. I think it
20 was Vanilla Ice or one those cases.

21 Q The issue here, you've been in the courtroom, the
22 issue is about this federal custody deal?

23 A Right.

24 Q Okay. Can you tell -- first of all, this plea
25 agreement that's signed by you and Mr. Ham and John Crout

MILLS ARIAIL-DIRECT BY MR. RICHEY

1 it looks like from the Attorney General's Office, do you
2 remember that?

3 A Right, it's a standard plea agreement. And in his
4 case we made changes. We actually negotiated down. He
5 was looking at, I think, 400 grams or more of trafficking
6 and negotiated down. He had, I think, it was three 28 to
7 100 charges, distribution and there was one other case in
8 there. But he had about four or five drug charges.

9 Q Okay. He wanted to serve his time in federal
10 custody, is that correct?

11 A The way the whole thing went is I started
12 representing him. And throughout the representation we
13 were trying to get the best deal for him. He had been
14 debriefed by SLED, he had provided testimony to the Grand
15 Jury, then we went on. During that time there were no
16 other issues until he was out on bond and got the
17 carjacking, kidnapping and other cases that were there.
18 Which then brought in the federal charges that he asked me
19 to look into and see kind of what we could do to kind of
20 consolidate them and figure out a way to help him out.
21 So, I looked into it and talked to Mr. Loggins and Alex
22 Stalvey to see what's the best way to handle that was.

23 Q So, he had your cases first, the State Grand Jury?

24 A Right. From my recollection that was the first one
25 that he had started the process with.

MILLS ARIAIL-DIRECT BY MR. RICHEY

1 Q Okay. And then he made bond and he got the federal
2 and the state cases?

3 A Right. The history of this, I can't remember. There
4 was one time he got back in on a probation violation. I
5 either got him a bond, he got out. He then was coming to
6 the courthouse to plead over in Pickens and escaped from
7 the SCDC van. There's a lot of different things so the
8 chronology's a little bit off but I was the first one
9 involved.

10 Q Well, let's talk about this federal, because this is
11 the issue, this federal custody deal part of it. Did you
12 discuss with him about being in federal custody on all
13 these charges, did you discuss that with him?

14 A We had a conversation -- I mean, the way it began was
15 he clearly wanted to be in federal custody.

16 He asked me, Can I be in Bureau of Prison?

17 I told him, I'm representing you on the state
18 charges, I said, I'll have a conversation with Mr. Loggins
19 and Mr. Stalvey to see what we can do to get you into
20 federal custody. I said, I'd try to take those steps to
21 be able to do that.

22 But I couldn't give him any guarantees or say this is
23 going to be for certain because I been to federal court
24 and most of the judges, the time you're over there, say We
25 can't tell the Bureau of Prisons to do anything. But we

MILLS ARIAIL-DIRECT BY MR. RICHEY

1 developed a process that we thought -- Mr. Loggins thought
2 was going to work to try to get him into the Bureau of
3 Prisons. And that's why we signed these Orders to try to
4 release him and do a writ over to the Bureau of Prisons or
5 into federal custody so that he was not in state custody
6 at the time he was sentenced. Apparently Bureau of
7 Prisons didn't give any credence to that Order and
8 disregarded it is what the problem is.

9 Q The intent of his sentence was never to be a
10 consecutive sentence, was it, to his federal time?

11 A Well, I can't say. I mean, I'm only on the state
12 charges. I mean, I didn't get into the negotiations with
13 them. Clearly, I can tell you I've never heard anybody
14 saying we're trying to get consecutive sentences for him.
15 And I understand he's got those now and that was never any
16 spirit of this thing. And clearly, I was just trying to
17 get him the lowest amount of time I could on the charges I
18 had for him.

19 Q And based on your representation of him and in
20 talking with him, do you believe if you had told him, Hey,
21 all this is going to be consecutive, his state and federal
22 cases you have, do you believe he would have pled to your
23 cases?

24 A (There was no response.)

25 Q Just by his demeanor in talking to him, do you

MILLS ARIAIL-DIRECT BY MR. RICHEY

1 believe if you had said, Hey, look, your federal sentence
2 is going to run consecutive to your state sentence, do you
3 believe that he would have pled to these state charges?

4 A I don't -- I mean, I don't think so. I mean, we
5 never got into that discussion in regards to it because I
6 never had that discussion with James Loggins or
7 Mr. Stalvey in regards to it. I mean. . .

8 Q But you weren't concerned about that during your
9 representation, correct?

10 A No, my concern was I trying to get -- in reality I
11 was trying to get him, he got 15 years, he was looking at
12 lot more than that. Then I was trying to, at the end of
13 it all, defer his sentencing so try to do -- try to help
14 him out with regards to the Bureau of Prisons issue. And
15 that was really all I was trying to help him with.

16 Q And you have signed this plea agreement with
17 Mr. Crout and -- Mr. Crout and Mr. Ham and the time this
18 was signed, y'all were still trying to work on this
19 federal custody issue, correct?

20 A Yeah. I think I said as part of the transcript, and
21 I went back to try to figure out what was going on.
22 Because as part of this what I remember was they said, you
23 either take this or deny it, 15 years.

24 I said, Well, hey, we got to either go to trial or we
25 got to do this, here's what we got, it's the best deal you

MILLS ARIAIL-DIRECT BY MR. RICHEY

1 can get. And I told him, as far as the transcript, I
2 think even said, We're trying to work out a logistical
3 issues and explained to the Court what they were. And I
4 think it was Judge Welmaker at that time said, We'll
5 consider those, we'll look at those down the road. But at
6 no time did -- was this -- I don't think this was going to
7 hang it up to be able to say he wasn't going to plead
8 because of that. Because he was going to get a lot more
9 time if we went to trial. And I think we both knew that.

10 Q Did you -- do you know whether Mr. Crout went to SCDC
11 to talk to him?

12 A Mr. Crout?

13 Q Yeah.

14 A No. When you said that I was -- and I didn't go back
15 and look at my records but clearly I would have recalled
16 if he would have gone. Or he would have notified me
17 before he had done that. I don't remember anything about
18 that.

19 Q Okay. So Mr. Ham's feeling that he should be in
20 federal custody is not totally unreasonable, would you
21 agree with that statement?

22 A I would say that what we're trying to do and I was
23 accomplishing for him, which I thought I went above and
24 beyond, because I had represented him and I felt that I
25 wanted to help John out because he was in a bad situation.

MILLS ARIAIL-DIRECT BY MR. RICHEY

1 I said, I will try to help you get to the Bureau of
2 Prisons the best I can because that's where you want to
3 be.

4 And I think that John understood, you know, he didn't
5 want to be in the Department of Corrections. That's why
6 we were trying to help him that route. And that's what I
7 was trying to do and I think that was -- but I don't think
8 it was going to hang up the pleas in this based on if I
9 said, No, you can't go to the Bureau of Prisons. From my
10 recollection of the conversations with him.

11 Q Okay.

12 A Because I didn't really have anything to defend him
13 on after he provided all his testimony and other things to
14 the Statewide Grand Jury and to SLED.

15 MR. RICHEY: One moment, Your Honor.

16 THE COURT: Yes, sir.

17 MR. RICHEY: One moment, Your Honor.

18 THE COURT: Yes, sir.

19 BY MR. RICHEY:

20 Q Do you recall receiving a letter from Mr. Ham stating
21 that if it didn't get granted -- if he didn't do federal
22 custody he was going to trial, do you recall getting a
23 letter from him saying that?

24 A I don't have a recollection of that. I'm not saying
25 I didn't or when I got it.

MILLS ARIAIL-DIRECT BY MR. RICHEY

1 MR. RICHEY: One moment, Your Honor.

2 THE COURT: Sure.

3 MR. RICHEY: No other questions, Your Honor.

4 MS. MCMAHAN: Just briefly.

5 CROSS-EXAMINATION

6 BY MS. MCMAHAN:

7 Q Mr. Ariail, back to the plea agreement. So, you
8 negotiated successfully him down from trafficking 400
9 grams to 10 to 28, is that correct?

10 A That is correct. He had other charges too that were
11 on top of that.

12 Q And was the basis of that his cooperation thus far
13 with the State Grand Jury?

14 A Yeah, he was very cooperative in the beginning. He
15 came in, was debriefed, I think for two or three hours by
16 SLED, then provided testimony, which we discussed. We
17 went through whether or not he even needed to do that if
18 they had a strong enough case based on the search and
19 seizure issues before that and he made that decision to go
20 forward to help them out. And that was his cooperation,
21 clearly, got him to where he is.

22 Q Do you remember him also testifying at the trial that
23 convicted somebody?

24 A I do not remember. I don't know if I was here in
25 regards to that but I do remember hearing him testify or

MILLS ARIAIL-CROSS BY MS. MCMAHAN

1 was going to testify.

2 Q Do you remember Mr. Crout saying on the record all
3 the cooperations that Mr. Ham had done?

4 A I do not recall it specifically but I do remember
5 Mr. Crout saying he was very helpful during this time.

6 Q And as far as the plea agreement goes, so obviously,
7 that was a final rendition of a plea agreement because it
8 has the 10 to 28 in it. Did you go sit and go over that
9 plea agreement with him before he signed it?

10 A Yeah. I mean, we went over it in detail. And the
11 interesting thing about this which -- he came up to be
12 sentenced or to plead guilty in Pickens. And I had it on
13 the table and told him about it. And that's when he
14 escaped. And I was able to go back to them and say,
15 Please keep this on the table, they didn't have to, they
16 wanted to withdraw it and go to trial because we were
17 coming up on trial. Still got the 15 years for him
18 despite all that going on. And he knew about that. We
19 read the plea agreement, we went through it, he had a copy
20 of it and it was explained.

21 Q So he voluntarily signed that plea agreement?

22 A Oh, yes.

23 Q You didn't hold his hand or force him to sign it or
24 anything like that?

25 A No, I mean, part of the transcript he clearly says

MILLS ARIAIL-CROSS BY MS. MCMAHAN

1 that.

2 Q And you had ample time to go over it with him?

3 A Yeah.

4 Q And you discussed all the parts with him?

5 A Yes.

6 Q And with Mr. Crout?

7 A Yes.

8 Q And it was entered as an exhibit in the record?

9 A It was.

10 Q So, in your opinion was there anything about that
11 plea agreement that was involuntary?

12 A No.

13 Q All right.

14 MS. MCMAHAN: Nothing further, Your Honor.

15 THE COURT: All right.

16 All right, any redirect, sir?

17 MR. RICHEY: None, Your Honor.

18 THE COURT: All right, anything further from the
19 Applicant?

20 MR. RICHEY: No, Your Honor, that's all.

21 THE COURT: All right. Anything from the State?

22 MS. MCMAHAN: Your Honor, not witness wise, just a
23 shortly summary.

24 THE COURT: Okay.

25 Mr. Ariail, you may step down.

1 MS. MCMAHAN: I believe if you just read everything
2 and taking the testimony that Mr. Ariail has just given,
3 one, that my motion to dismiss is supported. And two,
4 particularly telling is the federal court documents that
5 we included. Especially, the affidavit of Mr. Loggins.

6 THE COURT: Okay. Thank you, very much. I'll take
7 it under advisement. I had the opportunity to read the
8 case, the question is whether someone can waive it by and
9 through a plea agreement. And it would be waived by and
10 through contractual rules of law. That is whether it was
11 entered freely and voluntarily. And I think it's going to
12 be dispositive. I see what happened in this case. I
13 mean, this is -- this is -- what happens oftentimes in
14 these cases. And that is the Bureau of Prisons doesn't
15 play ball with everybody else. And when I mean everybody
16 else, I mean state prosecutors, state defense attorneys,
17 state Judges, federal prosecutors, federal defense
18 attorneys and federal Judges; they just do their own
19 thing. I don't know if the appropriate for PCR but what I
20 would invite you to do, Mr. Ham, is make a motion in front
21 of Judge Welmaker to see if he will consider amending his
22 sentence. You know, it sounds to me like what everybody
23 was trying to effect, everybody was basically a sentence
24 of somewhere between 25 and 30 years. Collectively in any
25 institution. Whether it be the Department of Prisons or

1 in the State Department of Corrections. It maybe that
2 once he finds out, upon motion appropriately filed and
3 served, that you've already served five years on his
4 sentence and you got 315 months in federal prison. And
5 the only thing to be done is for him to amend it to say
6 five years. And with the assurance that you go straight
7 to the Department of Prisons, maybe he'll consider doing
8 that. Maybe he'll consider doing that. Save the State of
9 South Carolina money and also effect the sentence that
10 everyone intended at the inception.

11 How would are you, 45, 46?

12 MR. HAM: Forty-six.

13 THE COURT: Yeah, I mean, that's essentially a life
14 sentence anyway. In a correctional institution. So, I
15 encourage you to do that. Having said that, I'll take
16 this under advisement, sir. Good luck to you.

17 (WHEREUPON, the proceedings were concluded.)
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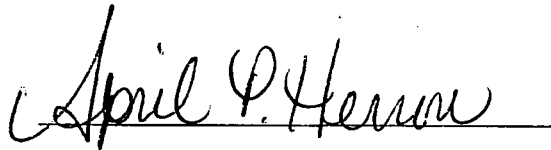
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
18th day of June, 2014.

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

September 23, 2014

A handwritten signature in cursive script that reads "April P. Herron". The signature is written in dark ink and is positioned above a horizontal line.

APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 John Forrest Ham, Jr.,)
 S.C.D.C. No. 240615,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2011-CP-23-6136

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2014 AUG 5 AM 9 54

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 14, 2011. The Respondent made its return on March 15, 2012. An evidentiary hearing into the matter was convened on June 18, 2014, at the Greenville County Courthouse.¹ The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire.² Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified at the PCR hearing. Also testifying were R. Mills Ariail, Jr., Esquire and the Applicant's plea counsel, Alex Stalvey, Esquire. The Court had before it the transcripts of the guilty plea and sentencing hearings, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

¹ This hearing was consolidated with the hearing on the Applicant's other PCR application (2012-CP-39-0177). The applications were not merged but – as the issues and witnesses for each case overlapped – the parties agreed it was most expeditious to have a single hearing.

² Mr. Richey represented the Applicant on both of his PCR applications.

RB

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections. The Applicant was indicted by the Greenville County Grand Jury for Assault and Battery with Intent to Kill (ABWIK) (2009-GS-23-9547, count 1), Pointing and Presenting a Firearm (2009-GS-23-9548), Resisting Arrest with a Deadly Weapon (2009-GS-23-9549), Failure to Stop for a Blue Light (2009-GS-23-9554), and Kidnapping (2009-GS-23-9570). He was represented by Alex Stalvey, Esquire.

On May 19, 2010, the Applicant pled guilty and the Honorable Edward W. Miller deferred sentencing to a later date. On September 1, 2010, the Applicant appeared before the Honorable G. Edward Welmaker for sentencing and received concurrent terms of twenty years for ABWIK, five years for Pointing and Presenting a Firearm, five years for Resisting Arrest with a Deadly Weapon and three years for Failure to Stop for a Blue Light. Judge Welmaker levied a sentence of twenty-two years for Kidnapping, to be consecutive to the sentence for Failure to Stop for a blue light. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Allowed the Applicant's attorney for another set of charges to draft a motion and consent order.
 - b. Failed to inform of right to appeal.
 - c. Failed to have the kidnapping victim's name removed from the indictment "since I had already [sic] been sentenced for carjacking her in Federal Court for the same incident."
 - d. Failed to properly advise about the kidnapping charge.
 - e. Failed to properly advise about the ABIK charge, including the possibility of self-defense or a lesser-included charge.
2. Involuntary guilty plea.

2/13/11

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel/Involuntary Guilty Plea

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

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

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct.

1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had federal charges, State Grand Jury charges, and Greenville County charges. The Applicant stated his federal public defender called plea counsel (and also his attorney for his State Grand Jury charges) and that they agreed he would go into federal custody with concurrent state sentences. The Applicant stated he would have pled guilty "to anything" in order to receive this deal. The Applicant stated plea counsel never advised him of the *mens rea* for the kidnapping charges. The Applicant admitted he did not dispute the factual recitation at either the guilty plea or sentencing hearing. The Applicant admitted he did not tell the plea judge he had been made any promises.

Plea counsel testified he filed discovery motions and received those materials. Plea counsel testified he reviewed the discovery with the Applicant, as well as the elements and sentence ranges for his charges. Plea counsel testified the incident that led to these charges occurred while the Applicant was out on bond for the State Grand Jury charges. Plea counsel testified there were several witnesses (including police officers) and there was no possible defense. Plea counsel testified his strategy would be to argue for the best possible sentence. Plea counsel testified he was aware of the Applicant's federal charges (and tried to have the Applicant serve his time in federal prison), but that he did not promise or guarantee the Applicant would go to federal prison. Plea counsel testified the Applicant never said he wanted a jury trial if he could not serve his time in federal custody.

R. Mills Ariail, Jr. represented the Applicant on his State Grand Jury charges. Ariail testified the Applicant was released on bond for these charges, then accrued the Greenville County charges, and then accrued the federal charges. Ariail testified the Applicant said he wanted to be in federal custody, so he spoke to the Applicant's other attorneys about this. Ariail stated the Applicant's attorneys all signed a consent order to attempt to have the Applicant be taken into federal custody first, but that the Federal Bureau of Prisons did not give credence to this order.

This Court finds the Applicant failed to meet his burden of proving his guilty plea was involuntary. The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.7). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.6-7). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that his guilty plea was not knowing, intelligent, or voluntary; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not explain the concept of *mens rea* regarding the kidnapping charge. Plea counsel testified he discussed the discovery materials, elements of the charges, and possible sentence ranges for the charges with the Applicant. This Court finds plea counsel's testimony is credible. This Court

notes the Applicant did not dispute the kidnapping charge or that he did "unlawfully seize, abduct, confine, inveigle, decoy or carry away [the victims] . . . without the authority of law." (Plea transcript, p.4). This Court notes the Applicant stated at the guilty plea hearing that he reviewed the evidence with plea counsel. (Plea transcript, pp.7-8). This Court further notes the Applicant did not dispute the facts of the kidnapping at either the guilty plea hearing or sentencing hearing. See Stalk v. State, 375 S.C. at 300, 652 S.E.2d at 407.

This Court finds the Applicant failed to meet his burden of proving plea counsel was deficient in not ensuring he would serve his time in federal custody. The Applicant stated his attorneys all worked together and entered into a consent order in August 2010, the intent of which was that he would initially go to the federal Bureau of Prisons. Plea counsel testified, however, that he did not make any promises or guarantees to the Applicant that he would serve his time in federal prison. Further, plea counsel testified the Applicant never stated he would not plead guilty if he would not be able to serve his time in federal prison. This Court finds plea counsel's testimony is credible.³ This Court finds the Applicant was aware of the charges he was facing and their sentencing ranges. The Applicant told the plea judge he was not made any promises in exchange for pleading guilty. (Plea transcript, p.6). This Court finds plea counsel was not deficient in his representation and could not have anticipated the Bureau of Prisons' interpretation of the Applicant's state and federal sentences. While the parties clearly hoped the Applicant would serve his sentences in federal custody, the Applicant was aware of the sentences he was facing and was not made any promises of federal custody in exchange for his guilty pleas to these charges. Cf. Holden v. State, 713 S.E.2d 611, 617, 393 S.C. 565, 575-76 (2011) (citing

³ In contrast, this Court does not find credible the Applicant's assertion that he would not have pled guilty to these charges if he had known he would not serve his sentence in federal prison. Based on the overwhelming evidence of the Applicant's guilt, this statement is highly improbable.

RM

Roddy v. State, 339 S.C. 29, 36, 528 S.E.2d 418, 422 (2000)) ("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.").

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

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

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

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

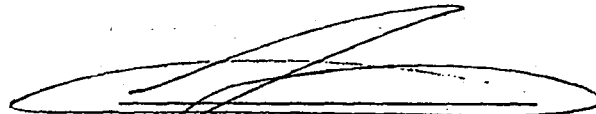
prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of August, 2014.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Gville, South Carolina.

WITNESSES

J.L. Wilkinson

Greenville County Sheriff's Office

9/17/2009

[Signature]

ARREST WARRANT NUMBER

J991484, J991485

ACTION OF GRAND JURY

TRIP BILL
LMH of Forrester

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-

LMH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2009

THE STATE

vs.

JOHN FORREST HAM, JR.

[Signature]

Stalvey

Indictment for

0014, 0549

ASSAULT AND BATTERY WITH INTENT TO
KILL AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME

VIOLATION § 16-03-0620 and § 16-23-0490

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY WITH INTENT TO KILL AND
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

MAY 04 2010

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE

ASSAULT AND BATTERY WITH INTENT TO KILL

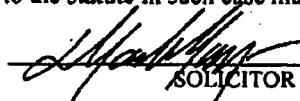
That JOHN FORREST HAM, JR. did in Greenville County, on or about the 2nd day of August, 2009, willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon JAMES SCOTT LEWIS. This is in violation of §16-03-0620 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JOHN FORREST HAM, JR. did in Greenville County, on or about the 2nd day of August, 2009, possess or visibly display a pistol and/or knife during the commission or attempted commission of a violent crime, to wit: Assault and Battery with Intent to Kill. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
John Forrest Ham Jr

AKA:

Race: W Sex: M Age: 42DOB: SS

Address:

DL#: SS SID#: SS*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault and battery with Intent to Kill

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2309547A/W#: J991484Date of Offense: 8/2/2009S.C. Code §: 16-03-0620CDR Code #: 0014

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. JD (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark64155 SC Bar#John Ham DefendantAttorney for Defendant71739 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2009 GS 23-9554☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

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)

§ 47.12 (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)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Paul B. Winkler

Presiding Judge

Judge Code: 2130Sentence Date: 5-19-10DEFERRED SENTENCE
2137 9-1-10

WITNESSES

Blusk

Paul

Greenville Police Department

9/17/2009

DOCKET NO. 2009-GS-23-

LMM

The State of South Carolina

County of Greenville

00:50:00

COURT OF GENERAL SESSIONS

May

TERM 2009

THE STATE

VS.

JOHN FORREST HAM, JR.

ARREST WARRANT NUMBER

M380615

ACTION OF GRAND JURY

TRUE BILL

Wm. J. Forrester

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

2352

Indictment for

RESISTING ARREST WITH A DEADLY WEAPON

VIOLATION § 16-03-0625

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
RESISTING ARREST WITH A DEADLY WEAPON

At a Court of General Sessions, convened on

MAY 04 2010

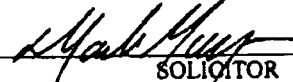
the Grand Jurors of Greenville

County present upon their oath:

That JOHN FORREST HAM, JR. did in Greenville County, on or about the 17th day of September, 2009, knowingly and willfully resist the efforts of Officers C. A. Moody, J. N. Hawkins, M. P. Austin, P. B. Galvin, and others with the Greenville Police Department to arrest him or another, and did so with the use or threat of use of a deadly weapon against the Officers and he was in possession or claimed to be in possession of a deadly weapon.

This is in violation of §16-03-0625 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.John Forrest Ham Jr

AKA:

Race: W Sex: M Age: 42DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
29640DL#: [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: Resisting arrest with a deadly weapon - 1st offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2309549A/W#: M380615Date of Offense: 9/17/2009S.C. Code § : 16-03-0625CDR Code #: 2352

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0625 of the S.C. Code of Laws, bearing CDR Code # 2352
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-43
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury X JFH (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 64155 X JFH 71739
Moyer, Mark 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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2009 GS 23-9554
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: C. Hiskell

SCCA/217 (11/2009)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge E. W. WalkerJudge Code: 2130Sentence Date: 5-19-10DEFER SENTENCE
2137 9/1/10

WITNESSES

B Lusk

[Signature]

Greenville Police Department

9/17/2009

DOCKET NO. 2009-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2009

THE STATE

VS.

JOHN FORREST HAM, JR.

ARREST WARRANT NUMBER

M380613

ACTION OF GRAND JURY

TRUE BILL

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0122

Indictment for

POINTING AND PRESENTING A FIREARM

VIOLATION § 16-23-0410

Foreperson of Petit Jury

Date:

ENTERED
ACCT. 10/1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POINTING AND PRESENTING A FIREARM

At a Court of General Sessions, convened on **MAY 04 2010** the Grand Jurors of Greenville
County present upon their oath:

That JOHN FORREST HAM, JR. did in Greenville County, on or about the 17th day of September, 2009, present
or point a firearm, to wit: a pistol, at Roslyn Phyll and Officers C. A. Moody, J. N. Hawkins, M. P. Austin, P. B.
Galvin, and others. This is in violation of §16-23-0410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
John Forrest Ham Jr

AKA:

Race: W Sex: M Age: 42

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] 29640

DL#: [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: Pointing and presenting firearm at a person

in violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lowd 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:

Mayer, Mark

64155 SC Bar#

John Ham Defendant

Attorney for Defendant

71739 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2009 GS 23 - 9554
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

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

Recipient:

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

Clerk of Court/ Deputy Clerk

Court Reporter: C. Hiskell

SCCA/217 (11/2009)

Paul B. Wiseman

Presiding Judge

Judge Code: 2130

Sentence Date: 5-19-10

DEFER SENTENCE 2137 9-7-10

WITNESSES

Eric Turner

Greenville County Sheriff's Office

9/17/2009

423

ARREST WARRANT NUMBER

1478927

ACTION OF GRAND JURY

TRIP BILL

John Forrester Ham, Jr.

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-23-
LMM

000001

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2009

THE STATE

VS.

JOHN FORREST HAM, JR.

DL SUSPENDS

Did Clerk receive driver's license?

YES NO

If no, explain

Defendant

Indictment for

0065

FAILURE TO STOP FOR BLUE LIGHT

VIOLATION § 56-05-0750

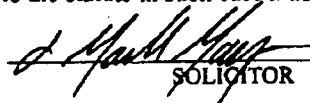
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FAILURE TO STOP FOR BLUE LIGHT

At a Court of General Sessions, convened on **MAY 04 2010** the Grand Jurors of Greenville County present upon their oath:

That JOHN FORREST HAM, JR. did in Greenville County, on or about the 28th day of August, 2009, willfully, knowingly, and unlawfully commit the offense of failure to stop for a police vehicle in that the said defendant while driving on a road, street or highway of the State did, under circumstances where it would be reasonable for a driver to hear or see signals from the law enforcement vehicle, fail to stop when signaled to do so by a police vehicle using blue lights and/or siren. This is in violation of §56-05-0750 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

John Forrest Ham Jr

AKA:

Race: W Sex: M Age: 42

DOB:

Address:

City, State, Zip:

DL#:

SID#:

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

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

TO: Failure to stop for a blue light, no injury or death - 1st offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2309554

A/W#: 1478927

Date of Offense: 8/28/2009

S.C. Code §: 56-05-0750(B)(1)

CDR Code #: 0065

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065

☒ 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:

Meyer, Mark

64155 SC Bar#

Defendant

Attorney for Defendant

71739 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed 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: Fed sentence 8/31/10☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ § 47-12 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$100 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ § 90.7 (SCCA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter: C. Hiskell

SCCA/217 (11/2009)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2130

Sentence Date: 9-1-10

DEFERRED SENTENCE 9-1-10 2137

WITNESSES

B Lusk

County of Greenville

Greenville Police Department

9/17/2009

DOCKET NO. 2009-GS-23-

LHM

The State of South Carolina

09/15/10

COURT OF GENERAL SESSIONS

May

TERM 2009

THE STATE

VS.

JOHN FORREST HAM, JR.

ARREST WARRANT NUMBER

M380609

ACTION OF GRAND JURY

TRUE BILL

Wm. J. Federate

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0095

Indictment for

KIDNAPPING

VIOLATION § 16-03-0910

Foreperson of Petit Jury

Date:

ENTERED
ACCT. 10/1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on **MAY 04 2010** the Grand Jurors of Greenville
County present upon their oath:

That JOHN FORREST HAM, JR. did in Greenville County, on or about the 17th day of September, 2009,
unlawfully seize, abduct, confine, inveigle, decoy or carry away Roslyn Phyll, and/or Tommy Williamson,
without the authority of law. This is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as
amended.

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

D. Mark May
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
John Forrest Ham Jr

AKA:

Race: W Sex: M Age: 42

DOB: [REDACTED] SS# [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2309570

A/W#: M380609

Date of Offense: 9/17/2009

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ 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. x JJA (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark

64155
SC Bar#x John Ham
Defendant

Attorney for Defendant

71739
SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 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: 2009GS23-9554☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

Clerk of Court/ Deputy Clerk

Court Reporter: C. Hiskell

SCCA/217 (11/2009)

Paul B. Winkler

Presiding Judge

Judge Code: 2130

Sentence Date: 9-19-10

DEFERRED SENTENCE 9-1-10