

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Maite Murphy, Circuit Court Judge

RECEIVED

APR 8 2015

S.C. Supreme Court

SEAN ECHOLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001909

APPENDIX

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CLAY MITCHELL
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF ORANGEBURG

2013-GS-38-01557 & 01559

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 SEAN ECHOLS,
7 Defendant.

8
9
10 Heard on Thursday, April 11, 2013

11 Orangeburg, South Carolina

12 BEFORE:

13 THE HONORABLE EDGAR W. DICKSON
14

15 APPEARANCES:

16 Counsel on Behalf of the State:
17 Sarah A. Ford, Esq.

18 Counsel on Behalf of the Defendant:
19 Andrew J. Brown, Esq.

20
21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
25 Aiken, SC 29804-5232

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON THURSDAY, APRIL 11, 2013 AT 3:25 P.M.:

2 MS. FORD: Sean Echols. He's here pleading guilty to
3 one count of armed robbery and one count of assault and
4 battery first degree, Your Honor, on Indictment 2011-GS-
5 38-1557 and 1559 for a negotiated sentence of 15 years,
6 Your Honor.

7 (Defendant placed under oath.)

8 THE COURT: Mr. Echols, the sentencing sheet says
9 you're 29?

10 THE DEFENDANT: Yes, sir.

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

12 THE DEFENDANT: Eleventh grade.

13 THE COURT: And where were you going?

14 THE DEFENDANT: I was locked up.

15 THE COURT: No. I mean, where were you going to
16 school before you got --

17 THE DEFENDANT: CIS, Citizens School.

18 THE COURT: Okay. Have you ever gotten your GED?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. And, Mr. Echols, appreciate you
21 testifying yesterday.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: My impression of you testifying was that
24 you were very smart and that you can accomplish more than
25 an eleventh grade education. That was my take on it.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay? And so, I understand you're
3 pleading guilty to those charges that you were involved
4 in?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: While you are in, I hope you will take
7 advantage and get more of an education.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Have you been treated for any
10 mental health issues?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You have?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you taking any medication for that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Does that medication affect your ability
17 to understand what you're doing?

18 THE DEFENDANT: No, sir.

19 THE COURT: So you are thinking clearly here today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Know exactly what you're doing?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The State has indicated to me that you're
24 pleading guilty to one armed robbery charge and one
25 assault and battery first; is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And they are recommending a 15-year
3 sentence?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Negotiated. Your attorney and the State
6 have negotiated a 15-year sentence; is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Other than that negotiated sentence, has
9 anybody promised you anything, threatened you or forced
10 you to get you to plead guilty here today?

11 THE DEFENDANT: No, sir.

12 THE COURT: You're doing this freely and voluntarily?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Brown is your attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: He -- you have met with him, gone over the
17 evidence in this case. He's advised you of possible
18 sentences that you could face. He's advised you of your
19 constitutional rights; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you understood everything he's told
22 you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you satisfied with his services as
25 your attorney?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you need any more time to talk with
3 him?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Ms. Ford, do you want to tell
6 me what happened?

7 MS. FORD: Your Honor, I'll be brief as Your Honor
8 presided over the trial with Mr. Echols' co-defendant
9 yesterday, Mr. Richard Sprinkle.

10 Your Honor, it's the State's position that Mr. Echols
11 as well as his co-defendant, Richard Sprinkle, entered the
12 residence of Mr. Robert Rumph and Mr. James Wright.
13 Mr. Rumph is here in the courtroom.

14 They entered that residence, assaulted the victims.
15 Mr. Wright was hit in the head several times with a gun
16 and Mr. Rumph was cut six or seven places over his body,
17 Your Honor, with a knife. And ultimately Mr. Echols left
18 that residence with the money of both the victims and the
19 car of Mr. Rumph.

20 Your Honor, those would be the facts. That would be
21 the extent of the facts, Your Honor.

22 THE COURT: Okay. Thank you.

23 And, Mr. Echols, you know, I was the presiding judge
24 in the trial so I've heard your testimony. I remember
25 your testimony from yesterday.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And based upon your plea here today and
3 your testimony of yesterday, how do you plead to a charge
4 of assault and battery first degree?

5 THE DEFENDANT: Guilty.

6 THE COURT: All right, sir. How do you plead to the
7 charge of armed robbery?

8 THE DEFENDANT: Guilty.

9 THE COURT: All right. Mr. Echols, do you understand
10 if I accept your guilty plea to these charges they will
11 show up as convictions on your record?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that the armed robbery
14 charge is a violent and a most-serious offense?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: It counts as a strike against you; is that
17 correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. And your attorney has gone over
20 strikes with you, explained that to you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, sir. Understanding that, do
23 you want me to accept your guilty plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Mr. Echols, I find that your

1 decision to plead guilty is freely, voluntarily and
2 intelligently made. I find you have had the advice and
3 counsel of a competent attorney. I find you're satisfied
4 with the services of your attorney. I find there's a
5 factual basis for you to plead guilty to both these
6 charges. So I am going to accept your guilty plea to
7 these charges.

8 THE DEFENDANT: Thank you, sir.

9 THE COURT: You're welcome. Mr. Brown?

10 MR. BROWN: Thank you, Your Honor.

11 Obviously we'd ask you to accept the negotiated plea
12 of 15 years concurrent, giving Mr. Echols credit for the
13 time he's served since he's been incarcerated which was
14 since June 28th, 2011.

15 Obviously this, the facts of this case you're well
16 aware of. It's a terrible, terrible situation, horrible
17 thing for the victims to go through.

18 What I will say -- and, oh, standing next to
19 Mr. Echols is his grandmother Ms. Bookhart. She came up
20 here today.

21 THE COURT: How are you?

22 MS. BOOKHART: Good.

23 THE COURT: -- is that while representing him and
24 obviously deciding to testify was a difficult decision.
25 But when Mr. Echols did make that decision it was a sense

1 of calmness to let the chips fall where they may and tell
2 the truth. And I give him a lot of credit for doing
3 that.

4 But that's all we'd have. We'd ask you to accept the
5 negotiated sentence.

6 THE COURT: And you said he's been in since June --

7 MR. BROWN: 28.

8 THE COURT: -- 28th, 2011?

9 MS. FORD: 2011; yes, sir.

10 Your Honor, I would also put on the record that the
11 State appreciates Mr. Echols' cooperation and also that
12 the disposition of these charges here in Orangeburg County
13 do not have anything to do with any other charges in any
14 other counties or any other jurisdictions including
15 federal investigations. These are simply to dispose of
16 the charges here in Orangeburg County.

17 MR. BROWN: That's correct. And I did go over that
18 with my client prior to this hearing.

19 THE COURT: Okay. All right. And, Mr. Echols, you
20 understand that I believe that there are some federal
21 charges or possible federal charges. And you know this
22 doesn't take care of anything like that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Echols, and -- Mr. Echols, I thought
25 you did a good job on the witness stand.

1 THE DEFENDANT: Okay.

2 THE COURT: I appreciate you testifying on behalf of
3 the State as well.

4 Mr. Echols, I am going to go along with the
5 recommendation regarding the assault and battery first.

6 THE SENTENCE OF THIS COURT IS YOU'RE COMMITTED TO THE
7 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 10 YEARS.
8 REGARDING THE ARMED ROBBERY, YOU'RE SENTENCED TO THE STATE
9 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 15 YEARS. THESE
10 SENTENCE ARE CONCURRENT. I WILL GIVE YOU CREDIT FOR TIME
11 YOU SERVED SINCE JUNE 28, 2011.

12 MS. FORD: Thank you, sir.

13 THE COURT: Good luck to you.

14 THE DEFENDANT: Thank you, Your Honor.

15 THE COURT: Thank you.

16 THE DEFENDANT: Love you, Grandma.

17 END OF PROCEEDINGS: 3:33 P.M.

18 ***

19 CERTIFICATE OF REPORTER.

20 STATE OF SOUTH CAROLINA)

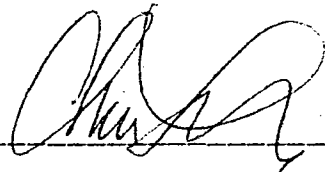
21 COUNTY OF AIKEN)

22 I, Cheri L. Young, Registered Professional Reporter
23 and Official Court Reporter for the State of South
24 Carolina, Second Circuit-At Large, do hereby certify that
25 the foregoing proceedings were written stenographically by

1 me using computer-aided translation; further, that the
2 foregoing is a true, accurate and complete record, to the
3 best of my skill and ability, of all the proceedings had
4 and evidence introduced in the hearing of the captioned
5 case, relative to appeal, in the Court of General Sessions
6 for Orangeburg County, on the 11th day of April, 2013.

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

9 I have hereunder set my hand this Friday, the 11th day
10 of October, 2013.



11
12
13 Cheri L. Young, RPR
14 Official Court Reporter
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FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Orangeburg)
)
Sean Echols #282720)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2013 CP-38-00874

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution, 4344 Broad River Road, Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence GENERAL SESSIONS, Orangeburg Post Office ~~Box~~ Drawer 9000, Orangeburg, South Carolina 29116-9000
3. Name(s) of co-defendant(s) (if any) Richard LAMAR SPRINKLE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 GS38-1559
 - (b) 2011 GS38-1557

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 CLERK OF COURT
 ORANGEBURG
 SOUTH CAROLINA
 APR 25 11:55 AM '13

(c) _____

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

(a) TEN YEAR SENTENCE April 11th, 2013

(b) FIFTEEN YEAR SENTENCE April 11th, 2013

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty PLEA Guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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

(a) ENTER A plea of guilt

(b) _____

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WILEY EPP FORD
CLERK
COURT
CRIMINAL JUSTICE
2013

(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) CRUEL AND UNUSUAL SENTENCE

(c) GUILTY PLEA NOT FREELY AND VOLUNTARILY ENTERED

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

(a) ATTORNEY ADVISED ME TO PLEAD GUILTY

(b) GUILTY PLEA SENTENCE WAS SUPPOSE TO BE (10) YEARS CAP

(c) ONLY AGREED TO PLEA AGREEMENT OF (10) YEARS MAXIMUM, PLEA BREACHED

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

(a) any petition in a State Court under South Carolina Law? NONE

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE

(d) any other petitions, motions or applications in this or any other Court? 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. N/A

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. N/A

iii. _____

iv. _____

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WILLIAMSON COUNTY
CLERK OF COURT
2013 JUL 25 PM 11:55

(c) the disposition thereof:

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

N/A

(d) the date of each such disposition:

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

N/A

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

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

N/A

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. _____

N/A

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

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

N/A

2013 JUL 25 PM 11:45
 FILED FOR RECORD
 CLERK OF COURT
 CHAS. H. HARRIS, JR.

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) NO grounds has been raised before because
- (b) I WAS NOT SENTENCED AT THAT TIME.
- (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? ENTER GUILTY PLEA
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO APPEAL
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NONE / FILED PCR PRO SE

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. ANDREW J. BROWN, ESQUIRE, 1540 RUSSELL STREET, SE SUITE 103, ORANGEBURG, SOUTH CAROLINA 29115
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. At my guilty plea hearing, throughout this entire case that I am confined and sentenced under.
 - ii. _____
 - iii. _____

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 2017 JUN 25 AM 11:55
 CLERK OF COURT
 ORANGEBURG COUNTY
 SOUTH CAROLINA

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

To have my ~~fifteen~~ (15) year sentence reduced to ten (10) years, OR guilty plea thrown out, in the interest of justice.

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

NONE

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

I, SEAN Echols, 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.

Sean Echols

SWORN to and subscribed before me this 23rd day of July 2013.

Stauria Shea - Regier (L.S.)
Notary Public

STAUDRIA SHEA - REGIER
My Commission Expires: April 12, 2023

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CLERK OF COURT
ORANGE COUNTY, SC
2013 JUL 25 PM 11:55

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

I, SEAN Echols, 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.

Sean Echols
Applicant

SWORN or affirmed to and subscribed before me this
03rd day of July, 2023.

Shanice Rhea-Royce
Notary Public

Shanice Rhea-Royce
My Commission Expires: April 12, 2023

FILED FOR RECORD
WINDYBROOK COURT
CLERK OF COURT
ORANGE COUNTY, FL
2023 JUL 25 AM 11:56

State Of South Carolina
County of Orangeburg

Sean A. Echols

v.

State Of South Carolina

MOTION AND AFFIDAVIT
TO PROCEED IN FORMA PAUPERIS

I, Sean A. Echols, being duly sworn, state that I do not have the funds available to pay the costs of filing and service in this case. I request that my Post-Conviction Relief be filed and service made without cost to me, based on the following:

- # 1; I am an indigent inmate housed in South Carolina Department of Corrections.
- # 2; Any funds that maybe sent to me will be removed from my inmate account due to pass restitution that I owe to the Department Of Corrections.

To assure that this Affidavit, is written in all truth South Carolina Department Of Corrections. Can verify my inmate account and restitution fees.

2013
FEB 19 4:33
CLERK
DEAN A. Echols
MAY 11 5 56
WV 117 56

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
)
)
 Sean Echols, #282720,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2013-CP-38-0874

RETURN

In response to the post-conviction relief application filed July 25, 2013, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. On April 11, 2013, Applicant appeared before the Honorable Edgar W. Dickson, alongside counsel Andrew J. Brown, Esquire, where Applicant waived presentment to the Orangeburg County Grand Jury for Armed Robbery (2011-GS-38-1557) and Attempted Murder (2011-GS-38-1559). Pursuant to plea negotiations, Judge Dickson sentenced Applicant to confinement for fifteen (15) years for Armed Robbery and ten (10) years for Assault and Battery, with both sentences to be served concurrently; additional armed robbery and attempted murder charges were also dismissed pursuant to the plea. Applicant did not appeal his sentences or convictions.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections. Applicant's guilty plea transcript has been ordered and will

be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel;
 - "Attorney advised me to plead guilty."
2. Involuntary Guilty Plea.
 - "Guilty plea sentence was supposed to be (10) years cap."
 - "Only agreed to plea agreement of (10) years maximum, plea breached."

Any claims not specifically enumerated in the post-conviction relief Application or amendments will be opposed by the State at an evidentiary hearing, 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, SCRPC.

III.

In his Application, Applicant alleges ineffective assistance of counsel. 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

Respondent submits 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.

Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may

collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

[signature page follows]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Megan E. Harrigan
Attorneys for the Respondents

October 9, 2013.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
)
 SEAN ECHOLS, #282720)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2013-CP-38-0874

AFFIDAVIT OF SERVICE BY MAIL

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:

Jonathan Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street
Suite 104
Columbia, SC 29201

DATED this 9th day of October, 2013.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

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DEFENDANT

<u>No.</u>	<u>Description</u>	<u>Marked</u> / <u>Admitted</u>
1	Letter	
2	Transcript of Richard Sprinkle	

Sean Echols v State of S.C.
Proceedings
May 29, 2014

1 PROCEEDINGS

2 THE COURT: Good afternoon, everyone.

3 MS. HARRIGAN: May it please the court?

4 THE COURT: Yes, ma'am.

5 MS. HARRIGAN: Your Honor, the next matter is Sean
6 Echols v the State of South Carolina. Docket number
7 2013-CP-38-00874. On April 11, 2013, Mr. Echols
8 appeared before the Honorable Edgar W. Dixon alongside
9 counsel; Andrew J. Brown where he waved presentment to
10 the Orangeburg County Grand Jury for Armed Robbery and
11 Attempted Murder.

12 Pursuant to plea negotiations, Judge Dixon sentenced
13 Mr. Echols to confinement for 15 years for Armed Robbery
14 and to 10 years for the lesser included offense of
15 Assault and Battery with both sentences to be served
16 concurrently. Additional Armed Robbery and Attempted
17 Murder charges were also dismissed pursuant to the plea.

18 Mr. Echols did not appeal his sentences or
19 convictions. On July 25, 2013 Mr. Echols filed a timely
20 application for post-conviction relief alleging he was
21 being held in custody unlawfully based on the following
22 allegations: Ineffective assistance of counsel, that his
23 attorney advised him to plead guilty, as well as an
24 involuntary guilty plea that the guilty plea sentence was
25 supposed to be 10 years and that the only plea agreement

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1 of a 10 year maximum was breached. The State made its
2 return on October 9, 2013 requesting an evidentiary
3 hearing be held and he's represented in this action by
4 Jonathan Waller. At this time I'll turn it over to Mr.
5 Waller.

6 THE COURT: All right. Ms. Harrigan, do you have
7 a packet for Mr. Echols? I don't have anything.

8 MS. HARRIGAN: Yes, Your Honor. It should be...

9 THE COURT: I don't see it anywhere.

10 [Whereupon, Ms. Harrigan reviews documents]

11 MS. HARRIGAN: That's because it's still in my
12 file, Your Honor. I apologize; let me approach with
13 that.

14 THE COURT: That's okay.

15 [Whereupon, Ms. Harrigan provides documents to the
16 court]

17 THE COURT: Mr. Waller?

18 MR. WALLER: Thank you, Your Honor. Your Honor, at
19 this time the applicant would call Sean Echols to the
20 stand.

21 THE COURT: Mr. Echols if you would come around
22 here to the witness stand please.

23 [Whereupon, Mr. Echols comes forward]

24 CLERK OF COURT: Please raise your right hand and
25 state your full name for the record.

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THE WITNESS: Sean Echols.

[Whereupon, the witness is duly sworn by the Clerk
of Court]

THE COURT: Your witness Mr. Waller.

MR. WALLER: Thank you, Your Honor. May it please
the court?

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1 SEAN ECHOLS,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WALLER:
6 Q. Mr. Echols, how are you this morning?
7 A. I'm doing okay.
8 Q. If you can't understand any of my questions or can't
9 hear me just please ask me to stand up or speak up. This
10 is a large courtroom and I don't have the loudest voice.
11 I want to talk to you a little bit today about your
12 previous charges and your convictions. You were
13 originally charged with two counts of Attempted Murder
14 and two counts of Armed Robbery, is that right?
15 A. Yes, sir.
16 Q. Okay. And you were appointed an attorney?
17 A. Yes, sir.
18 Q. Who was your attorney?
19 A. Initially my attorney was Ms. Peggy Hinds.
20 Q. Okay. At some point did you -- was Andrew Brown
21 appointed to be your attorney?
22 A. Yes, sir. He was appointed to my attorney because I
23 was a person of interest in a case that Ms. Peggy Hinds
24 had and she would have been a conflict of interest.
25 Q. Okay. So the court appointed Andrew Brown?

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1 A. Yes, ma'am. I mean, yes, sir.

2 Q. When was the -- when were you arrested?

3 A. June 20, 2011.

4 Q. Okay. When was the first time after Mr. Brown was
5 appointed that you met with him?

6 A. Near the end of the year before my preliminary
7 hearing, around probably October or November.

8 Q. Okay. So, approximately how long had he
9 represented you when he first came to visit?

10 A. Probably about four or five months.

11 Q. Okay. When he first came to visit you, what did
12 y'all talk about?

13 A. When he first came to visit me he asked me, you
14 know, he explained he was appointed as my attorney and I
15 had made -- I had done been through my motion for
16 discovery that I had received from Ms. Peggy Hinds and I
17 came up with a lot of details and things that needed to
18 be done. And I explained this to him and he said that
19 he would get on it, but he didn't.

20 Q. Okay. And you had -- there was a co-defendant
21 charged with the same crimes plus a Burglary in the First
22 Degree, is that correct?

23 A. Yes, sir.

24 Q. Okay, when you spoke with Mr. Brown did you talk to
25 him about any witnesses that you had?

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1 A. Yes, sir.

2 Q. Okay. What did you tell him?

3 A. I told Mr. Brown about my two alibi witnesses and he
4 -- I didn't have their phone numbers or addresses at the
5 time so he told me to send it to him. I sent it to him,
6 and he never contacted them or done anything in that
7 matter to get in touch with them.

8 Q. Okay. And when -- this was right before your
9 preliminary hearing?

10 A. This was, yes sir, before my preliminary.

11 Q. Okay. Did you discuss -- what else did y'all
12 discuss at that meeting?

13 A. We discussed the terms of the sentences that I was
14 facing and we discussed about a bond hearing about him
15 getting a bond hearing scheduled for me, and I really
16 can't remember everything.

17 Q. Okay. Did y'all discuss the elements that the state
18 would have to prove of each of the 2 crimes?

19 A. No, sir.

20 Q. Okay. Did y'all discuss -- did he have a copy of
21 the discovery at that point?

22 A. Yes, sir.

23 Q. Okay. Did y'all go over every piece of the
24 discovery?

25 A. No, sir.

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1 Q. At how many times did you meet with him before your
2 guilty plea?

3 A. Probably six times, but those meetings wasn't for
4 dealing with my case, he was more into my federal case
5 worrying about what was going on with that instead of
6 with my state case.

7 Q. Okay, we'll get to that in just a second. How long
8 did Mr. Brown represent you before you pled guilty?

9 A. For probably a little over a year and a half.

10 Q. And you said he met with you six times?

11 A. Yes, sir.

12 Q. Okay. But, some of those meetings were not about
13 your pending Orangeburg County charges?

14 A. No, sir.

15 Q. Okay. How many of the meetings were about your
16 Orangeburg County charges?

17 A. One.

18 Q. Just one?

19 A. Yes, sir.

20 Q. Which one was that?

21 A. The first meeting.

22 Q. Okay. You said you did not go over all of your
23 discovery. What did you go over?

24 A. Basically I was -- I had to -- I was telling him all
25 of the information in my discovery. He said that he was

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1 looking into things and I would send him letters
2 documents showing everything that needed to be done and
3 he never done nothing.

4 Q. What did you ask him to do?

5 A. I told him about sending an investigator to speak to
6 the victims, and I told him about the investigator over
7 my case, Ms. Lorraine Garrison [phonetic], that she
8 coerced both statements of my victims.

9 I showed him that she wrote both statements dealing
10 with the victim, Robert Rumph [phonetic] and James Wright
11 [phonetic] being that Mr. Rumph say that he had limited
12 education and so forth that he couldn't do it so she
13 wrote the statement.

14 And I showed my lawyer how both of the statements
15 are contradicting each other and I showed him about -- I
16 told him about no fingerprints, no evidence to put me to
17 the crime scene, that the victims did not point me out in
18 my motion on their own; and things of that nature.

19 Q. Okay. Do you know that he never sent -- do you
20 know whether or not he sent an investigator to speak with
21 the people you asked him to?

22 A. He never did.

23 Q. How do you know that he didn't?

24 A. Because my alibi witness is my brother and my best
25 friend.

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1 Q. Okay. And that was the only meeting y'all had
2 where you discussed the evidence against you in this
3 case?

4 A. Yes, sir.

5 Q. Okay. You said he represented you for about 18
6 months ---

7 A. --- Yes, sir ---

8 Q. --- Is that correct? At what point did you start
9 getting concerned about his representation of you?

10 A. The end of 2011 whenever he started representing me.

11 Q. Did you write letters to him that you were
12 concerned?

13 A. Yes, sir. I wrote a lot of letters to him, my
14 family was trying to talk to him, he was ignoring my
15 family, my grandmother would go to see him and he
16 wouldn't see her or nothing.

17 Q. Okay. Did you write letters to anyone else?

18 A. Judge Dixon complaining.

19 Q. Okay. At some point did you feel that Mr. Brown
20 was not giving your case the attention that you felt it
21 deserved?

22 A. Yes, sir.

23 Q. What did you do then?

24 A. I wrote Mr. Brown and I told him, I explained to him
25 my concerns and then that I was going to contact the BAR

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1 Association on him and because he was neglecting to do
2 his job, I was trying to get him relieved as my counsel.
3 He said that he would take me before a Judge.

4 He sent me a letter, I believe I gave to you that he
5 say he would take me before the judge for a hearing of
6 dismissal which he never did.

7 Q. Okay. Did you ever contact anybody from the
8 Solicitor's Office?

9 A. Yes, sir.

10 Q. Okay. Who did you contact?

11 A. Ms. Sarah Ford.

12 Q. Okay. And was that the Solicitor that was
13 prosecuting your case?

14 A. Yes, sir.

15 Q. Why did you contact her and what about?

16 A. I contacted Ms. Sarah Ford in 2012 because I see
17 that Mr. Brown wasn't handling my case as he should and I
18 knew that he would not be prepared to take me to trial.
19 So I did what I felt was best. I contacted Ms. Sarah
20 Ford and asked her could we come up with a plea
21 agreement.

22 Q. Okay. So you were concerned that Mr. Brown was not
23 doing his job, is that correct?

24 A. Yes, sir.

25 Q. Up to that point, had you planned to go to trial?

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1 A. Yes, sir.

2 Q. Okay. How far along had you and Mr. Brown gotten
3 in your discussions about getting ready for trial?

4 A. Not many -- since that first discussion, everything
5 else was dealing with my federal case.

6 Q. Okay. Did you tell Mr. Brown you wanted to go to
7 trial?

8 A. Yes, sir.

9 Q. Okay. Had y'all started preparations for the
10 actual trial itself?

11 A. No, sir.

12 Q. Was the trial date set?

13 A. He said that one would have been set after my co-
14 defendant but no trial date was set that I know of.

15 Q. Okay. So a trial date had not been set?

16 A. No, sir.

17 Q. When you contacted Ms. Ford, what did you tell Ms.
18 Ford?

19 A. I told Ms. Ford, I asked her could she, for a lesser
20 included offense, I asked her for a 10 year cap to give
21 my testimony against my co-defendant.

22 Q. Okay. And did she offer you that?

23 A. She never said anything in return. Me and -- I met
24 with Ms. Ford two or three times to discuss things ---

25 MS. HARRIGAN: --- Your Honor, I would object to any

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1 hearsay coming in from what Ms. Ford told him.

2 THE COURT: Sustained.

3 Q. [By Mr. Waller] When you contacted Ms. Ford, what
4 did you tell her about what you would be willing to do?

5 A. I told her that I'd be willing to give my testimony
6 and tell the whole truth on what happened for a lesser
7 included offense and a 10 year cap.

8 Q. Okay. Why did you feel the need to contact Ms.
9 Ford?

10 A. Because my attorney wasn't doing what I needed him
11 to do, he was worried about other concerns that didn't
12 concern him so I had to do what was best for myself.

13 Q. Okay. So up until you contacted Ms. Ford, you
14 fully intended to go to trial?

15 A. Yes, sir.

16 Q. Okay. You had pending federal charges at the time?

17 A. Yes, sir ---

18 Q. --- right? When did you pick up those federal
19 charges?

20 A. In the federal investigation I was being
21 investigated by federal government since 2010. And they
22 finally came to me in 2011 with my -- to start the
23 interviews and things then I had a sealed indictment,
24 which the indictment was passed in 2012 and served on me
25 in 2013.

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- 1 Q. Okay. But you were aware of the investigation, is
2 that correct?
- 3 A. Yes, sir.
- 4 Q. Did you have a lawyer for that federal investigation
5 slash charges?
- 6 A. Not at the time because I wasn't indicted.
- 7 Q. Okay. Did you ultimately retain a lawyer on those
8 charges?
- 9 A. I was appointed a lawyer.
- 10 Q. Who was that lawyer?
- 11 A. Mr. Douglas Tressler [phonetic].
- 12 Q. Okay. It's not Mr. Brown.
- 13 A. No, sir.
- 14 Q. Did Mr. Brown have anything to do with your federal
15 investigation or charges?
- 16 A. He was involved with everything dealing with my
17 federal investigation with the federal government.
- 18 Q. Okay. Did you ask him to be involved?
- 19 A. No, sir.
- 20 Q. Okay. Do you -- when was the -- at some point you
21 did testify against your co-defendant, is that correct?
- 22 A. Yes, sir.
- 23 Q. Okay. When was the next time you saw Mr. Brown?
- 24 A. Meaning after?
- 25 Q. After you testified.

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1 A. The very next day because he wasn't there during the
2 testimony.

3 Q. Okay. He was not there at your co-defendants
4 trial?

5 A. No, sir.

6 Q. Who was there?

7 A. His partner, Mr. Michael Culler [phonetic].

8 Q. Okay. When you were appointed Mr. Brown to
9 represent you, was the law firm appointed or was it just
10 Mr. Brown?

11 A. Just Mr. Andrew Brown.

12 Q. Okay. Did you consent to having Mr. Culler
13 present?

14 A. No, sir. Mr. Brown had me under the impression that
15 he was going to be there.

16 Q. Okay. Had you ever dealt with Mr. Culler before?

17 A. Mr. Culler was present at my preliminary hearing
18 because Mr. Brown wasn't there.

19 Q. Okay. Had you had any conversations with Mr.
20 Culler before?

21 A. Yes, sir.

22 Q. About your case?

23 A. When he was at my preliminary hearing and he came to
24 one of my federal investigations.

25 Q. Okay. But Mr. Culler did not represent you on

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1 these charges?

2 A. No, sir.

3 Q. Okay. You said you saw Mr. Brown the next day
4 after your testimony.

5 A. Yes, sir.

6 Q. What happened the next day?

7 A. I was brought to the court house unaware of what was
8 going on and when I got there he said we have a
9 negotiated plea of 15 years and I told him I said I
10 didn't want 15 years.

11 And he explained to me that the only way that he was
12 expected a negotiated plea -- he said a negotiated plea
13 that was only to keep from pleading to a natural life
14 sentence due to South Carolina two strike violent
15 offender.

16 Q. Okay. Did you indeed plead guilty that day?

17 A. Yes, sir.

18 Q. Okay. Did you plead guilty because you were more
19 concerned about receiving a life sentence or did you
20 plead guilty because ---

21 MS. HARRIGAN: --- Your Honor, I would object to
22 leading. I've allowed a lot of leeway, but he's leading
23 his witness and almost testifying.

24 THE COURT: Just rephrase your question Mr. Waller
25 please.

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1 MR. WALLER: Yes, ma'am.

2 Q. [By Mr. Waller] Why did you feel the need to plead
3 guilty instead of going to trial?

4 A. Because Mr. Brown, I didn't feel comfortable with
5 letting Mr. Brown represent me in the way that he
6 represented at trial due to the way he was going with my
7 case presently at that time.

8 Q. Did you feel Mr. Brown was ready to go to trial if
9 that had been your decision?

10 A. No.

11 Q. Okay.

12 MR. WALLER: No further questions, Your Honor.

13 THE COURT: Cross-examination?

14 MS. HARRIGAN: Yes, Your Honor.

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Sean Echols v State of S.C.
Sean Echols-Cross-Examination by Ms. Harrigan
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1 CROSS-EXAMINATION

2 BY MS. HARRIGAN:

3 Q. Good morning, Mr. Echols.

4 A. Good morning.

5 Q. You testified that you met with Mr. Brown six times

6 to the best of your recollection, correct?

7 A. Yes, ma'am.

8 Q. But you testified that five of those times you

9 exclusively discussed your federal case, correct?

10 A. Yes, ma'am.

11 Q. So your testimony is you only discussed your pending

12 Orangeburg charges once?

13 A. Yes, ma'am.

14 Q. But you testified before that you discussed alibi

15 witnesses and investigation you wanted him to do several

16 times, correct?

17 A. That was in the letters I sent to him.

18 Q. Did he ever respond to those letters?

19 A. No, ma'am.

20 Q. Did you ever talk to him on the phone, about your

21 case?

22 A. When I used to call the office his secretary used to

23 always say he's not in or he's not available and when I

24 do get to talk to him, I talked to him like two to three

25 times initially and it was only for like a minute or two

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1 because he said he had things to do.

2 Q. So, during these five other times you never
3 discussed your Orangeburg charges once with Mr. Brown?

4 A. No, ma'am.

5 Q. How long was the one meeting where you did discuss
6 your Orangeburg charges?

7 A. Probably 15, 20 minutes.

8 Q. And during this 15 minute meeting you were able to
9 discuss alibi witnesses, investigation, and review the
10 discovery with him?

11 A. I told -- those are the things I was telling him
12 about, we didn't get to go through the discovery.

13 Q. But you testified before that you were given a copy
14 by Ms. Hinds and you discussed it with Ms. Hinds,
15 correct?

16 A. No. Ms. Hinds gave me a copy and before I could
17 discuss anything I was called back to the court house due
18 to the fact that I was a person of interest in the case
19 that she had with one of her clients.

20 Q. So your testimony is that you never discussed your
21 discovery with any of your attorneys?

22 A. No, ma'am.

23 Q. Well, then when did you see the two witness
24 statements?

25 A. Ma'am?

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1 Q. When did you see the two witness statements that you
2 allege were forged?

3 A. They were in my motion discovery; they came in my
4 Rule 5.

5 Q. And you testified that you discussed those with Mr.
6 Brown.

7 A. I wrote him in letters and told him about things, he
8 should have a copy of all of those.

9 Q. Do you have a copy of any of those letters?

10 A. Some of them.

11 Q. Okay.

12 A. I also have copies to Judge Dixon complaining about
13 my representation.

14 Q. You testified that you told Mr. Brown about two
15 alibi witnesses, a brother and a best friend, correct?

16 A. Yes, ma'am.

17 Q. But then you testified that you were called to
18 testify at your co-defendants trial, correct?

19 A. Ma'am?

20 Q. You testified at your co-defendants trial, correct?

21 A. Yes, ma'am.

22 Q. And during that trial you described how you
23 committed the crimes with your co-defendant, correct?

24 A. Yes, ma'am.

25 Q. So why did you need alibi witnesses if you did it?

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1 A. Because I was going to trial because there was no
2 evidence, nothing to convict me.

3 Q. So your alibi witnesses were going to be lies?

4 A. No, ma'am.

5 Q. But you were there and committed the crime, correct?

6 A. Yes, ma'am.

7 Q. Moments indulgence, Your Honor.

8 [Whereupon, Ms. Harrigan reviews documents]

9 Q. [Ms. Harrigan] Do you recall the date that you
10 testified at your co-defendants trial?

11 A. It was in April, I think April 11, I'm not sure 2012
12 -- I mean 13.

13 Q. Okay.

14 MS. HARRIGAN: Your Honor, at this time the State
15 would move to introduce a copy of the full trial
16 transcript of Richard Sprinkle, his co-defendant,
17 including the testimony of Mr. Sean Echols which begins
18 on page 257.

19 THE COURT: Any objections?

20 MR. WALLER: Your Honor, I am going to object. I
21 don't know that a foundation has been laid that would
22 make it necessary at this point. I don't -- the
23 discussions I believe she is getting into was whether or
24 not his attorney investigated the alibi witnesses. I
25 don't think there was ever any question that he did

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1 testify and that he did plead guilty.

2 MS. HARRIGAN: I think there was testimony that his
3 alibi witnesses weren't lies, that he had truthful alibi
4 witnesses. And it's disingenuous and incongruent and I
5 think goes to impeach him that he didn't have alibi
6 witnesses if he got on the stand, during his co-
7 defendants trial and admitted he helped plan and commit
8 these robberies.

9 THE COURT: So, obviously you're trying to get in
10 prior inconsistencies.

11 MS. HARRIGAN: Yes.

12 THE COURT: I'll allow it.

13 Q. [By Ms. Harrigan] So you are guilty of committing
14 these crimes, correct?

15 A. Yes, ma'am.

16 Q. And again you testified that you needed these alibi
17 witnesses in case you went to trial, correct?

18 A. I needed my alibi witnesses because I was going to
19 trial.

20 Q. But you freely admit that you committed these
21 crimes, correct?

22 A. When I had no choice, yes.

23 Q. So what were your alibi witnesses going to say for
24 you?

25 A. My alibi witnesses were going to state that I was at

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1 the club with them.

2 Q. But you weren't at the club because you testified at
3 Richard Sprinkle's trial that you committed the crimes,
4 correct?

5 A. Yes.

6 Q. So you were planning on putting up a defense that
7 was a lie?

8 A. It was a defense -- it was my defense. But still
9 yeah regardless of the fact he did not do his job to
10 contact them at least to get statements to see what was
11 going on.

12 Q. You've testified about your federal charges. What
13 were your pending federal charges?

14 A. I plead the fifth on that, it's not -- it is not
15 having to do with this situation that is going on.

16 MS. HARRIGAN: Your Honor I don't think it's about
17 self incrimination, I believe he's pled guilty to the
18 federal charges, has he not? And it's been brought up by
19 him. I don't think asking the pending federal charges --
20 I'm not asking whether he's guilty of them or not.

21 THE COURT: How is it relevant to this particular
22 action?

23 MS. HARRIGAN: I'll withdraw. Well actually, Your
24 Honor, I think it's relevant because he said that his
25 attorney was ineffective by only one out of the six

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1 meetings discussing these charges. I think based on what
2 the federal charges were it would impact what potential
3 sentence he might have so the State would submit it as
4 relevant.

5 THE COURT: What's the -- Mr. Waller?

6 MR. WALLER: Your Honor, I'm not aware of the
7 disposition. I believe he testified that there was not
8 even an indictment until the -- for the majority of this
9 there was an ongoing investigation of which Mr. Brown did
10 not represent him on the federal charges. I don't see
11 the relevance. It's my understanding actually that Mr.
12 Brown doesn't do any federal court work.

13 MS. HARRIGAN: If the state could be heard briefly
14 in reply. I would have had the opportunity to look up
15 the federal charges had I known about this line of
16 questioning ahead of time. It's not pled in his
17 application, the only things pled in his application was
18 the he was promised a 10 year negotiated sentence and the
19 plea was breached as well as misadvise to plead guilty.

20 I think whether or not there were discussions about
21 pending federal charges goes directly to the allegation
22 as to whether or not he was misadvised if he's claiming
23 that his attorney in five of the six meetings only
24 discussed these federal charges. I think the State's
25 entitled to know what these federal charges were.

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1 THE COURT: I understand. I think it's -- we're
2 getting outside the bounds of what was pled initially and
3 I think it's irrelevant. I understand that there were
4 federal charges pending and that ---

5 MS. HARRIGAN: --- Certainly Your Honor ---

6 THE COURT: --- he claimed that he was -- however
7 let's stick to the actual facts.

8 Q. [By Ms. Harrigan] You discussed that you wrote Ms.
9 Ford, the Assistant Solicitor handling your case and
10 asked her for a 10 year negotiated sentence to a lesser
11 included offense, correct?

12 A. Yes, ma'am.

13 Q. Did she ever write back and promise you a 10 year
14 sentence?

15 A. No, ma'am. But at one of my meetings when we had a
16 meeting, my first interview with the federal government
17 with the F-B-I, Ms. Ford was present and it was stated to
18 me that if I cooperated that it was possible that she
19 will -- because she initially stated about a 10 year plea
20 before I wrote her about the 10 year plea.

21 She said that if I assisted and deal -- and
22 cooperated that it was a possibility that she may give me
23 10 years. She said basically one hand washes the other.

24 Q. Did you discuss plea offers with Mr. Brown?

25 A. Ma'am?

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1 Q. Did you discuss plea offers with Mr. Brown?

2 A. No, ma'am.

3 Q. You never discussed the State's offer?

4 A. I sent him letters -- you mean offer about the 15
5 years?

6 Q. Yeah.

7 A. I was unaware of it. I didn't even know about the
8 15 years.

9 MS. HARRIGAN: Your Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 Q. [Ms. Harrigan] I'm handing you a letter that's been
13 premarked for identification only as defendant's exhibit
14 1.

15 [Whereupon, the witness is shown document]

16 Q. Do you recognize this letter?

17 A. That's the day I went to court that I did -- that's
18 when I first out about the 15 years.

19 Q. Is that your signature there?

20 A. That's my signature, but I had no idea or nothing
21 about 15 years.

22 Q. Would you review that to yourself for a second, I
23 have some questions for you about it.

24 [Whereupon, the witness reviews document]

25 A. Yes, ma'am.

Sean Echols v State of S.C.
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1 Q. Will you please read into the record the third
2 paragraph beginning with you understand?

3 A. [Reading] You understand that the negotiated
4 sentence being agreed to in this plea is for a plea to
5 Armed Robbery most serious offense and Assault and
6 Battery First Degree most serious offense for a sentence
7 of 15 years.

8 You should assume this sentence would have to be
9 served in full; however the offenses are categorized as a
10 no parole so you will have to serve at least 85 percent.

11 Q. And that's your signature at the bottom there,
12 correct?

13 A. Yes, ma'am.

14 Q. So you knew the day you were pleading guilty that it
15 was for a 15 year sentence, correct?

16 A. That was -- when I first got to the courthouse Mr.
17 Brown told me that the negotiated plea was to keep me
18 from having to plea to a natural life sentence. That's
19 what I was under the impression of.

20 Q. But you understood on the day of your plea before
21 you pled guilty that you were going to get a 15 year
22 sentence if you pled guilty that day, correct?

23 A. Yes, ma'am.

24 Q. And you testified before you'd asked the State for a
25 10 year offer but they never responded and told you they

Sean Echols v State of S.C.
Sean Echols-Cross-Examination by Ms. Harrigan
May 29, 2014

1 were going to give you a 10 year sentence, correct?

2 A. Ma'am?

3 Q. The State never told you they were going to give you
4 a 10 year sentence, correct?

5 A. No, ma'am.

6 Q. The State dismissed several other charges against
7 you, correct?

8 A. Those charges -- it's not several other charges. It
9 was the charge that separated my case from my co-
10 defendants case.

11 Q. So your testimony is that the State didn't dismiss
12 another Armed Robbery charge and an Attempted Murder
13 charge against you?

14 A. Those charges came from the same incident. Those
15 are not separate occasions -- I mean separate charges.
16 My initial charge was two Attempted Murders, two Armed
17 Robberies for the same crime.

18 Q. You testified that Mr. Brown and Mr. Culler both
19 told you that pleading guilty was the only way to avoid a
20 sentence ---

21 A. --- I said nothing ---

22 Q. --- of life without parole, correct?

23 A. I said nothing was about Mr. Culler, I said Mr.
24 Brown.

25 Q. Just Mr. Brown. He told you that if you wanted to

Sean Echols v State of S.C.
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1 avoid life without parole you needed to plead guilty,
2 correct?

3 A. He also sent me letters talking about life.

4 Q. Did you have any prior serious or most serious
5 offenses?

6 A. One yes, ma'am.

7 Q. What was that?

8 A. Assault and Battery with Intent to Kill.

9 Q. And did he explain to you that that could be used
10 against you to enhance your charges so that the State
11 could seek life without parole?

12 A. He sent that to me in a letter.

13 MS. HARRIGAN: No further questions, Your Honor. I
14 do have a court's copy if you'd like of both of the
15 exhibits.

16 THE COURT: All right, thank you.

17 [Whereupon, Ms. Harrigan provides documents to the
18 court]

19 THE COURT: Any further redirect, Mr. Waller?

20 MR. WALLER: Just briefly, Your Honor.

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Sean Echols v State of S.C.
Sean Echols-Redirect Examination by Mr. Waller
May 29, 2014

1 REDIRECT EXAMINATION

2 BY MR. WALLER:

3 Q. Mr. Echols, did you and Mr. Brown have a chance to
4 discuss what an alibi witness actually means?

5 A. No, sir.

6 Q. Okay. Did he explain to you what an -- what alibi
7 means?

8 A. No, sir.

9 Q. Okay. And your case did not go to trial, is that
10 correct?

11 A. Yes, sir.

12 Q. Did anyone testify on your behalf that you -- as
13 alibi witnesses?

14 A. No, sir.

15 Q. Okay. Were you ever served with a notice of intent
16 to seek life without parole, the paper work?

17 A. No, sir.

18 Q. Okay. It never got to that point?

19 A. No, sir.

20 MR. WALLER: No further questions, Your Honor.

21 THE COURT: You may step down, Mr. Echols. Thank
22 you.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: You may call your next witness.

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1 MR. WALLER: No further witnesses, Your Honor.

2 MS. HARRIGAN: Your Honor, the State would call
3 Andrew J. Brown to the stand.

4 [Whereupon, Mr. Brown comes forward]

5 CLERK OF COURT: Please raise your right hand and
6 state your full name for the record.

7 THE WITNESS: Andrew Jacob Brown.

8 [Whereupon, the witness is duly sworn by the Clerk
9 of Court]

10 THE COURT: Your witness.

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Sean Echols v State of S.C.
Andrew Brown-Direct Examination by Ms. Harrigan
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1 already turned over discovery to the PD's office in Mr.
2 Echols case?

3 A. They may have. Actually I can tell you about when I
4 was appointed, it would have been May 21, 2012. That's
5 when I filed my motion for discovery -- I'm sorry, let me
6 back up. I'm sorry; it was October 20, 2011.

7 Q. And that's when you also filed your Brady or Rule 5
8 motion?

9 A. That's correct.

10 Q. Did you receive materials back from that?

11 A. I did.

12 Q. Did you share those materials with your client?

13 A. I did. I went over them with him.

14 Q. How many times did you meet with him?

15 A. I don't have my -- and unfortunately I don't have
16 the list, I usually write down every single time, but it
17 was well over one time. It was well over six times, too.

18 Q. And you've heard his testimony today, correct?

19 A. Correct.

20 Q. Did you only discuss his Orangeburg charges with him
21 once?

22 A. No.

23 Q. Did you discuss the Orangeburg charges with him --
24 how many times did you discuss the Orangeburg charges
25 with him?

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1 A. I couldn't tell. We talked about them every time we
2 were together we would talk about them unless we were
3 with the federal investigators.

4 But we would -- you know, it kind of became a
5 situation where this kid is looking at life without
6 parole and I get a call from the feds saying hey we may
7 be able to give a proffer agreement which helped him with
8 his State charges.

9 Q. When you were talking about the life without parole,
10 is that based on prior South Carolina offenses?

11 A. That's correct.

12 Q. Do you recall what that offense was?

13 A. I think he testified it was ABWIK; Assault and
14 Battery with Intent to Kill.

15 Q. Did you give Mr. Echols a copy of his discovery?

16 A. I can't remember if I did, I probably did. I think
17 I mailed one out recently but, if he didn't have one and
18 he asked for one I would have given him one.

19 Q. During these meetings did you discuss the elements
20 of the charges?

21 A. Yes.

22 Q. Did you discuss what the state would be required to
23 prove at trial?

24 A. Yes.

25 Q. Did you discuss the sentence range for Attempted

Sean Echols v State of S.C.
Andrew Brown-Direct Examination by Ms. Harrigan
May 29, 2014

1 Murder and Armed Robbery with him?

2 A. We would have gone over that, yes.

3 Q. Did you discuss his version of the facts?

4 A. Yes, we went over all of that. We talked about the
5 parts of his case that were real bad.

6 Q. When you ---

7 A. --- the identification ---

8 Q. --- Will you elaborate for the court the parts that
9 were real bad?

10 A. Yeah, he was identified and then the next day his
11 Mother goes and allegedly goes and I believe either talks
12 to the victim or the police saying hey don't get my son
13 locked up.

14 Q. And you discussed all of this with him?

15 A. Yes. And I talked to his -- I did meet with his
16 grandmother and did take phone calls from his I think it
17 was mostly his grandmother and maybe his aunt.

18 Q. Did you discuss possible defenses with Mr. Echols?

19 A. We would've gone over possible defenses, but there
20 wasn't really any good defenses.

21 Q. Did you discuss alibi defenses with him?

22 A. We may have. I don't recall him giving me the alibi
23 witnesses and I don't have those notes with me, but of
24 course if he did we would've looked into it.

25 Q. Did you use an investigator on this case?

Sean Echols v State of S.C.
Andrew Brown-Direct Examination by Ms. Harrigan
May 29, 2014

1 A. I believe -- I can't tell, I don't know.

2 Q. At what point during your representation did the
3 discussion of him testifying against his co-defendant
4 come up?

5 A. Well, I think that was -- that came up later because
6 his co-defendant, my understanding they were trying to
7 get him -- it was like whoever wants to flip and testify
8 is going to get the deal.

9 And it just ended up being him. His co-defendant
10 wasn't going to testify so they said well, Sean will
11 testify and we won't notice him for life without parole.

12 Q. Did you force him to testify?

13 A. No.

14 Q. Did you advise him about the benefits and drawbacks
15 about testifying?

16 A. Yes.

17 Q. Did he understand that if he came into court, he'd
18 have to admit his guilt?

19 A. Yes. And I think it's even in that rule affirmation
20 that he signed.

21 MS. HARRIGAN: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 MS. HARRIGAN: I think it's still up there,
25 defendant's exhibit number 2.

Sean Echols v State of S.C.
Andrew Brown-Direct Examination by Ms. Harrigan
May 29, 2014

- 1 THE COURT: I've got a copy.
- 2 Q. [Ms. Harrigan] I'm going to hand you -- or you've
3 got one right there?
- 4 A. I got one.
- 5 Q. Do you recall this letter that he signed?
- 6 A. Yes. I drew that up so when he "P-C-R'd" me he
7 couldn't say that I didn't tell him anything.
- 8 Q. Have you had an opportunity to review that before
9 coming into court today?
- 10 A. Pardon?
- 11 Q. Have you had an opportunity to review that ---
- 12 A. --- I have ---
- 13 Q. --- before coming into court today? In this letter
14 do you promise him a 10 year sentence?
- 15 A. No.
- 16 Q. What sentence do you tell him he'll receive?
- 17 A. 15 years.
- 18 Q. Do you advise him about parole eligibility in there?
- 19 A. I do.
- 20 Q. What do you advise him?
- 21 A. Don't count on it that assume you're going to do day
22 for day, but you have to do at least 85 percent of it.
- 23 Q. Did he sign this document?
- 24 A. He did.
- 25 Q. Was it in your presence?

Sean Echols v State of S.C.
Andrew Brown-Direct Examination by Ms. Harrigan
May 29, 2014

1 A. I believe so, yes.

2 Q. Did you force him to sign it?

3 A. No.

4 Q. Did you ever tell him there was a 10 year offer from
5 the State?

6 A. No. That may have been what we were trying to
7 negotiate, of course I probably tried to negotiate for a
8 lower sentence than 15 years, but that just ended up
9 being the lowest the State could go.

10 Q. Whose decision was it to plead guilty?

11 A. I believe it was his.

12 MS. HARRIGAN: No further questions, Your Honor.

13 THE COURT: Okay. Cross-examine the witness?

14 MR. WALLER: Thank you, Your Honor.

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Sean Echols v State of S.C.
Andrew Brown-Cross-Examination by Mr. Waller
May 29, 2014

1 CROSS-EXAMINATION

2 BY MR. WALLER:

3 Q. Mr. Brown, you were appointed to represent Mr.
4 Echols, correct?

5 A. That's correct.

6 Q. Did you represent him at his preliminary hearing?

7 A. I don't believe I did. I think he testified that my
8 partner Michael Culler did.

9 Q. Okay. Why did -- why were you not there?

10 A. I wasn't available and Michael, obviously we have
11 our own firm and he was the chief public defender for
12 over 20 years, so he was in pretty good hands.

13 Q. Okay. Did you -- did Mr. Echols consent to having
14 someone else represent him?

15 MS. HARRIGAN: Your Honor, I object, this is not one
16 of the grounds that was pled in the application. The
17 specific grounds were that it was misadvised to plead
18 guilty and that he was promised a 10 year sentence.
19 We've gone into several different collateral actions
20 included federal charges and now going into Mr. Culler's
21 representation of him.

22 THE COURT: I'll allow you some leeway on that.

23 MR. WALLER: Thank you, Your Honor.

24 Q. [By Mr. Waller] I'll ---

25 A. --- Oh, I don't think he objected. I mean Michael

Sean Echols v State of S.C.
Andrew Brown-Cross-Examination by Mr. Waller
May 29, 2014

1 would've talked to him before. But I think it was very
2 essential to have him go forward with that preliminary
3 hearing because they could have true billed him the next
4 day and then he doesn't get the preliminary hearing.

5 Q. Okay. You testified that you had meetings with
6 federal investigators, correct?

7 A. That's correct.

8 Q. Do you do any federal court work?

9 A. I do bankruptcy work. I don't do federal criminal
10 work.

11 Q. Okay.

12 A. And I did advise Mr. Echols of that.

13 Q. Okay. When you met with Mr. Echols to go over his
14 discovery, did you go over alibi witnesses with him?

15 A. I don't remember.

16 Q. Okay. Did -- if he had given you alibi witnesses
17 would you have contacted them?

18 A. Yeah. I would've investigated and looked into it.
19 But that -- as the case went on, that wasn't a serious
20 defense.

21 Q. Okay. When you say as the case went on you would
22 have looked at them, does that mean that you did not ---

23 A. --- No, as the case went on, I mean, at some point
24 he voluntarily -- he gives another statement during my
25 representation because it's videotaped, okay, without my

Sean Echols v State of S.C.
Andrew Brown-Cross-Examination by Mr. Waller
May 29, 2014

1 approval or consent. The allegation, I believe; I'm
2 trying to remember is that he actually contacted the
3 investigating officer to come talk to him that he wanted
4 to give a statement. I have the video right here, that
5 was after with -- again, without my knowledge. It was
6 investigator Schumpert [phonetic] I believe.

7 Q. Okay. Was that before or after he gave you the
8 names of his potential alibi witnesses?

9 A. Again, I don't remember him doing that. He may,
10 again, he may have. I don't have, unfortunately that
11 part is not in here.

12 Q. Okay. Who made contact with the Solicitor about
13 him testifying?

14 A. Well, the Solicitor would have contacted me.

15 Q. Okay. Did you contact the Solicitor and say yes
16 he's going to?

17 A. Well, at some point I must have said okay and
18 discussed with him are you going to testify? In fact, he
19 wanted to testify. He wanted to -- like I said, like he
20 told me get a clean slate, tell the truth and do the
21 right thing.

22 Q. To the best of your knowledge, did it -- was it you
23 or Mr. Echols that first contacted the Solicitor about
24 testifying?

25 A. I think they contacted me and I talked to him, and

Sean Echols v State of S.C.
Andrew Brown-Cross-Examination by Mr. Waller
May 29, 2014

1 then I went back to them.

2 Q. Okay. And he testified at his co-defendants trial
3 the day before he pled guilty, is that correct?

4 A. If that's temporally how it happened, yes.

5 Q. Okay. Were you present when he was testifying?

6 A. Nope.

7 Q. Why were you not present when he was testifying?

8 A. Wasn't available. So, my partner Michael Culler
9 appeared and talked to him and I reviewed with Michael
10 what to tell him, make sure he knows. You know, tell the
11 truth. He was advised of everything.

12 Q. At that point was a plea agreement entered into when
13 he went to testify?

14 A. Nah, they don't do that in Orangeburg they just kind
15 of say it's not a wink, wink, nudge, nudge, but they're
16 not going to give you -- when they can question you about
17 that on the stand.

18 Q. Okay. So he wasn't set in stone when he went in
19 there to testify?

20 A. Nah.

21 Q. Okay. And you were not present?

22 A. No.

23 Q. Did Mr. Echols consent to you not being present?

24 A. If he consented, I wasn't there.

25 Q. Okay. Did you discuss that you wouldn't be there

Sean Echols v State of S.C.
Andrew Brown-Cross-Examination by Mr. Waller
May 29, 2014

1 with him before?

2 A. I can't remember.

3 Q. Okay. Was he ever served with the notice of intent
4 to seek life without parole?

5 A. No, that was something that they were going to do
6 but held off. Primarily, my belief, is because the feds
7 were interested in his help so that they were going to
8 help him so the Solicitor said well, if they're going to
9 take this case then we'll hold off.

10 Q. Okay. But you don't know that for certain?

11 A. In my discussions with Ms. Ford, I think that's what
12 I recall.

13 Q. Okay.

14 MR. WALLER: No further questions, Your Honor.

15 THE COURT: Anything further ---

16 MS. HARRIGAN: --- Very briefly, Your Honor.

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Sean Echols v State of S.C.
Closing Argument by Mr. Waller
May 29, 2014

1 CLOSING ARGUMENT

2 BY MR. WALLER:

3 Your Honor, at this time the applicant would move
4 that you grant his application for post conviction
5 relief. I believe that deficiency being the first
6 element under Strickland v Washington has been shown.
7 Not only did his attorney not do the things that you
8 would need to, to prepare for trial, he did not represent
9 him at court proceedings. There were -- the testimony
10 just showed that there were two separate court
11 proceedings where his appointed attorney was not there,
12 his law partner was there.

13 Mr. Echols at some point felt that he was unable to
14 take the risk of going to trial and felt he had no choice
15 but to plead guilty, take the lesser of two evils and I
16 believe, but for those errors on behalf of Mr. Brown, we
17 would have never gotten to the point where Mr. Echols
18 pled guilty. I believe that satisfies the prong from
19 Hill v Lockhart that has to show that if he, but for
20 those errors, that they would have proceeded to trial
21 instead of pleading guilty.

22 THE COURT: Ms. Harrigan?

23 MS. HARRIGAN: Your Honor, if the state could be
24 heard briefly in reply?

25

Sean Echols v State of S.C.
Closing Argument by Ms. Harrigan
May 29, 2014

1 CLOSING ARGUMENT

2 BY MS. HARRIGAN:

3 The State would submit that the first prong of
4 Strickland v Washington requiring a showing of deficiency
5 with it being the applicant's burden has not been met
6 here. We have testimony from Mr. Brown that he advised
7 him about various aspects of potential sentences, what
8 the State would be required to prove at trial as well as
9 reviewed all of the discovery with him.

10 Additionally we have a signed letter from Mr. Echols
11 showing that he understood the plea was for a negotiated
12 15 year sentence as well as advised him about various
13 other constitutional, appellate, and likely parole
14 sentences he might serve.

15 Additionally the State would submit that no
16 prejudice has been shown here. We have overwhelming
17 evidence of guilt coming from the best possible source,
18 his own testimony in Richard Sprinkle which has been
19 introduced as defendant's exhibit 1 and for those reasons
20 the State would submit this application needs to be
21 denied.

22 THE COURT: All right, thank y'all. I'll take time
23 to review the record and notify you in writing of the
24 decision.

25 MS. HARRIGAN: Thank you, Your Honor.

Sean Echols v State of S.C.
Closing Argument by Ms. Harrigan
May 29, 2014

1 MR. WALLER: Thank you, Your Honor.

2 THE COURT: Thank you.

3 *****END OF TRANSCRIPT OF RECORD*****

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Sean Echols v State of S.C.
Certificate of the Court Reporter
May 29, 2014

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina on the 29th day of May, 2014.

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

November 2, 2014



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Sean Echols, #282720,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-00874

ORDER OF DISMISSAL

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This matter comes before the Court by way of an application for post-conviction relief filed July 25, 2013. The State made its Return on October 9, 2013, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 29, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. On April 11, 2013, Applicant appeared before the Honorable Edgar W. Dickson, alongside counsel Andrew J. Brown, Esquire, where Applicant waived presentment to

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CLERK OF COURT
ORANGEBURG COUNTY, SC

the Orangeburg County Grand Jury for Armed Robbery (2011-GS-38-1557) and Attempted Murder (2011-GS-38-1559). Pursuant to plea negotiations between Applicant and the State, Judge Dickson sentenced Applicant to confinement for fifteen years for Armed Robbery and ten years for the lesser included offense of Assault and Battery, with both sentences to be served concurrently. Additional armed robbery and attempted murder charges were also dismissed pursuant to the plea. Applicant did not appeal his sentences or convictions.

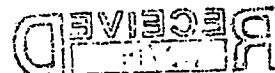
In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on the following allegations:

- 1. Ineffective assistance of counsel
 - a. "Attorney advised me to plead guilty;" and
- 2. Involuntary Guilty Plea
 - a. "Only agreed to plea agreement of ten years maximum, plea breached."

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel, Andrew J. Brown, Esquire (hereinafter "Counsel") and two Exhibits, No. 1 (Affirmation of Guilty Plea dated April 11, 2013) and No. 2 (the trial transcript of Richard Sprinkle, Applicant's co-defendant, including Applicant's testimony). This Court also had before it Applicant's guilty plea transcript, the records from the Orangeburg County Clerk of Court regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that he was originally charged with two counts of Attempted Murder and two counts of Armed Robbery, but one of each was



dismissed pursuant to his plea agreement with the State. Applicant testified that he was originally represented by Margaret E. Hinds, Esquire, of the Orangeburg Public Defender's office, but was later appointed Counsel due to a conflict of interest with the public defender's office. Applicant testified that he met with Counsel six times, but Counsel was only concerned with discussing his pending federal charges and only discussed the merits of this case one time for approximately fifteen minutes. He testified that he had a preliminary hearing and met with Counsel before this hearing, as well as Counsel's law partner, Michael R. Culler, Jr., who was present at the preliminary hearing on behalf of Counsel. He testified that he wrote Counsel several letters, to all of which received no reply. He testified that his grandmother also repeatedly tried to contact Counsel to no avail. He testified that he contacted Judge Dickson regarding his complaints, but never received a response.

Applicant testified that he reviewed his discovery with Hinds while she represented him and that she gave him a copy of all discovery materials. He testified that he discussed discovery with Counsel, but Counsel did not provide him with another copy of the discovery materials. He testified that he provided Counsel with two alibi witnesses - his brother and his best friend - whom he wanted Counsel to contact for use at trial. However, Applicant readily admits he is guilty and conceded that he described the crimes during his testimony on behalf of the State at his co-defendant's trial. (See Respondent's Ex. No. 1). He acknowledged that Counsel used a private investigator to assist in his defense, but testified that the investigator never spoke to his alibi witnesses.

Applicant testified that he was interested in reaching a favorable plea agreement with the State, so he contacted the prosecuting Assistant Solicitor, Sara Ford, directly in an attempt to broker a deal. He testified that he told Ford he would be willing to testify against his co-defendant in exchange for a ten year plea offer; he acknowledged that Ford never promised he would receive a ten year sentence. He testified that he did testify at his co-defendant's trial, where he fully described his involvement. He testified that Counsel negotiated a plea offer of fifteen years imprisonment, which helped him avoid a possible life without parole sentence based on his prior convictions. He acknowledged that he understood he would receive a fifteen year sentence in exchange for his guilty plea, as well as the dismissal of related charges, which was memorialized in writing in an "Affirmation of Guilty Plea" prepared by Counsel and signed by Applicant on April 11, 2013. (See Respondent's Exhibit No. 1). He testified it was his decision to plead guilty, but he only did so because he felt Counsel was not prepared.

Following Applicant's testimony, Counsel was called to testify by Respondent. He testified that he has been practicing law since 2003 and was an assistant public defender from 2004 to 2008. He testified that he was appointed to represent Applicant on October 20, 2011, after previous counsel was relieved due to a conflict with the Orangeburg County Public Defender's office. He testified that he met with Applicant numerous times, as well as members of Applicant's family. He testified that his law partner, Michael R. Culler, Jr., also assisted in Applicant's case on an as-needed basis, and elaborated that Culler is a highly experienced criminal defense attorney who was the Chief Public Defender in Orangeburg for many years. He strongly refuted Applicant's contention that his current pending charges were only discussed

once, testifying that he discussed all of Applicant's pending charges with him at every meeting. He testified that he filed appropriate Rule 5, SCRCrimP and Brady motions on Applicant's behalf and reviewed all materials with Applicant. He testified that Applicant had already reviewed all of these materials with his prior counsel as well. He testified that he reviewed the elements of the charges, what the State would be required to prove, and possible sentences with Applicant. He testified that there was a significant concern that the State would seek life without parole based on Applicant's prior conviction for Assault and Battery with Intent to Kill. He testified that he discussed defenses with Applicant, including a possible alibi defense. He testified that Applicant provided him with two possible alibi witnesses, but neither were able to adequately provide an alibi. He testified that this case had "very bad facts" and actively involved victims, which was exacerbated by Applicant's mother initiating contact with the victims and pleading with them not to get her son locked up. He testified that he fully investigated the case, but unfortunately, there were no viable defenses available.

Counsel testified that the State was seeking either Applicant or his co-defendant to testify against the other at trial, and he informed Applicant that if Applicant did not cooperate, his co-defendant likely would. He testified that he was able to negotiate a favorable plea deal with the State, allowing Applicant to plead guilty to one count of Armed Robbery and one count of Attempted Murder for a negotiated fifteen year sentence and the dismissal of related charges in exchange for Applicant's testimony against his co-defendant. He testified that he fully informed Applicant of all aspects of the plea offer, which was memorialized in an "Affirmation of Guilty Plea" signed by Applicant. (See Respondent's Exhibit No. 1). He testified that he never told

Applicant he would receive a ten year sentence in exchange for testimony against his co-defendant, but rather, explained to Applicant both orally and in writing that the negotiation was for a fifteen year sentence. He testified that it was Applicant's decision to plead guilty and that Applicant wanted to accept this extremely favorable plea offer from the State.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds that Counsel's testimony is credible and should be afforded great weight and that Applicant's testimony lacks credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Applicant alleges that Counsel was ineffective for "advising him to plead guilty." However, Applicant readily admitted that he is indeed guilty, that he provided sworn testimony detailing his participation in the crime, that he understood that his guilty plea would result in a fifteen year sentence, and that it was his decision to plead guilty. This Court finds that this allegation is without merit and must

be denied and dismissed with prejudice. First, this Court finds that Counsel's performance was not deficient, as Counsel fully advised Applicant, both orally and in writing, of all aspects of the State's plea offer, which was confirmed by Applicant, both orally and in writing. This Court finds that Counsel's performance was reasonable according to professional standards and, therefore, did not perform deficiently in regards to this allegation. Furthermore, this Court finds that Applicant cannot establish any resulting prejudice, as there is no reasonable probability that he would have insisted on going to trial absent Counsel's advice. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant also alleges that his guilty plea was entered involuntarily. To find a guilty plea is voluntarily and knowingly entered into the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [applicant] presents valid reasons why he should be allowed to depart

from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. During his guilty plea, Applicant told the plea court that he wanted to plead guilty, that he understood the plea was for a negotiated sentence of fifteen years imprisonment, and that he was entering his plea freely and voluntarily.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such. As shown in Applicant's allegation of ineffective assistance of counsel presented above, this Court finds that Counsel acted reasonably and effectively. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

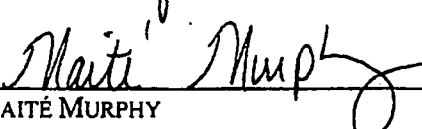
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

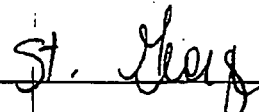
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 18 day of August, 2014.


 MAITÉ MURPHY
 Presiding Judge
 First Judicial Circuit

 South Carolina.

WITNESSES

Lori Garrison

DOCKET NO. 2011GS38-1557

The State of South Carolina

County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Sean A Echols

Orangeburg County Sheriff

COURT OF GENERAL SESSIONS

September 12, 2011 TERM

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

M805583

THE STATE

vs.

Defendant

Arrested: June 29, 2011

ACTION OF GRAND JURY

Sean A. Echols

Witness:

C.C.C. PLS. AND G.S.

Foreperson of Grand Jury

Date: September 14, 2011

Indictment for

ARMED ROBBERY

VERDICT

SC Code: 16-11-330(A)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

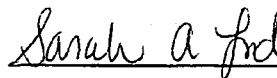
INDICTMENT
2011GS38-1557

At a Court of General Sessions, convened on September 12, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about June 26, 2011, in Orangeburg County, the defendant, Sean A. Echols did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Robert Rump, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon(s) described as a gun and a knife. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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



Sarah A. Ford, Solicitor

WITNESSES

Lori Garrison

Orangeburg County Sheriff

ARREST WARRANT NUMBER

M805585

Arrested: June 29, 2011

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: September 14, 2011

VERDICT

DOCKET NO. 2011GSS38-1559

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 12, 2011 TERM

THE STATE

vs.

Sean A. Echols

Indictment for

ATTEMPTED MURDER

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Sean A. Echols
Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

SC Code: 16-3-29

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

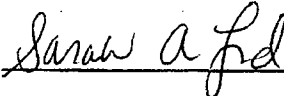
INDICTMENT
2011GS38-1559

At a Court of General Sessions, convened on September 12, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

That in Orangeburg County, South Carolina, on or about June 26, 2011, the Defendant, Sean A. Echols, did enter the residence armed with a gun and a knife, causing multiple injuries to the victim, Robert Rump, by cutting him with the knife on the chest, feet, and arm area, and as a result violated Section 16-03-0029 Code of Laws of South Carolina, as amended.

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



Sarah A. Ford, Solicitor