

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

J. Ernest Kinard, Jr., Circuit Court Judge

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S.C. Supreme Court

DANNY RAY PITTMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002101

APPENDIX

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STATE OF SOUTH CAROLINA)	GENERAL SESSIONS
)	
County of York)	2012-GS-46-2491
)	
)	
State of South Carolina,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
Danny Ray Pittman.)	
)	
)	
)	

December 20th, 2012
York, South Carolina

BEFORE:

THE HONORABLE MICHAEL G. NETTLES, JUDGE.

APPEARANCES:

LISA COLLINS, ASSISTANT SOLICITOR
Attorney for the State

HARRY A. DEST, PUBLIC DEFENDER
Attorney for the Defendant

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

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P R O C E E D I N G S

(Exhibit Number 1 was marked.)

1
2
3 MS. COLLINS: Thank you, Your Honor. May it please
4 the Court. Your Honor, this is the State of South
5 Carolina versus Danny Ray Pittman, who's present before
6 you with appointed counsel, Harry Dest, our circuit public
7 defender. He's before you today on three indictments.
8 They are 2012-GS-46-04-374, originally for attempted
9 murder. Pursuant to the plea agreement, he's pleading
10 guilty to the lesser-included offense of assault and
11 battery of a high and aggravated nature, which, as Your
12 Honor knows, is a no-parole felony carrying up to 20 years
13 in prison.

14 Similarly, 2012-GS-46-04-375, also originally for
15 attempted murder. He's again waiving presentment to the
16 grand jury as on the former one and entering a plea to
17 assault and battery of a high and aggravated nature. And
18 finally, grand larceny, value more than 2,000 but less
19 than 10,000, on indictment 2012-GS-46-04-376. He's
20 waiving presentment to the grand jury and entering a plea
21 of guilty to that charge as charged. He's pleading
22 guilty, I understand, on the premise of Alford versus
23 North Carolina, and at the appropriate time, Mr. Dest may
24 address you in regard to that.

25 Other than the reduction in charge from the original

1 attempted murder to assault and battery of a high and
2 aggravated nature, there is no agreement with the State as
3 to a particular sentence. In fact, the plea is straight
4 up as to these three charges, leaving the ultimate
5 sentence in the discretion of the court. Although I've
6 agreed as prosecutor to remain silent as the sentence to
7 be given by the Court, the victims are present. I do
8 anticipate that one or both will address the Court, as
9 will law enforcement as to the sentence they wish to see
10 the Court consider in this case.

11 Your Honor, let the record reflect that Mr. Dest and
12 I previously met in chambers to provide you with an
13 overall background, as we will also recite completely on
14 the record today as a fact pattern. I would hand up at
15 this time -- I've shown Mr. Dest some photographs that
16 were taken at the scene of the two victims as well as at
17 the hospital after the surgeries that they both received
18 to their skulls, repairing multiple scalp fractures. And
19 also there are two letters from the Health and Human
20 Services. They have now begun with Medicaid, makes
21 payments for medical, sending that in. We're not asking
22 formally for restitution, but they have asked that be
23 handed up to the Court. If Your Honor does order
24 restitution, of course those are in thousands of dollars,
25 as reflected by the letters I've handed up, both for

1 Kimberly Dawn Faile and the other victim, Christopher
2 Faile.

3 At the appropriate time, again, the victims wish to
4 be heard. As to law enforcement as to the sentence, I
5 would like to at the appropriate time give you a complete
6 rendition of the facts as well as the defendant's lengthy
7 prior criminal record.

8 THE COURT: Mr. Dest, do you represent Mr. Pittman?

9 MR. DEST: I do, Your Honor.

10 THE COURT: You explain to him the offense of assault
11 and battery of a high and aggravated nature under the new
12 statutory provision, the fact that he could be
13 incarcerated for a period of up to 20 years and that it is
14 a nonparolable offense? Does he understand that?

15 MR. DEST: Yes, sir.

16 THE COURT: Does he understand the elements of the
17 offense, potential defenses, and his constitutional
18 rights?

19 MR. DEST: He does, Your Honor.

20 THE COURT: Does he understand this falls within a
21 very special category of crimes in that it's a violent
22 offense, which adversely affects his custody status; it's
23 a serious offense subject to the three-strike rule?

24 MR. DEST: He does, Your Honor.

25 THE COURT: Does he understand he's pleading to two

1 separate and distinct assault -- counts of assault and
2 battery of a high and aggravated nature and a grand
3 larceny offense for which he could be incarcerated for a
4 period up to five years?

5 MR. DEST: Yes, sir, he does.

6 THE COURT: All right. These matters have not been
7 before the grand jury. Does he understand what the grand
8 jury is?

9 MR. DEST: Yes, sir.

10 THE COURT: Does he waive presentment?

11 MR. DEST: He does, Your Honor.

12 THE COURT: Is that true, Mr. Pittman?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Let's place Mr. Pittman under oath.
15 Before we do that, how does he wish to plead, Mr. Dest?

16 MR. DEST: Your Honor, he wishes to plead guilty
17 under North Carolina versus Alford. I believe that based
18 upon my investigation of the facts of this case, that is
19 the appropriate plea. Your Honor, as I indicated in
20 chambers, my client was under the influence of numerous
21 drugs that night. He cannot recall the specifics of what
22 actually happened. However, after reviewing the discovery
23 with him, it is clear that the evidence is overwhelming
24 and that he wishes to give up his right to a jury trial.
25 And under the prongs of Alford, I believe the benefit of

1 the bargain he is receiving is the reduction of charge.
 2 So based upon what the Solicitor's Office is offering in
 3 terms of the plea agreement, based upon his lack of being
 4 able to recall specifically by being under the influence
 5 of drugs, but the fact that the evidence is overwhelming
 6 against him, he has agreed to plead in this fashion
 7 because he recognizes that if it went to trial, he would
 8 be found guilty of the charge.

9 THE COURT: And based on your evaluation, you feel as
 10 though the factors of it warrant an Alford plea and you
 11 indicated there's overwhelming evidence and he's receiving
 12 the benefit of the bargain; is that correct?

13 MR. DEST: Yes, sir.

14 THE COURT: And is that true, Mr. Pittman?

15 MR. DEST: Yes, sir.

16 THE COURT: Mr. Pittman, are you under the influence
 17 of any drugs or alcohol here today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Are you experiencing any kind of physical
 20 or mental problem that would prevent you from
 21 understanding what's going on here today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Pay very close attention as the State
 24 summarizes the facts that bring us here today.

25 MS. COLLINS: May it please the Court. These

1 offenses happened in York County, South Carolina, on the
2 late night hours of February 1st, 2012. Deputies from
3 the Sheriff's Department here responded to the residence
4 of the victim at [REDACTED] in Rock Hill in response
5 to a 911 call placed by a young female child who was 11
6 years of age. She was the daughter of the victim,
7 Kimberly Dawn Faile. The child reported to law
8 enforcement her mother had been injured in the head. She
9 didn't know how and that she was bleeding. Law
10 enforcement responded, as did EMS immediately.

11 They found Kimberly Dawn Faile, who was one of the
12 two victims at the home, very severely injured, having
13 suffered injuries to her head and in need of immediate
14 medical attention. When they arrived, they also found the
15 16-year-old child of Kimberly Dawn Faile, and his name is
16 Christopher F. [REDACTED] He was outside on the ground in a pool
17 of blood, as reflected in the pictures that I've handed to
18 you, Your Honor. And he, although barely conscious, was
19 able to answer some simple questions. Didn't know what
20 had happened. The mother reported she had been asleep in
21 bed; she didn't know exactly what happened. The only
22 person who had been at the home earlier -- they had
23 actually, it's my understanding, been out to dinner
24 earlier -- was the defendant, Danny Ray Pittman. He was
25 not at the scene.

1 The vehicle, the Kia Sorento that was driven by the
2 victim, Kimberly Dawn Faile, was missing from the scene.
3 That was ultimately determined that the defendant did take
4 that vehicle after the assault and flee. I have some more
5 information in a moment in regard to the fact pattern
6 leading up. Ultimately law enforcement did locate Danny
7 Pittman in the Horry County, South Carolina, region. He
8 did admit to stealing the vehicle. He did not admit to
9 assaulting the two victims.

10 I will note the 11-year-old female child had placed
11 the 911 call was not injured, and we are very thankful for
12 that. In any way doesn't appear she was part of the
13 assault at all. However, again, she did make the call,
14 and I'm sure will be some emotional trauma from having
15 discovered her mother and brother in that condition.
16 Ultimately through a search warrant that was obtained some
17 clothing selected from Mr. Pittman at the time of his
18 arrest there in Horry County, they did discover DNA of the
19 victim, Christopher F. [REDACTED] throughout the clothing of the
20 defendant, specifically reflecting a blood spatter pattern
21 from an assault. The victim's blood, Christopher F. [REDACTED]
22 blood, was found on the swab on the toe of the right shoe
23 of the defendant. His front left leg of his jeans, his
24 back left leg of his jeans, and from the right arm of the
25 black jacket that the defendant was arrested in.

1 The defendant, also after taking the vehicle of the
2 mother, he did ultimately also use her debit card. That
3 was memorialized in a video from -- there was a store in
4 Sumter that it was used and also a convenience store in
5 Hemmingway. He did also admit to law enforcement officers
6 that he had a drug problem, that he had eaten
7 approximately 30 to 50 hydrocodone pills on the day of the
8 assault, and that he blacked out.

9 After waiving his Miranda rights and speaking with
10 Lieutenant Jerry Hoffman of the sheriff's department, who
11 went to Horry County to interview him, he did challenge
12 Lieutenant Hoffman during the course of that statement
13 stating, "Why wouldn't I -- if I did it have hurt the
14 11-year-old and taken the money for the rent?" The victim
15 Kimberly Dawn Faile did note that, aware of the defendant
16 having a drug problem, she would hide the money from him,
17 at which point Lieutenant Hoffman questioned the defendant
18 and said, "How do you know it wasn't taken? We've never
19 discussed that. We haven't stated that." At which point
20 he suddenly got very defensive and angry. He used several
21 curse words to Lieutenant Hoffman and said, "This isn't
22 about the money."

23 Further, there were other discussions with Lieutenant
24 Hoffman and Carson Neely. When they took statements from
25 the defendant, again he did not admit to striking them.

1 At first they thought a bat had been utilized to inflict
2 these serious injuries on the skulls of the two victims,
3 but ultimately no DNA or bodily tissue was found on the
4 bat and at this time law enforcement can only surmise he
5 actually used his hands in inflicting these injuries. One
6 of the victims interviewed by law enforcement did state
7 the defendant had made a statement to her afterwards
8 stating that he had killed the bitch and her son. That
9 was hearsay. They did ultimately try to verify that, but
10 that is also part of the investigation that was given to
11 the defense in preparation for this plea here today.

12 The victim and her son were treated at -- they were
13 seen at Piedmont Medical Center here in Rock Hill. They
14 were immediately transferred to Carolinas Medical Center
15 Hospital, where they both underwent neurosurgery for
16 injuries to their scalp. Both the mother and the son had
17 multiple skull fractures. Christopher had three skull
18 fractures. As I've handed up to Your Honor, he had one on
19 the left side that was most severe, one on the right, and
20 the midline of his skull. Kimberly Dawn Faile, the
21 mother, also had blood when law enforcement found her,
22 covering her face and hair, as depicted, Your Honor, and
23 we've also handed up a copy of a photograph. After her
24 head was shaved and the injury was closed, she did have a
25 depressed skull fracture at the left region of her skull

1 with loose fragments, as verified by the Piedmont Medical
2 Center team, and then was transferred to CMC, where she
3 had neurosurgery. She has had to go back to the hospital
4 numerous times. Both she and Christopher were in the
5 hospital for approximately a week in Charlotte.
6 Christopher then had some outpatient. He's had some
7 issues, I believe, in terms of his memory. She certainly
8 has. She has repeated migraines that are debilitating.
9 She's had to go to the hospital several times since this
10 incident not only for the migraines and the pain thereof
11 but for issues affecting her ability to function as an
12 individual with her brain and the trauma she's suffered
13 from this incident.

14 Certainly we are appreciative that -- of the medical
15 attention they did receive, appreciative of the quick
16 response of law enforcement in getting them the medical
17 attention they needed, and both of them had suffered and
18 lost a very significant amount of blood. But for the
19 grace of God and this child waking up and finding her
20 mother in this condition and calling 911, we really
21 question whether or not they would have survived the
22 evening without getting that care they needed.

23 At one point, one of the other witnesses, a Ronald
24 Lee Blackwood, was talking about a statement that had been
25 made by Danny Pittman after he went to the beach when they

1 were reading an online Herald article about the incident,
2 that Danny had made a statement, "I didn't use a weapon."
3 After he was apprehended by Horry County, he was then
4 charged and ultimately, I understand, pled to malicious
5 injury to property trying to kick out the window, he said
6 to get their attention of the patrol car, and he did --
7 while he did assault an inmate down in Horry County, the
8 blood again that was recovered from his clothing, most of
9 the blood did match Christopher F. [REDACTED] There was a small
10 amount of blood from an unidentified victim.

11 Your Honor, I could go at length in terms of law
12 enforcement responding to this call from this 11-year-old
13 child and the scene they saw when they found not only
14 Christopher lying in a pool of blood but also the mother
15 of the child inside with her head trauma. You have the
16 pictures there before you. Law enforcement did
17 memorialize in their report that there was blood
18 throughout the scene that they did swab. The defendant's
19 fingerprint was on the outside of the door. I do believe
20 at one point he actually had been living there, so I don't
21 think it's a surprise his blood was found there -- I mean
22 his fingerprint was found there.

23 There was no indication of forced entry into the
24 home. No indication that anyone other than the defendant
25 had committed this crime. The mother, although initially

1 she did not recall anything, she did state that she --
2 later she told law enforcement she had a memory of the
3 defendant standing over her in a T-shirt and underwear
4 with blood at the time when this happened, but that was
5 all she recalled. The son, Christopher F. [REDACTED] indicated
6 he recalled that the defendant had contacted him by text
7 to say, "Come outside and help feed the dog," which is
8 where the son was when the incident took place.
9 Ultimately there was a large amount of pills that were
10 recovered from the car, the vehicle, that the defendant
11 took that -- again memorializing he had clearly a serious
12 drug problem.

13 Your Honor, at this time I want to make sure with law
14 enforcement that I've recounted all of the information
15 they wanted to share with you. So if you'll permit me.

16 Lieutenant Hoffman, is there anything I need to add
17 factually? Detective, anything?

18 Again, at the proper time they would like to speak as
19 to sentence, but that would be the fact pattern
20 supporting, again, just for purposes of the elements of
21 the offense. Ms. Faile indicated that defendant did not
22 have permission ever to drive her vehicle.

23 THE COURT: Let's place Mr. Pittman under oath.

24 DANNY RAY PITTMAN, after having first being duly
25 sworn, testified under oath as follows:

1 THE COURT: Mr. Pittman, you've heard the facts that
2 have been rendered here today. Do you believe the State
3 has overwhelming evidence to establish your guilt?

4 THE DEFENDANT: I do.

5 THE COURT: You're standing before me pleading guilty
6 pursuant to Alford, but you don't have to plead guilty to
7 anything. You could exercise your right to a jury trial.
8 In that process, the jury would determine whether or not
9 the State could actually prove you guilty beyond a
10 reasonable doubt. I would charge the jury as a matter of
11 law that you're presumed to be innocent. No one could
12 require that you take the witness stand. However, if you
13 wanted to, you could, and you could subpoena witnesses on
14 your own behalf. In addition to that, you and your lawyer
15 could cross-examine the State's witnesses, have an
16 opportunity to eyeball them and confront them as they
17 testified against you. You realize by pleading guilty,
18 you're giving up all these rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Still wish to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you indeed guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Plea negotiations, I understand there are
25 none other than what he's pleading to?

1 MS. COLLINS: Yes, just the reduction to assault and
2 battery high and aggravated nature.

3 THE COURT: Is that your understanding, Mr. Dest?

4 MR. DEST: Yes, sir.

5 THE COURT: Is that your understanding, Mr. Pittman?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Pittman, are you satisfied with your
8 lawyer?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: Have you understood all your
11 conversations with your lawyer, particularly your
12 discussions about this being a violent crime, a serious
13 crime, and it's subject to the three-strike rule; the fact
14 that it's a nonparolable offense, subject to the
15 85 percent rule; and you'll serve it day for day and
16 you'll be subjected to community supervision upon your
17 release. Do you understand all that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: All right. Have you understood all your
20 conversations with your lawyer concerning your
21 constitutional rights and your right to a jury trial?

22 THE DEFENDANT: I have, sir.

23 THE COURT: Do you have any complaints with your
24 lawyer?

25 THE DEFENDANT: No, sir.

1 THE COURT: Has he done everything you've asked him
2 to do?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has he not done anything you've asked him
5 to do?

6 THE DEFENDANT: No, sir.

7 THE COURT: Need any additional time to confer with
8 him?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. Has anybody promised you
11 anything, threatened you, pressured you, mistreated you in
12 any way, shape, or form in an effort to get you to plead
13 guilty here today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Has it been your decision to plead
16 guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You understand that you have ten days to
19 appeal any decision I might render here today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you understood all my questions?

22 THE DEFENDANT: Yes, I have.

23 THE COURT: Have your answers been truthful?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Based on your testimony, I find there's a

1 substantial and factual basis for your plea; that your
2 decision was freely and voluntarily entered into,
3 knowingly and intelligently, with the consent of competent
4 counsel with whom you say you're satisfied. I'll accept
5 your plea. Be glad to hear from the State with regard to
6 anything else concerning sentencing, and then we'll hear
7 from defense and I'll recognize you, Ms. Collins.

8 MS. COLLINS: Thank you, Your Honor. I would like to
9 recite the defendant's prior record for the Court for your
10 consideration in sentencing. As a juvenile, he had a
11 juvenile adjudication for grand larceny auto in 1993. In
12 1997, he began his criminal history with convictions as
13 follows: Grand larceny, value more than 1,000, less than
14 5,000. '98, escape with captured in the state. '98,
15 burglary second degree for which he received an active
16 youthful offender sentence. Also possession of stolen
17 vehicle. In 2000, he had convictions in South Carolina
18 again for an attempted escape or possession of tools for
19 an escape. Also for receiving stolen goods less than a
20 thousand. In 2002 for giving false information. In 2002,
21 obtaining property under false pretenses. 2002, two
22 counts of receiving stolen goods. 2003, obtaining
23 signature under false pretenses. In 2003, Your Honor, he
24 had a conviction for strong-arm robbery and also for
25 resisting arrest under Subsection A of the code. He did

1 receive a sentence at the Department of Corrections, five
2 years suspended upon four years with ATU treatment
3 ordered. In 2006, he also had a conviction for strong-arm
4 robbery and criminal conspiracy and threatening the life
5 of a public official.

6 And, Your Honor, although listed separately, I'll
7 note they appear to have the same sentence, so I don't
8 know if the strong-arm was one count or two. I'll make
9 that -- you aware of that. In 2009, Your Honor, he had
10 grand larceny. He had a 2007 assault and battery simple.
11 2008, CDV second. 2011, shoplifting. In March of 2011 he
12 actually was in the Department of Corrections for a
13 one-year probation revocation. Again, this incident
14 happened, as indicated, later that year in 2011 -- I'm
15 sorry, in February of 2012. Your Honor, he had a
16 conviction in North Carolina -- excuse me, in Florida for
17 a domestic violence with a battery. That was, however, a
18 misdemeanor level. And of course, again, was arrested in
19 Horry County. He has and has been convicted of a
20 malicious injury to property.

21 At this time, Your Honor, I'd ask first law
22 enforcement to come forward as to the sentence, and this
23 is Lieutenant Jerry Hoffman and Detective Carson Neely.
24 And they would like to be heard as to the sentence they
25 wish to be considered in this case.

1 THE COURT: Yes, sir. Thank you for being here.
2 Your full name?

3 MR. HOFFMAN: My name is Jerry Hoffman.

4 THE COURT: Glad to hear from you. Yes, sir,
5 Mr. Hoffman.

6 MR. HOFFMAN: Yes, sir. I very rarely do this, Your
7 Honor, but I feel like the facts of this case compel me to
8 speak to the Court today, especially in regard to
9 sentencing. This is one of the most vicious attacks that
10 I've had the unpleasantness of having to deal with as a
11 police officer short of a homicide. This was a very
12 vicious attack and I truly believe had Ms. Faile not
13 awoken that night, we would definitely had been dealing
14 with a homicide, if not a double homicide. The victims
15 have to live the rest of their life with the injuries and
16 the result of those injuries that Mr. Pittman inflicted
17 upon them. So I would ask the Court to consider giving
18 him every day of what he has pled to of the maximum
19 sentence, Your Honor, and consecutive as such. It's truly
20 my belief that Mr. Pittman is a danger to the community
21 and to society as a whole no matter where he ends up, and
22 certainly that is evidenced by his actions on that night.
23 Thank you, sir.

24 THE COURT: Thank you.

25 MR. NEELY: Yes, sir.

1 THE COURT: Yes, sir. Your full name?

2 MR. NEELY: Carson Neely.

3 THE COURT: Good to see you, Officer Neely. Be glad
4 to hear from you.

5 MR. NEELY: Yes, sir. Like Captain Hoffman was
6 saying, we worked very hard on this case, a lot of hours,
7 weeks, extended the months. But keep it short and sweet,
8 Mr. Pittman here is a very violent man, very violent past,
9 as we heard, and been given a lot of chances in life. Lot
10 of in and out of the court system. And like Captain
11 Hoffman was saying, I feel like if reentered into society
12 sooner than later, he'd have the option to repeat these
13 more violent crimes. He's had chances and options in
14 life. The victim was at -- worse off in this case, had
15 things taken away from them, options that they may not get
16 to see in the future because of their physical
17 limitations.

18 Your Honor, I don't think a day under 40 years is too
19 much to ask. These victims -- the victim teenager and the
20 teenager's mother will have to live for the next 40 years
21 under physical limitations and mental limitations. But
22 Mr. Pittman has options. He's -- ask that you look at
23 those options and consider the maximum amount of time
24 possible.

25 THE COURT: Thank you, sir. Thank you.

1 MS. COLLINS: And, Your Honor, I believe that
2 Christopher F. [REDACTED] (sic), the female victim, wishes to
3 come forward and address the Court is my understanding.

4 Ms. Faile, come forward as well as any other member
5 of the family. I think there was one other one,
6 Ms. Rhodes. And I've been told that Christopher F. [REDACTED] did
7 not wish to address the Court. He is the 16-year-old male
8 victim.

9 State your name for us.

10 MS. FAILE: Kimberly Faile.

11 THE COURT: Yes, ma'am. Your full name?

12 THE DEFENDANT: Kimberly Dawn Faile.

13 THE COURT: Very good. Glad to hear from you. Yes,
14 ma'am.

15 MS. FAILE: Just start by saying how this has changed
16 our lives completely.

17 THE COURT: Take your time. I know this is a very
18 difficult situation. Just take your time. We got all
19 day.

20 MS. FAILE: There are things that we can't do
21 anymore. We can't go in our own house because we're in
22 fear someone's in there trying to hurt us again. Have
23 headaches every day. Some days are worse than others.
24 Doctors tell me this could go on possibly the rest of my
25 life.

1 Started seeing a therapist to help deal with some of
2 the fears of not being able to go home. Scared to go out
3 in public or to be in big groups of people because I fear
4 someone knows him or is related to him is there and will
5 try to hurt us again. My son and daughter have been
6 through things that some grown people have not been
7 through. Christopher was only 16 when all this happened.
8 It has changed his whole life. He is not the same person
9 that he was before.

10 VICTIM ADVOCATE: If you don't mind, Your Honor, I'll
11 finish for her.

12 THE COURT: Yes, ma'am, your full name?

13 VICTIM ADVOCATE: (reading) He tried to kill my son.
14 He's taken all that I've worked so hard as a single mom
15 and destroyed it. Christopher was only given a 10 percent
16 chance of living through this even after his surgery.
17 He's had to walk with a walker for a few weeks. He still
18 has a long way to go, but I feel that he will never be the
19 Christopher that he was before February the 1st of 2012.

20 My daughter, Stephanie, cannot sleep in her bed for
21 several months out of fear that someone was going to hurt
22 us again. She has been given medication in order to sleep
23 at night. She has to have her TV on, lights on. Windows
24 have been screwed down, alarms put on them just to try to
25 make her feel safer. No matter what we do, she's still

1 scared. She prays every night that no one will try to
2 hurt any of us again. Stephanie was 11 when she walked in
3 and found me bleeding to death. She only came in because
4 she heard the sound of someone outside her window in the
5 backyard. She didn't know at the time it was her brother
6 trying to get her to help him.

7 He has taken my world as we knew it and turned it
8 upside down. All I know is that I want him to never see
9 the outside of a prison again. I'm sure it's not justice
10 for this. Justice for me will be for someone to do to him
11 what he did to my son and leave him for dead. I also
12 would like for him to fear -- feel the fear that he put in
13 my daughter that night.

14 I fear for the lives and safety of my family and can
15 only hope and pray you see fit to make sure he can never
16 do this to anyone ever again. I don't know what I ever
17 did to him for him to try to kill my son or myself. But
18 there's only one thing I'm thankful for: He did not hurt
19 my daughter. Everyone says happens for a reason. I'm
20 still trying to figure that reason out. The only thing I
21 can think that would help my children and I feel safe
22 again is to know he will not walk out of prison. He
23 deserves no pity for what he has done to my family.

24 THE COURT: Thank you, ma'am.

25 Yes.

1 MS. NICHOLS: I'm Vanessa Nichols.

2 THE COURT: Thank you, Ms. Nichols.

3 MS. NICHOLS: Your Honor, I would like to start by
4 saying thank you for letting me speak today. I'm
5 Christopher's aunt, and I spent the first 36 hours with
6 him after surgery. To say it was horrible is a huge
7 understatement. Christopher was hooked up to numerous
8 machines. His heart rate would shoot up to hundred and
9 drop down to 30 in 15 seconds. His heart rate dropped so
10 low once that the machine started alerting the nurses of a
11 possible code. He could not sleep for more than 15
12 minutes at a time. He could not sit up or lay down
13 without help. He would get hot and cold every few
14 minutes. He had to have an in-room CT because he was too
15 unstable to move. All of these were caused by his
16 brain -- were caused because his brain was trying to
17 reroute itself due to his injury.

18 Christopher asked numerous time to be taken home. He
19 did not understand why he had to stay at the hospital. He
20 remembers being attacked and did not want to be alone. My
21 family and I had to take shifts so somebody would always
22 be with him. He was in ICU for three and a half days. He
23 was at CMC for seven days total because of increased risk
24 for stroke.

25 I did not get to see Dawn much, but when I did, she

1 would be confused and in pain. Dawn and Christopher each
2 have six plates in their head. Dawn has chronic headaches
3 and problems with short-term memory loss. Christopher, by
4 the grace of God, is back to a hundred percent physically
5 and mentally. He has increased risk of seizures for the
6 rest of his life due to his numerous skull fractures.

7 Dawn and Christopher are still under the care of a
8 concussion rehabilitation clinic and both are on daily
9 medications. They were each given a 10 percent chance of
10 living and not having some kind of permanent disability.
11 My niece Stephanie is our hero, and I am grateful that the
12 defendant did not attack her. She has been traumatized by
13 this experience. She refused to come today because she
14 states that she never wants to see that monster again. I
15 cannot blame her. I wish I did not have to see him or
16 breathe the same air he does.

17 The defendant is truly a coward. He could have taken
18 what he wanted from the house and left. Instead he chose
19 to attack Dawn in her sleep. He didn't change clothes and
20 wash his hands. He sent Christopher a text asking him to
21 come outside and help feed the dogs. Once Christopher
22 leaned over to put the dog bowl down, the coward attacked
23 Christopher from behind. Then he got in Dawn's truck and
24 drove away, leaving my family to die. The defendant does
25 not deserve any mercy from the Court, as he showed no

1 mercy when he attacked my family. It does not matter
2 whether he remember his actions or not. I ask you to give
3 him the maximum sentence allowed by law and do not let it
4 run concurrent. He deserves more punishment than he will
5 ever receive. Christopher and Stephanie had what was left
6 of their childhood innocence shattered. My family has
7 been through emotional torture this year, and we deserve
8 some justice. Thank you.

9 MS. COLLINS: Thank you, Your Honor. That's the
10 presentation from the State.

11 THE COURT: Do you have anything else?

12 MS. COLLINS: No, Your Honor.

13 THE COURT: Very good.

14 Mr. Dest, you're recognized.

15 MR. DEST: May it please the Court. Your Honor, I've
16 represented Danny for 315 days, and I can tell the Court
17 unequivocally there are two things that he tells me every
18 time I meet with him, and I've met with him numerous times
19 over the last year. First thing he'll tell me after we
20 discuss a couple of issues is, "Mr. Dest, the most painful
21 thing is that I hurt the people that I loved. People that
22 I lived with, and that people that did no harm to me."
23 And the second thing he will say is, "I can't believe I
24 did this. I can't believe I did this, but I know I did,
25 and I'm ashamed of the horrible things I've done." Those

1 two statements, Your Honor, are statements that he makes
2 every time I see him.

3 There's not a day that goes by that Danny Pittman
4 doesn't cry, doesn't feel remorse, doesn't feel shame for
5 what he has done. Judge, I know you heard the rendition
6 of the facts by the solicitor that he did hydrocodeine
7 (sic) that night. That is true. What is also true is
8 that he did four Xanax pills; two Opana pills, which are
9 basically heroin; smoked marijuana joints; and consumed
10 about \$60 worth of crack cocaine. I tell that to the
11 Court not as a justification, because we know that
12 voluntary intoxication is not a defense. But it is an
13 explanation as to why he doesn't remember what happened.
14 He was so, so messed up, for lack of a better term,
15 because of all the drugs that were swirling in his system.

16 And it is the only explanation of why he could commit
17 such a horrendous act for people who he had no reason to
18 hurt. There was no precipitating event. There was no
19 argument. There was no discussion, unpleasant discussion.
20 There was no domestic undercurrents whatsoever. There was
21 nothing that precipitated this assault other than his
22 consuming large amounts of drugs which led to his
23 blackout.

24 Judge, I've come to know Danny Pittman over the last
25 year, and talking to many people in the community that

1 know him, there are two Danny Pittmans. And I'm going to
2 be candid with the Court, as I was in chambers, regarding
3 his life history. There is the Danny Pittman who is a
4 hard worker, who is a loving father. He has a 14-year-old
5 son who is in high school here, on the JV basketball team
6 in Rock Hill. There's the loving uncle. There's the
7 loving son. There's the person who does work for
8 charities. I have here a letter. I won't read it in its
9 entirety, but it's from Reverend Debra Kay, who's with the
10 Yaweh Crossroads Ministry here in Rock Hill, which is a
11 nonprofit organization, and she acknowledges there are two
12 Danny Pittmans, and she wanted me to relay to the Court
13 that she has seen both sides. What she wanted me to relay
14 to the Court was the side that is productive, that is
15 caring, that is loving, and that does work for the less
16 fortunate people here in York County.

17 There is the employer, Mr. Nathaniel Sims, who he
18 worked with at Nate's Wood, Incorporated, here in Rock
19 Hill for a number of years. Basically Danny works in
20 carpentry and does cabinetry work. He told me, "Mr. Dest,
21 he's a reliable worker. He's always on time when he
22 works, and he's somebody that I trust, and the only time I
23 ever had to lay him off was when the economic times got so
24 bad I didn't have enough work for him."

25 Judge, it is hard to reconcile incidents like this,

1 and of course no one can ease the pain that the family,
2 Faile family, has to endure. I've talked to Danny about
3 that, and he recognizes that what he has done they will
4 have to live with the rest of his life. I've talked to
5 his family members. They are all here in the courtroom
6 today. If I ask the members of Danny's family to stand,
7 please, to show the support that he has. His mother and
8 father are here and other relatives..

9 Thank you. You may be seated.

10 They wanted me to relay to the Court that no matter
11 what happens, they're here for Danny and they're going to
12 try to support him. Judge, I have a letter from his
13 father who -- which is written basically in his own
14 handwriting, and he states, "To the Faile and Hill family,
15 I'm deeply sorry for what has happened on that night. I'm
16 speaking on behalf of my son Danny and the Phillips
17 family. I wish everybody a full recovery. And to my son
18 Danny, I'm very sorry for you, Danny. I wish there was
19 something I could do to change everything. But I pray for
20 you and all who were affected by this matter. I love you,
21 Danny, and, again, I'm so sorry to all who have been
22 affected by this."

23 Judge, his mother, Linda Pittman, is the only family
24 member that wishes to address the Court, so I would call
25 her forward now. Ms. Pittman.

1 THE COURT: Ms. Pitmann, your full name?

2 MS. PITTMAN: Linda Joyce Pittman.

3 THE COURT: Very good. Be glad to hear anything that
4 you'd like to say. Yes, ma'am. Thank you for being here.

5 MS. PITTMAN: It's a -- to Dawn and your family, I'm
6 really, really sorry this happened.

7 This is my son. I'm asking the Court to have mercy
8 on him, please. Danny is a good person. The drugs that
9 they were all doing really messed him up. And I'm -- and
10 I know my son. My son is sorry. And he's got to live
11 with this. I've got to live with this. Please, sir, just
12 show mercy on my son.

13 MR. DEST: Thank you, Ms. Pittman.

14 Your Honor, I recognize that under the parameters of
15 the plea agreement, his life is in your hands. And
16 whatever sentence you give today, I realize that he will
17 have to serve a substantial amount of time. Danny
18 realizes that as well. And I know that there are people
19 who come into the courtroom and seek justice and believe
20 that the maximum sentence is always appropriate and they
21 have strong feelings about that.

22 I would respectfully submit, Your Honor, that there
23 are two sides to justice. There is the punishment side,
24 and there also is the side that tempers justice with
25 mercy. That upon cool reflection of what it really means

1 to serve a significant amount of time, whether or not
2 somebody is salvageable or redeemable. I believe that
3 Danny Pittman is salvageable. I believe that he is
4 redeemable because I've seen how he is today versus how he
5 was a year ago. Certainly he is now clean and sober. And
6 if he were clean and sober on the outside, there's no
7 reason to believe that he cannot be a productive citizen,
8 because he's demonstrated that in the past.

9 So the question is, really, how much time is enough?
10 How much time does someone have to serve before they can
11 come back to society? I know that's within the discretion
12 of the Court, and that's why the Court makes the final
13 decision. But I would submit to you, Your Honor, that on
14 charges that are no-parole offenses that carry a minimum
15 of 85 percent of whatever the Court gives would be a
16 substantial sentence.

17 Danny is 33 years old. Ten years from now, ten years
18 from now, eight to ten years from now, Danny Pittman, if
19 he were to serve eight to ten years in the Department of
20 Corrections, would have an experience that he's never had
21 in terms of that amount of time. Being able to get the
22 tools that he needs so that when he is released someday,
23 that he can deal with his drug addiction problems. He'll
24 be older, he'll be wiser, he'll be more mature, and he
25 would have had a lot of time to reflect upon the horrible

1 things that he has done based upon his drug addiction.

2 On the other end of the spectrum, there's 40 years,
3 45 years. Putting Danny Pittman away for 40 years would
4 basically be, I would submit, Your Honor, a rejection of
5 the notion of rehabilitation. I believe he can be
6 rehabilitated. I believe that from today forward, he
7 realizes he has a lot of work to do to prove to this court
8 and to this community that he can do better.

9 I am on his behalf respectfully requesting, Your
10 Honor, a sentence of the eight- to ten-year range so that
11 he can be punished for what he's done, so that he can get
12 the tools he needs to be a productive citizen, and so that
13 he can come back and prove to this community that he is
14 more than the sum of this act. Thank you.

15 Your Honor, I believe that that concludes my
16 presentation, but I believe Mr. Pittman would like to make
17 a statement. Before he does that, Your Honor, may I
18 present the plea affidavit as part of the court record in
19 this case?

20 THE COURT: Certainly. We'll make that part of the
21 record.

22 MR. DEST: Thank you.

23 THE COURT: Mr. Pittman, be glad to hear anything you
24 have to say.

25 THE DEFENDANT: Yes, sir. It's taken me almost a

1 year to put this together. And I just want to explain
2 some things here today. First and foremost, I want to
3 apologize to the victim and the family. I deeply regret
4 what has happened. Second, I want to ask them for
5 forgiveness. Although I may not receive it here today,
6 and I may never receive it at all. Know that I have to
7 ask because of the pain I have caused the victims. The
8 day's just not about me, but it's about the victims and
9 the pain they suffered and the justice they seek.

10 I want the Court to know that I have the highest
11 regard for human life, and I never meant for this to
12 happen. The victims and her family and my family have
13 been hurt by the course of action that have taken place.
14 Truth of the matter here today is that I'm more scared to
15 face the victims in this courtroom than I am you, Your
16 Honor. Because of the fact that I have to look at the
17 victims and be confronted by them and see the betrayal and
18 broken trust they have for me. I wish I could find
19 justification for the drugs that caused my actions, but I
20 can't, knowing I made an irrational decision to do the
21 drugs without knowing or caring of the extent and the harm
22 that they would cause myself or the people surrounding me.

23 I have let drugs shatter my life and shatter my
24 victims' life. I had a beautiful family and a beautiful
25 home and promising future, only to tear it down by making

1 an unjustified decision to do drugs. And drugs don't care
2 for nobody. I should have thought to listen when I seen
3 drugs destroy others, yet here I am today asking for
4 forgiveness and asking for mercy in a courtroom full of
5 people that I don't even know who are about to decide and
6 determine how to spend my next years.

7 I want the people of the court and the victims and
8 their family to know that I'm a changing man. I ain't
9 changed yet, but I'm a changing man. And that I will
10 never put myself in another position to have a court
11 determine my lifestyle and never do drugs again. And no
12 matter what has been spoken against me here today, please
13 know that I am not a savage or a menace to society or a
14 threat to any person and that I can be rehabilitated first
15 by admitting that I am wrong and that I have a drug
16 addiction and that I am accepting full responsibility of
17 my actions regardless that I was induced with drugs or
18 not. I knew it was wrong to take them from the start.
19 Yet again I will apologize and tell everyone in the court
20 that I am deeply ashamed of myself.

21 Finally, I ask the Court and the victims to consider
22 if they had a loved one or themselves in the same position
23 I am in, would they want the Court to have mercy on them?
24 For I know that I should be punished for my actions. May
25 the Court please have mercy upon me.

1 THE COURT: Very good.

2 Mr. Pittman, you stand before me today, and it does
3 appear as if in a sober state here that you are remorseful
4 and your remorse seems to be genuine. But as I'm sitting
5 here trying to perform the function of trying to figure
6 out what's the right thing to do, there are a number of
7 things I have to consider, one of which is the facts and
8 circumstances of this case, which is a terrible case. I
9 look at the victims. I look at how it's affected them
10 physically. They're going to have permanent impairment
11 for the rest of their life. They're going to have
12 emotional trauma, and I can't imagine this young
13 11-year-old girl, what she's going to have to deal with
14 throughout her life. Those are things that you're
15 responsible for and something that I need to take into
16 consideration in your sentence.

17 There -- what you've done here is caused a world of
18 emotional and physical pain. This type trauma to the head
19 is going to be a permanent impairment. It's clear from
20 the medical records and the testimony here today that
21 there's an increased likelihood of seizures, epilepsy.
22 It's -- they're going to have to suffer the rest of their
23 lives because of what you've done. As I look at the
24 pictures, it's clear that you're a dangerous man and that
25 there needs to be a period of time where you're separated

1 from society in order to protect our community. You
2 understand that, don't you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And there are a number of different
5 factors that come into play, one of which is
6 rehabilitation. I want you to get better. Need to
7 separate you from drugs for an extended period of time in
8 order that you can learn to do without drugs. The other
9 thing is I need to take into consideration the time that I
10 sentence you to will deter you from doing it again. Do
11 you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And the other thing, and perhaps most
14 important aspect of this particular sentence, is
15 retribution. It's just pure punishment for what you've
16 done. I've taken into consideration all of those things,
17 and what Mr. Dest says is something I grapple with every
18 day. How much is enough? And that's a very difficult
19 question to answer, and of course justice does need to be
20 tempered with mercy. And really all we can do is the best
21 we can do.

22 But taking all these matters into consideration, on
23 indictment 2012-GS-46-04-374, assault and battery of a
24 high and aggravated nature, the sentence of the Court is
25 that you be committed to the State Department of

1 Corrections for a period of 20 years. The sentence is to
2 run consecutive to the next sentence and concurrent with
3 the next. I'll delineate those in a moment. Given credit
4 for 315 days and you're ordered to participate in
5 addiction treatment unit.

6 With regard to indictment 2012-GS-46-04-375, this
7 sentence to run consecutive with the previous indictment
8 374, assault and battery of a high and aggravated nature,
9 the sentence of the Court is you be committed to the State
10 Department of Correction for a period of five years. This
11 is to run consecutive with indictment 374.

12 With regard to indictment 2012-GS-46-04-376, grand
13 larceny, the sentence of the Court is you be committed to
14 the State Department of Correction for a period of five
15 years, sentence to run concurrent with the other sentence.
16 Credit for 315 days. Good luck to you.

17 (Whereupon, the proceedings were concluded.)
18
19
20
21
22
23
24
25

FORM 5

2013CP4602491

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of YORK)

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

Danny Ray Pittman #294081)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION REVIEW

DAVID HAMILTON
C.C.C. & GS
YORK COUNTY, SC

FILED - RECEIVED
2013 AUG 16 AM 9:47

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 South Carolina Dept of Corrections
2. Name and location of Court which imposed sentence County of York South Carolina General Sessions
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) warrant # Number mb 03914
 - (b) Docket Number

2012-GS46-014374
Dont know the other Docket and warrant numbers, please list.

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) December 20th 2012 20 years
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty a plea of guilt
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere Alford plea

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes. HARRY DEST DID WITHOUT MY CONSENT

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. ~~Remitted~~ Remitted Back to lower Court
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. Disposition for Remittance on April 18th 2013
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. That I Didn't properly Appeal and
 - ii. Bring Reasons why?
 - iii. _____

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

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of counsel
- (b) State challenge the validity of plea
- (c) Breach of plea agreement

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

- (a) Failing to provide proof of paperwork that we both
- (b) That I have gained nothing by pleading guilty.
- ~~(c)~~ the same as a trial. I received the max sentence

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

- (a) any petition in a State Court under South Carolina Law? Court of Appeals
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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. The court of Appeals in South Carolina
- ii. _____
- iii. _____
- iv. _____

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

- i. South Carolina court of Appeals - Columbia SC.
- ii. _____
- iii. _____
- iv. _____

Question 11 - A Know we have
I'm sending a copy of the
paperwork stating that I did
not cause these mental problems
and the speech impairment
and the migraines. That both
victims suffered these problems
before they was assaulted. Also
my lawyer failed to present
this paperwork which I have
enclosed in the PCR Applications

Question 11-A - also He Harry ~~Doat~~
my counsel did not speak
with me about Direct appeal
OR motion to Reconsider. Although
IN his Notice of Appeal He
stated that He consulted with
me before He filed. I have
not seen NOR heard from
my counsel since the Court
Room on December 20th 2012.

(c) the disposition thereof:

- i. Remitted to lower court
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. April 18th 2013
- ii. _____
- iii. _____
- iv. _____

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

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

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

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

(a) which grounds have been presented:

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

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

- i. There was no grounds as the court says.
- ii. _____
- iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes HARRY DEST YORK COUNTY
- (b) your trial, if any? Public Defender
- (c) your sentencing? yes YORK COUNTY public Defender
- (d) your appeal, if any, from the judgment of conviction or the imposition of HARRY DEST sentence? Remitted to lower court, NO counsel
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 - i. HARRY DEST + public Defenders office
 - P.O. Box 691 YORK SC.
 - ii. 1675-1E YORK Hwy
 - YORK SC. 29754-0691
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. my sentencing in General Sessions
 - in the County of YORK South Carolina
 - ii. _____
 - iii. _____

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

I am seeking the 8-10 years my lawyer was asking for until he became ineffective.

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of YORK)

I, Dan Rg Pittman, 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.

Dan Rg Pittman

SWORN to and subscribed before me this 9th day of August, 2013.

Leedman Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, Dany Ray Sutton, 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.

Dany Ray Sutton
Applicant

SWORN or affirmed to and subscribed before me this
9th day of August, 2013.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

AHN: CLERK of COURT,

7-1-13

I am enclosing All the nessasary
paperwork to challenge my
PCR Issues and as more
Become available I will present
Them At the Hearing if I
am granted one. Please make
a copy of All these papers and
send me copies of All. I Am
sending some original Documents
and I need them for my
legal Argoment. Please Allow
me this Request. I'll will
Be waiting for a Response
From your office.

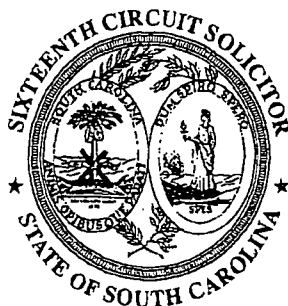
Respectfully

Date: 7-1-2013

Day Ky fellow

294081

* Also Notice that I am asking and
filing FOR a copy of my transcript
of my hearing upon those charges
in General sessions under the Honorable
Michael G. Nettles. Judge



KEVIN S. BRACKETT
SOLICITOR

November 30, 2012

Harry A. Dest
Circuit Public Defender
Moss Justice Center - 1675 York Highway
York, S.C. 29745

Re: Plea Offer – State of South Carolina vs. Danny Pittman

Dear Mr. Dest:

Pursuant to our plea discussions in the above-referenced case, this is to confirm that your client Danny Pittman will be pleading guilty to two counts of Assault and Battery of a High and Aggravated Nature (under South Carolina Code 16-3-600 - reduced from the original charges of two counts of Attempted Murder) and will also plead "as charged" to one count of Grand Larceny (value more than \$2,000 but less than \$10,000). As the plea will be "straight up" to these charges, the ultimate sentence will be in the discretion of the judge. As discussed, in further consideration of your client's plea I will remain silent as prosecutor as to the sentence to be given by the Court. However, please note that the victims will be present at the plea and I expect that law enforcement will also be present at the plea, and they will all address the judge in regard to their requests for sentencing.

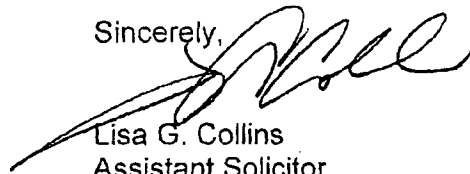
As discussed, in addition to reducing the Attempted Murder charges to ABHAN charges, I have allowed you to select the judge for the plea hearing. Pursuant to your request, I have scheduled the plea to be in front of Judge Nettles on Thursday December 20, 2012 at approximately 2 pm. As with all major cases, we can discuss this case with Judge Nettles in chambers prior to the plea, to review with him the fact pattern and circumstances in the case as well as your client's prior record. We will also discuss with the judge any mitigation which you may have on behalf of your client. Of course, we will present all of this formally on the record as well during the plea hearing itself.

MOSS JUSTICE CENTER
1675-1A YORK HIGHWAY • YORK, SOUTH CAROLINA 29745-7422
(803)-628-3020 • FAX: (803)-628-3025

As discussed, the sentence will be in the discretion of the judge and I understand that you will be requesting a minimal sentence on behalf of your client. I also understand from our discussions that you may request a sentence in the range of eight (8) to ten (10) years on behalf of your client given the unique circumstances of this case. Of course such a request by the defense is allowed under the terms of the plea agreement. Again, while the ultimate sentence will be up to the judge and I can't agree to such a sentence, I will remain silent as prosecutor as to the sentence. Again, we can go in chambers with the judge prior to the plea so that you can discuss the mitigating circumstances in detail with the judge on behalf of your client. Moreover, your client is entitled to credit for the 315 days he would have served in jail as of the date of his plea hearing, and therefore I will make the judge aware of this time served so that he can receive credit for this time against any sentence ordered by the Court.

Thank you. If you need any additional information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa G. Collins", written over the typed name and title.

Lisa G. Collins
Assistant Solicitor



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 28, 2013

Mr. Danny Pittman #294081
Kirkland Corr. Inst.
4344 Broad River Rd.
Columbia SC 29210

Re: The State v. Pittman, Danny Ray
Appellate Case No. 2012-213733

Dear Counsel:

This Court has received your notice of appeal. Since this is an appeal from a guilty plea, nolo contendere plea, or plea pursuant to *Alford*, Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules requires you to provide "a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal." **Failure to make a sufficient showing may result in dismissal of this appeal.**

The explanation should be served and filed within ten (10) days of the date of this letter.

Please be advised the time limits for ordering the transcript are held in abeyance.

201200003630

2/2/12

Deputy R. B. Gladden

On 2/1/12, I was dispatched to [REDACTED] to an assault. While en route, I was advised by dispatch that the caller, an eleven year old female named Stephanie, stated her mother was bleeding and there was an injured unidentified male subject lying in the back yard of the residence. Upon arrival, I located Stephanie and her mother, Kimberly Faile, at the front door of the residence. Kimberly was bleeding from the head and appeared to be confused and in shock. Stephanie advised the male subject was still in the back yard. Deputy Clark and I located the male subject, later identified as Christopher F. [REDACTED] lying on the ground beside the porch in the back yard. Christopher was covered in blood and moaning. I then re-entered the residence to secure the scene. Neither Stephanie nor Kimberly were able to advise if any other persons were inside the residence. Sgt. Clevenger arrived on scene and we then cleared the residence. While clearing the residence, I observed blood on pillows in Kimberly's bed. I also observed blood in the bathroom.

I did not observe any indication of forced entry or an altercation, and Stephanie stated Kimberly, Christopher and Danny Pitman were the only people at the residence on 2/1/12. Stephanie stated she was in her bedroom and heard moaning outside her bedroom window. According to Stephanie, she went outside and observed a male subject lying on the ground. Stephanie stated she then went inside and woke Kimberly after finding her bleeding from the head. Stephanie stated Kimberly then went to the restroom. Stephanie advised she did not hear any altercation.

I then spoke with Kimberly, who stated she went to sleep and did not awake until Stephanie woke her prior to calling 911. Kimberly advised she was unsure how she sustained the injury to her head. Kimberly then advised when she went to sleep, Stephanie, Christopher and Danny were inside the residence. Kimberly advised there was no argument or assault between any parties at the residence prior to her falling asleep. Kimberly's hands and face were covered in blood. Kimberly then gave oral consent to search the premises. Danny was not on scene, and Kimberly advised he did not own a vehicle. Throughout my interview with Kimberly, I observed she appeared confused and disoriented. Kimberly advised she did not consume any alcoholic beverages or narcotics on 2/1/12.

Sgt. Clevenger requested CID, FSU and K-9 units. Deputy Clark spoke with Christopher prior to EMS transporting him to PMC. EMS also transported Kimberly. Margaret Faile, Stephanie's grandmother, arrived on scene to take possession of Stephanie.

Rachel Gladden

State of South Carolina

Kevin S. Brackett
Solicitor




Office of the Solicitor
Sixteenth Judicial Circuit

FAX COVER SHEET

TO: Susan Larsen
RE: Release and Subpoena for Medical Records
FAX NO: 985-4684
DATE: October 25, 2012
FROM: Lisa Collins, Assistant Solicitor
PAGES: 3 (including this cover sheet)
COMMENTS:

*Thank you!
Susan!*



Susan - Please note that these are 2 separate subpoenas for 2 separate victims (Christopher Falle and Kimberly Dawn Falle), although the defendant is the same for both victims. Thank you Susan!

Thank you, as always, for your assistance in this matter. Please call me at (803) 627-1656 (my cell number) when these records are ready and I will come and pick them up. I will bring you the original subpoenas in both cases for your files at that time. Thanks again!

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL LISA COLLINS AT (803)-627-1656. THANK YOU.

The information contained in this facsimile is confidential and is intended only for the use of the individual or the entity to which it is addressed. If you are not the intended recipient or the person responsible for delivering it to the intended recipient, do not use or disclose this facsimile. If you have received this facsimile in error, please immediately notify us by telephone, and return the original to the Solicitor's office via the United States Postal Service. Thank You.

Piedmont Medical Center - Rock Hill, SC 29732

Patient: Christopher F. [REDACTED] DOB: [REDACTED]
 [REDACTED] 000093224 Age/Gender: 16Y M
 DOS: 2/2/2012 00:12 Acct #: [REDACTED]
 Private Phys: ED Phys: John W. Lee, MD

HEMOGLOBIN	N	15.3	G/DL	14.0-18.0	F
HEMATOCRIT	H	44.2	%	30.0-43.0	F
MEAN CELL VOLUME	N	92.6	FL	80.0-94.0	F
MEAN CELL HEMOGLOBIN H		32.0	PG	27.0-31.0	F
MEAN CELL HGB CONC.	N	34.5	mmol/L	33.0-37.0	F
RED CELL DIST. WIDTH	N	13.6	%	11.5-14.5	F
PLATELET COUNT AUTO	N	200	K/MM3	150-400	F
MEAN PLATELET VOLUME	N	9.4	FL	7.4-10.4	F

Reviewed By: John W. Lee, MD 2/2/2012 01:23

Category: Toxicology; Test: DRUG SCREEN MEDICAL, URINE; Collected by nurse/physician: Yes John W. Lee, MD

Result 2/2/2012 01:48 < User N. Interface 2/2/2012 1:48 AM >



DRUG SCREEN	N			I
MEDICAL(In-House)				
COCAINE	N	NEGATIVE		NEGATIVE F
MARIJUANA METABOLITES URINE	H	POSITIVE		NEGATIVE E
BARBITURATES	N	NEGATIVE		NEGATIVE F
BENZODIAZEPINES	N	NEGATIVE		NEGATIVE F
OPIATES METABOLITES	N	NEGATIVE		NEGATIVE F
AMPHETAMINES, URINE	N	NEGATIVE		NEGATIVE F
PHENCYCLIDINE (PCP)	N	NEGATIVE		F
CREATININE	N	177.5	MG/DL	20.0-400.0 F
SPECIFIC GRAVITY	N	1.025		1.003-1.030 F
URINE PH	N	5.0		4.5-8.0 F
DRUG IH NOTE	H	NOTE		E

*** Screening procedures for URINE BENZODIAZEPINES ***
 WILL NOT DETECT ATIVAN (Lorazepam).
 Testing must be performed by Gas Chromatography when
 ATIVAN is suspected. A specific test for Ativan
 can be sent to a reference lab for analysis.

The IN HOUSE URINE drug screen panel is for medical purposes only and gives presumptive positive results. Results are not confirmed by Piedmont Healthcare Laboratory. Any presumptive positive specimen is sent to a reference.

Printed By User N. Interface on 2/4/2012 7:26 AM

Medical Chart with Audits

23:35	T. O'neil	Bleeding Control	BLS	N/A	N/A	N/A	N/A No
23:40	T. O'neil	Trauma Spinal Immobilization	BLS	N/A	N/A	N/A	N/A No
23:45	S. Roscoe	Respiratory Oxygen Mask	BLS	N/A	N/A	N/A	N/A No
23:45	D. Loftin	IV Start	ALS1	N/A	N/A	N/A	N/A No
23:45	S. Roscoe	Assessment Paramedic	BLS	N/A	N/A	N/A	N/A No
		Ongoing/ Secondary					
23:45	S. Roscoe	Cardiac EKG monitored (4 lead)	ALS1	N/A	N/A	N/A	N/A No
23:48	S. Roscoe	Assessment Paramedic Primary	BLS	N/A	N/A	N/A	N/A No

FlexFields:

FlexField	Value
Vitals: SPO2 [1] - SPO2	Room Air
Vitals: SPO2 [2] - SPO2	Oxygen
Vitals: SPO2 [3] - SPO2	Oxygen
Vitals: SPO2 [4] - SPO2	Oxygen

Flow Chart: Treat Code [4] - IV SIZE/LOCATION

SIZE	18 GA
LOCATION	RIGHT ANTECUBITAL
IV Fluid	Saline Lock

Flow Chart: Treat Code [2] - SPINAL IMMOBILIZATION

LSB	Yes
KED	No
PediBoard	No
Head Immobilized	Yes
Body Immobilized	Yes
Neck Immobilized	Yes
Immobilized with Head Blocks	Yes
Secured with straps	Yes
MSC Before	Yes
MSC After	Yes
C Collar	Adult

Narrative History Text:

"GENERAL CALL DESCRIPTION"
 TRANSPORTED A 16 YEAR OLD MALE WITH A CHIEF COMPLAINT OF HEMORRHAGE - TRAUMATIC WHICH STARTED ON FEB 01 2012 2300:00.

PARAMEDIC PERFORMED INITIAL PATIENT ASSESSMENT.

DISPATCHED P1 TO THIS LOCATION FOR UNCONTROLLED BLEEDING. DISPATCH ADVISED SCENE NOT SECURE, STAGED FOR PD TO ARRIVE. ON OUR ARRIVAL WE ARE MOTIONED TO THE BACK YARD. WE FOUND A 16 YR OLD MALE LYING ON THE GROUND BLEEDING FROM THE HEAD. APPROX 50-75 CC OF BLOOD WAS ON THE GROUND. PT WOULD RESPOND TO VERBAL STIMULI BUT REFUSED TO TELL US WHAT HAPPENED TO HIM. PT DENIED ANY ALCOHOL OR DRUG USE. PT TOLD US HIS NAME AND BIRTHDAY AND THAT HE KNEW WHERE HE WAS. PT WOULD FOLLOW COMMANDS SUCH AS "SQUEEZE MY FINGERS". WE WERE ABLE TO LOCATE A LACERATION TO THE BACK OF HIS HEAD AND BLEEDING WAS CONTROLLED WITH BANDAGES. PT WAS PLACED IN FULL SPINAL PROTOCOL AND TAKEN TO AMBULANCE. FURTHER EXAM SHOWS NO OTHER INJURIES. PT WILL NOT COOPERATE BUT IS CONSCIOUS AND BREATHING NORMALLY. PT DID TELL ME HE HAD NO MEDICAL HISTORY, TAKES NO MEDS AND NO ALLERGIES. VITAL SIGNS ARE TAKEN AND ARE WITHIN NORMAL LIMITS. PT TRANSPORTED TO PMC P2. AS WE ARE PULLING INTO THE HOSPITAL, PT BEGINS TO VOMIT. THE BACKBOARD IS TILTED TO PREVENT ASPIRATION. PT 2 OF THIS CALL WAS TREATED AND TRANSPORTED BY EMS 3.

73892803

Office/Clinic Visit Notes

DOCUMENT NAME:

Rahab Clinic Note

Christopher F.

5295026

CLINIC NOTE

DATE OF VISIT: 02/28/2012.

PRECEPTOR: Dr. Lori Grafton

CHIEF COMPLAINT: "I was assaulted."

HISTORY OF PRESENT ILLNESS: This is a 16-year-old right-handed male who on 02/02/2012 was found down in the yard, apparently struck by a baseball bat several times by his mother's boyfriend. He initially at the scene was found to have a Glasgow Coma Scale of 3, but then in the ER his Glasgow Coma of 14 with some positive loss of consciousness. He was initially brought to Piedmont Medical Center and then had a CT revealing multiple skull fractures and also skull fracture depressed with a left open skull fracture with overlying lacerations. The patient was evaluated by neurosurgery at that time. He required surgical elevation. The patient comes today for evaluation. Since then, the patient states that he has been having headaches, but they have decreased significantly in frequency and also in severity. He stated that he is doing well. He has some history of speech impairment and a history of ADHD. He is saying that after his injury his speech has become worse. He also denies any irritability or any problems with sleeping. He does report having some phonophobia, denies any photophobia. Upon questioning on how he feels about concentration, he is stating that he is doing okay, but as mentioned prior he still feels that he has some issues with his speech and with word finding.

PAST MEDICAL HISTORY: History of attention deficit hyperactivity disorder.

PAST SURGICAL HISTORY: The patient had several tympanic placement.

SOCIAL HISTORY: The patient lives with his mother. He is in school. He is a B student. No history of alcohol abuse or drug abuse or any smoking.

FUNCTIONAL HISTORY: Prior to this, the patient was independent in all areas.

FAMILY HISTORY: Mother has a history of brain injury sustained on the same day, otherwise healthy.

ALLERGIES: Allergic to Augmentin and morphine.

MEDICATIONS:

1. Keppra 500 mg
2. Percocet 7.5/325 mg.

REVIEW OF SYSTEMS: As per HPI, otherwise 10 other systems negative.

Admit Date: 2/28/2012 13:43 EST
 Disch Date: 2/28/2012 23:59 EST
 Admitting: GRAFTON, LORI MD
 Attending: GRAFTON, LORI MD
 Printed: 11/8/2012 11:24 EST

Pt Name: Christopher F.
 MRN: 0005295026 Acct#:
 DOB: Age: 16 years Sex: Male
 Location: RGNC
 Print ID: 37915097

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

PATIENT NAME FAILE, KIMBERLY D
MEDICAL REC#: M000105162
ACCT#: [REDACTED]

BIRTHDATE [REDACTED]
ADMSVC DATE 02/10/12
DISCHARGE DATE

HISTORY AND PHYSICAL

PRIMARY CARE PHYSICIAN: Shiland Family Medicine physicians.

NEUROSURGEON: E. Hunter Dyer, M.D.

This is a 35-year-old white female patient with recent history of

1. Traumatic skull injury for which she has had surgery done at CMC done by Dr. Dyer. She has been discharged about 4 days ago from CMC.
2. History of migraine.

Patient comes to the ER with the chief complaint of confusion since the last couple of days, and forgetfulness.

HISTORY OF THE PRESENTING ILLNESS: Patient's cousin is there at the bedside and as noted by her, patient has been appearing more forgetful over the last couple of days. Also, she has been having intermittent episodes of confusion during the last couple of days which have been unpredictable. Patient herself cannot exactly recall if she felt any difference with regards to her mental status; however, she is having some difficulty in reading occasionally though she is not currently agitated or confused. She is awake, alert and oriented to time, place and person. She had a traumatic head injury about 1 week ago for which she was here at the ER. She was transferred after CAT scan of the brain showed skull injury and she was treated surgically at CMC and subsequently was discharged about 4 days ago. There is no history of fever, chills, seizures, severe headache, blurring of vision, speech disturbances, though the patient appears to be somewhat slow to respond.

PAST MEDICAL HISTORY: Described as above.

FAMILY HISTORY: Not contributory with regards to any history of premature coronary artery disease, diabetes mellitus, cancer, stroke, etc.

ALLERGIES: There are no known drug allergies.

MEDICATIONS: The patient currently takes only Norco for postoperative pain as needed.

PAST SURGICAL HISTORY: Significant for:

1. Bilateral tubal ligation.
2. History of kidney stones.
3. Recent history of skull fracture, status post surgery, which was done by Dr. Dyer at CMC.

PATIENT NAME: FAILE, KIMBERLY D
MEDICAL REC#: M000105162
LOCATION: PCTA 353-A
PROVIDER: Uchit V Bhalodia MD

HISTORY & PHYSICAL

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

on 2/2/2012. There are some vague areas of attenuation, which could be due to hemorrhagic contusion.

I did not find an EKG on the chart.

ASSESSMENT AND PLAN

1. A 35-year-old white female patient with recent history of skull injury, status post surgery, who now comes in with forgetfulness, confusion and other behavioral changes and mental status changes. Currently, she appears to be mentally lucid, but is somewhat slow to respond. Given the CAT scan findings, it is likely that the patient's behavioral changes are related to the recent history of injury and to the cerebral edema. I had a discussion with Dr. Lee and he did discuss the findings with neurosurgery prior to calling me. As per Dr. Lee, patient needs to be treated with steroids as advised by neurosurgery and she will be seen later by neurosurgery. Besides, I would hold off on putting her right away on mannitol because of her borderline low blood pressure even though she is symptomatically stable. I am also going to consult neurology to see if we need to put her on any seizure prophylaxis. She may need a repeat CAT scan in the next 1 or 2 days to reevaluate the extent of the cerebral edema. Further management also depends on neurosurgery and neurology input.
2. History of migraine, which is currently stable.
3. Tobacco abuse for which she has been counseled to quit smoking.
4. Asymptomatic low blood pressure, which is chronic. Patient runs at a baseline low blood pressure as said by the patient and her cousin.

Further management depends on the patient's clinical course. Patient's prognosis is guarded. I did discuss regarding the plan of care with the patient and her cousin at the bedside.

Dictated by: UCHIT BHALODIA, MD

TR:UB/BN

DD:02/10/2012 14:55 EST

DT:02/10/2012 18:36 EST

Dictation ID: 5642885/Confirmation #: 014578

Copies to:

Bhalodia, Uchit V MD

Dyer, E Hunter MD

Lee Jr, James E MD

PATIENT NAME: FAILE, KIMBERLY D
MEDICAL REC#: M000105162
LOCATION: PCUA 353-A
PROVIDER: Uchit V Bhalodia MD

HISTORY & PHYSICAL

Page 3 of 4

Patient Name: FAILE, KIMBERLY DAWN
Date of Birth: 1/13/1977

MRN: 525032; 0004248310; 0004248310
FIN: 8100042158

* Auth (Verified) *

Drain Type: Hemovac **Size:** medium **Site:** left cranium **OR Drainage Amount:** to bulb
Packing Type: **Size:** **Site:** **Quantity:**
Cast Type: **Site:**
Dressing Comments:

COUNTS and CERTIFICATIONS

Performed Required Counts (193): Y
Preoperative Count Performed By: **Circulator:** Wiridan, Sonia, RN **Scrub:** Davis, Gardenia, ST
Final Count Performed By: **Circulator:** Wiridan, Sonia, RN **Scrub:** Davis, Gardenia, ST
Final Count Correct: **Sponges:** Y **Needles:** Y **Instruments:** N/A **Other:** Y
Provider Notified of Final Counts: Y **(Counts unresolved, X-ray taken:** **Read by:**
Counts Explanation:
Counts Comments:

IMPLANTS

Implant(s) Used and Documented (1112): Y **See Manual Implant Addendum on Chart:** Y
Electronic Implant Addendum?: N/A **Total Joint Revision?:** N/A ****Addendum for Total Jt and Total Jt Revisions:**
Plus Implant(s) not in Exception Noting

Implant Description with Size:	Manufacturer:	Manufacturer Catalog #	Lot/Serial #	Location:	Qty:
Item#: 234613 Supply Description: CLAMP CRANIOFIX2 11mm TITANIUM	Supply Mfr: AESCULAP	Supply Cat#: FF490T	Supply Lot#: 51791621	Supply Site: left cranium	Qty: 2
234615 CLAMP CRANIOFIX2 20mm TITANIUM	AESCULAP	FF491T	51580150	lt. cranium	2

CELL SAVER

Cell Saver: **Cell Saver Status:** ***** See Perfusionist Record *****
Cell Saver Unit #: **Operator:**
Orthopaed Applied at End of Case:
Cell Saver Comments:

CSECTION

HEART/LUNG BYPASS

Heart - Lung Bypass Performed: **Heart - Lung Bypass Standby:**
Perfusionist:
Cardioplegia: Amino Acid Enriched Cardioplegia **Lot #:** **Total Used:**
Bypass Comments:

GYN - HYSTEROSCOPIC PUMP


Hysteroscopic Pump Used: N/A **Hysteroscopic Pump Unit #:**
Fluid Type: **Infused Fluid Amount:** **Returned Fluid Amount:**
Volumes Confirmed with Surgeon:
Hysteroscopic Comments:

VITALS SIGNS
Time: **Temperature:** **Pulse:** **Respiratory Rate:** **Loc:** **O2 SAT:** **O2/Min:** **BP/Left:** **BP/Right:** **Rhythm(EKG):**

INTRAOPERATIVE NURSING CARE PLAN

Patient Surgery Performed Using Aseptic Technique and in a Manner to Prevent Cross Contamination: (O10) MET
Skin Remains Smooth, Intact Non-Reddened, Non-Irritated, Free From Bruising: (O1, O2, O5) MET
Patient Free of Signs/Symptoms of Equipment Injury (Laser, Electrical, Xray, Objects, Environment): (O2, O3, O6, O7) MET
Nursing Outcomes Comments:

549558

Carolina Medical Center

Carolina HealthCare System
Intraoperative Nursing Record

Patient Name: MEMO, TRAUMA
History #: 0005749684
Account #: C8100042158
Sex: F **Age:** 123 Yrs
Date of Birth: 01/01/1989
Printed: 02/02/2012 6:54 **Page:** 4

60

Patient Name: FAILE, KIMBERLY DAWN
Date of Birth: 1/13/1977

MRN: 525032; 0004248310; 0004248310
FIN: 8100042158

* Auth (Verified) *

CASE SUMMARY

Wound Class:(122) Class IV - Dirty/Infected
Fire Safety Measures Implemented:(122) Infection Control Measures Implemented: (122) Y
Patient Transported to: ICU Surgical Via: Bed
Patient Status Provided to Family or Support Person:(109)
Family / Support Person Comments:
Case Summary Comments:

COMPLETED BY: Signature: [Signature] Date: 2/12/12 Time: 0658

IS REC: 549558

Carollinas Medical Center

Carollinas HealthCare System
Intraoperative Nursing Record

Patient Name: MEMO, TRAUMA
History #: 0005749684
Account #: C8100042158
Sex: F Age: 123 Yrs
Date of Birth: 01/01/1889
Printed: 02/02/2012 6:54 Page: 5

STATE OF SOUTH CAROLINA)
)
 IN THE COURT OF APPEALS)
)
 State of South Carolina)
)
 -vs-)
)
 Danny Ray Pittman,)
)
)
 Defendant.)
)
)

Indictment Nos.: 2012-GS-46-02889

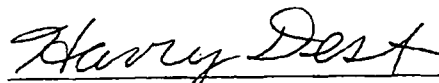
FILED-RECEIVED
 2012 DEC 21 AM 11:39
 DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, SC

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the issue to be raised on appeal is whether the trial court abused its discretion when it imposed the twenty five year sentence upon the Appellant after he pled guilty to two counts of Assault and Battery of a High and Aggravated Nature and Grand Larceny.

The undersigned does not have a good faith basis to believe that this issue is properly before the Court of Appeals, and the undersigned did not object to the sentence or file a motion to reconsider the sentence. Nevertheless, the undersigned consulted with the Appellant about his right to appeal, and after consultation, the undersigned has filed the instant appeal at the request of the Appellant because the Sixth Amendment requires counsel to follow the Appellant's request. *See Frazer v. South Carolina*, 430 F.3d 696, 705 (4th Cir. 2005) ("A defendant has a right to pursue a direct appeal, even if frivolous, which counsel must assist as 'an active advocate on behalf of his client.'") (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Respectfully submitted,



Harry A. Dest
 P.O. Box 691
 York, South Carolina 29745
 (803) 628-3031
 Attorney for Danny Ray Pittman

York, South Carolina

December 21, 2012



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 24, 2013

Mr. Danny Pittman #294081
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC 29210

Re: The State v. Danny Ray Pittman
Appellate Case No. 2012-213733

Dear Mr. Pittman:

This office is in receipt of your letter received May 16, 2013. Please be advised the above appeal was dismissed on April 18, 2013 and remitted to the Clerk of Court for York County on May 15, 2013. A copy of both orders are enclosed for your reference.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Harry Alfred Dest
Robert Michael Dudek
Lisa G. Collins
Salley W. Elliott



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 15, 2013

The Honorable David Hamilton
PO Box 649
York, SC 29745

REMITTITUR

Re: The State v. Danny Ray Pittman
Lower Court Case No. 2012GS4604374, 2012GS4604375, 2012GS4604376
Appellate Case No. 2012-213733

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Harry Alfred Dest
Robert Michael Dudek
Salley W. Elliott

The South Carolina Court of Appeals

The State, Respondent,

v.

Danny Ray Pittman, Appellant.

Appellate Case No. 2012-213733

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:
Harry Alfred Dest
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FILED
KS 2/18/13

**Sixteenth Circuit
Public Defender
Office**

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York, S.C. 29745



Harry A. Dest
Sixteenth Circuit Defender

June 13, 2013

Danny Ray Pittman, SCDC# 294081
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210

Dear Mr. Pittman,

Your Notice of Appeal was filed on December 21, 2012. The appeal was filed within ten (10) days of the disposition of your case. A Motion to Reconsider the Sentence must be filed within the same ten (10) day period. Therefore, the time to file the motion has expired and you are not entitled to have the matter before the Court.

If you have a complaint regarding my representation in this matter you may file a Post-Conviction Relief application (PCR). You must file this application within one (1) year of the dismissal of your appeal.

Sincerely,

Harry A. Dest
Circuit Public Defender
Sixteenth Judicial Circuit

HAD/jmd

Cc: file

Bryson J. Barrowclough
Deputy Public Defender

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Union County Public Defender
Erik D. Delaney

Department of Corrections and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Failing to provide proof of paperwork that we (cannot read)"
2. "Challenge the validity of plea"
 - a. "That I have gained nothing by pleading guilty"
3. "Breach of plea agreement"
 - a. "the same as a trial. I received the max sentence."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

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

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

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

The Respondent submits that the 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, the 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.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 30, 2013.

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1 P R O C E E D I N G S

2 MR. JOHNSON: May it please the Court, Your Honor,
3 the name of the case is Danny Ray Pittman versus the
4 State of South Carolina, Case Number 2013-CP-46-2491.
5 Mr. Pittman was charged with two counts of attempted
6 murder and one count of grand larceny. On December 20,
7 2012, he waived presentment of the charges and pled
8 pursuant to North Carolina versus Alford to two counts
9 of assault and battery of a high and aggravated nature
10 and grand larceny, before the Honorable Michael G.
11 Nettles. He was sentenced to 20 years for one count
12 of the ABHAN, a five-year consecutive to the other
13 count of ABHAN, and concurrent five years for grand
14 larceny. There was no appeal filed; however, there
15 was a timely PCR application filed on August 16, 2013.
16 The State filed its return December 30, 2013, and he is
17 represented here today by Mr. Mike Hemlepp.

18 MR. HEMLEPP: Thank you, Your Honor. May it please
19 the Court, I'm ready to proceed, but if I could correct
20 the record, the appeal was filed in this case the day
21 after the plea, but the Court of Appeals dismissed it.

22 THE COURT: All right.

23 MR. HEMLEPP: Thank you. I would call to the stand
24 the Applicant in this case, Danny Ray Pittman.

25 DANNY RAY PITTMAN,

1 Q. What are you in the Department of Corrections for?

2 A. Assault and battery, high and aggravated nature,
3 two counts.

4 Q. Okay. And were you convicted or pled guilty on that
5 charge?

6 A. I pled guilty.

7 Q. Where did that happen?

8 A. It happened here in York County in the courtroom.

9 Q. Okay. Were you -- do you remember when that
10 happened, what day?

11 A. Yeah, it was Thursday, December 20, 2012.

12 Q. Okay. Did you have an attorney representing you at
13 the time of that plea?

14 A. I did.

15 Q. Who was your attorney?

16 A. Harry Dest.

17 Q. Okay. Were there any other lawyers assisting you
18 in that case?

19 A. No, sir.

20 Q. Okay. How did you come to be represented by
21 Mr. Dest?

22 A. He was given to me by the Public Defender's Office.

23 Q. Okay. And when you were arrested on this charge,
24 you were put into the detention center; were you not?

25 A. Correct.

1 Q. Did you make bond?

2 A. No, I never had one.

3 Q. Okay. How long did you stay in the detention
4 center?

5 A. Eleven months.

6 Q. Okay. And prior to your plea -- well, let me
7 withdraw that question. After you got arrested -- how
8 long after you got arrested did you get Mr. Dest as your
9 appointed lawyer?

10 A. Probably a month after that.

11 Q. Okay. Did you have the opportunity to talk to
12 Mr. Dest while you were in the detention center?

13 A. I did.

14 Q. And how many times; do you think?

15 A. Probably three, maybe four.

16 Q. Okay. Did you talk to him about your case?

17 A. Yes, sir.

18 Q. And did you talk to him about possible defenses in
19 your case?

20 A. I did.

21 Q. Okay. What do you believe were possible defenses
22 that you had in your case?

23 A. I mean, with -- with the situation of the medical
24 records and what was explained in the courtroom through
25 the detectives and everything, there was a possible

1 defense that we could have came up with had we even
2 went through the whole record. I never went through my
3 whole -- I never went though my whole case with him. I
4 mean, we didn't even really get to the case. I never
5 even really seen it with him but one time.

6 Q. Okay. So -- and let me back up because you
7 testified -- you went ahead of me. At the time of your
8 plea, you were represented by Mr. Dest in the courtroom?

9 A. (Nods head.)

10 Q. Do you remember that proceeding?

11 A. Yes, sir.

12 Q. Okay. And the judge who sentenced you was Judge
13 Nettles; was it not?

14 A. Correct.

15 Q. Now the Solicitor in the case and your lawyer at the
16 time of the plea, did they talk to the judge about the
17 medical condition of the victims?

18 A. I have -- I have no way of knowing.

19 Q. I'm talking about in the hearing.

20 A. Yeah, in the hearing they did and also the victims
21 spoke up and so did the Solicitor about the medical
22 condition, but my lawyer never said anything about the
23 medical condition.

24 Q. He never said anything at the plea or never said
25 anything to you?

1 A. I mean, he said something to me, but he never said
2 anything in the plea.

3 Q. Okay. So was there evidence in your file that
4 related to the medical condition of the victims?

5 A. It is.

6 Q. Okay. And was that ever brought up --

7 A. No, sir.

8 Q. -- in the plea?

9 A. No, sir.

10 Q. During the sentencing, did Judge Nettles talk to
11 you and everyone in the courtroom, specifically you,
12 about why you were sentenced to the sentence you
13 received?

14 A. He did.

15 Q. Okay. And your sentence was the maximum; was it
16 not?

17 A. Correct.

18 Q. Were the medical conditions of the victims part of
19 his reasoning for his sentence?

20 A. It was.

21 Q. Okay. And did you know -- had you seen medical
22 records that refuted that medical condition?

23 A. I have. I have those records with me today.

24 Q. Okay. Did Mr. Dest ever bring that up?

25 A. No, sir, he didn't.

1 Q. This was -- the date of your plea, what day of the
2 week was that?

3 A. Thursday.

4 Q. Thursday. Did Mr. Dest file a motion for
5 reconsideration?

6 A. He did not. He did not consult with me on anything.

7 Q. Did you have an opportunity to talk to him to ask
8 him?

9 A. I did not.

10 Q. Okay. Was an appeal filed?

11 A. Yes, it was.

12 Q. When was the appeal filed?

13 A. I'm assuming the next day.

14 Q. Okay. Okay. Had you known that the -- well, I'm
15 gonna back up. Did you see a letter from the Solicitor
16 outlining the plea offer in this case?

17 A. I did.

18 Q. Did you see that prior to your plea?

19 A. I did.

20 **MR. HEMLEPP:** I'm sorry, Your Honor. I beg the
21 Court's indulgence.

22 **THE COURT:** Fine.

23 **MR. HEMLEPP:** May I approach the witness, Your
24 Honor?

25 **THE COURT:** Sure.

1 BY MR. HEMLEPP:

2 Q. I'm gonna hand you something and ask if you can
3 identify that?

4 A. I can. It's a plea agreement.

5 Q. Okay. From Assistant Solicitor Collins in your
6 case?

7 A. Yes, sir.

8 Q. Okay.

9 **MR. HEMLEPP:** Your Honor, I would like to move to
10 admit -- my copy has writing on the back that would not
11 be admissible, and I'm not trying to get that in, I'd
12 move to admit as Applicant's 1, Your Honor.

13 **THE COURT:** Okay.

14 (Applicant's Exhibit Number 1 was marked and
15 admitted into evidence.)

16 BY MR. HEMLEPP:

17 Q. Mr. Pittman, in the letter that conferred an offer
18 to you through your lawyer, did the Assistant Solicitor
19 talk about mitigating circumstances?

20 A. Three times, yeah.

21 Q. And the letter referred to the ability of your
22 lawyer to bring up mitigating circumstances?

23 A. In the judge's chambers, in the courtroom, and,
24 again, in the judge's chambers.

25 Q. Okay. Do you know what mitigating circumstances

1 are?

2 A. Yeah, evidence to help refute what they're saying,
3 you know. They're helping you in the case.

4 Q. Do you believe the medical records were mitigating
5 circumstances in this case?

6 A. Absolutely.

7 Q. Had you known that they were never gonna be brought
8 up, would you have pled guilty?

9 A. No, I wouldn't.

10 Q. Is there anything else about this matter that you
11 think that Judge Kinard needs to know before he rules in
12 this case?

13 A. I just think he needs to see the medical records,
14 and he's reading the transcript, where the judge made
15 his decision on how much time he was gonna give me based
16 on the facts of what was said in the courtroom, but we
17 have on the paperwork to dispute what was said. I had
18 the assumption that everybody was gonna tell the truth
19 when we went into the courtroom, you know. I didn't --
20 I didn't have any assumption that anybody was gonna be
21 out of line, that's the only reason I pled guilty, and
22 he had me thinking that that was the reason that -- they
23 was gonna tell the truth was the reason that I pled
24 guilty because everybody was gonna do, you know,
25 everything by the book.

1 Q. And when you say tell the truth, you're talking
2 about the medical condition of --

3 A. Medical conditions and everything, you know.

4 **MR. HEMLEPP:** Okay. Mr. Pittman, thank you. Thank
5 you very much. You need to sit and answer any questions
6 that the Attorney General may have for you. Thank you,

7 Your Honor.

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

9 **MR. JOHNSON:** May it please the Court, Your Honor?

10 **THE COURT:** Go ahead.

11 CROSS-EXAMINATION

12 BY MR. JOHNSON:

13 Q. Mr. Pittman, do you remember your guilty plea on
14 December 20, 2012?

15 A. I do.

16 Q. Okay. And you waived presentment of the charges at
17 that plea hearing?

18 A. I did.

19 Q. And said you weren't under any influence of alcohol,
20 drugs and no mental issues, correct?

21 A. Right.

22 Q. Okay. And you also agreed that the State had
23 overwhelming evidence of your guilt at that hearing,
24 correct?

25 A. Well, that's what my lawyer said, so.

1 Q. You're the one who agreed to it, correct?

2 A. I did agree to it.

3 Q. And that's under oath?

4 A. That's under oath.

5 Q. And the Judge advised you of your constitutional
6 rights; the right to plead guilty, right to a trial,
7 right to remain silent, right to present witnesses?

8 A. He did.

9 Q. And you agreed that you were, indeed, guilty,
10 correct?

11 A. I did.

12 Q. Okay. And you were satisfied with Mr. Dest's
13 representation, correct?

14 A. Up until the point of --

15 Q. But under oath at the guilty plea, you told the
16 judge that you were satisfied with his representation?

17 A. I did.

18 Q. And that you understood your conversations with
19 Mr. Dest?

20 A. I did.

21 Q. And you had no complaint whatsoever about Mr. Dest?

22 A. No, I didn't.

23 Q. You didn't say that or you didn't have any
24 complaint?

25 A. I didn't have a complaint with him.

1 Q. And nobody promised or threatened you to get you to
2 plead guilty?

3 A. Nobody did.

4 Q. And that was your decision to plead guilty?

5 A. Yes, sir.

6 Q. You understood the Court's questions?

7 A. Yes, sir.

8 Q. And answered them truthfully?

9 A. I did.

10 Q. And now what you're saying is that you're not
11 satisfied with his representation, correct?

12 A. Well, I am.

13 Q. Is that what you're saying?

14 A. Yeah, for the reason that I had talked to him the
15 day before about the same medical issues and I said
16 there was only two things that I want you to tell the
17 judge. One, that I don't have any violent crimes on my
18 record and, two, that I did not cause these medical
19 conditions, they was preexisting, and he said okay, I'll
20 bring it up in the courtroom, and it was never brought
21 up.

22 Q. And actually you were given a chance to speak on
23 your own behalf, but you never said -- mentioned that
24 at all, did you?

25 A. No, I didn't. I didn't have my paperwork in there

1 because I was depending on my lawyer to be the one with
2 the paperwork that we was talking about.

3 Q. Okay. But you actually apologized and accepted
4 responsibility for your actions?

5 A. I did. For my actions.

6 Q. And do you remember signing the affidavit prior to
7 the guilty plea?

8 A. Yes, sir.

9 Q. I'll be glad to present it to you.

10 **MR. JOHNSON:** May I approach, Your Honor?

11 **THE COURT:** Okay.

12 BY MR. JOHNSON:

13 Q. Mr. Pittman, I'm handing you an Affidavit
14 of Defendant for Guilty Plea. Do you recognize that
15 document?

16 A. I do.

17 Q. Okay. All right. So that's your signature on the
18 back of that document? The very back. Flip the whole
19 thing over.

20 A. It is.

21 Q. Okay. And in that your lawyer goes over, you know,
22 all the negotiations; that you are aware that the
23 maximum penalty you could get was 20 years on the ABHAN?

24 A. Right.

25 Q. Okay. And you agreed to that?

1 A. Right.

2 Q. Okay. So you were fully aware of the sentencing
3 you could have gotten, correct?

4 A. I was.

5 Q. All right. And you, in fact, got the maximum on
6 that one charge, right?

7 A. I was. I did.

8 Q. Okay. But what your gripe is, is that he didn't
9 present medical records for mitigation or file a motion
10 for reconsideration hoping that you'd get a lesser
11 sentence?

12 A. Right.

13 Q. Okay. But this shows that you were, in fact, aware
14 that you could have gotten much more time than you
15 actually did?

16 A. Only 15 years, yes.

17 Q. Okay. Well, actually if you had the possession,
18 you could get 20 more years, correct? If everything was
19 consecutive, you could have gotten up to 45 years?

20 A. Correct.

21 MR. JOHNSON: Okay. Thank you. And, Your Honor,
22 this is already in the packet, so I don't think I need
23 to introduce it. No further questions at this time.

24 REDIRECT EXAMINATION

25 BY MR. HEMLEPP:

1 Q. At the time that you answered the judge's questions
2 about Mr. Dest, had he talked to the Court about
3 sentencing yet?

4 A. No.

5 Q. Do you understand that question?

6 A. No. Would --

7 Q. I'll ask -- I'll ask the question again. When you
8 were at the plea and Mr. Johnson, with the Attorney
9 General's Office, said that you had responded to the
10 judge you were happy with Mr. Dest, that'd you
11 understood everything, bla, bla, bla, this was all
12 contained in the plea before Mr. Dest had the
13 opportunity to present mitigating evidence; is that
14 correct?

15 A. Right.

16 Q. So at the time he had not yet failed to do what
17 you believed he was going to do, which was present this
18 medical testimony?

19 A. Correct.

20 **MR. HEMLEPP:** Thank you. I have no further
21 questions.

22 **THE COURT:** All right. Well, what medical things
23 are y'all talking about and what plea offer was put in
24 evidence? I haven't seen those things.

25 **MR. HEMLEPP:** Your Honor, the plea offer has been

1 admitted.

2 **THE COURT:** Well, I understand that, but that
3 doesn't help me if I haven't seen it.

4 **MR. HEMLEPP:** I'm sorry, Your Honor.

5 **THE COURT:** Right. You can step down.

6 (Witness excused.)

7 **MR. HEMLEPP:** -- Your Honor -- Your Honor, if you look
8 at the packet filed by the Applicant, the Application
9 for Post-Conviction Relief --

10 **THE COURT:** All right. I read the transcript. I
11 am a speed reader, but Lord knows it's --

12 **MR. HEMLEPP:** Yes, sir. There -- the medical
13 records -- I apologize.

14 **THE COURT:** There's forty something pages of the
15 transcript I just read and I'm not down to that. I was
16 gonna get to that.

17 **MR. HEMLEPP:** Yes, sir. Yes, sir.

18 **THE COURT:** Okay.

19 **MR. HEMLEPP:** I simply wanted to point out that
20 in the application -- attached to the Application for
21 Post-Conviction Relief are the medical records in
22 question.

23 **THE COURT:** All right.

24 **MR. HEMLEPP:** So they're actually part of the
25 Court's packet already.

1 **THE COURT:** Okay.

2 **MR. HEMLEPP:** And, Your Honor, for the -- before
3 I rest, I'd like to go ask the Court to make sure that
4 your record is complete; if we could compare what's in
5 the Court's record.

6 **THE COURT:** So far all I have is the document
7 you put in and I have an Application for Post-Conviction
8 Relief, I've got the Court of Appeals deal, I've got
9 the medical records attached, the plea affidavit, and a
10 list of his prior convictions. It's pretty numerous.

11 **MR. HEMLEPP:** Yes, sir. And the transcript --
12 and with that, Your Honor, since the Court's record is
13 complete, the Applicant would rest.

14 **THE COURT:** Okay.

15 **MR. HEMLEPP:** Thank you.

16 **THE COURT:** The State calls Mr. Harry Dest to the
17 stand, Your Honor.

18 **THE COURT:** All right, Mr. Dest.

19 HARRY A. DEST,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. JOHNSON:

23 Q. Good morning, Mr. Dest.

24 A. Good morning.

25 Q. Please tell the judge how you became involved in

1 this case.

2 A. I was appointed to represent Mr. Pittman shortly
3 after he was arrested. He was initially charged with
4 attempted murder, two counts, which were the main
5 charges that we were confronting in this case.

6 Q. How long have you been practicing law?

7 A. Twenty-four years.

8 Q. And how much of that is criminal?

9 A. Virtually all of it. I practiced for a brief
10 period of time in North Carolina. I'm licensed in
11 North Carolina. It was a private practice, but ever
12 since 1990 I've been here in York County.

13 Q. And you are now the Chief Public Defender here in
14 the 16th Circuit?

15 A. Circuit Public Defender, yes, 16th Circuit.

16 Q. And when you first spoke with Mr. Pittman, can you
17 explain to the judge the gist of those conversations?
18 Did he give you his side of the story versus the
19 evidence? Did you go over discovery with him?

20 A. Yes, we did. And, first of all, to kind of take
21 a step back, ultimately he pled under North Carolina
22 versus Alford, and the reason why he pled under North
23 Carolina versus Alford was because Mr. Pittman had
24 consumed a lot of drugs on the day in question. In
25 fact, he told authorities in Horry County where he was

1 originally arrested that he had taken about 30 or 40
2 Hydrocodone pills. He told me that when -- that night
3 he had taken a number of different drugs, including
4 Xanax, crack cocaine, Opana pills, he smoked some
5 marijuana joints. So he had a lot of drugs in his
6 system and because of that he actually blacked out.

7 Now the evidence against him was that he was with
8 Ms. Faile, who was his girlfriend, and they had gone
9 out earlier in the evening in Charlotte and had come
10 back to Rock Hill and apparently at some time in the
11 early evening hours the 11-year-old daughter of
12 Ms. Faile found her mother in a pool of blood in her
13 bedroom and her brother outside near a pool area in a
14 pool of blood. The car that they were in Mr. Pittman
15 had taken and had gone to Horry County, South Carolina,
16 but prior to going to Horry County he used an ATM card
17 that was taken from Ms. Faile and that was captured on
18 videotape.

19 He was apprehended, like I said, in Horry County
20 where they took his clothing, articles of clothing, and
21 there was blood spatter on three different areas of
22 Mr. Pittman's clothing. One was on the front leg pants
23 of his jeans, the other was on the back leg pants of
24 his jeans and the other was the right arm, and the
25 blood spatter was from the young man, Christopher F. [REDACTED] [REDACTED]

1 who was assaulted. So the DNA evidence was conclusive
2 that -- and the blood spatter certainly corroborated the
3 fact that Mr. Pittman was involved in an altercation
4 that night. I will note that the injuries that were
5 sustained by both those individuals, and the record
6 clearly reflects, were multiple skull fractures to both
7 Ms. Faile and Christopher Faile; so therein lies the
8 significance of the medical injuries.

9 As I indicated, he pled under -- guilty under
10 North Carolina versus Alford. The reason why, of
11 course, is because he couldn't recall exactly what
12 happened. However, based upon the forensic evidence,
13 based upon all the factors in this case, the video of
14 him using her ATM card, the fact that he took her car,
15 the fact that Christopher F. [REDACTED] s blood was on his
16 clothing, that I felt that there was overwhelming
17 evidence that had we gone to trial he would have been
18 convicted; hence the reason for the plea under Alford.

19 The mitigation was quite simply that Danny was
20 under the influence of drugs and had been for quite
21 some time. I think in talking with him over the many
22 times that I talked to him, you know, he was extremely
23 remorseful for having been a part of something like
24 this. We presented evidence of him as a father, he
25 has a son who's at Rock Hill High, and certainly there

1 were letters that were written on his behalf. A former
2 employer had talked about what a good carpenter he was
3 and what a reliable employee he is, or was at that time,
4 so I felt that the heart of the mitigation needed to be
5 centered around the fact that he needs some treatment
6 for his drug addiction problem, which was horrendous at
7 the time.

8 So the parameters of the plea offer would allow
9 me to ask for a minimum sentence or a sentence in the
10 8- to 10-year range, and the letter that was written by
11 Ms. Collins reflects that; although the plea agreement
12 certainly could have -- it could have been worse. And,
13 again, we dropped the charges down from attempted murder
14 to assault and battery of a high and aggravated nature,
15 so under the parameters the plea agreement, the time
16 was left totally up to the judge, but I was trying to
17 argue for a minimal sentence given the fact that he had
18 not been in prison for any significant period of time,
19 that he desperately needed that drug treatment and that
20 8 to 10 years from now Danny Pittman would be a very
21 different person having had the opportunity to get the
22 drug treatment that he needed and hopefully learn from
23 this mistake.

24 Q. And your negotiations with the Solicitor, did
25 you explain that to Mr. Pittman?

1 A. I did.

2 Q. Was he onboard with that?

3 A. Yes.

4 Q. Okay. And, in fact, he signed an affidavit before
5 the guilty plea stating that he understood --

6 A. Yes.

7 Q. -- that negotiation would be a 20-year cap -- or a
8 20 year on the ABHAN?

9 A. Yes, and that I would be -- that I would be asking
10 for an 8- to 10-year sentence, which, again, is
11 reflected in the -- in the affidavit -- I mean, in the
12 letter written by Solicitor Collins. And I will say
13 that, you know, as far as the facts of the case, the
14 mitigation of the case, the reason why he pled under
15 Alford, I did go back in chambers with Ms. Collins prior
16 to the plea to run all that by Judge Nettles to make
17 sure that it would be an appropriate plea in this case.

18 Q. And Judge Nettles' sentence is legal under South
19 Carolina law, correct?

20 A. Yes, sir.

21 Q. Okay. Do you see any reason why you did not file a
22 motion for reconsideration?

23 A. I did not. Now I did file a motion -- a notice of
24 appeal, but I did not file a motion to reconsider, and
25 the reason was because I did not see any good faith

1 basis to go back in front of the Court to try to argue
2 that he would receive a sentence less than what he
3 received. Now I do understand that he wanted me to get
4 into certain things about the victim and about she had
5 some migraines and some problems prior to that, but when
6 you looked at the crime scene photos, the amount of
7 blood that was lost, the fact that they had fractured
8 skulls, to me I don't think it would have made any
9 difference at all to get back in front of the Court to
10 argue those, which I would consider, minor points.

11 **MR. JOHNSON:** That's all the questions I have at
12 this time, Your Honor.

13 **MR. HEMLEPP:** May it please the Court?

14 **THE COURT:** All right.

15 **MR. HEMLEPP:** Thank you.

16 **CROSS-EXAMINATION**

17 **BY MR. HEMLEPP:**

18 Q. The discovery in this case -- you worked with
19 Ms. Collins the entire time?

20 A. Yes.

21 Q. And she's no longer with the Solicitor's Office, I
22 believe, but she had been with the Solicitor's Office
23 for a long time?

24 A. Correct.

25 Q. And you had worked with her in the past?

1 A. Yes.

2 Q. Did you have a good working relationship with her?

3 A. I did.

4 Q. Okay. And did you have any -- any difficulty in
5 obtaining all of the discovery in this case?

6 A. No.

7 Q. Okay. You appropriately moved and she appropriately
8 gave you information as she received it?

9 A. Yes.

10 Q. The medical records about -- that are in question,
11 the medical records that relate to the medical condition
12 of the victims, did you receive that at the beginning of
13 the case or toward the end of the case?

14 A. The beginning, I believe.

15 Q. Okay. And did you -- did you read them?

16 A. Yes.

17 Q. Okay. Now in the medical records -- have you
18 reviewed them before coming today?

19 A. Not today, no.

20 Q. Okay. In the medical records, as far as Christopher
21 Faile, the records clearly show that he had a history of
22 a speech impediment?

23 A. Uh-huh.

24 Q. With regards to Kimberly Faile that's in the
25 Court's -- with regards to Kimberly Faile, did she have

1 a history of seizures --

2 A. Yes.

3 Q. -- pre-dating this incident? Okay. Is that your
4 recollection?

5 A. Yes.

6 Q. Looking at the transcript, Page 36, beginning on
7 Line 2, the judge starts talking about his rationale --
8 I'm talking about Judge Nettles, the sentencing judge,
9 talks about his rationale for this sentencing. He
10 says, and I quote, I look at how it's affected them
11 physically. They're going to have permanent impairment
12 for the rest of their life. That's at Line 9. Line 18
13 on the same page, "What you've done here has caused a
14 world of emotional and physical pain. This type of
15 trauma to the head is going to be a permanent
16 impairment." Did you believe it was important in
17 mitigation that they had permanent impairment prior to
18 this incident?

19 A. I don't think one can say whether they were gonna
20 have permanent impairment or not. My recollection was
21 at the time that still was a question mark, but --

22 Q. And I recognize that, and I'm not asking either
23 you or Judge Nettles to be medical experts, but in
24 making his sentencing decision, clearly Judge Nettles
25 specifically pointed to the permanent impairment of

1 the victims as a major rationale for why he gave
2 the sentence he gave when you had evidence in your
3 possession that they had permanent impairment prior to
4 the incident and yet that was never brought up. Is
5 that a decision that you made or is that an oversight
6 that you made?

7 A. That was a decision I made.

8 Q. Okay. And the decision was based upon what?

9 A. It was based upon the fact that you had a traumatic
10 injury that was caused and so there was no way that
11 you could dispute the fact that what occurred was a
12 significant, serious medical injury because you had
13 fractures to both skulls. So the question of whether
14 it was permanent or not or what was the ramification of
15 that, I couldn't say at that point, but it was clear
16 from the evidence and the crime scene photos that this
17 was a very serious, brutal beating.

18 Q. I agree with you and -- and I'm sure Judge Nettles
19 clearly saw it that way. All right.

20 A. But I -- I did not want to get into a medical
21 debate at how serious the injuries would be. I mean,
22 emotionally, of course, it's gonna be a serious
23 emotional impact on their lives. I mean, how could it
24 not be? I mean, an 11-year-old girl sees his {sic}
25 mother and her brother lying in a pool of blood. The

1 boy, I -- I interviewed the boy personally and, you
2 know, I can --

3 Q. What -- what boy? When you said a boy, who are you
4 talking about?

5 A. Christopher F. [REDACTED] [REDACTED] And so my
6 sense was that it clearly had an effect on him.

7 Q. But you also just testified, did you not, that
8 you're not a medical expert?

9 A. No, I'm not, no.

10 Q. Okay. So the question of what was the medical
11 condition of the victims, would you agree that's not
12 really an issue here today? The issue here today is
13 what did Judge Nettles believe the medical condition
14 was.

15 A. I don't -- I don't know what Judge Nettles factored
16 in other than what he stated and probably other things.
17 I think the brutal nature of the beating was probably
18 the primary factor and that's what I felt at the time
19 and still feel that way.

20 Q. What is your -- you filed an appeal in this case.
21 There's a letter in the Court's file where you indicate
22 to your client that you filed an appeal the next day.

23 A. Yes.

24 Q. Is that a practice that you have as far as --

25 A. If there's any indication that they may want to

1 file an appeal, and I received a phone call from the
2 mother, and so I -- as a matter of course, we just
3 went ahead and filed it since it's a matter of right.

4 Q. Which is a laudable practice to be in.

5 A. Right.

6 Q. That's what a good lawyer does. What is your
7 practice with regards to a motion for reconsideration?

8 A. Well, as I understand the law, it's not a matter of
9 right and given the fact that we presented everything
10 that I said we were gonna present, that I felt was
11 appropriate, that I didn't think I had to --

12 **THE COURT:** In twenty-seven years, I've reduced
13 one. That's why he doesn't do it. I mean, we can
14 spend all of our time in -- in Columbia. I'm sentencing
15 two hundred people some weeks. I mean, I can't then
16 listen to two hundred more. Actually, I have never
17 given a sentence in my twenty-seven years where both
18 sides stood up and did this (clapping hands).

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

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

21 **THE COURT:** We agree, great. Great job, Judge.
22 Somebody is gonna be disappointed.

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

24 **THE COURT:** Generally, both sides.

25 **MR. JOHNSON:** That's exactly right, Your Honor.

1 BY MR. HEMLEPP:

2 Q. You had decided it was not a matter of right and
3 it was unnecessary in this case?

4 A. Correct.

5 MR. HEMLEPP: Okay. Thank you. Thank you, Your
6 Honor.

7 THE COURT: Okay.

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

9 THE COURT: Step down.

10 (Witness excused.)

11 MR. JOHNSON: The State has no further witnesses.

12 THE COURT: Okay.

13 MR. HEMLEPP: Thank you, Your Honor.

14 THE COURT: Would you like to argue anything while
15 he's in here?

16 MR. HEMLEPP: No, Your Honor. I would just ask the
17 Court to consider the entire record.

18 THE COURT: Well, here's the thing. I mean, I do
19 this a lot and I am a speed reader. The skulls were
20 cracked. The victims indicated to the judge that the
21 conditions had worsened, you know. The judge was aware
22 of that. He's faced with law enforcement people wanting
23 more time than he could give him, you know, and they
24 generally don't do that, so that weighed on his mind,
25 how bad it was. I just don't see -- the attorney made

1 the decision not to even bring that up because you can't
2 mitigate skulls being cracked and blood all over the
3 place. So if Judge Nettles, just from reading this,
4 had sentenced him to attempted murder, he could given
5 him much more time. I generally don't give people
6 consecutive time. Occasionally I do, but -- he was
7 asked to do that, and he did, so I just don't feel
8 that he's carried his burden. I don't need him to go
9 thinking he might win later, you know. I recognize the
10 sentence was pretty tough, but even if I granted your
11 petition, all you can get is a new situation and they
12 could go for attempted murder and you might end up even
13 worse than you are now, so just prepare an order.

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

15 **MR. HEMLEPP:** Thank you, Your Honor.

16 (Proceedings were concluded at 10:42 AM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 4th day of August, 2014.

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

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

November 24, 2014

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS)
SIXTEENTH JUDICIAL CIRCUIT)

Danny Ray Pittman, #347976,)

2013-CP-46-2491)

Applicant,)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

FILED-RECEIVED
2014 SEP 26 AM 10:00
DAVID HEMLEPP
C.C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 16, 2013. Respondent made its Return on December 30, 2013. An evidentiary hearing into the matter was convened on August 4, 2014, at the Moss Justice Center in York, SC. W. Michael Hemlepp, Jr., Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Harry Dest, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was charged with two counts of Attempted Murder and one count of Grand Larceny. Harry Dest, Esquire, represented him. On December 20, 2012, Applicant waived presentment of the charges to the grand jury and pled pursuant to North Carolina v. Alford to two counts of Assault and Battery of a High and Aggravated

Nature (ABHAN) and Grand Larceny before the Honorable Michael G. Nettles. Judge Nettles sentenced the Applicant to twenty (20) years for one count of ABAHN, five years, consecutive, for the other count of ABHAN, and five (5) years, concurrent, for Grand Larceny.

A Notice of appeal was filed on Applicant's behalf, but the South Carolina Court of Appeals dismissed his appeal. The Remittitur was issued on May 22, 2013.

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

1. "Ineffective Assistance of Counsel"
 - a. "Failing to provide proof of paperwork that we (cannot read)"
2. "Challenge the validity of plea"
 - a. "That I have gained nothing by pleading guilty"
3. "Breach of plea agreement"
 - a. "the same as a trial. I received the max sentence."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel listed in his amended application.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified Counsel represented him and met with him three or four times. He claimed he did not review the entire case with Counsel. Applicant also claimed that he and Counsel discussed the medical records of the Victims, but Counsel never mentioned these pre-existing conditions during the guilty plea. Applicant testified he has since seen medical records that refute the injuries sustained by the Victims and could have been used in mitigation.

On cross-examination, Applicant admitted he was not under the influence of drugs or alcohol and had no mental or emotion issues during the guilty plea. Applicant also agreed with the facts of the case as the solicitor articulated during the plea. Applicant admitted the plea judge advised him of his constitutional rights and that he waived them in order to plead guilty. Applicant testified he was satisfied with Counsel's representation and had no complaints about Counsel. Applicant stated it was his decision to plead guilty and that nobody threatened him or promised him anything to plead guilty. He also stated he understood the court's questions and answer them truthfully.

Counsel testified he is the Chief Public Defender for the 16th Circuit and has been practicing criminal defense for twenty-four years. Counsel testified he received discovery in the case and discussed it with Applicant. Applicant pled under North Carolina v. Alford because Applicant so many drugs on the day of the incident, including 30-40 hydrocodone pills, Xanax, crack cocaine and marijuana, that he blacked-out and did not remember the incident. Counsel testified the evidence at trial would have been that Applicant was with Victim, his girlfriend, and her 11-year old daughter found her and her son in her house in pools of blood. Applicant then fled the scene and was apprehended in Horry County, where police found Victim's blood on Applicant's clothing. Victims also had skull fractures. Counsel testified that from the medical records and forensic evidence, there was overwhelming evidence of Applicant's guilt.

Counsel additionally testified that during mitigation at the guilty plea, he explained that Applicant was heavily under the influence of drugs during the incident, that Applicant was extremely remorseful, that letters were written on Applicant's behalf, and that Applicant need treatment for drug addiction. Counsel testified he was allowed to ask for the minimum sentence during the plea

and that the plea could have been much worse because the amount of prison time was left up to the plea judge.

Counsel also testified he met in chambers with Judge Nettles and the State prior to the plea hearing and that the sentence Judge Nettles handed down was legal. He stated he filed an appeal on Applicant's behalf, but found no reason to file a motion for reconsideration. Counsel lastly stated that when he viewed the crime scene photographs, skull fractures, and medical records, there was no need to argue over small issues.

On cross-examination, Counsel testified Applicant testified he received all of the discovery from the State, including the medical records of Victims. In these medical records, there were records that Victim #1 had a history of headaches and Victim #1 had a prior speech impediment. Counsel testified he decided not to argue these points due to the traumatic injuries to the Victims, including skull fractures. He stated he filed an appeal on Applicant's behalf after receiving a phone call from Applicant's mother. Counsel lastly testified he did not file a motion for reconsideration because he found no reason to and was not required to do so.

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 the testimony of the Applicant not credible while finding Counsel's testimony very credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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, 106 S.Ct. 366 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel

advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION


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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!



J. Ernest Kinard, Jr.
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9/3, 2014
Benford, South Carolina

WITNESSES

YCS/D.C. Neely

DOCKET NO. 2012-GS46-04574

The State of South Carolina

County of York

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

Danny Ray Pittman
Defendant

COURT OF GENERAL SESSIONS

December 6th Term 2012

lgc

ARREST WARRANT NUMBER

Arrest Warrant M603914

THE STATE

vs.

DANNY RAY PITTMAN

Danny Ray Pittman
hereby appear in my own proper person and plead guilty to the within-indictment or to lesser-included offense of Assault and Battery of a High and Aggravated Nature (S.C. Code 16-3-600).
Danny Ray Pittman
Defendant

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

ATTEMPTED MURDER

SC Code Section 16-03-0029

CDR Code 3410

Foreperson of Petit Jury

Date:

Witness:
Deborah A. DeWitt
C.O.P.S. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

CERTIFIED TRUE COPY

2013 AUG 28 PM 3:58

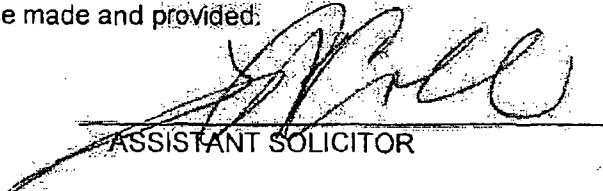
At a Court of General Sessions, convened on December 6, 2012, the Grand Jurors of York County present upon their oath:

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

ATTEMPTED MURDER

That on or about February 1, 2012, the Defendant Danny Ray Pittman did, with intent to kill, attempt to kill another person, to wit: Kimberly Dawn Faile, and said Defendant did so with malice aforethought, either expressed or implied. Said incident occurred at [REDACTED] Rock Hill, South Carolina. Said incident did occur within York County, South Carolina. All in violation of 16-03-0029, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the Common Law of the State of South Carolina and the statute(s) in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

VCSD / C. Neely

DOCKET NO. 2012-GS46-04375

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

December 6th Term 2012

THE STATE

vs.

DANNY RAY PITTMAN

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.
[Signature]
Defendant

I, *Danny Ray Pittman* hereby appear in my own proper person and plead guilty to the within indictment or to lesser - included offense of *Assault and Battery of a High and Aggravated Nature (SC Code 16-3-600)*
[Signature]
Defendant

Witness:
[Signature]
C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

Arrest Warrant M603915

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

ATTEMPTED MURDER

SC Code Section 16-03-0029

CDR Code 3410

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

2013 AUG 28 PM 3:58


At a Court of General Sessions, convened on December 6, 2012, the Grand Jurors of York County present upon their oath:

CLERK OF COURT
YORK COUNTY, SC

ATTEMPTED MURDER

That on or about February 1, 2012, the Defendant Danny Ray Pittman did, with intent to kill, attempt to kill another person, to wit: Christopher F. and said Defendant did so with malice aforethought, either expressed or implied. Said incident occurred at [REDACTED] Rock Hill, South Carolina. Said incident did occur within York County, South Carolina. All in violation of 16-03-0029, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the Common Law of the State of South Carolina and the statute(s) in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

CSD/C. Neely

DOCKET NO. 2012-GS46- 04376

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

December 6th Term 2012

ARREST WARRANT NUMBER

J158109

THE STATE

vs.

DANNY RAY PITTMAN

ACTION OF GRAND JURY

For person of Grand Jury

Date:

VERDICT

Indictment for
GRAND LARCENY
(VALUE OF STOLEN PROPERTY more
than \$2,000 but less than \$10,000)

SC Code: 16-13-0030(B)
CDR Code: 3420

For person of Petit Jury
Date:

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

Danny Ray Pittman
Defendant

I, *Danny Ray Pittman*
hereby appear in my own proper person and plead
guilty to the within indictment-
as charged.

Danny Ray Pittman
Defendant

Witness
Danny Ray Pittman
C.O.C. PLS. ADD G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2013 AUG 28 PM 3:58

At a Court of General Sessions, convened on December 6, 2012, the Grand Jurors of York County present upon their oath

CLERK OF COURT
YORK COUNTY, SC**GRAND LARCENY**

That on or about February 1, 2012, the Defendant Danny Ray Pittman did unlawfully take and carry away goods and/or property belonging to the victim Kimberly Dawn Faile, without the permission of said owner, and said Defendant did so with the intent to deprive said victim/owner permanently of such goods and/or property, to wit: a 2006 Kia Sorento automobile, the value of said automobile being approximately Five Thousand Dollars (\$5,000.00), being over Two Thousand (\$2,000.00) Dollars but less than Ten Thousand (\$10,000.00) Dollars. Said incident occurred at [REDACTED] Rock Hill, South Carolina. Said incident did occur within York County, South Carolina. All in violation of Section Code 16-13-0030(B), South Carolina Code of Laws (1976, as amended).

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


ASSISTANT SOLICITOR