

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

RECEIVED

MAR 24 2015

S.C. Supreme Court

SAMUEL K. CURETON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2015-000097

APPENDIX

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South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

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1 State of South Carolina)

In the Court
Of General Sessions

2 County of Lexington)

3 Indictment No.: 2012-GS-32-3202

4
5
6 State of South Carolina,)
Plaintiff.)

7
8 vs.)

Transcript of Record

9
10 Samuel Cureton,)
Defendant.)

11
12
13 May 23, 2013
Lexington, South Carolina

14
15
16 B E F O R E:

17 The Honorable R. Markley Dennis, Judge.

18
19 A P P E A R A N C E S:

20 J. Angela Garrick, Assistant Solicitor
Attorney for the State

21 Robert M. Madsen, Esquire
22 Attorney for the Defendant

23
24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

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16	during this hearing.)		
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1 THE CLERK: 2012-GS-32-3202, State versus Samuel
2 Kenneth Cureton, indicted for attempted murder. He is
3 pleading to assault and battery first degree, the
4 indictment has been true billed and he's pleading under
5 North Carolina versus Alford and the indictment has been
6 true billed and he's represented by Mr. Madsen.

7 SAMUEL KENNETH CURETON,
8 having been duly sworn, testified as follows:

9 THE COURT: You're Samuel Cureton?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Cureton, you stand with your
12 lawyer. Has he explained to you the charge of attempted
13 murder which is contained in the Indictment 2012-3202?

14 THE DEFENDANT: Yes, sir.

15 ~~THE COURT: And the possible punishment for that~~
16 charge?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: He's explained the
19 lesser-included-offense of assault and battery of a high
20 and aggravated nature -- excuse me assault and battery
21 first-degree?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And the difference between the two?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand that for assault and

1 battery in the first-degree, I could sentence you up to ten
2 years in jail.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You have been advised and explained the
5 principal of North Carolina versus Alford.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Let's talk about that for just a
8 moment. Has your lawyer explained to you the case itself?
9 The defendant didn't know whether he committed any offense.
10 He was unable to articulate any reason for that because he
11 didn't have recollection of it. Over the years, we've
12 expanded that to include not only, I'm not -- I don't know
13 whether I'm guilty, but I'm not guilty, but based on what
14 the State's prepared to present, it's my belief if I go to
15 trial, a jury most probably would find me guilty beyond a
16 reasonable doubt. Is that correct as to -- is that your
17 understanding?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Secondly, there's a benefit that I'm
20 wanting to receive. I want to take advantage of that and
21 I'm pleading to take advantage of that.

22 What is the benefit here?

23 MR. MADSEN: The reduction in the charge.

24 THE COURT: Okay. So if you went to trial, you
25 would go on attempted murder and this one --

1 MS. GARRICK: Correct.

2 MR. MADSEN: And I've explained to him you can't do
3 an Alford plea on a straight-up plea. You've got to --

4 THE COURT: Well, you can --

5 MR. MADSEN: -- have an recommendation.

6 THE COURT: -- but there would have to be some kind
7 of recommendation or something.

8 MR. MADSEN: Right, a recommendation, reduction of
9 charges, dismissal of charges, you've got to get something.

10 THE COURT: That's correct.

11 And that's the benefit that you want to take
12 advantage of is a ten year sentence -- a potential ten year
13 sentence?

14 THE DEFENDANT: Yes, sir.

15 ~~THE COURT: Of course your lawyer's also explained,~~
16 notwithstanding assault and battery in the first-degree,
17 it's a nonviolent offense?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: While attempted murder would not be.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Attempted murder would be a non
22 parolable offense as well. You understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So there's significant underlying
25 benefits to you as well.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand that you will have -- if
3 I accept the Alford plea, that you will have a record of
4 assault and battery in the first-degree?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you also understand -- I believe
7 you've indicated it -- but that you could still be
8 sentenced, notwithstanding the Alford plea for up to ten
9 years?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So how do you plead, guilty under
12 Alford?

13 Solicitor, other than permitting him to plead
14 under -- assault and battery of -- plead to the
15 lesser-included-offense, are there any other agreements
16 that you have with him?

17 MS. GARRICK: No, sir, Your Honor.

18 THE COURT: Is that your understanding, Mr. Madsen?

19 MR. MADSEN: It is, Your Honor.

20 THE COURT: First, I would ask you sir, based on --
21 you investigated this matter fully on your client's
22 behalf --

23 MR. MADSEN: I have, Your Honor.

24 THE COURT: -- and shared the results with him?

25 MR. MADSEN: I have, Your Honor.

1 THE COURT: Based on your investigation, do you
2 concur with his assessment that if he went to trial, there
3 is a possibility a jury would find him guilty beyond a
4 reasonable doubt on the indicted offense?

5 MR. MADSEN: Yes, Your Honor.

6 THE COURT: You have advised him of the sequences
7 of my accepting an Alford plea?

8 MR. MADSEN: Yes, Your Honor.

9 THE COURT: As well as the rights that he will be
10 relinquishing?

11 MR. MADSEN: Yes, Your Honor.

12 THE COURT: In your opinion, does he fully
13 appreciate those?

14 MR. MADSEN: He does.

15 THE COURT: So you concur with the Alford plea
16 then?

17 MR. MADSEN: Wholeheartedly.

18 THE COURT: Is that true, Mr. Cureton?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Then you understand and realize if I
21 accept your plea, you'll not have a jury trial, you will
22 not confront the witnesses against you, you're giving up
23 the right to remain silent.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Anyone threatened you in any way or

1 promised you anything?

2 THE DEFENDANT: No, sir.

3 THE COURT: Listen to the solicitor as she tells me
4 the facts. I'm going to ask you questions I need to ask
5 you concerning that.

6 Solicitor, if you would, please.

7 MS. GARRICK: Thank you, may it please the Court.

8 THE COURT: Yes, ma'am.

9 MS. GARRICK: Your Honor, the victim in this case
10 was -- is the defendant's 15-year-old son, minor , who is
11 present in the courtroom on the first row here sitting
12 there in between his grandparents. That is also
13 Mr. Cureton, the defendant's father, so there are a lot of
14 family dynamics going on in this case. There's a lot going
15 on with this family. There's a lot of history that I've
16 been privileged to in my meetings with the family that have
17 come into this case and have resulted in these negotiations
18 here.

19 But what happened back in September of 2012, it was
20 actually September 22nd, the defendant went to where minor
21 was. I think minor was at his grandparents' house on Otis
22 Drive in Lexington County. When he got there, his son, and
23 there was a cousin there as well, told law enforcement that
24 Mr. Cureton was cussing, he was very angry with his son.
25 He appeared to be intoxicated. He was mad at minor

1 minor was playing -- minor says he was playing with a BB
2 gun in the yard; and he told his son, get in the car. Get
3 in the car. We're going now.

4 So minor did get in the car with his dad. They
5 went down the road. His dad tells minor you're good for
6 nothing. I should just end us now. I'm going to kill both
7 of us. Look at that light pole there, it's going to be the
8 last thing you're going to see.

9 And minor truly believed that his dad was going to
10 kill him and possibly his on self. minor reached for the
11 wheel, grabbed the wheel. They did not hit the pole, they
12 did hit a pine tree. The car over turned. minor got out.
13 He was hurt; his dad was hurt as well. minor ended up
14 going to the neighbor's house there and was able to call
15 ~~some of the family to come; and I think another witness~~
16 called law enforcement.

17 The defendant, Cureton, left walking. He was hurt
18 too. He left the scene, left his child there and was gone.
19 EMS responded, family responded. minor was injured. He
20 had -- he was treated and released at the hospital after
21 several hours. He had abdominal pain, lots of contusions,
22 neck strain, chest contusion. Law enforcement obviously
23 knew who they were looking for. They went out, they took
24 photographs, they looked at the scene, the light pole that
25 the had indicated was right where it should have been

1 in the line of traffic. The pine tree was there. There
2 was damage to the car. Mr. Cureton had left his car there.
3 They started looking for Mr. Cureton. They heard he'd gone
4 to the hospital as well. And he had gone to a hospital.
5 He had trauma. He had a fracture to his ankle and he had
6 trauma to his head and chest. There was alcohol in the
7 car.

8 Judge, it was just -- it's just a really sad case.
9 Like I said, there were a lot of family dynamics at the
10 time that this happened. You know, we didn't really know
11 what Mr. Cureton's mindset was and I guess we still don't
12 really know. I do know that the child -- I think he's 16
13 now. He's living with the grandparents and I think that's
14 the plan. I think he's going to stay there. I think
15 they're good for him. His step grandmother is very
16 involved in his life and is trying to help him. But it's
17 just really a bad situation.

18 Did not -- it was ultimately, as always is, my
19 decision to decide what to do and how to proceed and I
20 think this is a good resolution.

21 THE COURT: I don't have any problem with it. The
22 child knows --

23 MS. GARRICK: I had -- with all the other issues --

24 THE COURT: I didn't know if unlawful conduct
25 towards the would have been the same penalty, up to

1 ten years. Same thing.

2 MS. GARRICK: Well, I didn't want to put minor
3 through having to testify against his father.

4 THE COURT: I understand.

5 MS. GARRICK: And it's just a really bad situation.
6 I truly believe from the way law enforcement documented it,
7 from talking to the cousin, he was at the house when law
8 enforcement took the away. From that person, from
9 what minor said then, from what was said at the hospital,
10 I think that minor truly believed his dad intended to hurt
11 him and hurt himself. So -- that's where we are, Judge.
12 And I have his rap sheet.

13 THE COURT: Okay. If you have it let me hear his
14 record.

15 ~~MS. GARRICK: Your Honor, he has a 1985 felony~~
16 grand larceny out of Florida; and a -- fondling
17 abuse case; he has a 2002 ABHAN; and he has a September
18 2005 possession of cocaine; and at that point, it looks
19 like his ABHAN was revoked and he has a driving under
20 suspension from 2009.

21 I know that Mr. Madsen has told me that Mr. Cureton
22 doesn't think that possession of cocaine is him. Clearly
23 on his criminal history, on page 13 of his criminal
24 history, it is coming up under his name.

25 THE COURT: The ABHAN's are though.

1 MS. GARRICK: And see, that also leads me to
2 believe that that possession of cocaine is him too because
3 it says the ABHAN was revoked.

4 THE COURT: We -- you really that's a tenth that's
5 in the teapot. That doesn't have any influence with me.

6 MS. GARRICK: At that time his ABHAN was revoked.

7 MR. MADSEN: And, judge, just to clarify, he said
8 he didn't have a possession of crack. They don't show a
9 charge there, but when he gets to SCDC -- they show the
10 conviction for the ABHAN and a concurrent possession of
11 crack. He tells me he never had a possession.

12 THE COURT: He's guilty of the ABHAN, that's the
13 significant charge for my purposes.

14 MR. MADSEN: Yes, Your Honor.

15 THE COURT: Thank you.

16 Are those facts a condensed version of the evidence
17 that you would face if you went to trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You believe there's a person or persons
20 who will testify to those facts?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you believe once a jury hears those
23 facts, based on what you understand, the elements of
24 attempted murder, a jury would most probably find you
25 guilty beyond a reasonable doubt?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Be happy to hear from you, Mr. Madsen
3 as to why I should accept the proposal of this sentence
4 under North Carolina versus Alford.

5 MR. MADSEN: Judge, if I might, can I just give you
6 some background on him?

7 THE COURT: Sure, absolutely.

8 MR. MADSEN: Just to give you some background --

9 THE COURT: No, take as long as you need.

10 MR. MADSEN: Sammy is 46 years of age. As you
11 heard, he grew up in Florida, went to tenth grade up there.
12 I can tell you he ended up getting a GED there. One of the
13 things is he had that fondling charge up there. He is a
14 registered sex offender now, but that occurred back in
15 1985. He tells me that he had had consensual sex -- he was
16 18, he had consensual sex with a 15-year-old. There was no
17 such thing as a registry there. When he got in trouble on
18 that ABHAN up here in South Carolina, he was required to
19 register at that point in time.

20 You know, I don't know if that would be a crime now
21 under our South Carolina law, but I told him that he's kind
22 of stuck with that, that the sheriff had the right to do
23 that, or they did that before they let him out of SCDC,
24 they required him to sign on that. And he does register
25 because of that.

1 But he moved to South Carolina when he was 21 and
2 got married in 1997, ultimately getting separated in 2006.
3 minor is his one son and right before this incident, he
4 had just started working with a fellow by the name of Brian
5 Cook doing construction. He and his son lived together.
6 Ultimately once this ended up happening, he spent seven
7 days in the hospital. He had a lower back injury, bruised
8 ribs, a head injury and a fractured ankle, which I can
9 tell, Your Honor, was a pain in the rear because where they
10 housed him in the jail, I would actually have to go back to
11 the pod because he couldn't come up and down stairs. So I
12 would have to go in the pods consistently to see him until
13 actually just recently.

14 Additionally, I've become aware, he's been at the
15 hospital because he's had internal bleeding within the last
16 couple of weeks --

17 THE DEFENDANT: Last week.

18 MR. MADSEN: So he's been there a couple of days,
19 they're trying to figure out -- he tells me that they've
20 diagnosed him with ulcers there. This is a traditional
21 type of Alford plea. He's very fuzzy in his recollection,
22 which I don't think is unusual because of the head injury.
23 He doesn't remember leaving there that day. I can kind of
24 give you a little bit of background. We've been out, we've
25 interviewed minor we've interviewed the grandfather, an

1 uncle who was there, a niece who was there. Actually
2 minor took us out and showed us where the car had hit.
3 There are still pieces of the car there. So we got
4 pictures of all that.

5 But just to give you an idea, minor had gotten in
6 trouble at school for some marijuana. Additionally with
7 the marijuana, he had a backpack that had a handgun in it
8 and got in trouble for that. Eventually, law enforcement
9 figured out that even though he had the backpack, it wasn't
10 his gun in there, it was someone else, but Sammy had become
11 aware of that.

12 My guess is that when he gets out there that day
13 and he's playing around with guns, that as you've heard
14 Sammy's been in trouble in the past and he didn't want his
15 son -- or doesn't want his son to kind of go down that same
16 path and so he was sore at him. It's kind of, from what I
17 see, he understands and the solicitor and I have talked
18 about this, that minor doesn't want to have anything to do
19 with him. He loves his son, but he realizes that that
20 relationship is, you know, unrepairable at this point in
21 time.

22 Hopefully at some point in time, they will be able
23 to repair that relationship, but, you know, in my
24 conversation with him, I don't think that's going to be any
25 time soon and he understands that. minor is with his

1 grandfather and that's who -- probably the best place for
2 him. We've spoken to his grandfather as I said. As you
3 heard from the solicitor, minor did go to the hospital and
4 ultimately was released that same day. Sammy ended up
5 having quite substantial injuries. You know, his last --
6 he did have a driving under suspension in 2009, but his
7 last general sessions was that ABHAN, which was not a -- I
8 don't believe that was a sex-related case. The registry is
9 from the 1985.

10 We would ask, Your Honor, he has been in jail since
11 September 29th of 2012, which by my calculations would be
12 236 days. We would ask Your Honor to consider a
13 probationary sentence with a no contact with minor As I
14 said, Your Honor, he has a very fuzzy recollection of what
15 happened. He tells me he's not sure how he ended up at the
16 hospital and he's walking on a broken ankle.

17 THE COURT: Sorry.

18 MR. MADSEN: He caused it himself.

19 THE COURT: That's right. He brought it on
20 himself.

21 MR. MADSEN: And he understands that. He hasn't
22 whined or cried about any of his injuries or being in jail
23 the entire time I've had him.

24 THE COURT: Thank you, sir.

25 Mr. Cureton, anything you want to tell me?

1 THE DEFENDANT: Just want to say I wouldn't do
2 nothing to hurt my son. I don't know what happened. I
3 lost control of the car. That's all I remember. I love my
4 son.

5 THE COURT: Okay. I appreciate that. Strange way
6 of showing it sometimes.

7 I understand sometimes you have to be tough with
8 them when they're doing something, but this is an issue of
9 an Alford plea and it's very similar sitting here
10 listening, I guess it's my reaction as a lawyer, Mr.
11 Madsen, but I had the pleasure of representing an
12 individual who was charged with murder and after some
13 negotiations, I guess, and some good fortune on our part,
14 the State accepted a plea to involuntary manslaughter. I
15 ~~was pleading before my mentor, Judge Richard Peels and~~
16 started talking and Judge Peels stopped me and he said,
17 Mr. Dennis, thank you, but you've already done all you can
18 do for him. You've gotten him the best deal, that is the
19 exposure to five years. There's not much more I can do to
20 help him.

21 You got the best deal for him. You did a good job
22 for your client. You want the benefit, you're getting it.
23 You're getting a sentence under the assault and battery
24 first-degree, which is nonviolent. That's why it makes no
25 sense what the legislature has done with the nonviolent

1 burg second because we've done the calculations. The
2 youthful offender has to do more time than an adult will
3 have to do with a ten year sentence.

4 Now, that doesn't make any sense to me, but that's
5 the way it figures. We've seen it over and over in this
6 courtroom this week and I know that that's what's going to
7 happen here.

8 So you've got a great benefit. Good luck to you.
9 The sentence of the Court is ten years, you're given credit
10 for 236 days. Thank you, sir.

11 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

2 County of Aiken)

Certificate of Reporter

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 23rd
11 day of May, 2013.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 1 through 18 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 21st day of October, 2013.

19
20
21 

22 Brenda J. Sigwald,
23 Court Reporter and Notary Public
24 For the State of South Carolina
25 My commission expires
January 4, 2020.

FORM 5
FILED

EH

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF

LEXINGTON

Full name and prison number (if any) of Applicant

SAMUEL K. CURETON

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013 JUL 31 A 4:22

BETH A. CARRIGE
CLERK OF COURT
JUL 31 2013

APPLICATION FOR

POST-CONVICTION RELIEF

2013CP3202587

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 EVANS CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence LEXINGTON CO. G.S
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2012-GS-3203202
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 5/23/13
 - (b) 10 yrs. (236 days jail credit)

- (c) _____
6. Check whether a finding of guilty was made: **FILED**
 (a) after a plea of guilty x N.C vs Alford
 (b) after a plea of not guilty _____ **2013 JUL 31 A 4: 22**
 (c) after a plea of nolo contendere _____ **WETHA CARRICO**
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) ATTORNEY DIDN'T MAKE MY RIGHT(S) CLEAR TO ME.
 (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) INEFFECTIVE ASSISTANCE OF COUNSEL

- (b) _____
 (c) _____

FILED

2013 JUL 31 A 4:22

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

- (a) ATTORNEY SAID I SHOULDN'T RECIEVE ANY TIME AGREEMENT
 BETWEEN HIM AND THE SOLICITOR
 (b) _____
 (c) I WAS TOLD PROBATION OR NOT TO EXCEED 18MON.

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

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (d) the date of each such disposition:

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

FILED

2013 JUL 31 A 4: 22

- (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?

NONE

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) ~~I WAS~~ UNAWARE OF MY LEGAL RIGHT(S) AT THE TIME.

- (b) ~~DID NOT~~ KNOW I HAD TO APPEAL WITHIN (10) DAYS

- (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. ROBERT M. MADSEN
407 1/2 W. MAIN ST. LEXINGTON, S.C 29072
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. MAT 2013 TERM GENERAL SESSIONS LEXINGTON CO.
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
REDUCTION IN THE AMOUNT OF TIME TO SERVE.
20. Are you now under sentence from any other court that you have not challenged?
NONE

FILED

2013 JUL 31 A 4:22

JETHA L. CARRIGLE
CLERK OF COURT
LEXINGTON CO. S.C.

ORIGINAL 25

STATE OF SOUTH CAROLINA

VERIFICATION

County of

FILED

SAMUEL CURETON

I, SAMUEL CURETON, 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.

Samuel H. Cureton

SWORN to and subscribed before me this 30th
day of July, 2013.

Chris J. Rogers (L.S.)
Notary Public

My Commission Expires: Feb. 9th, 2020

2013CP3202587

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

ORIGINAL

FILED

SAMUEL CURETON

I, _____, 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.

Samuel K. Cureton
Applicant

SWORN or affirmed to and subscribed before me this

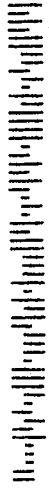
30th day of July, 2013.

C. J. Hogan
Notary Public

My Commission Expires: Feb. 9th, 2010

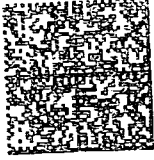
2013 CP 3202587

Seal of the Commonwealth of Massachusetts



Samuel K. Coreton #311561
610 Hwy 9W CF3A-166)
Bennettsville, S.C. 29512

02



Lexington County Clerk
General Sessions Dept
203 East Main St. #128
Lexington S.C. 29072

P.C.R. Leq. Mail

2013CP3202587

FILED

2013 JUL 31 A 11:22

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR DIRECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.
BETH A. CARRIGG, ASSISTANT
S.C. DEPARTMENT OF CORRECTIONS

ORIGINAL

29

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
2013-CP-32-2587

SAMUEL CURETON)
SCDC # 311561,)

Applicant,)

vs.)

AMENDED APPLICATION
FOR POST CONVICTION RELIEF

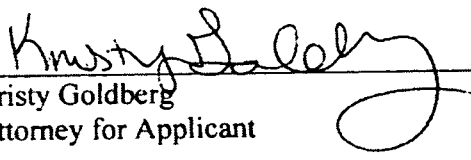
STATE OF SOUTH CAROLINA,)
Defendant.)

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- (a) Ineffective assistance of trial counsel – miscommunication regarding plea negotiations and while advising client of whether to have a trial or plead guilty;
- (b) Ineffective assistance of trial counsel – failure to file for a motion to reconsider or appeal;
- (c) Ineffective assistance of trial counsel – failure to present mitigation including: failure to present details about Applicant's prior ABHAN, failure to present Applicant's family members to speak in mitigation, failure to present factual information regarding the incident and witnesses.

FILED
2014 APR -1 A 10:41
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC


Kristy Goldberg
Attorney for Applicant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.

1720 Main Street, Suite 301
Columbia, SC 29201
803-252-2299
803-799-4059 (fax)
kristy@kristygoldberglaw.com

Columbia, South Carolina

This 31st day of March, 2014

ORIGINAL

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

SAMUEL CURETON)
 SCDC # 311561,)

Applicant,)

vs.)

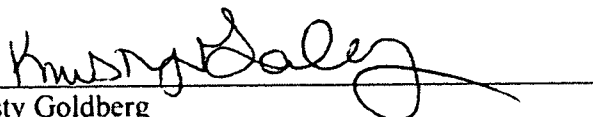
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
 2013-CP-32-2587

CERTIFICATE OF SERVICE

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.

FILED
 2014 APR -1 A 10:41
 BETHE A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC


 Kristy Goldberg
 Attorney for Applicant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 31ST day of March, 2014

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Samuel K. Cureton,
S.C.D.C. No. 311561,

Applicant,

v.

State of South Carolina,

Respondent.

FILED IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2013 DEC 27 A 8:08

Case No. 2013-CP-32-2587

BEH A CHING
CLERK OF COURT
LEXINGTON, SC

RETURN

Respondent, making its Return to the application for post-conviction relief filed July 31, 2013 would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the January 2013 term of the Lexington County Grand Jury for attempted murder (2013-GS-32-3202). Applicant was represented by Robert M. Madsen, Esq. On May 23, 2013, Applicant entered a guilty plea pursuant to North Carolina v. Alford to the lesser included offense of assault and battery, first-degree.¹ The Honorable R. Markley Dennis sentenced Applicant to ten (10) years imprisonment. Applicant did not appeal his guilty plea or sentence.

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

II.

¹ N. Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970)

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

1. "Ineffective Counsel:"
 - a. Failure to advise on sentencing range for plea agreement.

Any claims not specifically enumerated in the PCR application or **amendments not filed ten (10) days prior to the evidentiary hearing** will be opposed by the State, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV.

Applicant further alleges a violation of enhancement. However, Applicant fails to set forth with specificity the grounds upon which these violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to

meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

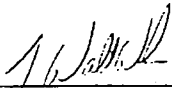
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE
Assistant Attorney General

By:  Dec. 17th 2013
ATTORNEYS FOR RESPONDENT

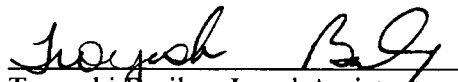
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE ELEVENTH CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2013-CP-32-2587
	)	
SAMUEL K. CURETON, # 311561	)	
	)	
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:

Kristy Grafton Goldberg, Esq.
1720 Main St. Ste. 301
Columbia, SC 29201

DATED this 17th day of December, 2013


 Troyeshi Brailey, Legal Assistant
 For Respondent

1 State of South Carolina

Court of Common Pleas

2 County of Lexington

3
4
5 Samuel Kenneth Cureton)

6 Applicant,)
7 v.)

Transcript of Record
13-CP-32-2587

8 State)
9 _____)

10 April 15, 2014

11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Judge.
15

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

17 Kristy G. Goldberg, Esquire
Attorney for the Respondent

18 Walt Whitmire, Esquire
19 Attorney for the State
20
21
22
23

24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

1		I N D E X	
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1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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1 (The following proceedings were held on
2 April 15, 2014.)

3 **MR. WHITMIRE:** May it please the Court.

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

5 **MR. WHITMIRE:** The matter before this Court
6 currently is Samuel Cureton v. State of South
7 Carolina, case number 2013-CP-32-2587. Mr. Cureton
8 was indicted for attempted murder. He was
9 represented by Rob Madsen. On May 23rd, 2013,
10 Mr. Cureton entered an Alford plea to the
11 lesser-included offense of assault and battery first
12 degree. Judge Dennis sentenced Mr. Cureton ten
13 years imprisonment.

14 A notice of appeal was not filed on
15 Mr. Cureton's behalf. He did file a timely
16 application for post-conviction relief.
17 Furthermore, his attorney, who is present, in
18 representing him, also filed an amended application
19 post-conviction relief at the end of March of this
20 year. I believe the pro se and the amended
21 application's in Your Honor's packet.

22 It's my understanding that opposing counsel is
23 going forward on failure to advise defendant on
24 entering a guilty plea, failure to present evidence
25 in mitigation, failure to file a motion for

1 reconsideration, failure to file notice of appeal.

2 At this time, I turn matters over to Applicant.

3 **THE COURT:** Yes, ma'am.

4 **MS. GOLDBERG:** Thank you, Your Honor. The
5 Attorney General did accurately state the causes of
6 action we'll be going forward on today. Those are
7 listed on the amended application filed April 1st of
8 this year. If Your Honor has a copy of that in your
9 file?

10 **THE COURT:** Yes.

11 **MS. GOLDBERG:** All right. Then we are ready to
12 proceed.

13 **THE COURT:** Call your witness.

14 **MS. GOLDBERG:** Thank you, Your Honor. At this
15 time, the Applicant calls Samuel Cureton.

16 **THE COURT:** Come around, please.

17 SAMUEL KENNETH CURETON,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** If you'll have a seat and state
20 your name for the record, please.

21 **THE WITNESS:** Samuel Kenneth Cureton.

22 DIRECT EXAMINATION

23 BY MS. GOLDBERG:

24 **Q** Thank you, sir. Where are you currently
25 housed?

1 **A** Evans Correction.

2 **Q** And what charge are you serving a sentence on?

3 **A** Assault and battery.

4 **Q** First degree?

5 **A** Yes, ma'am.

6 **Q** What was your sentence?

7 **A** Ten years.

8 **Q** Did you plead guilty or have a trial or did you

9 plea under another --

10 **A** Pled under North Carolina versus Alford.

11 **Q** Okay. Did you understand what that meant?

12 **A** Not really at the time.

13 **Q** What was your understanding of what an Alford

14 plea was? What did you think?

15 **A** He said that he would explain something. I

16 couldn't really hear him in the courtroom and all

17 because the trial was going on when he was trying to

18 explain it to me. I could only hear parts of it.

19 My hearing ain't real good anyway, but he said that

20 he would explain about my case and all and do the

21 talking, and that I didn't remember -- it was

22 something about I didn't remember parts of what

23 happened or something. I'm not -- like I said, I'm

24 not real quite sure, but it's like pleading guilty,

25 but not being guilty.

1 Q Okay. And who was your attorney?

2 A Robert Madsen.

3 Q You were -- what was your original charge?

4 A Attempted murder.

5 Q You understand that if you're successful in
6 this PCR, your conviction will be overturned, but
7 you'll be facing the attempted murder charge again?

8 A Yes, ma'am.

9 Q Were you in jail while your charge was pending?

10 A Yes, ma'am.

11 Q How long do you think that was?

12 A Eight months.

13 Q And did your lawyer come visit you?

14 A About twice, maybe three times.

15 Q When you met with your lawyer at the jail, did
16 you tell him everything that you knew about your
17 case?

18 A Yes, ma'am, I sure did.

19 Q You told him what you remembered what happened
20 and what witnesses were available?

21 A Yes, ma'am, I did.

22 Q What was your understanding of -- well, at what
23 point did you hear of any plea offers being made?

24 A Excuse me?

25 Q Did you ever hear that there was a plea offer?

- 1 **A** Not until like the -- a day before.
- 2 **Q** The day before you went to court?
- 3 **A** Yes, ma'am.
- 4 **Q** Did he come and see you at the jail?
- 5 **A** Yes, ma'am, he did.
- 6 **Q** What did you discuss that day?
- 7 **A** He come in and all, and I told him I had just
- 8 got out the hospital and all, ICU at the time, and
- 9 said that we were trying to get to court, that they
- 10 was offering me zero to ten, but him and the
- 11 Solicitor had already talked and he was trying to
- 12 get me the lesser. So they had already agreed on a
- 13 lesser something, lesser sentence at 18 to three
- 14 years, maybe probation with it.
- 15 **Q** Eighteen months?
- 16 **A** Eighteen months.
- 17 **Q** To three years?
- 18 **A** Yes, ma'am.
- 19 **Q** Maybe probation?
- 20 **A** Maybe probation with time served.
- 21 **Q** Okay. And he told you this was what him and
- 22 the Solicitor agreed?
- 23 **A** Yeah. Him and the Solicitor had already talked
- 24 about this.
- 25 **Q** You mentioned just now that you had recently

1 been in the hospital. Tell me about that.

2 **A** When I was in Lexington County, they give me
3 some medication and all that -- it caused me two
4 bleeding ulcers, and they had to rush me to
5 Lexington Memorial and all. I was there for a week
6 in intensive care. I had a blood transfusion and
7 all. I wasn't doing too good.

8 **Q** When did you get out of the hospital?

9 **A** I got out that Friday and he come and seen me
10 the following Wednesday.

11 **Q** And the plea was on Thursday?

12 **A** Yes, ma'am.

13 **Q** When he came to talk with you at the jail, did
14 you understand your conversation?

15 **A** Pretty much. I mean --

16 **Q** You think you did?

17 **A** Yeah.

18 **Q** And that conversation had to do with the
19 agreement him and the Solicitor made?

20 **A** Uh-huh. He said -- he told me that him and the
21 Solicitor had talked and that he would get my father
22 and all to stand up. And if I could get a hold of
23 him, he would talk to my father about standing up
24 and talking on my behalf and all and even my son.
25 And I said, Well, that'll be fine and all, you know,

1 that would be good. And he said, All right then.

2 Q Did you know when you were going to be pleading
3 guilty?

4 A When?

5 Q Did you know it would be the next day?

6 A Yes, ma'am. He said they was going to try to
7 get me in to the next day and do it.

8 Q When you came to court the next morning, did
9 you talk with Mr. Madsen more?

10 A Not -- very briefly over there in the -- while
11 the court was going on and all. Like I said, it was
12 hard to hear him. That's when he explained -- when
13 he explained the North Carolina versus Alford and
14 all.

15 Q It was hard to hear?

16 A Yes, ma'am.

17 Q Did he talk to you anymore about what your
18 potential sentence would be?

19 A He said that him -- I said, You and the
20 Solicitor talked? He said, Yeah. That's what he
21 was going to try and get and all, you know. He
22 said, But, you know, zero to ten, you know, he
23 couldn't tell me what the judge was going to do.
24 And I kind of understood that part, but he was going
25 to put in a good word for me, you know, and talk to

1 him and tell him what him and the Solicitor agreed
2 on.

3 Q And he specifically said the Solicitor was
4 involved in this agreement?

5 A Yes, ma'am.

6 Q Was your father present that day?

7 A My father and -- my father, my son and my
8 stepmother was sitting in the...

9 Q Did Mr. Madsen talk to you that morning about
10 if any of them would testify in mitigation?

11 A He didn't say nothing to me then, but we had
12 talked the day before, so I figured, you know, he
13 had already, you know.

14 Q You thought he was going to be standing up with
15 you?

16 A Yes. I was expecting them to stand up and come
17 up and talk and all, and they never did.

18 Q Did you talk with Mr. Madsen about what you
19 should be saying during the plea?

20 A He just told me to say yes, sir, no, sir, and
21 that he would do the talking and all and, you know,
22 explain my case and all.

23 Q Were you okay with that?

24 A Not really. Not really.

25 Q Was there something additional?

1 **A** I just wanted to tell him my version and all.

2 He more or less told the version that was written
3 down in the statement from the Solicitor and my son
4 and not really what I, you know, what I was saying.

5 **Q** Did he tell you at any point why it may be good
6 or bad -- why it may be good for you to not tell
7 your side of the story during the plea?

8 **A** Not really he didn't.

9 **Q** Did you -- prior to the plea, did you discuss
10 your prior record with your lawyer?

11 **A** He said -- we had discussed part of it, said
12 the Solicitor and all was mad about one part that
13 happened, like, 30 years ago and all down in Florida
14 and not really none of the rest of it, I mean,
15 besides the driving under suspension, you know.

16 **Q** There was an assault and battery of a high and
17 aggravated nature on your record. Did y'all talk
18 about that, the circumstances?

19 **A** Not really much on it.

20 **Q** What was left out of your guilty plea? What
21 was not said that you wanted your lawyer to say or
22 that you wanted to say yourself?

23 **A** Really I wasn't guilty of the thing. I just
24 wanted to try to get out and all and get proper
25 medical care I wanted and all. And I didn't want to

1 put my son through this because he had a emotional
2 problem, and I didn't want to have to put him
3 through no court, you know, trial or whatever and
4 all. And I was trying, you know, and the way he
5 come to me or him and the Solicitor had talked, time
6 served and all, 18 months, whatever, you know, and I
7 said, well, I'll just take the fall and, you know,
8 get out and then work on it from there with my son
9 and all in counseling or whatever.

10 Q What sentence did you receive?

11 A What did I receive?

12 Q Uh-huh.

13 A The full ten.

14 Q The maximum sentence?

15 A Yes, ma'am.

16 Q Did you ask your attorney to file a notice of
17 appeal or any post-trial motions?

18 A At the time when Judge Dennis said ten years, I
19 stood there kind of in shock. I wasn't expecting
20 the whole ten years and all. Mr. Madsen, he didn't
21 say nothing. It took me a few minutes to walk back
22 over and sit down.

23 I had later wrote him when I got to Kirkland
24 and asked him is there any kind of appeals. I
25 didn't know nothing about no kind of appeals and

1 reconsideration till somebody advised me of it. And
2 I wrote him and asked him about it. And he wrote
3 me, I had ten days or whatever. And I think I was
4 too late or whatever. It was like, you know.

5 Q Do you know how soon or when after you -- after
6 the plea that you wrote to him?

7 A It was like a week or so, I mean.

8 Q Not exactly sure?

9 A Not exactly sure. It was one to two weeks,
10 something. I tried -- as soon as I found out and I
11 could get an envelope, because they don't -- when
12 you get there to R&E, you only get so many envelopes
13 and all. And I was trying to get an envelope and
14 try to get it to him as soon as possible.

15 Q Were any post-trial motions ultimately filed or
16 any appeal filed?

17 A No.

18 Q Do you think that your sentence would have been
19 different had your father spoken on your behalf?

20 MR. WHITMIRE: Objection; calls for
21 speculation.

22 THE COURT: Do you wish to be heard?

23 MS. GOLDBERG: Your Honor, this is post-trial
24 -- I mean, this is post-conviction relief. The
25 whole thing is what he thinks may have been

1 different and how he believes he may have been
2 prejudiced.

3 **MR. WHITMIRE:** First, Your Honor, it calls for
4 an improper opinion, legal conclusion from an
5 Applicant who is not a lawyer. Second of all, it
6 calls for speculation into what was inside the
7 sentencing judge's mind.

8 **THE COURT:** You can ask him what he anticipated
9 his father might say.

10 **MS. GOLDBERG:** Okay.

11 BY MS. GOLDBERG:

12 **Q** Mr. Cureton.

13 **A** Well, I know my father would have stood up for
14 me and all.

15 **MR. WHITMIRE:** Objection; hearsay.

16 **THE COURT:** He didn't say it.

17 Go ahead.

18 **MS. GOLDBERG:** Mr. Cureton, did you --
19 actually, I'm going to call his father -- I can call
20 his father as a witness anyway, so it doesn't need
21 to be hearsay.

22 BY MS. GOLDBERG:

23 **Q** Mr. Cureton, when you went to court that day,
24 did you fully understand that you could get a
25 ten-year sentence?

1 **A** I really wasn't thinking I was going to get the
2 ten years and all, not that I don't have a bad --
3 that bad of a record and all. And like I said, Mr.
4 Madsen said him and the Solicitor had done talked
5 and all and said it was a good judge and all and
6 pretty sure, you know, I'd get my time served and
7 the three years or the 18 months, you know.

8 **Q** At this point you are proceeding on this
9 post-conviction relief because -- is it because that
10 you'd like a trial now?

11 **A** Either a trial or get my time reduced or
12 whatever I can and all, you know, because I didn't
13 believe I deserved the whole ten years and all. I
14 would rather have the retrial and all because, to
15 me, I didn't feel like he really wanted to represent
16 me during this whole time anyway. I kept telling
17 him I was innocent. My son snatched the wheel out
18 of my hand and caused this wreck. He kept saying,
19 Because you left the scene.

20 I had left the scene with injuries and all and
21 didn't realize. I woke up the next morning about
22 200 yards and all from the ambulance and police
23 substation and had somebody call the ambulance and
24 all, went to the hospital. Because I don't really
25 -- I don't remember what happened after the wreck.

1 I remember up to the wreck, but after the wreck, I
2 really don't know what happened and all.

3 MS. GOLDBERG: No further questions.

4 THE COURT: All right. Cross.

5 MR. WHITMIRE: Beg the Court's indulgence.

6 THE COURT: Yes.

7 (Pause.)

8 MR. WHITMIRE: May it please the Court.

9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MR. WHITMIRE:

12 Q Did Mr. Madsen review your son, minor
13 statement with you?

14 A Sir?

15 Q Did Mr. Madsen review your son, minor
16 statement with you?

17 A Which statement? The first one or the second
18 one?

19 Q Either one.

20 A Yes, he did. He said he changed it -- he said
21 he changed it on the second one of what he said,
22 what my son said.

23 Q Didn't minor a give a statement to law
24 enforcement that you called him a failure,
25 threatened to drive your truck into a -- car into a

1 light pole in an attempted murder/suicide?

2 A That's what he said -- that's what he said my
3 son said. That's not what I said.

4 Q Do you remember what happened?

5 A I remember up to that point. I went to get my
6 son from my dad's. We live right down the road from
7 my dad's, probably a hundred yards, maybe 125 yards
8 from my dad. I pulled out the driveway. Me and my
9 son was having an argument about him outside playing
10 with a gun with my niece. My son had just got in
11 trouble --

12 Q And, actually, witnesses to that argument --

13 A Yes. My brother-in-law --

14 Q -- didn't they give statements that said you
15 appeared to be intoxicated? Did y'all review that?

16 A My son said I was intoxicated. Witnesses said
17 I didn't appear to be.

18 MR. WHITMIRE: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. WHITMIRE:

22 Q Did you tell Mr. Madsen your version of the
23 facts that day?

24 A Yes, sir. I told him me and my son was having
25 an altercation when we pulled out the driveway. I

1 had sped up to get over the bumps on the dirt road,
2 I was in a little Escort, and my son had a fit and
3 said, You're not killing me. And he done -- he
4 snatched the wheel out of my hand before and I've
5 told Mr. Madsen about this and all, but it didn't
6 lead up to a wreck like this did.

7 When he snatched the wheel, we went down in my
8 neighbor's yard. When I got the wheel back, I
9 thought I was hitting the brakes and I guess I was
10 hitting the floorboard because I guess my foot came
11 off the gas or whatever, and we went into the tree
12 that was in the yard.

13 **Q** Did Mr. Madsen advise you that voluntary
14 intoxication is not a defense in this state?

15 **A** Voluntary what?

16 **Q** Intoxication is not a defense in this state?

17 **A** They had no proof that I was intoxicated.

18 **Q** But y'all had discussed the witness statements
19 at your parents' house?

20 **A** Excuse me?

21 **Q** Y'all discussed the witness statements?

22 **A** (Witness nodded head.)

23 **Q** In fact, you weren't even charged with child
24 abuse or neglect in this?

25 **A** No, sir.

1 **Q** And I believe the Solicitor said, based on
2 Mr. Madsen's efforts, they dropped you down to
3 assault and battery first?

4 **A** Yes, sir.

5 **Q** It's correct you're parole eligible in six
6 months?

7 **A** I guess. I'm not sure.

8 **Q** Did Mr. Madsen advise you of your
9 constitutional implications in entering a guilty
10 plea?

11 **A** My what?

12 **Q** The constitutional implications of entering a
13 guilty plea or waivers?

14 **THE COURT:** I didn't hear your answer. What
15 was your answer?

16 **THE WITNESS:** I can't understand what you --
17 BY MR. WHITMIRE:

18 **Q** Y'all talk about waiving the right to put up a
19 defense?

20 **A** Waiving the right, yeah.

21 **Q** Waiving the right to have a jury trial?

22 **A** Yeah, go ahead and just get it over with.

23 **Q** Did he tell you an Alford plea is no different
24 than a real plea?

25 **A** I'm not sure. When he was explaining an Alford

1 plea and all, like I said, I couldn't hardly hear
2 him and I was trying to. I have bad hearing after
3 this.

4 **Q** So it's your contention Mr. Madsen didn't
5 advise you of Alford until the morning of your plea?

6 **A** Until the morning of the plea.

7 **MR. WHITMIRE:** Beg the Court's indulgence.

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

9 (Pause.)

10 BY MR. WHITMIRE:

11 **Q** Did y'all talk about the right to appeal a
12 sentence?

13 **A** He said something about couldn't appeal or
14 whatever and all, and then I found out that --
15 somebody told me that you could appeal. And he
16 never mentioned nothing about a reconsideration or
17 nothing like that and all. I found this out later
18 on, which I would have figured he would, you know,
19 being my attorney and all, he would know I wouldn't
20 be happy with being ten years, you know, when we
21 were discussing a whole lot lesser, that he would
22 ask for, you know, a reconsideration, you know. I
23 mean, I would if I was his attorney.

24 **MR. WHITMIRE:** No further questions, Your
25 Honor.

1 **THE COURT:** All right. Redirect.

2 **MS. GOLDBERG:** No, Your Honor.

3 **THE COURT:** Thank you, sir. You may step down.
4 Call your next witness.

5 **MS. GOLDBERG:** Thank you, Your Honor. At this
6 time, Applicant would call Paul Cureton.

7 **THE COURT:** Come around, please.

8 PAUL CURETON,
9 having been duly sworn, testified as follows:

10 **THE CLERK:** Have a seat and state your name for
11 the record.

12 DIRECT EXAMINATION

13 BY MS. GOLDBERG:

14 **Q** State your name.

15 **A** Paul Cureton.

16 **Q** Can you hear me from here?

17 **A** Yes, ma'am.

18 **Q** Were you present in court when your son entered
19 his plea?

20 **A** Yes, ma'am, I was.

21 **Q** Who asked you to be in court that day?

22 **A** My wife was with me and we sat with the
23 prosecuting attorney. We never saw Samuel's lawyer.

24 **Q** Why did you sit with the prosecuting attorney?

25 **A** Because they came in and sat by us over in the

1 corner, the two ladies. I don't remember their
2 names.

3 Q Okay. At the time of the plea, did you have
4 custody of Samuel's son?

5 A No. Actually, he was staying at the house, but
6 Samuel had custody of him. I had turned him over to
7 Samuel because I couldn't handle him.

8 Q But you were there with his son?

9 A I wasn't there that night.

10 Q During the plea?

11 A I was here during the plea.

12 Q Sitting with Samuel's son?

13 A (No response.)

14 Q Sitting with Samuel's son?

15 A (No response.)

16 Q You were sitting with ^{minor} during the plea?

17 A No. I don't think -- yeah, my wife --

18 MS. CURETON: Yes.

19 THE COURT: Hold on a second.

20 THE WITNESS: Okay.

21 THE COURT: Ma'am --

22 THE WITNESS: My memory --

23 THE COURT: Hold on, please.

24 Ma'am, nobody can sit in the audience and tell
25 a witness how to respond to a question. If you want

1 to take the stand, you're welcome to come up and
2 take the stand, but --

3 **THE WITNESS:** Yes, ma'am.

4 **THE COURT:** Hold on, please.

5 But it's inappropriate for a witness to be
6 coached or talked or given signals by someone else
7 in the courtroom, whether it's an attorney or some
8 member of the audience or anyone else.

9 So you can't ask your wife. If your wife wants
10 to testify, she's welcome to testify, all right.

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

12 **THE COURT:** Thank you.

13 Go ahead, Counsel.

14 **MS. GOLDBERG:** Thank you, sir.

15 BY MS. GOLDBERG:

16 **Q** Did you ever speak with Samuel's attorney?

17 **A** No.

18 **Q** Did he ever call you prior to the plea?

19 **A** No.

20 **Q** Did you speak with him in court the day of the
21 plea?

22 **A** No.

23 **Q** Did the Solicitor tell you what the plea
24 agreement was?

25 **A** The prosecuting attorney told me that --

1 **MR. WHITMIRE:** Objection to hearsay.

2 **THE WITNESS:** The prosecution --

3 **THE COURT:** Hold on a second, please. Are you
4 hard of hearing?

5 **THE WITNESS:** Yes, sir.

6 **THE COURT:** That's why I'm speaking so loud.

7 **THE WITNESS:** Well, that's good. I appreciate
8 it.

9 **THE COURT:** Do you want to be heard on the
10 hearsay?

11 **MS. GOLDBERG:** No, Your Honor.

12 **THE COURT:** Okay. Sustained then. Ask your
13 next question.

14 BY MS. GOLDBERG:

15 **Q** Did anyone ask you to stand with Samuel during
16 the plea?

17 **A** No, ma'am. She told me I didn't have to stand
18 up there because it was already a plea bargain been
19 made.

20 **Q** What did you think was going to happen?

21 **A** She told us that he would get 18 months to
22 three years and that --

23 **MR. WHITMIRE:** Objection; hearsay.

24 **THE COURT:** Do you want to be heard on this?

25 **MS. GOLDBERG:** No, Your Honor.

1 **THE COURT:** All right. Sustained then.

2 BY MS. GOLDBERG:

3 **Q** Did you intend on speaking to the court on
4 Samuel's behalf that day?

5 **A** Yes, ma'am, I would have.

6 **Q** Did you think that you were going to have that
7 opportunity to?

8 **A** I thought I was.

9 **Q** Had Samuel asked you to speak on his behalf in
10 court?

11 **A** Yes, he did.

12 **Q** If you had been given that opportunity, what
13 would you have said?

14 **A** Well, I would have said that I didn't think
15 that Sammy was intending to harm his child because
16 this kid had snatched the steering wheel before, he
17 had a violent temper and he's very hard to handle.
18 I've had custody of him twice. He goes into
19 tantrums, he lies, he does a whole lot of things.
20 I'm 73 years old and I could not handle him, and I
21 gave him back to his father -- well, to his mother
22 now. And he's in trouble now for --

23 **MR. WHITMIRE:** Objection; relevance.

24 **THE COURT:** Overruled. Go ahead.

25 **THE WITNESS:** He's waiting to go to court now

1 for possession of marijuana.

2 BY MS. GOLDBERG:

3 Q What would you have told the judge about Samuel
4 as a person?

5 A Well, I would say that Sammy was trying to
6 steer the kid right because he had some very hard
7 problems, and he had just been caught in high school
8 with a gun in his bookbag. He lied about that. We
9 knew that he was lying. And he was playing with a
10 rifle in my yard. I'd give my other grandson
11 permission to shoot squirrels because they was
12 invading my attic and chewing my wires up and the
13 whole yard, and I let him kill some of the
14 squirrels, but ^{minor} was not supposed to be around
15 the gun.

16 Q I'm not asking about ^{minor}

17 A Okay.

18 Q What would you have told the court about
19 Samuel?

20 A I would have told the court that Sammy was just
21 aggravated because of the fact that he was playing
22 with a gun again and that he was hollering at him or
23 fussing at him. And Sammy talks loud like I do and
24 people mistake my voice for being harsh. It's just
25 that I talk loud because I'm hard of hearing.

1 **MS. GOLDBERG:** No further questions.

2 **THE COURT:** Cross.

3 **MR. WHITMIRE:** May it please the Court. Just a
4 few questions, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. WHITMIRE:

7 **Q** So you would have testified in mitigation that
8 Samuel was just trying to scare ^{minor} straight when
9 he attempted to drive his car into a light pole?

10 **A** I don't understand exactly what you're saying,
11 but Sammy wasn't trying to drive his car anywhere
12 into anything.

13 **Q** Did you ever go to the public defender's office
14 and talk to his attorney about this?

15 **A** No.

16 **Q** Did anyone from the public defender's office
17 ever contact you to get your version of events?

18 **A** No, sir.

19 **Q** No one?

20 **A** No one.

21 **Q** Not an investigator?

22 **A** Not that I remember.

23 **Q** Not a secretary, no one?

24 **A** Not that I remember.

25 **Q** You said you would testify on his behalf at his

1 guilty plea?

2 **A** Testify as to what?

3 **Q** Speak on his behalf at a guilty plea?

4 **A** I'm still not hearing you.

5 **MR. WHITMIRE:** Beg the Court's indulgence.

6 **THE COURT:** Go ahead.

7 BY MR. WHITMIRE:

8 **Q** Is this better up here?

9 **A** Thank you.

10 **Q** So you're saying you wanted to tell Judge
11 Dennis about Samuel being a good person at his
12 guilty plea?

13 **A** Well, yes. He was trying to be a good father.

14 **Q** Then why were you sitting at the Solicitor's
15 table?

16 **A** They came and sat down beside us. Right where
17 the two guards are, my wife and I were sitting right
18 there behind them and they told us that we didn't
19 have to stand up and testify anything in Sammy's
20 behalf because they had done made a bargain.

21 **MR. WHITMIRE:** Beg the Court's indulgence.

22 (Pause.)

23 **MR. WHITMIRE:** No further questions, Your
24 Honor.

25 **THE COURT:** Redirect.

1 **MS. GOLDBERG:** No, Your Honor.

2 **THE COURT:** Thank you, sir. You can step down.
3 Any other witnesses for the Applicant?

4 **THE WITNESS:** Thank you, sir. I'm sorry about
5 my hearing.

6 **THE COURT:** That's all right, no problem.
7 Any other witnesses for the Applicant?

8 **MS. GOLDBERG:** Your Honor, at this time, we'd
9 call Mary Cureton.

10 **THE COURT:** Come around, please, ma'am.

11 MARY CURETON,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** If you'll have a seat and state
14 your name for the record.

15 **THE WITNESS:** My name is Mary Cureton.

16 DIRECT EXAMINATION

17 BY MS. GOLDBERG:

18 **Q** Good afternoon, Ms. Cureton.

19 **A** Hey.

20 **Q** Were you present during Samuel's plea?

21 **A** Yes, I was.

22 **Q** Where were you seated in court that morning?

23 **A** I was sitting right over there with minor and
24 my husband.

25 **Q** minor was the victim in this case; is that

1 correct?

2 **A** Yes, he was.

3 **Q** Did anyone tell -- did you bring minor to
4 court that day?

5 **A** I did because he was living with me.

6 **Q** At the time of the plea?

7 **A** Yes.

8 **Q** Did anyone tell you in court that you should
9 sit somewhere specific?

10 **A** The District Attorney said that we should sit
11 over there.

12 **Q** With the prosecution?

13 **A** Yeah. Right there, me and my son and -- my
14 grandson and my husband.

15 **Q** Because you had --

16 **A** Yeah, they told us to sit there.

17 **Q** Because you had the victim with you?

18 **A** Yes.

19 **Q** Did you ever speak with Samuel's attorney in
20 this case?

21 **A** No.

22 **Q** Did he ever contact you in any way to your
23 knowledge?

24 **A** I don't know. Sometimes we get messages and --
25 I don't know. I mean, I never really -- Larry tells

1 me some times, You got a call from such and such,
2 and then didn't get the number or nothing.

3 Q Did anyone ask you or discuss with you the
4 possibility of people speaking on Samuel's behalf
5 during the plea?

6 A The District Attorney said that we didn't have
7 to say anything, speak or anything, that she would
8 take care of everything. And we had -- me and
9 minor had talked with her and we met with her one
10 time. And she said, you know, she asked us what
11 kind of time did we want --

12 MR. WHITMIRE: Objection; hearsay.

13 THE COURT: Do you wish to be heard?

14 MS. GOLDBERG: I'm not sure exactly where she
15 was going, so I'm not sure what response I would
16 have with this right now because this is a prior
17 conversation.

18 THE COURT: Anything else?

19 MS. GOLDBERG: Your Honor, the Solicitor is
20 present now also to be cross-examined as to this, so
21 it wouldn't be a statement of an unavailable
22 witness.

23 THE COURT: Anything else?

24 MS. GOLDBERG: That's all, Your Honor.

25 THE COURT: Anything else from the State?

1 **MR. WHITMIRE:** Your Honor, I just ask for a
2 brief ten-minute recess to speak with Ms. Garrick
3 about this matter.

4 **THE COURT:** Do you wish to be heard?

5 **MS. GOLDBERG:** Your Honor, I would just ask to
6 let her continue testifying and then take the recess
7 so he knows what to --

8 **MR. WHITMIRE:** My apologies. I thought she was
9 done testifying. I am sorry.

10 **THE COURT:** The objection is overruled. You
11 may answer the question.

12 BY MS. GOLDBERG:

13 **Q** Yes, ma'am, go ahead.

14 **A** They just -- they had met with, you know, me
15 and minor and they wondered, you know, what did we
16 think that Samuel, you know, should get and --

17 **MR. WHITMIRE:** Your Honor, I renew my objection
18 to hearsay.

19 **THE COURT:** Overruled.

20 BY MS. GOLDBERG:

21 **Q** Go ahead.

22 **A** They told us that he wouldn't get over two
23 years.

24 **THE COURT:** Say that again.

25 **THE WITNESS:** They said that he wouldn't get

1 over two years.

2 **THE COURT:** Who is they?

3 **THE WITNESS:** Huh?

4 **THE COURT:** Who is they?

5 **THE WITNESS:** The prosecuting attorney, the
6 lady over there {indicating}.

7 **THE COURT:** Ms. Garrick back there?

8 **THE WITNESS:** Yes.

9 **THE COURT:** Go ahead.

10 BY MS. GOLDBERG:

11 **Q** When you went to court that morning, it was
12 your impression that Samuel would not get more than
13 two years?

14 **A** Yes, ma'am.

15 **Q** And for this reason, you were told that no one
16 in your family needed to speak on Samuel's behalf or
17 speak at all?

18 **A** Speak at all.

19 **Q** Speak at all.

20 **A** No.

21 **MS. GOLDBERG:** No further questions.

22 **THE COURT:** Do you want to cross-examine her
23 now or do you want to break now?

24 **MR. WHITMIRE:** Beg the Court's indulgence for
25 one second. Cross-examine her now.

1 (Pause.)

2 **MR. WHITMIRE:** Just a few questions, Your
3 Honor.

4 **THE COURT:** Sure.

5 CROSS-EXAMINATION

6 BY MR. WHITMIRE:

7 **Q** So you're saying now, a year plus after the
8 plea, you wanted to speak on Mr. Cureton's behalf in
9 front of Judge Dennis?

10 **A** I didn't say that I wanted to speak. I wasn't
11 asked to speak.

12 **Q** You're saying the Solicitor promised you he
13 would get two years in prison?

14 **A** That's what she -- she asked how much time. We
15 said, you know, not over two years.

16 **Q** And y'all are at --

17 **THE COURT:** Wait a minute. Who said? We said,
18 is that what you --

19 **MR. WHITMIRE:** Solicitor Garrick, Your Honor.

20 **THE WITNESS:** Yes, the Solicitor.

21 **THE COURT:** Read back what she said. She's
22 saying that the Solicitor was asking them what kind
23 of time the defendant should get, and I'm getting
24 lost in the they said and we said. I want to know
25 where this is coming from.

1 BY MR. WHITMIRE:

2 Q The question is the Solicitor, Ms. Garrick, did
3 she promise you Mr. Cureton would get a two-year
4 prison sentence?

5 A She asked us what kind of time did we think
6 that he should get. And minor and me both said,
7 you know, a couple, no more than a couple of years.
8 That's what we said, me and minor

9 Q Just to clarify, she didn't say there was a
10 plea agreement where he would get a fixed amount of
11 time and Judge Dennis had the discretion to sentence
12 based on the offense, just for clarification.

13 MR. WHITMIRE: No further questions, Your
14 Honor.

15 THE COURT: I didn't hear any answers.

16 MR. WHITMIRE: She --

17 THE COURT: Well, I'm looking down taking
18 notes. I can't see if she's nodding her head.

19 THE WITNESS: I'm sorry, sir. Ask me again.
20 I'm sorry.

21 BY MR. WHITMIRE:

22 Q You were never promised --

23 MR. WHITMIRE: Let me rephrase that, Your
24 Honor.

25 Q There was never a plea agreement for a two-year

1 sentence in place?

2 **A** No.

3 **Q** The last question I asked, did judge -- were
4 you aware that Judge Dennis had the discretion to
5 sentence according to the statute?

6 **A** I wasn't aware. I just -- I thought that's --
7 when they talked, that's what they was going to do.
8 I didn't know the judge could change it and give
9 more. I didn't know that.

10 **MR. WHITMIRE:** No further questions, Your
11 Honor.

12 **THE COURT:** All right. Redirect.

13 **MS. GOLDBERG:** No, Your Honor.

14 **THE COURT:** Thank you, ma'am. You may step
15 down.

16 Do you have any other witnesses?

17 **MS. GOLDBERG:** No, Your Honor.

18 **THE COURT:** Court's in recess for ten minutes.

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

20 (Brief recess.)

21 (State's Exhibit Numbers 1 through 5 marked
22 for identification.)

23 **THE COURT:** All right. Call your witness.

24 **MR. WHITMIRE:** Your Honor, Respondent calls
25 Ms. Garrick, a real quick witness.

1 **THE COURT:** Come around and be sworn, please.

2 ANGELA GARRICK,

3 having been duly sworn, testified as follows:

4 **THE CLERK:** Have a seat, please.

5 DIRECT EXAMINATION

6 BY MR. WHITMIRE:

7 **Q** Ms. Garrick, do you recall your prosecution in
8 this matter?

9 **A** I do.

10 **Q** I just want to ask you a few brief questions
11 regarding plea negotiations. Do you briefly recall
12 plea negotiations or can you?

13 **A** Yes.

14 **Q** What were they?

15 **A** At first appearance, there was no plea offer.
16 He was charged with attempted murder. And then
17 after we got the discovery and reviewed the
18 discovery, I did make a plea offer of assault and
19 battery first, which is zero to ten, nonviolent.

20 **Q** Do you have records of what day you made that
21 plea offer?

22 **A** No.

23 **Q** Did you make a recommendation as to sentencing?

24 **A** It was a straight-up plea, zero to ten, in the
25 judge's discretion.

1 **Q** Did you and Mr. Madsen and the Applicant sign
2 this sentencing sheet prior to the plea?

3 **A** We did.

4 **MR. WHITMIRE:** No further questions. Answer
5 any questions opposing counsel may have for you.

6 **THE COURT:** Cross.

7 **MS. GOLDBERG:** Briefly.

8 CROSS-EXAMINATION

9 BY MS. GOLDBERG:

10 **Q** Ms. Garrick, you mentioned the plea offer of
11 assault and battery first nonviolent. Was that the
12 only plea offer ever made in this case?

13 **A** I believe so.

14 **Q** Was there anything -- was there any talk of
15 anymore specific recommendations as to a particular
16 sentence?

17 **A** No, ma'am.

18 **Q** Do you recall -- did you and Mr. Madsen have
19 any conversations prior to the plea about what you
20 both believed would happen as far as sentencing
21 goes?

22 **A** I'm sure that we did, but I don't remember
23 specifically what that would have been.

24 **Q** Did you ever, to the best of your recollection,
25 tell the victim's family what you believed would be

1 -- the sentence would be?

2 **A** I don't think I would have done that, that's
3 not my usual practice. I tell them what the charge
4 will be and what the potential range will be and
5 that it's up to the judge. And I tell them if I'm
6 going to ask for a specific number or not, and, in
7 this case, I did not.

8 **Q** Ask for any specific sentence?

9 **A** Right.

10 **MS. GOLDBERG:** No further questions.

11 **THE COURT:** Redirect.

12 **MR. WHITMIRE:** Just one, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. WHITMIRE:

15 **Q** Who was the victim in this case?

16 **A** minor which would have been the defendant's
17 son.

18 **MR. WHITMIRE:** No further questions. Thank
19 you, Ms. Garrick.

20 **THE COURT:** Anything else of the witness?

21 **MS. GOLDBERG:** No thank you, Your Honor.

22 **THE COURT:** Thank you, ma'am. You may step
23 down.

24 Call your next -- do you want to call a next
25 witness?

1 **MR. WHITMIRE:** Yes, Your Honor. Last witness,
2 Mr. Madsen.

3 **THE COURT:** Come around, please, and be sworn.

4 ROBERT MADSEN,
5 having been duly sworn, testified as follows:

6 **THE CLERK:** Have a seat, please.

7 DIRECT EXAMINATION

8 BY MR. WHITMIRE:

9 **Q** Good afternoon, Mr. Madsen.

10 **A** Good afternoon.

11 **Q** Do you recall your representation in this
12 matter?

13 **A** I do.

14 **Q** Had a chance to review your file?

15 **A** I have.

16 **Q** What were the circumstances that led to your
17 client's arrest for attempted murder?

18 **A** It was alleged that he had picked up his son
19 from I believe it was his father's house, it was a
20 relative's house, that they had gotten in a car
21 together. And the son alleged that while they were
22 driving, he was upset with the son, that he was
23 trying to hit a light pole and kill both of them.
24 And the son had grabbed the wheel and that
25 ultimately they had struck a tree, and 9-1-1 was

1 called. And Sammy had left the scene and was
2 arrested at some point in time later.

3 **Q** How soon did you take on his case post-arrest?

4 **A** It appears that he was arrested on 9/29. I
5 don't believe that when we initially got the case,
6 immediately my -- well, it looks like that they
7 actually interviewed him relatively quickly. And
8 the first time I was able to go see him was on
9 November 7th. I believe there were some problems.
10 I think he had -- he had a broken ankle and so I
11 wasn't able to go see him in the normal visitation.
12 I had to actually go in the pod to see him and I
13 think I did that just about every time.

14 **Q** What was his version of the events?

15 **A** It was pretty much the same except for that the
16 son had grabbed the wheel, that he wasn't trying to
17 hit a light pole.

18 **Q** Did he give anymore information of why ^{minor}
19 grabbed the wheel?

20 **A** Not really. I mean, that his son suffered from
21 some emotional problems and got an SSI check, he
22 told me about that, and that they had kind of a
23 contentious relationship at times.

24 **Q** Did you have a chance to independently evaluate
25 the State's evidence in this case?

1 **A** I did. When I met with him on November 7th, I
2 did not have discovery. I subsequently sent
3 discovery to him. I went back out on January 7th
4 and went over discovery with him. From there, he
5 had given us or given me a list of potential
6 witnesses that he wanted us to interview to include
7 his father; Bobby Campbell, who was some type of
8 relative, maybe even a brother; and I think there
9 was a girl who was out there, A.C. And we had
10 gone out, and I've got extensive notes where my
11 investigator had tried to go out there and get them,
12 had some trouble getting them, but ultimately a
13 couple of the individuals that worked in our office
14 went out there, took statements from minor , A.C.
15 -- and it's A.C.

16 **Q** Before we get to that, I want to ask you why
17 did he want you to go out and interview these
18 people?

19 **A** Well, that's just kind of a normal part of a
20 case. Also, I will say that he had indicated to me,
21 and when I say he, Sammy had indicated to me that
22 both his father and Bobby Campbell would say that
23 minor had indicated to him {sic} that he had lied
24 initially and said that he had grabbed the wheel.
25 We took statements from them. Neither of them

1 confirmed that with us.

2 Q Who was your investigator in this case?

3 A Shanika Wilson was the main one who did that
4 for me. She works inhouse.

5 Q And what is your case load currently?

6 A Probably 200 cases.

7 Q Does your office -- you said inhouse. Does
8 your office employ investigator or plural?

9 A We have three -- or four individuals that we
10 use as paralegal investigators. On some cases, we
11 employ an outside private investigator. We did not
12 do that on this.

13 MR. WHITMIRE: I beg the Court's indulgence.

14 (Pause.)

15 MR. WHITMIRE: May I approach, Your Honor?

16 THE COURT: Yes.

17 BY MR. WHITMIRE:

18 Q Showing you what's been marked as Respondent's
19 Exhibit 2. Do you recognize this document?

20 A Yes. That would have been a statement that we
21 would have gotten from Paul Allen Cureton, who was
22 Sammy's father, and that would have been out at
23 either his house or the scene because there were
24 some photographs that were taken. They interviewed
25 a number of individuals, I believe, that same day.

1 **MR. WHITMIRE:** Your Honor, at this time, I'd
2 move or ask to move Respondent's Exhibit 1 {sic}
3 into evidence.

4 **THE COURT:** Any objection to this?

5 **MS. GOLDBERG:** No, Your Honor.

6 **THE COURT:** Mark it in evidence.

7 (State's Exhibit Number 2, statement of Paul
8 Allen Cureton, admitted into evidence.)

9 **MR. WHITMIRE:** May I approach?

10 **THE COURT:** Yes.

11 BY MR. WHITMIRE:

12 **Q** Do you recognize this document referenced as
13 State's Exhibit Number 1?

14 **A** This would have been a statement that my office
15 had taken from a Bobby Campbell around the same
16 time, if not, the same day.

17 **Q** Did you have a chance to review these
18 statements with your client?

19 **A** I did. I actually -- I've got in my notes that
20 on April 16th, I went out and went over the new
21 statements with him.

22 **MR. WHITMIRE:** Your Honor, at this time, the
23 Respondent requests to move State's Exhibit 1 into
24 evidence.

25 **THE COURT:** I thought it was in.

1 **MR. WHITMIRE:** I misstated the first one. My
2 apologies, Your Honor. For the record, 2 was the
3 first one, 1 was the second one.

4 **THE COURT:** Any objection to this?

5 **MS. GOLDBERG:** Your Honor, the Applicant isn't
6 asserting any failure to investigate claim, so I
7 don't know how it's relevant, but I have no
8 objection to the authenticity of the document.

9 **THE COURT:** The objection is to relevance then?

10 **MS. GOLDBERG:** Yes, Your Honor.

11 **THE COURT:** Overruled. Mark it in evidence.

12 (State's Exhibit Number 1, statement of
13 Bobby Campbell, admitted into evidence.)

14 BY MR. WHITMIRE:

15 **Q** Were these going to be helpful statements or
16 witnesses in your case?

17 **A** I didn't see where they would end up helping
18 Sammy in the trial of the case.

19 **Q** Would that have impacted your decision,
20 potentially, to call them as mitigation witnesses,
21 speak on Mr. Cureton's behalf in sentencing?

22 **A** Well, as far as Bobby Campbell, there was never
23 any discussion. The Solicitor had indicated to me
24 that the father, and I think he put it in the
25 statement also, did not want to see Sammy do

1 anything but time served. The Solicitor and I had a
2 discussion about that, although, he wasn't the
3 victim, ^{minor} was. Although, I think, at that
4 time, he might have had custody of ^{minor}

5 **Q** I'm showing you what's been marked as State's
6 Exhibit 3, 4 and 5.

7 **MS. GOLDBERG:** Your Honor, just -- I'm not sure
8 what the relevance of these are as well.

9 **MR. WHITMIRE:** I'm going to lay a foundation,
10 Judge.

11 BY MR. WHITMIRE:

12 **Q** Do you recognize these exhibits, Mr. Madsen?

13 **A** I do. These were photographs taken by my
14 office that indicated the path that the car had
15 traveled, according to ^{minor} also the tree that
16 they were alleged to have hit, and then actually a
17 piece of the car that they had photographed.

18 **MR. WHITMIRE:** I request to move these into
19 evidence and can address opposing counsel's
20 objection.

21 **THE COURT:** Go ahead.

22 **MR. WHITMIRE:** Your Honor, it's relevant in the
23 sense of counsel's advice to the Applicant to enter
24 an Alford plea, also counsel's interaction with the
25 victim and the victim's family in this matter. It's

1 exceptionally relevant in consideration of the
2 victim's grandparents testifying today.

3 **THE COURT:** Do you wish to be heard further?

4 **MS. GOLDBERG:** No, Your Honor, just simply,
5 again, we're not alleging any failure to
6 investigate, so I would object for relevance.

7 **THE COURT:** Objection's overruled. Mark those,
8 3, 4 and 5, into evidence, please.

9 (State's Exhibit Numbers 3 through 5,
10 photographs, admitted into evidence.)

11 BY MR. WHITMIRE:

12 **Q** At the time you're doing your own
13 investigation, were you getting any discovery?

14 **A** Yes.

15 **Q** How did the State's case look as your
16 representation furthered along?

17 **A** Well, it came down pretty much there were only
18 two individuals in the car, Sammy and his son,
19 minor And they both had -- Sammy was telling me
20 one thing; minor was saying the opposite.

21 **Q** Where was your client picked up or discovered
22 after this accident?

23 **A** At some -- some residence. I'm not real sure.
24 I recall, in just reviewing back, it might have been
25 with a George Shealy and maybe a Dubose, but it was

1 some other residence.

2 **Q** Had he left the scene?

3 **A** Yes.

4 **Q** Was there any other evidence in the vehicle
5 that substantially hurt his credibility or his
6 version of the events?

7 **A** There were -- well, there was a liquor bottle
8 in the car which ^{minor} had said that he thought
9 that he was drunk when he picked him up, which I
10 thought hurt. And then he and I discussed the fact
11 that I thought that him leaving the scene would
12 hurt, potentially, from a credibility standpoint.

13 **Q** Did you get statements or review statements
14 from police from other witnesses that observed your
15 client intoxicated just prior to this accident?

16 **A** I don't recall if there was anyone else who
17 necessarily said anything about the intoxication,
18 but I'm not a hundred percent sure.

19 **Q** And leading up to the Alford plea, you
20 previously described your -- I'm sorry -- your
21 communications with Mr. Cureton on plea
22 negotiations.

23 **A** Yes. I don't recall the specific date, but I
24 don't think that the plea offer came in until very,
25 very late. I generally do not have my clients come

1 over and convey a plea offer to them at court. I
2 wouldn't want to be treated like that and I don't.
3 So I generally, if it's avoidable, try not to do
4 that.

5 I don't have it in my notes, but I do remember
6 going to see him the day before just so I could
7 discuss that plea offer. So I'm thinking that I
8 probably got that plea offer from the State that
9 week. Prior to that, I don't think that she had
10 made a plea offer and had kind of expressed a desire
11 not to make a plea offer, but I think I got it that
12 week. So I immediately went to him and discussed
13 the difference between the attempted murder and the
14 assault and battery first. I explained to him, of
15 course, that it was -- that he could get probation
16 or time served, but that the judge could give him up
17 to ten years in prison, and he had told me that he
18 wanted to plead guilty.

19 I will say then that when we got over here the
20 next day, he kept on saying that ^{minor} had grabbed
21 the wheel, that he wasn't trying. And I told him
22 that he can't plead guilty if he does not admit to
23 guilt, that I wouldn't stand up there with him. And
24 I told him the same thing that I tell all my
25 clients, that if he is not guilty, that he ought to

1 go to trial.

2 Q So I guess the million dollar question is why
3 did he want to plead guilty?

4 A I mean, I can't say that. All I can say is
5 that I told him that if he didn't do it, he ought to
6 go to trial. I did explain to him, and I did
7 approach the Solicitor about potentially an Alford
8 plea, and then I explained the ramifications of an
9 Alford plea to him and he felt that that was
10 appropriate.

11 Q And specifically mentioning Alford, what is
12 your general practice on advising clients on Alford
13 pleas?

14 A I generally don't like Alford pleas because I
15 worry that when it gets in front of a judge, that
16 you lose the ability to basically say, hey, sorry.
17 In other words, there's not a remorse because you're
18 kind of saying that it didn't go on like the State
19 said. So I generally discourage them.

20 Sometimes when memories can kind of be fuzzy
21 because of either an accident or a substance or
22 something like that, I think that that's a better
23 situation to use those -- use those cases. I did
24 think that he had a good Alford plea type of case
25 because they had reduced the sentence and he wanted

1 to take that benefit of the bargain, but I generally
2 discourage them from that. But I told him that day
3 that he couldn't plead guilty if he was saying he
4 wasn't guilty.

5 Q Was the defendant's faulty memory the issue at
6 play here?

7 A A little bit because he really couldn't explain
8 why he left the scene that day, but also because he
9 was saying that he wasn't trying to hit the light
10 pole, that minor had grabbed it. So, you know, in
11 my interpretation, he couldn't plead guilty under
12 that set because he's not admitting to any type of
13 guilt, and I explained that to him.

14 Q Did you specifically advise him that an Alford
15 plea meant recognizing the State more than likely
16 would prove your guilt?

17 A Yes. I explained on Alford that he had to get
18 the benefit of a bargain, that ultimately that there
19 would be facts presented that if given to a jury,
20 could lead to his conviction.

21 Q Did he, in fact, come to that realization?

22 A Yes. And I think the judge -- that Judge
23 Dennis questioned him on that.

24 Q And if you thought he had a good shot at trial
25 or he could prove his innocence, would you have gone

1 forward with an Alford plea?

2 **A** Well, I gave that to him as an alternative. I
3 don't tell my clients to plead guilty or go to
4 trial. I leave that to his decision, but I
5 explained, you know, the Alford plea to him.

6 **MR. WHITMIRE:** Beg the Court's indulgence.

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

8 BY MR. WHITMIRE:

9 **Q** And do pardon the redundant questions from
10 prior PCR's today, but what is your general practice
11 in advising a client on the constitutional waivers
12 of entering a guilty plea?

13 **A** Well, when I initially meet or met with him in
14 November, I went over all his constitutional rights.
15 And then -- when I then met with him again to go
16 over the plea paperwork that day, I kind of
17 reiterate those rights, that he's not getting a jury
18 trial, that he's waiving the right to any defenses,
19 that he's giving up the right to remain silent, that
20 my investigation in his case ends at that point in
21 time and that the judge would sentence him and that
22 would be, you know, what would end up happening in
23 his case.

24 **Q** Did your client waver at all that day in front
25 of Judge Dennis?

1 **A** No.

2 **Q** What would you have done if he had wavered
3 during the plea colloquy?

4 **A** It just kind of depends on if it was a simple
5 question, then I would have tried to answer it. If
6 it were something more substantial, then I would
7 have requested to stand down.

8 **Q** Specifically regarding your mitigation case at
9 sentencing, did your client ask you to present any
10 witnesses to tell the judge -- or talk to the judge
11 during mitigation?

12 **A** No.

13 **Q** If you had known he desired to have certain
14 witnesses appear in front of Judge Dennis, what
15 would you have done?

16 **A** If I have a client that requests an individual
17 come to court, then we make an attempt to contact
18 them.

19 **Q** Just one -- well, a couple more questions. I
20 do apologize. And you already had contact with his
21 father or your investigator did?

22 **A** They did. And I knew, from talking with him
23 that day, that at least his father was there and I
24 believe^{minor} . I wasn't sure about his mother, but
25 I knew his father and^{minor} were there.

1 **Q** Did you specifically advise him on his exposure
2 and sentencing range in this case?

3 **A** Yes. I told him that under this plea, that he
4 could get time served or probation, but that the
5 judge could give him up to the maximum. Again, when
6 I talk to any of my clients, I always tell them the
7 same thing, that I can't promise that he doesn't
8 look like the guy who beat the judge up in
9 kindergarten and stole his milk money, and so --
10 that he's got to understand that I can't make that
11 promise.

12 **Q** In having your plea -- pre-plea discussions,
13 did y'all discuss the right to appeal?

14 **A** No. I generally don't talk to my clients about
15 appealing of a guilty plea just because if there's
16 not an error of law that's ruled upon by the court.
17 However, if he would have asked for a plea {sic},
18 then I would have filed one. I do recall, and I
19 don't have it in here and it might be in a different
20 file, I do recall getting a letter later asking
21 about an appeal, but it was well with after the
22 ten-day. And like I said, I don't have it, but I
23 believe I wrote him back and told him that, but it's
24 not in this file.

25 **Q** Is there any basis for a motion for a

1 reconsideration in this case?

2 **A** I didn't get the sense that Judge Dennis would
3 have entertained it, but he didn't ask for one at
4 the time and so I did not file one.

5 **MR. WHITMIRE:** Beg the Court's indulgence.

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

7 (Pause.)

8 BY MR. WHITMIRE:

9 **Q** Just two more final questions. You represented
10 Mr. Cureton to the best of your abilities?

11 **A** I did.

12 **Q** Did you feel comfortable with him entering an
13 Alford that day in front of Judge Dennis?

14 **A** I did.

15 **MR. WHITMIRE:** No further questions. Thank
16 you, Mr. Madsen.

17 **THE COURT:** Cross.

18 **MS. GOLDBERG:** Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. GOLDBERG:

21 **Q** Mr. Madsen, you -- I think the defendant pled
22 guilty to the assault and battery first degree?

23 **A** Yes, ma'am.

24 **Q** That was -- there was no agreement presented to
25 the court as far as sentencing?

1 **A** Correct.

2 **Q** Were there any ever discussions as to any
3 specific agreements for sentencing?

4 **A** As far as with the Solicitor?

5 **Q** Either -- yeah.

6 **A** It was always a straight-up plea. If I recall
7 correctly, I think I asked for probation on his
8 behalf during the plea, but as far as any particular
9 time, no. Now, I did tell him he could get
10 probation or time served, but he could also get up
11 to the maximum.

12 **Q** Did you ever tell him that there were any
13 agreements made with the Solicitor?

14 **A** The only thing that we ever talked about is I
15 know his father had told us that he wanted him to
16 get a time-served sentence. And I told him that,
17 that I thought if his father would speak, that that
18 would be helpful, but that the Solicitor, you know,
19 that they didn't necessarily go along with that or
20 that he wasn't -- that he wasn't the victim.

21 **Q** Did you explain to him that the Solicitor's
22 office makes the final decision as to plea offers?

23 **A** I don't remember if we had that specific -- if
24 that question would have come up, yes, I would have
25 explained that the Solicitor's office makes the

1 decision on what plea offers, but I don't recall us
2 specifically having that conversation.

3 Q Do you know if to his knowledge -- based on
4 your conversation with him, was he told that the
5 Solicitor's office was informed that there was a
6 desire for him to get time served or any particular
7 sentence?

8 A I don't recall -- I'm kind of confused. Are
9 you asking if family members or someone had
10 wanted --

11 Q My question would be did you tell Mr. Cureton
12 that family members had told the Solicitor's office
13 for -- that they wanted a particular sentence?

14 A I don't recall.

15 Q But you never informed him that there was an
16 agreement with the Solicitor's office for a
17 particular sentence?

18 A Correct.

19 Q Did you tell your client, at any point in time,
20 what you believed would happen at sentencing?

21 A No, other than it was a straight-up plea and
22 that the judge would make the decision.

23 Q And that you were asking for a probation
24 sentence?

25 A Correct. That I didn't think that that was an

1 unrealistic -- because I didn't expect to have
2 victims there. I do recall having a discussion with
3 the Solicitor that I didn't think that the victim
4 was going to get up there and say, hey, we want ten
5 years in prison, which usually helps if a victim
6 doesn't request incarceration.

7 **Q** Do you think he understood that he was facing
8 ten years that day based on your conversations with
9 him?

10 **A** Yeah. I never had any problem whatsoever in
11 communicating with him. Like I said, the only
12 problem that I ever had is whenever I'd go see him,
13 I'd have to actually go in the pod because of an
14 injury that he had to the foot, but I never had any
15 question about his understanding or anything. We
16 always had -- conversations were easy. He always
17 asked appropriate questions.

18 **Q** You mentioned that you had told your client
19 that it may be helpful if his father was in court
20 and spoke with the understanding that his father's
21 not the victim in this case?

22 **A** Correct.

23 **Q** So you never -- did you anticipate that it was
24 possible that the Solicitor's office would have him
25 speak on behalf of minor

1 **A** I knew he was here or was there and I expected
2 him to speak. Although, when he was sitting with
3 minor over on the Solicitor's side, that's --
4 sometimes people change what they're going to say
5 and so I was a little bit worried, but they never
6 called him and we didn't ask for him to speak
7 because of that fear of all of a sudden he's sitting
8 on that side. Generally, if I have a victim that --
9 or an individual that wants to speak, they usually
10 come over and stand with the defendant and they
11 didn't, so that caused me a little bit of angst.

12 **Q** Okay. And that goes to my question. You
13 anticipated tha^{minor}

14
15 that maybe he would want to
16 speak. I don't know if they call individuals to
17 speak, but if someone wants to speak, they
18 generally, if they have involvement in the case and
19 it's appropriate, they allow them to.

20 **Q** Did Samuel ever ask you to reach out to his
21 father about speaking in court?

22 **A** Not about speaking in court. Now, he had, as I
23 had mentioned earlier, he had said that he thought
24 that his father would provide helpful information
25 saying that ^{minor} had admitted to him that he lied,

1 which was not the case in the statement that we had
2 gotten.

3 **Q** Right, but specifically about mitigation?

4 **A** No.

5 **Q** He never requested it. Did you ever have any
6 conversations with Samuel at all about anybody
7 speaking on his behalf in mitigation?

8 **A** Not that I recall.

9 **Q** Did you, regardless of that, on your own ever
10 approach Samuel's parents about speaking in
11 mitigation?

12 **A** No.

13 **Q** You didn't talk to them that morning while they
14 were in the courthouse?

15 **A** No.

16 **Q** During the plea, Mr. Samuel Cureton received a
17 ten-year sentence; correct?

18 **A** Correct.

19 **Q** And that was the maximum sentence?

20 **A** Yes.

21 **Q** Based on the judge's sentencing, were you told
22 or did you get an idea that Judge Dennis has a
23 particular practice regarding Alford pleas?

24 **A** No, not that I knew of.

25 **Q** Okay. Not from -- have you read the transcript

1 in preparation for today?

2 **A** I have.

3 **Q** Did you file any post-trial motions in this
4 case?

5 **A** I did not.

6 **Q** Or an appeal?

7 **A** I did not.

8 **Q** Did you believe or do you now believe you have
9 any grounds or should have had any grounds for any
10 post-trial motions?

11 **A** No.

12 **MS. GOLDBERG:** Beg the Court's indulgence.

13 (Pause.)

14 **MS. GOLDBERG:** Nothing further, Your Honor.

15 **THE COURT:** Anything else of this witness?

16 **MR. WHITMIRE:** No redirect, Your Honor.

17 Respondent rests.

18 **THE COURT:** Thank you, sir. You may step down.

19 Any reply?

20 **MS. GOLDBERG:** No, Your Honor.

21 **THE COURT:** Do you wish to make any argument?

22 **MS. GOLDBERG:** Your Honor, again, for the most
23 part, the testimony will stand for itself. My only
24 -- what I would like to highlight would just be my
25 client's testimony that the day prior to trial, he

1 testified today, his lawyer told him that his father
2 would be asked to be present for mitigation, also
3 that there was an agreement between the Solicitor
4 and himself for 18 months to three years and that
5 that was what he intended on going forward with in
6 his plea.

7 **MR. WHITMIRE:** May it please the Court.

8 **THE COURT:** Yes.

9 **MR. WHITMIRE:** Your Honor's heard testimony
10 from the Solicitor, the public defender and the
11 records. If you have any questions, I'll be happy
12 to answer, but Respondent rests on the record.

13 **THE COURT:** You said just now 18 months to
14 three years.

15 **MS. GOLDBERG:** That was how he testified on the
16 stand, yes, Your Honor, or he said that he
17 understood there was a possibility of probation, but
18 he believed there was an agreement of 18 months to
19 three years.

20 **THE COURT:** I heard him say a lot of different
21 things. One time he said whatever, eighteen months
22 or two years, I thought he said, or whatever.

23 **MS. GOLDBERG:** Let me make sure I've got my
24 memory correct.

25 (Pause.)

1 **THE COURT:** I also want to cover one thing with
2 him while you're looking, which I do in a lot of
3 these cases.

4 Mr. Cureton, you're still under oath. You
5 understand that?

6 **MR. CURETON:** Yes, sir.

7 **THE COURT:** There was a discussion someone said
8 about what relief you were asking for in this
9 post-conviction relief action.

10 **MR. CURETON:** Yes, sir.

11 **THE COURT:** Do you understand that if I grant
12 your post-conviction relief outright, you're going
13 to go back and face all of these charges?

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

15 **THE COURT:** And I don't mean the assault and
16 battery first degree necessarily. I mean, you can
17 be charged -- I mean, you can be prosecuted for
18 attempted murder. You understand that?

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

20 **THE COURT:** And if they have some other charges
21 that they want to add on, they probably will do that
22 if you were to have a trial. You understand that?

23 **MR. CURETON:** Yes, sir.

24 **THE COURT:** Now, I'm not trying to suggest what
25 you should do. It's your decision to make, but I

1 want to make sure you understand that.

2 **MR. CURETON:** I do, Your Honor.

3 **THE COURT:** Do you still want to go forward
4 with your post-conviction relief action?

5 **MR. CURETON:** Yes, sir, I do.

6 **THE COURT:** Do you have anything else to put on
7 the record?

8 **MS. GOLDBERG:** No, Your Honor. And I looked at
9 my notes, I was scribbling while he was testifying.
10 I did write the 18 months down, but I didn't write
11 the top end of that. So I would defer to whatever
12 -- if Your Honor took notes during that testimony,
13 it's probably more accurate.

14 **THE COURT:** Sometimes it was hard to understand
15 because he was kind of trailing off there, but I'll
16 do the best I can with what I got, and I'll notify
17 you of a decision in writing. Thank you very much.

18 **MS. GOLDBERG:** Thank you, Your Honor.

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

20

21 **END OF PROCEEDINGS**

22

23

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

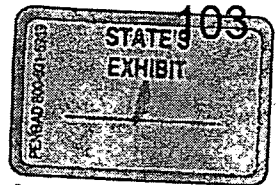
I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 15th of April, 2014.

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

February 5, 2015

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter



VOLUNTARY STATEMENT OF VICTIM OR WITNESS

REFERENCE: STATE OF SOUTH CAROLINA v. Samuel Kenneth Cureton
CHARGE (S): Attempted Murder
WARRANT #S: 2012 A 32102-02616
OFFENSE DATE:

I, Bobby K Campbell, VOLUNTEER THE FOLLOWING INFORMATION
OF MY OWN FREE WILL TO THE LEXINGTON COUNTY PUBLIC DEFENDER'S OFFICE.

I AM 41 YEARS OLD. MY TELEPHONE NUMBER IS

I RESIDE AT RISH LUCAS RD GASTON SC 29053

The day of the accident Sammy
came to his father's house to pick up
his son. Sammy seemed fine to me all
though I was preoccupied working on the
house doing carpentry work and didn't get
to talk to him. He and ^{minor} left and
the accident happen and I walked up to
the scene and Sammy was walking off looking
confused and dazed ^{minor} was crying
and scared saying his father tried
to kill me. I told him to lie down
until ambulance came and I got move.
Sammy told me that ^{minor} did in fact
snatched the wheel causing them to
wreck and he has done this before.
I really don't think Sammy tried to
hurt his son. Sammy said if DeKorte
had not snatched the wheel, the accident
wouldn't happen.

APOLINA
DRIVER LICENSES
OF NORTH CAROLINA

CAMPBELL BOBBY KEITH

[Redacted]

GASTON SC 290538968

DL#:

[Redacted]

Expires: 06-04-2013

NOT A DRIVER'S LICENSE

Hgt: 6-02 Wgt: 155

Sex: M

DOB:

[Redacted]

Issued: 06-04-2008 32055 R2

[Handwritten signature]

COMING

VOLUNTARY STATEMENT OF VICTIM OR WITNESS

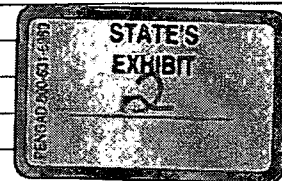
REFERENCE: STATE OF SOUTH CAROLINA v. Samuel Kenneth Cureton
 CHARGE(S): Attempted Murder
 WARRANT #S: 2012A3210200616
 OFFENSE DATE: _____

I, Allen Cureton, VOLUNTEER THE FOLLOWING INFORMATION
 OF MY OWN FREE WILL TO THE LEXINGTON COUNTY PUBLIC DEFENDER'S OFFICE.

I AM 72 YEARS OLD. MY TELEPHONE NUMBER IS _____

I RESIDE AT _____ OTIS Rd PELTON SC 29123

I CANT Believe that Sammy
intended to harm
He was mad because he was shooting
at him. I think Sammy should be
let off with time served.
Sammy was shouting at
and threatening him & grabbed
the wheel and turned them to the
bushes. Both of them told me the
same thing.



Registration:
Endorsements:

Name:
None

Paul P. [illegible]

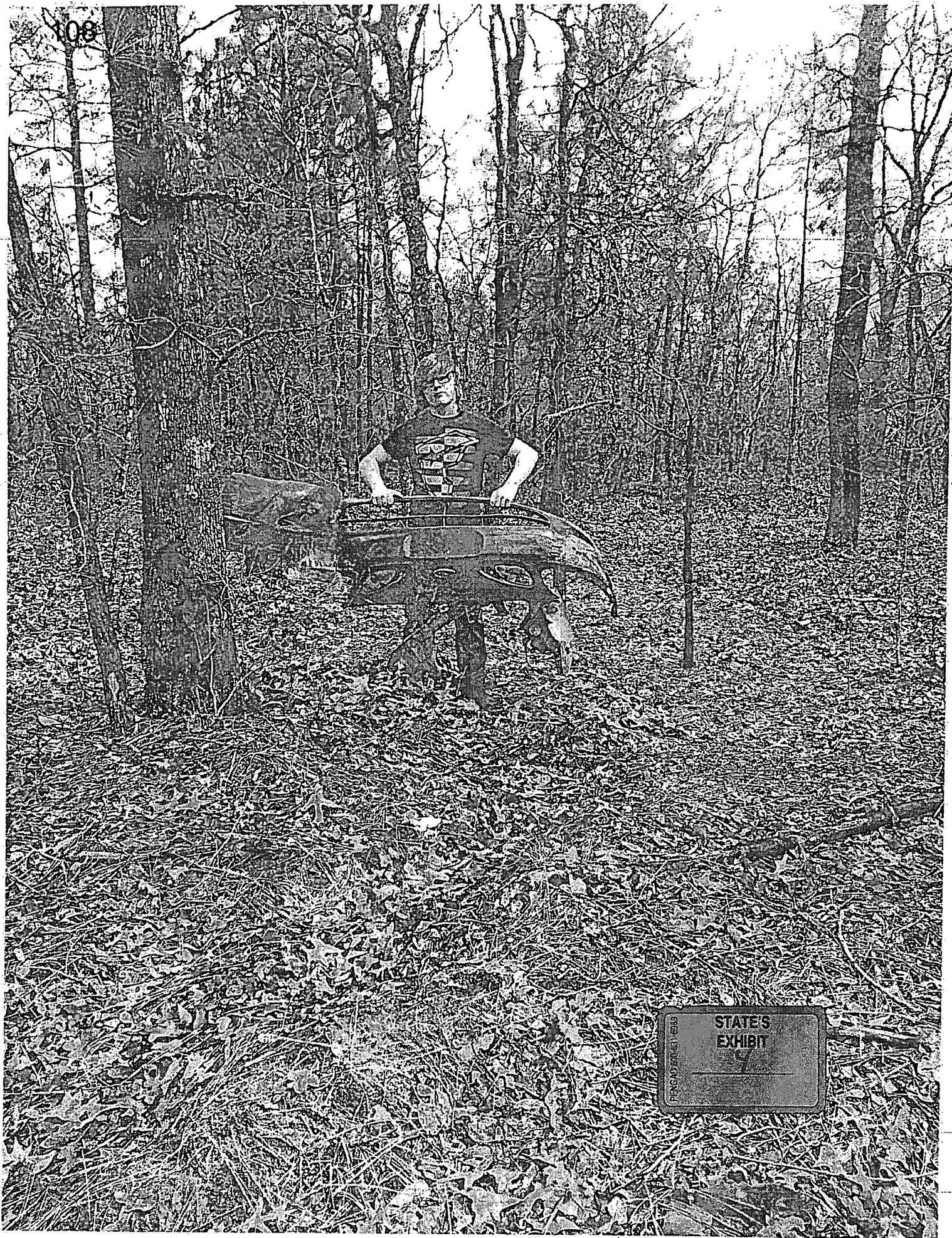
Class: D Hgt: 5' 11" Wt: 200
Sex: M DOB: [redacted]
Issued: 02-18-20 32955 R

CURETON PAUL
[redacted]
PELLION SC 29153

DL # [redacted]
Expiration: 02-18-20

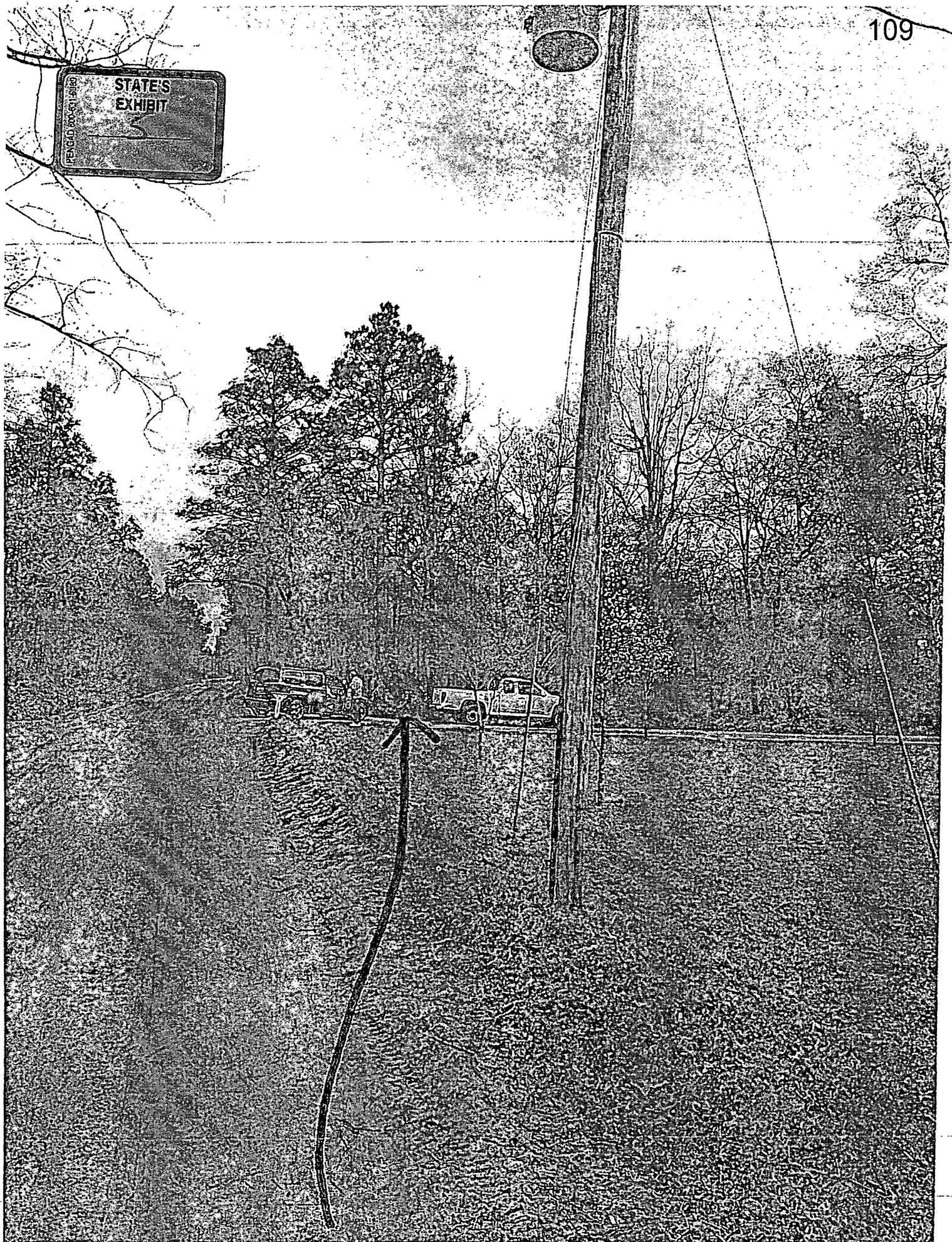


108



STATE'S
EXHIBIT
4

STATE'S
EXHIBIT
5



ORIGINALSTATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2014 JUN -3

ELEMETH JUDICIAL CIRCUIT

Samuel K. Cureton,
S.C.D.C. No. 311561,BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

C.A. No. 2013-CP-32-2587

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

WHL
#1

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 31, 2013. Respondent made its Return. An evidentiary hearing into the matter was convened on April 15, 2014 at the Lexington County Courthouse. Applicant was present and was represented by Kristy Goldberg, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the January 2013 term of the Court of General Sessions for Lexington County for attempted murder (2013-GS-32-3202). Applicant was represented by Rob Madsen, Esq. On May 23, 2013, Applicant entered a guilty plea pursuant to North Carolina v. Alford¹ to the lesser-included offense of assault and battery, first-degree. The Honorable R. Markley Dennis sentenced Applicant to a ten (10) year term of imprisonment. Applicant did not appeal his sentence or conviction.

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

JUN062014

At the PCR hearing, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. failure to adequately advise Applicant of the terms of the plea agreement;
 - b. failure to adequately advise Applicant regarding an Alford plea.
 - c. failure to present character witnesses to speak on behalf of Applicant during the mitigation phase of the plea hearing;
 - d. failure to explain the circumstances surrounding Applicant's prior ABHAN conviction to the plea judge;
 - e. failure to file a post-trial motion for sentence reconsideration on behalf of Applicant;
 - f. failure to file a notice of appeal on behalf of Applicant.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2014 JUN -3 P 12:15

FILED

SUMMARY OF TESTIMONY AT THE PCR HEARING

Wk #2
Applicant testified that he was in pre-trial detention at the Lexington County jail for eight months prior to his plea. He stated that he suffered chronic complications for injuries he sustained in the offense. Applicant outlined these injuries to the Court. He stated that counsel came to see him two to three times during the case. He explained his version of the facts that led to his arrest to counsel during the representation. He claimed the victim, his son, caused the underlying wreck when he grabbed the steering wheel while Applicant was driving the car. He stated that counsel reviewed the State's evidence with him. He stated that while the victim told police that Applicant appeared intoxicated during the commission of the offense, other witnesses disputed the victim's account. He stated that he was aware voluntary intoxication was not a possible defense. He acknowledged that he was not charged with child endangerment, or abuse and neglect although he abandoned the victim at the scene.

He stated that he learned of the State's plea offer about a day before he pled guilty. He stated that the solicitor dropped the attempted murder charge to the lesser-included offense of assault and battery, first-degree. He stated that counsel advised him that he was looking at eighteen month to a three year prison sentence if he accepted the offer. He stated that he hoped that the plea judge would sentence him to time served and possible probation. He knew that if he accepted the plea agreement, he would plead guilty the following day. He stated that he discussed the matter further with counsel on the morning of the plea hearing. He acknowledged that counsel discussed his rights and the consequences of pleading guilty. He asserted that he was not actually guilty of the offense. Applicant explained that he decided to plead guilty because he didn't want to put his son and family through a trial. He stated that counsel advised him to enter an Alford plea. He stated that counsel never articulated the nature of an Alford plea to him. It was his understanding that he was entering ^(LAW) ~~was entering~~ a guilty plea while he was not actually guilty. He stated that plea agreement ^{CAPIED (LAW)} ~~caped~~ his potential sentence at a possible three year term of imprisonment.

He recalled that the plea judge apprised him of the possible sentencing exposure for assault and battery, first-degree at the plea hearing that ranged from zero to a ten year term of imprisonment. However, he stated that he put stock in the solicitor's involvement in process. He stated that counsel failed to explain to the plea judge that he was innocent and pleading guilty for the benefit of his family. He stated that counsel did explain the circumstances surrounding his prior criminal record to the judge. He stated counsel did not tell the judge favorable facts concerning his prior assault and battery, high and aggravated nature 'ABHAN.' Applicant also stated that he was under the impression that his family would speak on his behalf in mitigation

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prior to the plea hearing. He stated that counsel advised him ^(case) to not explain his version of the facts to the solicitor.

Applicant stated that counsel never discussed an appeal with him. He stated that he wrote counsel a letter on the matter at least ten days after the plea hearing. He stated that he did not think that he would get the maximum sentence. He opined that he did not deserve a ten year prison sentence and wants a better plea deal. Applicant also stated that counsel never discussed filing a post-trial motion for sentence reconsideration with him.

Paul Cureton, Applicant's father, testified on his behalf at the PCR hearing. He stated that he sat with the solicitor at the plea hearing and never saw counsel on the day. He stated that he never spoke with counsel during the case. He explained that no one told him to stand with Applicant at the plea hearing. He stated that Applicant still had custody of the victim. He stated that he was interested in speaking on Applicant's behalf at the plea hearing. He stated that a person with the solicitor's office told him that he did not need to speak on Applicant's behalf at the plea hearing where they had offered Applicant a bargain. He stated that the victim had a violent temperament and had snatched the steering wheel while Applicant was driving on prior occasions. He stated the victim had recently ^{WHEEL} ^{GOTTEN} got in trouble for possessing a gun at school. He stated that Applicant was trying ^{HE'S} ^{WAS} is best to properly raise the victim. He opined that Applicant could not handle the victim. He explained that the predicament aggravated Applicant.

Mary Cureton, Applicant's mother, testified on his behalf at the PCR hearing. She stated that she also wanted to speak on Applicant's behalf at the plea hearing. She stated that the solicitor told her that Applicant was looking at a two year prison sentence.

Angela Garrick, Esq., of the Eleventh Circuit Solicitor's office testified at the PCR hearing to her course of conduct in prosecuting the case. She recalled the extent of the plea

negotiations and explained she had not yet made an offer at Applicant's first appearance. She stated she made the offer to drop the charge to assault and battery, first-degree after she provided counsel discovery and had reviewed the case. She explained the terms of the offer: straight-up, with no recommendation or negotiated sentence. She stated she informally discussed the possible outcomes with counsel but asserted that she most probably would not have apprised the victim's family of a speculative estimate as to what future sentence the plea judge would pronounce.

Counsel testified to his course of conduct during the representation. He stated that Applicant was arrested for attempted murder in an alleged failed attempt at a possible murder/suicide. He provided a brief summary of the State's case. Counsel stated Applicant explained his version of the facts to him. According to Applicant, it was never his intent to crash the vehicle into a light pole. Applicant also disputed fault and claimed that the victim grabbed the steering wheel during the incident. Applicant told counsel that the victim had suffered from emotional problems.

Counsel stated he met with Applicant numerous times prior to the plea hearing. He stated that he obtained discovery materials ^{FROM} ~~from~~ the solicitor. Counsel provided a copy of the discovery materials to Applicant. Counsel opined that ^{THE} ~~the~~ State collected evidence of Applicant's alcohol use. He also stated that ^{THE} ~~fact~~ Applicant fled the scene and abandoned the victim hurt his credibility. Counsel also stated that Applicant's version of flight was that he had no memory of it. He stated that he discussed the State's evidence with Applicant. He stated that Applicant asked him to ^{WITNESSES, INCLUDING} ~~interview his~~ Bobby Campbell, in anticipation that they would corroborate his version of events. Counsel ^{SENT} ~~recalled that~~ an investigator to interview the requested witnesses and the State's witnesses. The investigator went the scene of the offense, took photographs, and he obtained statements from the witnesses. All of these materials were provided to counsel. Numerous

JUN062014

exhibits on the matter were entered into evidence. He stated that he learned most of the witnesses would testify against Applicant's version of the facts.

Counsel stated that he continually communicated the developments in plea negotiations to Applicant throughout the representation. After the solicitor communicated the plea offer to counsel, he conveyed it to Applicant. Counsel stated that he met Applicant that day to discuss the offer. He stated that Applicant wanted to accept the offer while maintaining that he did not cause the wreck, without remembering why he abandoned the victim at the scene. As a result of Applicant's posture, counsel thought an Alford plea was appropriate in this case. He stated that as a matter of general practice, he discourages Alford pleas in most cases. Counsel advised Applicant that he had the option to accept the offer or proceed to trial. Counsel asserted that he did not recommend one option over another.

WAS
#6 Counsel stated he ^{discussed with the Applicant} advised the terms of the offer and the constitutional implications of pleading guilty. He advised Applicant of the sentencing range of assault and battery, first-degree. He explained to Applicant that he ^{was} looking at a possible time served or probationary sentence in the best case scenario. He also explained to Applicant that ^{the} plea judge had the discretion to sentence him to a ten-year term of imprisonment. He apprised Applicant that the plea offer was straight-up and explained that the judge had full sentencing discretion. He stated that he did not speculate on the how ^{much} prison time that he believed Applicant ^{must} would get. However, he opined that certain aggravating ^{factors} worked against Applicant. He apprised Applicant of these concerns.

Counsel stated that Applicant's father told a member of his staff that he hoped Applicant would get a favorable sentence. ~~He stated that this information, alone, would have necessitated him presenting Applicant's father in mitigation.~~ He explained that Applicant's father was not the victim. Counsel made the decision not to ask Applicant's father to speak in mitigation when he

MEMORANDUM OF THE COURT (circled)
 saw him sitting with ^{MEMORANDUM OF THE COURT} solicitor's office at the plea hearing. He stated that if he had reason to believe a character witness would have benefited his mitigation case and was present at the plea hearing, then he would ^{HAVE (circled)} presented the person.

Counsel stated he did not recall filing a post-trial motion for sentence reconsideration here. Counsel stated also that as a matter of general practice, he does not discuss an appeal with clients before a guilty plea. He stated that he received correspondence regarding a possible appeal well after the ^{W/M} ten-day filing period had passed.

APPLICABLE LAW

W/M #7
 In a post-conviction relief action, the Applicant bears the burden of proving the allegations in ^{HIS (circled)} their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, ~~the Applicant's records from the South Carolina Department of Corrections~~, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and, legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant has failed to meet his burden of proof. He ~~has~~ ^{HAS} not established that counsel performed deficiently or that he was prejudiced in any way by counsel's performance. This Court does not ~~find~~ ^{FIND} Applicant credible. The assertions that he did not understand the nature and ramifications of an Alford plea are not proven and are refuted by evidence and the transcript. While this Court finds no fault with Applicant's parents and their expressed intention of being thwarted to help their son at the plea, Applicant has the burden of proof to show that the outcome likely would have been different had they spoken on his behalf. That has not been proven. Likewise, there is no showing that any further involvement of the parents or anyone else in the investigation stage would likely change the result. An extensive investigation was performed. This case involved a swearing contest. Counsel properly focused on the problem created by Applicant leaving the scene of the wreck.

This Court finds the testimonies of the solicitor and counsel concerning the plea negotiations to be convincing.

A.

Applicant failed to meet his burden to prove counsel was ineffective for failing to adequately advise him on the terms of the plea agreement. "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) "Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial." Pelzer v. State, 381 S.C. 217, 221-22, 672 S.E.2d 790, 792 (Ct. App. 2009). This Court finds counsel's testimony that he advised Applicant that the plea offer included a potential zero to ^{10- (10-15)} year prison sentence to be credible. In contrast, this Court finds Applicant's testimony that there was some implied three-year cap in the plea agreement to be suspect and not credible. Furthermore, the plea judge properly apprised Applicant on the matter during the colloquy. See Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). Therefore, this allegation is ^(WAP) readily denied and dismissed.

Applicant's allegation that counsel was infective for failing to properly advise him on the nature and purpose of an Alford plea is without merit. "[I]n South Carolina there is no significant distinction between a standard guilty plea and an Alford plea. The Alford plea may nevertheless offer advantages to both the state and the defendant by facilitating a more efficient trial, providing the defendant a choice that benefits her interests, or obviating a humiliating public admission of guilt." State v. Herndon, 403 S.C. 84, 93, 742 S.E.2d 375, 380 (2013). "The

foregoing authority and this Court's precedent demonstrate the general consensus that an Alford plea is merely a guilty plea with the gloss of judicial grace allowing a defendant to enter a plea in her best interests." Id., at 95, 742 S.E.2d at 381. Counsel's advice to plead Applicant pursuant to Alford was reasonable in light of the fact that Applicant contested fault but claimed he did not remember abandoning his son at the scene of a brutal car accident. See United States v. Morrow, 914 F.2d 608, 611 (4th Cir.1990) (The primary thrust of the Alford decision is that a defendant may voluntarily and knowingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit he participated in the acts constituting the crime.). Furthermore, Applicant decided to plead guilty because he did not want to put his family through a trial. Thus, he has entirely failed to show that the procedural posture of the plea resulted in prejudice. Therefore, this allegation is denied and dismissed.

B.

W/see #10 Applicant has failed to meet his burden to prove counsel was ineffective in presenting a mitigation case at the guilty plea hearing. A defendant has a right to counsel at sentencing. Jones v. United States, 783 F.2d 1477, 1482 (9th Cir. 1986). Counsel's failure to introduce family mitigating evidence at sentencing in a non-capital case was only a failure to introduce a low-^{*W/see*} probability prospect^{*W/see*} for sentence reduction and caused no prejudice in a strong case. Jackson v. Roth, 24 F.3d 1002 (7th Cir. 1994). This Court finds Applicant has failed to meet his burden to prove how counsel's decision ^{*W/see*} to not present his parents at the plea hearing constituted deficient performance. It was objectively reasonable for counsel ^{*W/see*} to not ask Applicant's parents to speak on his behalf once counsel saw where they sat. Regardless, Applicant's claim that he ^{*WAS W/see*} prejudiced here was entirely speculative. This Court notes that the plea judge remarked that counsel's

effective mitigation performance was negotiating the plea agreement to the lesser-included offense. Therefore, this allegation is denied and dismissed.

For similar reasons, Applicant also failed to meet his burden to prove that ^{PLEA COUNSEL} was ineffective for failing to apprise the solicitor of the facts of Applicant's prior ABHAN conviction. See State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Cl. App. 2008) ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."). This allegation rests entirely on speculation. Applicant failed to present credible evidence of what, if anything, ^{was} mitigating surrounding this prior conviction. Again, Applicant failed to show that counsel's presentation of his mitigation case constituted deficient performance. Therefore, this allegation is denied and dismissed.

C.

Applicant's allegation that counsel was ineffective for failing to file a post-trial motion for sentence reconsideration is without merit. "Generally, what motion to make is within the exclusive province of counsel." Leavitt v. Arave, 646 F.3d 605, 611 (9th Cir. 2011). "Counsel is not required to file a reconsideration motion to rehash a position once rejected." U.S. v. Tajeddini, 945 F.2d 458, 463 (1st Cir. 1991). "[A] petitioner claiming ineffective assistance of counsel in a motion for reconsideration must also show prejudice." Dakane v. U.S. Atty. Gen., 399 F.3d 1269, 1274 (11th Cir. 2005). This Court finds Applicant failed to show that erroneous information was presented at the plea hearing that could have ^{HAD AN UPON} impacted the plea judge's consideration in pronouncing a sentence. Furthermore, the plea judge articulated his view on the

seriousness of Applicant's conduct in comparison to the lesser-included offense of assault and battery, first-degree. Therefore, this allegation is denied and dismissed.

Applicant has also failed to prove that counsel was ineffective for failing to file a notice of appeal on his behalf. "[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing."

Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). This

Court finds counsel's testimony on the matter ^{TO BE JUSTIFIED. [initials]} Applicant was adamant to plead guilty ^{UNDER ALFARO, [initials]} despite

never fully admitting his guilt. Applicant failed to prove that counsel had a credible reason to expect that he desired an appeal. ^[initials] Furthermore, ~~counsel was not deficient for choosing not to~~

^{WPK #12} ~~discuss an appeal with a client whose ^[initials] name had been convicted and served prison time in this~~ State. Furthermore, Applicant did not indicate an interest in appeal until well after counsel could do anything about it. Therefore, this allegation is denied and dismissed.

F.

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

failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

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

FILED

2014 JUN -3 P 12:14

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

AND IT IS SO ORDERED this 29th day of MAY, 2014.

William P. Keesley
WILLIAM P. KEESLEY
Presiding Judge
Eleventh Judicial Circuit

EDGEFIELD, South Carolina

123
WITNESSES

Lexington County Sheriffs Department

D. Novak

Law Enforcement Case #:

DOCKET NO. 2012GSS3203202

The State of South Carolina

County of Lexington

ARREST WARRANT NUMBER

JAG

2012A3210200616

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

THE STATE

vs.

Samuel Kenneth Cureton

ACTION OF GRAND JURY

Don Braasington
Foreperson of Grand Jury

Date: 1-22-13

CDR #: 3410

VERDICT

Indictment for

ATTEMPTED MURDER/MURDER

§ 16-03-0029

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
ATTEMPTED MURDER/MURDER

§ 16-03-0029

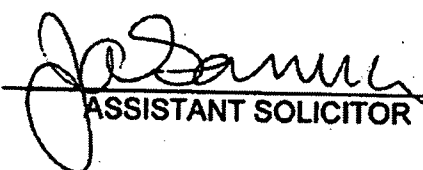
At a Court of General Sessions, convened on JANUARY 2013, the Grand Jurors of Lexington County present upon their oath:

That Samuel Kenneth Cureton in Lexington County, South Carolina, on or about September 22, 2012, did, with the intent to kill, attempt to kill minor ^{minor} with malice aforethought, either express or implied, to wit: the defendant deliberately drove his vehicle into a pine tree trying to kill his son and himself, in violation of §16-03-0029 of the South Carolina Code of Laws of 1976, as amended.

A TRUE COPY

Lex. Co. C.C.O.P., G.B. & F.O.

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


ASSISTANT SOLICITOR