

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marion County

Brooks P. Goldsmith, Circuit Court Judge

CODY INMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

—
APPELLATE CASE NO. 2015-000363

APPENDIX

ROBERT M. PACHAK
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. CROOM HUNTER
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF MARLBORO	)	
	)	
THE STATE	)	May 25, 2011
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
CODY INMAN,	)	
	)	2010-GS-34-00367
DEFENDANT.	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

Kernard Edward Redmond, Esquire
ATTORNEYS FOR THE STATE

Emily Crayton, Esquire
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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THE STATE VERSUS CODY INMAN

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1 (Whereupon, this hearing began at 12:04 p.m. on
2 Wednesday, May 25, 2011.)

3 **THE COURT:** I'll be glad to hear from you, Mr.
4 Solicitor.

5 **MR. REDMOND:** Before you at this time is Cody Inman.
6 He is before you on Indictment Number 2010-GS-34-367. He
7 is indicted for assault and battery with intent to kill.
8 This case has been indicted by the grand jury. He is
9 actually pleading to assault and battery of the first
10 degree under the ten-year statute. He is currently
11 serving a nine-year sentence on strong-armed robbery in
12 Dillon County. And basically what we have indicated is
13 that we will reduce the --- he is indicted for assault and
14 battery with intent to kill, to assault and battery first
15 degree. And he is represented by Ms. Crayton.

16 **THE COURT:** All right. If you would place the
17 defendant under oath.

18 **WHEREUPON, CODY INMAN**

19 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

20 **MR. INMAN:** Yes, sir.

21 **THE COURT:** All right. Ms. Crayton, have you - And
22 what is the recommendation?

23 **MR. REDMOND:** There is no recommendation, Judge.
24 And I have explained that to Ms. Crayton and her client.
25 And they are going to address that to the court with any

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1 mitigation. And we are yielding to the court's judgment,
2 as we always do.

3 **THE COURT:** Is there a victim who has asked to be
4 present?

5 **MR. REDMOND:** Not asked to be present, but
6 Investigator Stuckey with The South Carolina Department of
7 Corrections, actually was here. And we had a chance to
8 talk with him. He has been in contact with the victim,
9 and the victim's father is from out of state. But the
10 victim himself is incarcerated too. This happened at
11 Evans Correctional. But he has been in contact with him,
12 and based on my discussions with Investigator Stuckey, I
13 am comfortable with going forward, because the victim has
14 been apprised of what has been transpiring with this case.

15
16 **THE COURT:** Very good. Now, have you had an
17 opportunity, Ms. Crayton, to discuss with Mr. Inman the
18 elements of this charge, the penalties for, and his right
19 to a trial on this charge?

20 **MS. CRAYTON:** Yes, Your Honor, and we have also had
21 a chance to discuss the lesser charge along with the
22 original charge, which was the ABWIK.

23 **MR. REDMOND:** And, Your Honor, I hate to interrupt,
24 but I did not think about this in my haste. I don't know
25 if since we no longer have --- he is indicted for assault

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1 and battery with intent to kill, which is attempted
2 murder, do I need to add a count two to the Indictment? I
3 did not think about that, and I do apologize.

4 THE COURT: Well, I am wondering if we need to
5 waive a grand jury -

6 MR. REDMOND: Do I need to add -

7 MS. CRAYTON: It should be a lesser included though?

8 THE COURT: I would think that it may be, but I
9 will take that up with the defendant in my discussions.

10 MR. REDMOND: Thank you, Your Honor.

11 MS. CRAYTON: Thank you, Your Honor.

12 THE COURT: Do you believe that Mr. Inman has
13 understood the things that you have explained to him?

14 MS. CRAYTON: Yes, Your Honor. I do.

15 THE COURT: And what did you tell him the greater
16 charge, maximum penalty was?

17 MS. CRAYTON: We discussed that it carried up to
18 twenty years, and the lesser charge, the assault and
19 battery first degree carried up to ten years. And he
20 understands all of the differences and classifications of
21 each of the crimes.

22 THE COURT: All right. And, understanding all of
23 these things, how does he wish to plead?

24 MS. CRAYTON: Guilty, Your Honor.

25 THE COURT: Do you believe this is in his best

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1 interest?

2 MS. CRAYTON: Yes, Your Honor.

3 THE COURT: Do you believe he would be convicted if
4 he goes to trial?

5 MS. CRAYTON: Yes, Your Honor.

6 THE COURT: All right. Mr. Inman, your lawyer
7 tells me that you intend to plead guilty to this charge;
8 is that correct?

9 MR. INMAN: Yes, sir.

10 THE COURT: Are you guilty of it?

11 MR. INMAN: Yes, sir.

12 THE COURT: And I want to make sure that you
13 understand that when you come forward and enter a plea to
14 this charge you give up some significant rights.

15 I first want to ask you though, do you have any
16 alcohol or drugs in your system today?

17 MR. INMAN: No, sir.

18 THE COURT: Do you have any medication that you
19 take?

20 MR. INMAN: No, sir.

21 THE COURT: Let me get you to move a little closer
22 to that microphone, so we can hear you in the courtroom.

23 And do you take any kinds of medications?

24 MR. INMAN: No, sir.

25 THE COURT: And do you have any sort of condition,

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1 mental or emotional condition that prevents you from
2 understanding what we are doing here?

3 **MR. INMAN:** No, sir.

4 **THE COURT:** So you understand that you are pleading
5 guilty to a charge that carries up to ten years in prison?

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

7 **THE COURT:** All right. When you come in here to
8 plead guilty, you give up some significant rights, and I
9 want to discuss those with you.

10 First of all, you don't have to plead guilty, because
11 you have a right to a jury trial. You have a right to
12 remain silent in this courtroom. You have a right not to
13 incriminate yourself. And furthermore, you are presumed
14 innocent of these charges. Do you understand that you are
15 giving up these rights when you plead guilty today?

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

17 **THE COURT:** If you wanted to have a trial, you and
18 Ms. Crayton would have a right to help pick a jury here in
19 Marlboro County. Once we had a jury empaneled, you could
20 testify to that jury. You could confront evidence and
21 witnesses against you. You could bring others in here
22 with a subpoena to testify on your behalf to the jury.
23 All of this so the jury would hear your version of events
24 here. Do you realize that you are waiving these trial
25 rights today by pleading guilty?

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1 **MR. INMAN:** Yes, sir.

2 **THE COURT:** And if you wanted, as I said, if you
3 wanted to have a trial, as I said a moment ago, you would
4 be presumed innocent. What that really means is this.
5 You don't have anything to prove here. The state would
6 have the burden of proof, and would have to prove these
7 charges beyond a reasonable doubt. That is a high
8 standard. They would have to convince all twelve jurors
9 unanimously that you are guilty, or you would not be
10 convicted. And even if you were convicted, you would have
11 a right to appeal that jury decision.

12 And then furthermore, because this is a charge under
13 the new statute, you have the right to have this charge
14 presented to the grand jury here in Marlboro County. The
15 grand jury has the right to no bill these charges, meaning
16 they would dismiss this in your favor. But that has been
17 waived as well by you today. Do you understand that you
18 are giving up all of these rights today to plead guilty?

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

20 **THE COURT:** And is it your intention to give up
21 each and every one of these rights, go forward, plead
22 guilty, and be sentenced by this court today?

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

24 **THE COURT:** All right. Are you satisfied with Ms.
25 Crayton's services?

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1 **MR. INMAN:** Yes, sir.

2 **THE COURT:** Do you think she has done a good job
3 for you?

4 **MR. INMAN:** Yes, sir.

5 **THE COURT:** Have you had ample time with her to
6 discuss this?

7 **MR. INMAN:** Yes, sir.

8 **THE COURT:** All right. Then this decision to plead
9 guilty, is it yours or someone else's?

10 **MR. INMAN:** It's mine.

11 **THE COURT:** Has anyone tried to force you to do
12 this?

13 **MR. INMAN:** No, sir.

14 **THE COURT:** So you are telling me this is your
15 voluntary decision that you have made yourself?

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

17 **THE COURT:** All right. I want you to listen to the
18 Solicitor, who is going to give us the facts of your
19 arrest, and I will be back with you with more questions.

20 **MR. REDMOND:** Thank you, Your Honor. May it please
21 the court.

22 The incident occurred on the 2nd of February 2010.

23 At which time the victim, Joseph Martone - this occurred
24 at Evans Correctional Facility here in Marlboro County.

25 Joseph Martone had gone to the restroom, and while he was

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1 in the restroom, the defendant busted in and proceeded to
2 stab him with a shank. Mr. Martone was cut in the neck,
3 the face, and the shoulder area. The wound to the neck
4 almost took - it actually affected his larynx, and the
5 doctors were not sure if he would ever be able to speak
6 again. Fortunately, he recovered somewhat based on what I
7 have been told by Investigator Stuckey. But, he has had a
8 chance to interview everybody involved in this incident.
9 But his injuries were serious enough where he had to be
10 transported from Marlboro Park to McLeod down in Florence
11 for his injuries.

12 My understanding, based on the investigation, which
13 was very thorough by Investigator Stuckey, it appears that
14 this whole chain of events started around the 18th of
15 January, where the defendant, according to SCDC records,
16 and according to the victim, is accused of being a member
17 of the Crip's Gang. They were harassing this particular
18 individual --- victim, as far as taking certain items and
19 things like that. Be it canteen items or what. It rose
20 to a level where the victim confronted the defendant and
21 basically said, hey, look I need my stuff back. You know,
22 this isn't right. I want you to give me my stuff back.
23 And then it of course elevated to the point where this
24 attack occurred, and unfortunately Mr. Martone was
25 seriously injured.

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1 I had indicated to the court that the defendant is
2 currently serving a nine year sentence from Dillon County
3 on strong-armed robbery conviction. And correct me if I
4 am wrong, but I don't have his criminal history here.
5 But I had actually persecuted him previously, I think, on
6 a burglary case, if I am not mistaken, or larceny. I
7 think he got a probationary sentence, if I remember
8 correctly.

9 MR. INMAN: Yes, sir.

10 MR. REDMOND: As far as the facts, I will end at
11 that point. I do have --- since Investigator Stuckey is
12 not here, at the appropriate time I would like to convey
13 to the court some of what he indicated just in case he
14 doesn't make it back.

15 THE COURT: All right. The facts given to me about
16 the attack on the victim, are they true?

17 MR. INMAN: No, sir. They are not.

18 THE COURT: All right. What is not true about it?

19 MR. INMAN: All the rivalry and stuff like that is
20 not true.

21 THE COURT: All right. Come back to the
22 microphone.

23 MR. INMAN: The rivalry and stuff like that is not
24 true.

25 THE COURT: Is it true that you stabbed him with a

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1 shank?

2 MR. INMAN: Yes, sir. It started because we were
3 roommates. I tried to get him out of my room. They
4 wouldn't move him out of my room. So, he came at me like
5 I tell the police, and they moved him. And he came back
6 and my home-boy, he came to me like I am going to get you.

7 So that is basically what it came down to. And the
8 situation he got stabbed or whatever, and I go to lockup
9 and served my time in prison.

10 THE COURT: I am going to stop you there, because
11 what I am really looking for is, did you stab him with the
12 shank, and you have answered that question.

13 MR. INMAN: Yes, sir.

14 THE COURT: So, based on that I find that this
15 charge has a factual basis. It is a valid charge. You
16 made this decision yourself to plead guilty. You have
17 done this with a capable lawyer. You tell me you are
18 satisfied with your lawyer. And you tell me this is your
19 decision after I have advised you of all of our rights,
20 which you have waived.

21 So, for all of those reasons, I am going to accept
22 your plea. Now the question is the appropriate sentence.
23 And I'll be glad to hear from you.

24 MS. CRAYTON: Thank you, Judge. Mr. Inman is
25 twenty-four-years-old, as Mr. Redmond stated. He is

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1 serving a nine-year sentence from Dillon County on strong-
2 armed robbery.

3 This incident occurred between these roommates.
4 Unfortunately, this is how this dispute ended up. And,
5 after Mr. Inman was arrested on this charge, he was placed
6 in lockup. As I am sure you are aware, the jail has their
7 own disciplinary system. So, he was being punished for
8 this through the jail. He was on lockup for that amount
9 of time. And once he was released, Mr. Inman was actually
10 stabbed himself as retaliation I guess, from some of the
11 friends of the victim. And he was stabbed thirteen times.

12 He actually had a collapsed lung. When I saw him he was
13 not doing that well. Having a collapsed lung obviously it
14 was very painful. He was stabbed thirteen times. It was
15 obviously retribution for the original crime.

16 Your Honor, I think he has been punished a lot, and
17 the jail still has their own system. They do punish
18 individuals for acting out like this. And he has been in
19 lockup, and will remain in lockup, it is my understanding
20 until he does max out on his charge.

21 And I see Mr. Stuckey has just arrived.

22 **MR. REDMOND:** Has just arrived.

23 **THE COURT:** Very good.

24 **MS. CRAYTON:** Mr. Inman did receive his GED while in
25 prison in 2009. And he was born and raised in Dillon.

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1 He was being held here in Evans Facility along with the
2 victim. And, we would just ask that you consider a
3 concurrent sentence. He had several years left to serve.
4 It is my understanding that he has three years left. He
5 has already served three years. And, we would ask that
6 you consider a concurrent sentence. And take into
7 consideration that he has been punished quite a bit. Has
8 been the victim of a crime himself. And we would ask that
9 you take that into consideration, Your Honor.

10 **THE COURT:** Very good. Mr. Inman, do you have
11 something you wish to say?

12 **MR. INMAN:** No, sir.

13 **THE COURT:** All right. Investigator Stuckey,
14 welcome. And we will be glad to hear from you if you have
15 something you would like to tell us?

16 Please follow our clerk's instructions. We are going
17 to place you under oath, and let you tell us what you
18 would like for us to know about this.

WHEREUPON, ROBERT STUCKEY**AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

21 **INVESTIGATOR STUCKEY:** Yes, ma'am. I do. Your
22 Honor, he did a terrible act over here, but in turn he
23 received what he deserved. I agree with the
24 recommendation that was presented before you this morning.
25 I have no problem with it. The victim's family is in

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1 agreement with it as well. I have been dealing with
2 them, and their concern was that something would be done.

3 Cody has been helpful in some other things out there.
4 I am the investigator at Evans down the road. And he has
5 been helpful on some other things. So, I would ask that
6 you consider what they are recommending.

7 **THE COURT:** All right. Are there charges pending
8 against the individual who stabbed Mr. Inman?

9 **INVESTIGATOR STUCKEY:** No, sir. That has been taken
10 care of.

11 **THE COURT:** Were there charges in the General
12 Sessions Court?

13 **INVESTIGATOR STUCKEY:** No, sir. That was handled
14 administratively.

15 **THE COURT:** All right. Very good. Thank you.

16 **INVESTIGATOR STUCKEY:** Yes, sir.

17 **THE COURT:** Is there anything further you would
18 like to add?

19 **MR. REDMOND:** Nothing further, Your Honor.
20 Actually, I would say one thing, because I do know Cody.
21 I would just simply add, because Investigator Stuckey
22 wasn't there. When he was referring to the
23 recommendation, I think he is referring to the fact that
24 we have reduced the charge. I want to make sure that was
25 clear that we have reduced the charge from a no parole to a

THE STATE VERSUS CODY INMAN

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parolable charge. So that would be the only thing that I would add.

THE COURT: Thank you. Just a moment.

(PAUSE.)

THE COURT: Mr. Inman, I am sorry, but the court just cannot tolerate this type of street justice, prison justice, whatever you want to call it. I am going to sentence you to six years. You have a tremendous benefit in the reduction of time down to a first degree assault and battery.

I am going to sentence you to six years consecutive to your current sentence for this. And there will not be any time credit on that, because you are already in corrections. And that is the sentence of the court.

MR. REDMOND: Thank you, Your Honor.

MS. CRAYTON: Thank you, Your Honor.

(Whereupon, this hearing was concluded at 12:28 p.m. on Wednesday, May 25, 2011.)

-- END OF TRANSCRIPT --

20

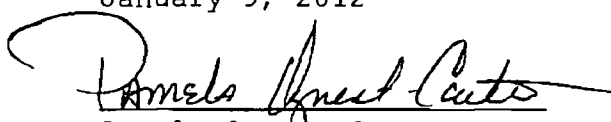
CERTIFICATE OF REPORTER

17

I, the undersigned, Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the trial of the above captioned case, relative to appeal, in The Court of General Sessions in Marlboro County, South Carolina, on the 25th day of May 2011.

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

January 9, 2012


Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of MarlboroCody Lomen #311682

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

A CERTIFIED
TRUE COPYWilliam B. Supp
CLERK OF COURT
MARLBORO COUNTY

34-222

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 S.C.D.C. / Perry Correctional Institution
2. Name and location of Court which imposed sentence Marlboro County Courthouse
Bennettsville, S.C. 29512
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-34-0367

2011 NOV 10 12
WILLIAM B. SUPP
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

- (b) N/A
- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 25, 2011, 6 years, Most Serious
- (b) N/A
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Exceeded time limit, related to institutional issues.
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. Marlboro County Court of General Sessions
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A, exceeded time to file Notice of Appeal
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Attempted, but exceeded time limit, due to institutional issues.

2011 NOV 2 PM 10 12
WILLIAM E. FORD, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

- (b) N/A
- (c) N/A
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) Prosecutor Misconduct
- (c) Sixth and Fourteenth Amendment violations
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED ISSUE ONE THRU FIVE.
- (b) PAGES 8 - 11
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

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CLERK OF COURT
MARLBOROUGH

- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A

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

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

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? N/A
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

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

i. Emily Croyton, Assistant Public Defender
313 West HAMPTON ST., Dillon S.C. 29536

ii. N/A

iii. N/A

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

i. Plea and Sentencing Phases

ii. N/A

iii. N/A

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

Conviction Reversed, Plea Agreement withdrawn and Remanded for Trial.

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

Originally Convicted by Same Court, related to Separate Criminal Accusations

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION

I, Cody Inman #311682, 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.

Cody Inman 311682

Cody Inman #311682

SWORN to and subscribed before me this 27th
day of Oct, 2011.

Diana Mune (L.S.)
Notary Public

My Commission Expires: Jan 28, 2018

FILED
2011 NOV 2 PM 10:13
Revised 3/2003
MARLBORO COUNTY
CLERK OF COURT
WILLIAM R. FORT

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

I, Cody Inman #311682, 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.

*Cody Inman #311682
Cody Inman #311682
Applicant

SWORN or affirmed to and subscribed before me this
12th day of Oct, 2011.

Dayle Murre
Notary Public

My Commission Expires: Jan 28, 2018

FILED
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CLERK OF COURT
HARRIS COUNTY
CLERK

Attachment To Question (11).
Issue one thru five.

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WILLIAM B. FORD
CLERK OF COURT
MARLBORO COUNTY, MASS.

Issue One

As observed in Powell v. Alabama, 287 U.S. 45 (1932), the layman defendant "requires the guiding hand of counsel at every step in the proceeding against him."

As stated:

"If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the Rules of evidence. Left without the aid of counsel he may be put on Trial without a proper charge, and convicted upon ~~mere~~ incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks skill and knowledge to adequately prepare his defense, even though he has a perfect one."

Applicant argues that as a result of ineffective assistance of counsel, he failed to ever be presented or receive an indictment in the case before you. Applicant was denied right to view or obtain a copy of any indictment for the accusations he was convicted of, to determine the legal effect of the grand jury which may have indicted him, the issuance of a "Bill" of Indictment or to determine if the court who convicted him had jurisdiction to hear the case before you. State v. Evans, 322 S.E. 2d 470 (1996), where a state obtains a criminal conviction in a trial in which the accused is deprived of effective assistance of counsel, the "State . . . unconstitutionally deprives the defendant of his liberty." Cayler, 486 U.S., at 343. The Applicant is thus "in custody in violation of the constitution," as his sixth and fourteenth amendments were plainly violated, where he was denied effective assistance of counsel.

Issue Two

Strategic choices made by criminal defense counsel after thorough investigations of law and facts relevant to plausible options are virtually unchallengeable, while strategic choices made after less than complete investigation are precisely to the extent that reasonable professional judgments support the limitations of investigations, in other words, counsel has a duty to make reasonable investigations, or to make a reasonable decision that makes particular investigations unnecessary, and a particular decision to not be investigated must be directly assessed for reasonableness in all circumstances, applying a heavy measure of deference to Counsel's judgments. Strickland v. Washington, 466 U.S. 668 (1984).

The Sixth Amendment imposes on counsel a duty to investigate, because reasonable effective assistance must be made and based on professional decisions and informed legal choices. Can be made only after investigating all options.

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. 1 American Bar Association Standards for Criminal Justice: 454-1 (2d ed.: 1982 Supp.)

Applicant argues that counsel was ineffective as she failed to retrieve all Rule 5 materials from possession of the State related to the case before you. As a result of Counsel's negligence, she failed to obtain obtain the victim's statements, witness statements, DNA evidence, videos of the day of the crime, the victim's criminal history and mental health records to include his own. Counsel never investigated the case before you in part or completely. Due to Counsel not obtaining all Rule 5 materials from the State or properly investigating the case before you, she could not present possible evidence to provide Applicant an accurate or possible defense against the ~~acc~~ accusations he was convicted for.

A proceeding in which the defendant does not receive meaningful assistance in meeting the forces of the State does not ~~constitute~~ constitute Due Process. In Chapman v. California, 386 U.S. 18, 23 (1967), it is acknowledged that certain ~~the~~ Constitutional rights are "so basic to a fair trial that their infraction can never be treated as harmless error."

Issue Two Continued

Gideon v Wainwright, 372 U.S. 335 (1963): The right to Counsel and the abridgement of the former is equivalent to abridgment of the latter, which is ~~effect~~ effective assistance of Counsel. It was held that a showing that the performance of a defendant's lawyer departed from Constitutionally prescribed standards requires reversal of conviction regardless of whether the defendant suffered demonstrable prejudice thereby. The court also held that a conviction must be reversed when evidence is not introduced because of the ~~in~~ incompetence of Counsel. Strickland v Washington, 466 U.S. 668 (1984)

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HARBOR COUNTY, S.C.

Issue Three

The right to effective assistance of counsel extends through the sentencing phase, it is a Critical stage in the criminal proceeding, Mempa V. Rhay, 359 U.S. 128 S.C.T. 254 (1967), Miller V State, 309 4. Supp. 1287, 1290 (1970), and counsel should offer any material evidence, to include mitigating evidence, as the Applicants mental health records and condition.

Applicant ~~eg~~ argues that counsel was ineffective, as she failed to present his mental health records and prior mental health condition before his sentencing phase, as Applicant had just been released from Suicidewatch by the Institution.

Mitigating circumstances as such do not constitute a justification or excuse for the offense in question, but with fairness of the Court, could have been considered and there is a significant chance that Applicant would have received a lighter sentence.

Furthermore, Counsel in preparing for the sentencing hearing did not seek out character witnesses or request a psychiatric examination. Counsel's negligence not to present evidence concerning Applicants character and emotional state denied him Due Process and Equal Protection, leaving the judge to rely on the plea agreement alone.

Counsel's function is to assist the defendant and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. Caylor V. Sullivan, Supra, at 346. The sixth and fourteenth amendments of the U.S. Constitution guarantee a person accused of a crime the right to the aid of a lawyer at every stage of court proceedings. It has been settled that the right to counsel is the right to effective assistance of counsel. McWann V Richardson, 397 U.S. 759, 771 n. 14 (1970)

Whereas, Applicant argues that he was denied his Sixth and Fourteenth amendment, as a result of ineffective assistance during his sentencing phase, a critical stage of the court's proceedings.

Issue Four

The standard for reviewing a claim of ~~prosecutorial~~ prosecutorial misconduct is whether the prosecutor's actions are such a nature to render the Court procedure fundamentally unfair, Donnelly v. DeChristofano, 614 U.S. 637, 94 S. Ct. 1868 (1974). While prosecutors may strike hard blows, they are not at liberty to strike foul ones, Berger v. U.S. 295 U.S. 78, 59 S. Ct. 629 (1935).

Applicant argues that the prosecutor committed misconduct, by stating during the Sentencing phase that he was a known Crip gang member who was locked up for Burglary and Strong armed Robbery. Then further presented a hearsay statement of the victim, as read that the victim had stated that he was previously robbed by the Applicant and his "Crip Bandits" shortly before he was assaulted. Such foul actions of the prosecutor painted an image in the Judges mind to believe he was preparing to sentence a known Violent Gang member of the Crips, being hearsay with no presented evidence to verify such foul accusations.

Counsel failed to object to the actions of the Prosecutor, leaving the Judge under the influence to believe such statements and accusations are true and accurate. As a result of counsel's negligence, he was denied the required effective assistance of counsel guaranteed by the sixth and fourteenth amendments.

In a criminal case, the state cannot attack the character of the defendant unless the defendant himself first places his character in issue. Rule 404(a) SCRE, Mitchell v. State, 298 S.C. 325, 313 S.E. 2d 298 (1984), State v. Swords, 279 S.C. 554, 309 S.E. 750 (1983), State v. Gamble, 247 S.C. 214, 146 S.E. 2d 709 (1966).

Evidence of prior or pending bad act is inadmissible to show Criminal propensity or to demonstrate that the accused is a bad person. State v. Johnson, 293 S.C. 321, 360 S.E. 2d 317 (1987).

In any event, as a general rule, evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. Rule 404(b) SCRE, State v. Jenkins, 332 S.C. 414, 472 S.E. 2d 251 (1996). Even if the prior crime evidence is relevant, it must be excluded if its probative value is substantially outweighed by the danger of the unfair prejudice to the defendant. Rule 403 SCRE. State v. King, 334 S.C. 504 S.E. 2d 578 (1999).

Issue Four Continued

Trail Counsel's ineffectiveness plainly violated the Applicants sixth and fourteenth amendments, which grants a defendant to be provided adequate assistance of Counsel in a criminal case. Counsel failed to provide Applicant effective assistance by failing to object to the Prosecutors Misconduct. The right to counsel is the right to effective assistance of Counsel. McMann V. Richardson, 397 U.S. 759, 771 N. 14, 90 S.Ct. 1441, 1449, N. 14, 25, L. Ed. 2d 763, 1970. Counsel can deprive a defendant the effective assistance of counsel by simply failing to render adequate legal assistance. Caylor V. Sullivan 446, 335, 344, 107 S.Ct. 1708, 1716, 64 L. Ed. 2d 333 (1980) The benchmark for judging any claim of ineffective assistance of counsel claim was whether Counsel's conduct so undermined proper functions of the adversarial process that the court procedure cannot be relied upon as having produced a just result, as the Applicant has plainly shown. Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

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CLERK OF COURT
MARLBORO COUNTY, S.C.

Issue Five

During the month of August 2010, Applicants Counsel visited him at the institution he was housed at, claiming that she could get him a Five (5) year sentence, non-violent and run concurrent with his present conviction. Applicant refused such plea offer, as he ~~was~~ insisted on a Jury Trial to resolve the false accusations on him.

On May 25, 2011, Applicant was transported to Court. Counsel insisted that Applicant accept a plea agreement of Ten (10) years, non-violent ~~was~~ and run concurrent with his present conviction. She convinced Applicant that if he takes the plea offer, that at the most he would only serve an extra six months to a year additional to his present conviction.

Counsel convinced me that I needed to speak to the Solicitor, as it would not be wise to go to Trial for the accused accusations. Counsel and the Prosecutor pressured me into signing a Plea Agreement. They claimed to have evidence, such as DNA that would get me a max sentence. It ~~was~~ convicted at trial, that I had no winning chance at all. Upon requesting to view such evidence, they claimed that such action could not happen as it is not permitted. After being pressured, under Duress, by counsel and the Prosecutor, Applicant accepted a plea agreement of 10 years, non-violent to be concurrent with Applicants present conviction. Upon such agreement, Counsel and the Prosecutor instructed me to state that I was not promised anything for my plea agreement to plead guilty to the accused accusation.

As a result of such pressure resulting from Counsel's ineffective assistance and prosecutors misconduct, Applicant pled guilty to accusations that he was not guilty of committing and intended to have a Jury hear and resolve, as he sought Due Process and Equal Protection of Law. As a result of Counsel misleading applicant to accept such plea agreement, being led to believe he would only serve an additional six months to a (1) year, upon his present conviction, he ~~plead~~ pled guilty. Such action resulted in Applicant being sentenced by the Judge to an additional Six (6) years, non-violent, run consecutive to his present conviction, by him being pressured to plead to accusations he was not guilty of.

Issue Five Continued

Whereas, applicant argues that he was wrongfully convicted as a result of ineffective assistance of Counsel and being ~~pressured~~ coerced by the Solicitor and Counsel to accept a misleading plea agreement to plead guilty to accusations he is not guilty of. The applicant was denied effective assistance of Counsel.

The right to Counsel is the right effective ~~counsel~~ assistance counsel of counsel. A proceeding in which a defendant does not receive meaningful assistance of Counsel does not ~~recess~~ constitute due process, as the Applicant has plainly shown in the case before you. Chapman v California, 386 U.S. 18, 23, (1967), Gideon v. Wainwright, 372 U.S. 335 (1963), Strickland v. Washington, 466 U.S. 668 (1984).

Sworn or affirmed to and subscribed
before me this 12th day of,
Oct, 2011.

Page Mue
Notary Public

My Commission Expires: Jan 28, 2018

Cody Inman #311682
Cody Inman #311682
Applicant Signature
10/12/11
DATE

2011 NOV 2 AM 10 13
WILLIAM B. FORD, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

10/20/11

Mr. Funderburk,

How are you doing Sir? I am writing you that
 when you file my PCR I am asking that you return me
 filed copy. I appreciate your time and help in this matter.

Respectfully Submitted

Cody Inman

Return to. Cody Inman # 311682

P. C. I. Q-2-B-212

430 Oaklawn Road

Pelzer, S.C. 29669.

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 WILLIAM B. FURMAN
 CLERK OF COURT
 CALBERT COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2011-CP-34-222
	)	
Cody Inman, 311682,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 2, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. The Applicant was indicted at the May 2010 term of the Marlboro County Grand Jury for Assault and Battery With Intent to Kill (ABWIK), 2010-GS-34-0367). He was represented by Emily Crayton, Esquire. On May 25, 2011, the Applicant pled guilty as indicted and was sentenced by the Honorable J. Michael Baxley to six years imprisonment, to run consecutively with his existing prison sentence. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Marlboro County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina 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"
2. "Prosecutor Misconduct"
3. "Sixth and Fourteenth Amendment violations."

Applicant seeks to have his conviction reversed, plea agreement withdrawn, and remanded for trial as a result of this proceeding.

III.

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, 80 L.Ed.2d 674. 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.

The Applicant's "Prosecutorial Misconduct" allegation concerns issues that could or should have been raised at trial or appeal. Thus, this allegation is not a proper matter for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, respondent requests this Court summarily dismiss this claim.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of

material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests the Application be denied, and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

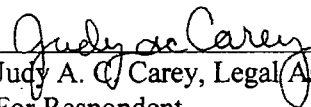
2-15, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2011-CP-34-0222
	)	
CODY INMAN, 311682	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Cody Inman, 311682
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

DATED this 15th day of February, 2012.



 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF MARLBORO) 2011-CP-34-00222

CODY INMAN)
)
) APPLICANT)
)
) vs.) TRANSCRIPT OF RECORD
)
)
) STATE OF SOUTH CAROLINA)
)
) RESPONDENT)

January 9, 2013
Darlington, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.

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

J. MARSHALL BIDDLE, ESQUIRE
Attorney for the Applicant

TYSON A. JOHNSON, SR., ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

EMILY M. CRAYTON , Public Defender

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

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1	APPLICANT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	P.C.R. Application	6	
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1 COLLOQUY

2 MR. JOHNSON, SR.: Your Honor, this is Cody Inman v.
3 South Carolina. 2011-CP-34-222. Mr. Inman was indicted
4 in the May 2010 term of the Marlboro County Grand Jury for
5 assault and battery with intent to kill. He was
6 represented by Emily Crayton who is seated here at counsel
7 table. On May 25th 2011 the applicant pled guilty as
8 indicted. Was sentenced by Judge Baxley to six years in
9 prison. And to run consecutively with his then existing
10 sentence. He did not appeal.

11 He's represented today by Mr. Marshall Biddle, and at
12 this time I'll turn it over to Mr. Biddle.

13 THE COURT: Mr. Biddle.

14 MR. BIDDLE: Thank you, Your Honor. Mr. Inman did
15 actually appeal. It was untimely in that he has some
16 issues with the processing through the Court, and I think it
17 was ultimately found through the prison system that it
18 wasn't untimely. I think sentencing was the 25th, and I
19 think he tried -- his appeal was dated -- dated and sent
20 out on the 13th. Not received until the 22nd. So it was
21 found to be untimely.

22 I don't know that there was any other motions to --
23 you know, for extensions or anything like that. So,
24 again, he did file an appeal at that time, but it was
25 untimely. And at this time, Your Honor, we would call

1 Cody Inman to the stand.

2 THE COURT: All right.

3 CODY INMAN, after being duly sworn, testified as
4 follows:

5 THE COURT: Okay. Mr. Biddle.

6 MR. BIDDLE: Okay. Thank you, sir. May it please
7 the Court.

8 DIRECT EXAMINATION

9 BY MR. BIDDLE:

10 Q. Mr. Inman, we are here on a P.C.R. that you filed; is
11 that correct?

12 A. Yes, sir.

13 Q. Okay. And in your P.C.R. application, I'm going to
14 show you can a copy of it as well as a copy of the
15 indictment. You made some allegations --

16 MR. BIDDLE: May I approach, Your Honor?

17 THE COURT: Sure.

18 BY MR. BIDDLE:

19 Q. --- regarding your attorney, Miss Emily Crayton; is
20 that correct?

21 A. Yes.

22 Q. Okay. And is this your application for post
23 conviction relief? Is that appear to be what you filed
24 with the Court?

25 A. Yes, sir.

1 Q. And does this item, Number Two, appear to be your
2 sentencing sheet and the indictment?

3 A. Yes, sir.

4 Q. Okay. Thank you?

5 MR. BIDDLE: Can I have those marked as One and Two
6 for identification purposes.

7 (WHEREUPON, Applicant's Exhibit Nos. 1 AND 2 were
8 marked for identification only.)

9 BY MR. BIDDLE:

10 Q. Mr. Inman, you're familiar with these two documents;
11 is that correct?

12 A. Yes, sir.

13 Q. Okay. Your allegations in your post conviction
14 relief application were ineffective assistance of counsel,
15 prosecutorial misconduct and violations of the 6th and
16 14th Amendments of the United States Constitution; is that
17 correct?

18 A. Yes, sir.

19 Q. Okay. Let's talk about each one of those if you
20 will. As to the ineffective assistance of counsel, tell
21 me about your meetings with Ms. Clayton [sic].. When did
22 you first meet Miss Clayton?

23 A. August of 2010.

24 Q. Okay. And did you go to her? She came to you?

25 A. She came to me.

1 Q. Okay. And where were you at the time?

2 A. Evans Correctional Facility.

3 Q. And that's in Bennettsville; is that correct?

4 A. Yes, sir.

5 Q. Okay. And so she met with you and talked to you
6 about the entire case; is that correct?

7 A. Yes, sir.

8 Q. Okay. And at that time did you give her a list of
9 witnesses and your side of the story? And, you know, did
10 you ask her about any investigations or anything that were
11 concluded?

12 A. I can't remember that right. But I know when she
13 came there was an investigator from the institution which
14 was like my investigating officer. He was standing right
15 there. So I didn't really want to talk about too much,
16 but she had -- I guess to answer the question.

17 Q. He was present? The investigator at the prison was
18 present when you were meeting with your attorney?

19 A. Yes, sir. Cause I got to get escorted everywhere I
20 go. So he the one that called her and told her to come to
21 the prison. And when I was talking to her I was sitting
22 at one table. He was standing right behind her. So, you
23 know, it wasn't no way I could -- confidentiality and
24 stuff like that.

25 Q. At the time that she came to meet with you did she

1 offer -- did she say that the Prosecutor had offered any
2 kind of a plea arrangement?

3 A. Yes, sir

4 Q. Okay. And what was that offer for you?

5 A. Five years non-violent to be done concurrent with my
6 sentence.

7 Q. Okay. She said that the Prosecutor was offering five
8 years concurrent non-violent plea offer if you pled to
9 these charges?

10 A. Yes, sir.

11 Q. And so what was your response to that?

12 A. I told her I didn't want no plea. I said I wanted to
13 go to trial on this matter.

14 Q. Okay. So you wanted a trial with the offer of five
15 years concurrent?

16 A. Yes, sir.

17 Q. And did she give you anything in writing regarding
18 that?

19 A. No, sir.

20 Q. Okay. But she said she had talked to the Prosecutor?

21 A. Yes, sir.

22 Q. And she had gotten the Rule Five and the discovery
23 materials from the prosecutors? Did she explain that to
24 you?

25 A. Yes. She only had two sheets of paper which was the

1 incident report from the institution and the warrant that
2 I had got served already. I already had them two.

3 Q. Okay. So these were the only two documents that she
4 had.

5 MR. JOHNSON, SR.: Your Honor, we would object to
6 leading of this witness. He can testify to what he knows
7 based on a proper question.

8 THE COURT: I'll overrule it. Go ahead.

9 MR. BIDDLE: Thank you.

10 BY MR. BIDDLE:

11 Q. All right. So you met with the attorney?

12 A. Yes, sir.

13 Q. Okay, and was that the only time you ever saw her?

14 A. Yes, sir. Prior to that day I never seen her before.

15 Q. Prior to what day? The day you pled?

16 A. No. No. That's the second time I saw her.

17 Q. Okay. So you saw her on the date. All right. So
18 you met with her in 2010. When did you meet -- you showed
19 up on May the 25th of 2011?

20 A. That was the second ---

21 MR. JOHNSON, SR.: Your Honor, again, can we have a
22 proper question of counsel?

23 THE COURT: I'm sorry. What was the objection?

24 MR. JOHNSON, SR.: Leading, Your Honor.

25 THE COURT: Overruled. Go ahead.

1 BY MR. BIDDLE:

2 Q. What did -- when you met with you attorney on the
3 25th were you expecting that to be a trial?

4 A. Yes, sir.

5 Q. Okay. So you were showing up and being transported
6 you believed that was for a trial?

7 A. Yes, sir.

8 Q. And what did your attorney tell you when you arrived
9 at court that day?

10 A. She told me it was a plea there, and she was trying
11 to get me to plead guilty to the charges.

12 Q. Okay. And what did she tell you?

13 A. At first she asked me did I want -- did I mind if the
14 Solicitor came. I told her, no, he can come in there. So
15 me, her and him was in the holding cell in Marlboro
16 County. And that's when she said I can get ten years
17 non-violent. Be concurrent with my sentence. So that was
18 about it. When she said that I said -- I asked about my
19 Rule Five then. She said she didn't have no more
20 materials, but she was still waiting on the Solicitor.

21 But they told me they had D.N.A. samples and all
22 that, but I asked them could I see them and she said she
23 didn't have them but the Solicitor said he had them.

24 Q. Okay. So if I -- if I'm understanding your testimony
25 you sat down with her and the Solicitor was there as well?

1 A. Yes, sir.

2 Q. Y'all talked about it and negotiated or what you
3 thought was a negotiated sentence?

4 A. Yes, sir.

5 Q. You asked her about the previous offer, the five
6 years?

7 A. I asked about that. She -- they had the -- first
8 they had the sentence sheet with 20 years on it. And then
9 they had another one with 10 years on it. So they were
10 talking. I was going to trial that day. But I was like,
11 "Where is all my Rule Five? I mean how we gonna -- you
12 know, how are we going to prepare for our defense?" And
13 then it was just kind of crazy. I don't really ...

14 Q. Okay. So you showed up that day expecting a trial,
15 and she informed you that you needed to plea?

16 A. Yes, sir.

17 Q. Okay. And she couraged you to plead to the ten
18 years; is that correct?

19 A. Yes, sir.

20 Q. Did she tell you that this was going to be a
21 recommended sentence or whether it was going to be a
22 negotiated sentence? Did the Prosecutor say anything to
23 you about whether that was going to be the recommendation
24 to the Court?

25 A. I mean I read it, but I was going to get ten years

1 worth of time. My understanding which makes it six and a
2 half months for good time. So you know, I took that at
3 face value.

4 Q. Okay. So you believed, if I understand your
5 testimony, you believed that you were already sentenced to
6 nine years. But ten years was going to be an additional
7 six months on your current sentence; is that correct?

8 A. Yes, sir.

9 Q. Okay. And did you sign what has been marked -- this
10 is the indictment and the sentence sheet. You sign that?
11 Is that your signature?

12 A. Yes, sir.

13 Q. Okay. And at that time was there an understanding
14 that this was going to be a non-violent offense?

15 A. Yes, sir.

16 Q. Okay. But the sentencing sheet, if you will, and I
17 will provide it to you. What is it marked, if you will?

18 A. It's marked most serious.

19 Q. Okay. So your understanding that this was a
20 non-violent that you were going to plea to?

21 A. Yes, sir.

22 Q. Okay. It was going to be something less than ten
23 years and it was to be or it was going to be no more than
24 ten years and it was to run concurrent?

25 A. Yes, sir.

1 Q. Okay. Did you talk with your attorney after you were
2 sentenced to -- what did the Judge sentence you according
3 to that sheet?

4 A. Six years to be consecutive to my pending sentence.

5 Q. Okay. And did your lawyer talk to you after the
6 sentencing?

7 A. Yes, sir.

8 Q. Okay. And what did she say?

9 A. She said it didn't go as we had planned.

10 Q. Okay. And what did she mean by that? What did you
11 think she meant by that?

12 A. It didn't go with the sentence I was told I was going
13 to get. The Judge went his own way. He didn't give me
14 the sentence we had agreed on?

15 Q. Okay. And so you believed you had a concurrent
16 sentence or that's what you were going to get?

17 A. Yes, sir.

18 Q. If your lawyer would have told you you were going to
19 get a consecutive sentence would you have agreed to plead
20 guilty that day?

21 A. No, sir.

22 Q. Okay. And were you prepared to try the case that
23 day?

24 A. No, sir.

25 Q. Do you think your lawyer was prepared to try the case

1 that day?

2 A. No, sir.

3 Q. Okay. Did she have witnesses? Did she talk to you
4 about witnesses for the case?

5 A. No, sir.

6 Q. Do you know if she did any investigation herself of
7 the records and got any other discovery from the
8 Solicitor's Office?

9 A. No, sir.

10 Q. Okay. In conjunction with your plea there were some
11 comments made by the Prosecutor?

12 A. Yes, sir.

13 Q. Okay. Tell me about the comments made by the
14 Prosecutor?

15 A. Well, he was saying that I had robbed a dude; that I
16 had stabbed. He said that I was a Crip gang member. He
17 was just really slandering my name. He just went his own
18 way when he got in the courtroom. He got on some other
19 stuff.

20 Q. Okay. Did your lawyer object to those comments?

21 A. No, sir.

22 Q. Okay. Did you agree with those comments that were
23 made?

24 A. No, sir.

25 Q. Did you express that to the Judge?

1 A. Yes, sir.

2 Q. Okay. And were those comments from the Solicitor,
3 were those made in an effort to -- well, do you know why
4 they were made?

5 A. No, sir. I can only guess why they were made.

6 Q. Okay. And you and the Prosecutor known each other
7 before?

8 A. Yes, sir.

9 Q. Okay. You had had a run in with him before; is that
10 correct?

11 A. Yes, sir.

12 Q. The information that he listed in court was that
13 listed in the facts of this case or in the indictment that
14 you were indicted under?

15 A. I mean can you repeat it.

16 Q. Did the comments that the Prosecutor that we believe
17 were extraneous you said in your testimony was they were
18 not part of the facts?

19 A. Yes, sir.

20 Q. Was that included in the indictment that you have
21 there in front of you?

22 A. No, sir.

23 Q. Okay. You believe that those statements were
24 prejudicial to you?

25 A. Yes, sir.

1 Q. Do you think they influenced the judge in his
2 sentencing of you?

3 A. Yes, sir.

4 Q. Now, do you believe that you're entitled to an
5 attorney as a constitutional right?

6 A. Yes, sir.

7 Q. Now, are you entitled to just any attorney or are you
8 entitled to an attorney that's competent?

9 A. An attorney who is competent.

10 Q. Okay. And you believe that that attorney would
11 represent you in the best interest -- in your best
12 interest and to the best of their ability?

13 A. Yes, sir.

14 Q. Do you believe that Miss Crayton met that standard of
15 providing adequate assistance for you?

16 A. No, sir.

17 Q. Okay. What did she not do that you wanted her to do
18 in this matter?

19 A. I wanted her to prepare for trial. You know, I
20 wanted her to get all the facts of the case, question the
21 witnesses for me. I needed her to go to the institution
22 and get a video camera for the date that the happened.
23 There were a couple of things I wanted her to do.

24 Q. But there was a lot of investigative work that you
25 talked to her about doing that you believe was not done?

1 A. It was not done.

2 Q. And you believe that affected your ability to try
3 this case?

4 A. Yes, sir.

5 Q. You believe that that's why she recommended that you
6 plead?

7 A. Yes, sir.

8 Q. And you believe that she was not prepared to try the
9 case that day?

10 A. No, sir.

11 Q. And you certainly weren't prepared to try the case
12 that day?

13 A. No, sir.

14 Q. Had y'all talked about witnesses?

15 A. Not that -- not the first time. But the second time.
16 The second time we just really got you gotta plead. You
17 gone plead. You gone plead, you know. You need to go
18 plead.

19 Q. Okay. How much time passed between the first time
20 you met her and when you met her in court?

21 A. Like nine months.

22 Q. Mine months. Okay. So you didn't see her from the
23 first initial consultation until you saw showed up in
24 court for this plea; is that correct?

25 A. Yes, sir.

1 Q. Okay. Is there anything else that you wanted to
2 offer to the Court regarding the ineffective assistance of
3 counsel, the prosecutorial misconduct, the handling of the
4 6th or 14th Amendment allegation from your post conviction
5 relief?

6 A. No, sir.

7 Q. Answer any question the Attorney General has for you.

8 A. Okay.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON, SR.:

11 Q. Mr. Inman, you say you wanted a trial in this matter?

12 A. I mean yes, sir.

13 Q. You do want a trial?

14 A. Yes, sir.

15 Q. All right. And your max out is in 2017; is that
16 right?

17 A. 2017?

18 Q. Yes, sir. Your max out date is sometime in the year
19 2017?

20 A. It's 18 now.

21 Q. Eighteen. And you're prepared to give that up and
22 roll the dice again at trial?

23 A. Yes, sir.

24 Q. Do you think the jury would have found you innocent?

25 A. I mean because -- I mean if they wouldn't have found

1 me innocent it would have been -- I don't know. I can't
2 really say what the Judge is going to do; if they would
3 have find me guilty or innocent. I can't say what they
4 were going to do.

5 Q. But you think a jury would have found you not guilty?

6 A. It's a possibility.

7 Q. All right. When I read the transcript it appears to
8 me that quite a few details were covered by Judge Baxley
9 as you were in the process of entering your plea. For
10 example, Judge told you that you could have a trial,
11 didn't he?

12 A. Yes, sir.

13 Q. All right. This is what is really confusing to me.
14 You're saying today that you wanted a trial, but during
15 your plea Judge Baxley told you that you could have a
16 trial and that you were waiving that right. Is that what
17 you remember?

18 A. Yes, sir, but at the time we had negotiated a plea so
19 I'm just really trying to put the matter behind me.

20 Q. But I told you told Mr. Biddle that when you went out
21 you were ready for trial?

22 A. I didn't say I was ready for trial.

23 Q. I misunderstand. You weren't ready for trial?

24 A. I wasn't ready for no trial.

25 Q. But you wanted a trial?

1 A. Yes. My lawyer said that the best thing to do was to
2 go ahead and plea because I kept asking her for the trial.
3 I'm trying to get to her to get ready for the trial and
4 she didn't do it.

5 Q. All right. So you told Judge Baxley that you wanted
6 to plead guilty that day at that time; is that?

7 A. I mean at the time, yeah. I did, yeah.

8 Q. And you did plead guilty, didn't you?

9 A. Yes, sir.

10 Q. But you pled guilty because y ou were guilty; isn't
11 that right?

12 A. No, I said -- yeah, I mean you can say that. I mean
13 I was going to plead.

14 Q. Well, I'm asking you that. You pled ---

15 A. No contest.

16 Q. You pled guilty because you were guilty; isn't that
17 true.

18 A. I mean with the time I was supposed to get six more
19 months to the max. I was just trying to bet the situation
20 on behind me and keep going back and forth to court. I
21 was just going to get it on behind me. I had my lawyer
22 talking to me. It was the best deal I could have got?

23 Q. So is that a yes?

24 A. I mean, I say, yeah.

25 Q. You pled guilty because you were guilty?

1 A. I mean, naw. I pled guilty because my lawyer told me
2 to plead guilty.

3 Q. Okay. So now you're changing your answer. You pled
4 guilty, but now you're saying that you were not guilty?

5 A. I mean I pled guilty because me and my lawyer came to
6 a conclusion. It's the best thing for me to do. I don't
7 know why you keep asking the same questions.

8 Q. Let me ask it to you this way. Did you tell Judge
9 Baxley that you stabbed or shanked your roommate?

10 A. I pled guilty. What that tell you.

11 Q. When Judge Baxley asked you during the colloquy
12 whether or not you stabbed your roommate did you or did
13 you not say, yes, you did?

14 A. I don't remember.

15 Q. You don't remember?

16 A. No.

17 Q. Okay. All right.

18 MR. JOHNSON, SR.: Just referring the Court to Page
19 11 of the transcript.

20 BY MR. JOHNSON, SR.:

21 Q. When Judge Baxley asked you, "Is it true that you
22 stabbed him with a shank?" And going over to Page 12.
23 "Mr. Inman, yes, sir." Was that your answer?

24 A. Yes, sir. You got it written.

25 Q. And is that still true?

1 A. I mean I pled guilty just to get in on behind me. I
2 did ---

3 Q. Yes, sir, I understand you pled guilty?

4 A. They said everything -- when the Judge ask me those
5 things just yes, sir, you know. Yes, sir.

6 Q. But, yes, sir. But here you're saying, yes, sir;
7 that you stabbed another man with a shank. That was true.
8 So is it still true today?

9 A. Yes, sir.

10 Q. It is true, isn't it?

11 A. Yes, sir.

12 Q. It was true then that you stabbed your roommate with
13 the shank. It is still true today, isn't it?

14 A. Yes, sir.

15 Q. So you're not denying that you're guilty of what you
16 were accused of, are you?

17 A. No, sir.

18 Q. Thank you. So if you are successful today would you
19 insist on a trial or would you attempt to plead again?

20 A. I mean I wanted a trial.

21 Q. You want to attempt to enter into plea negotiations?

22 A. I mean, yeah.

23 Q. You will?

24 A. Yes, sir.

25 Q. At your plea you also told Judge Baxley that you were

1 satisfied with Mr. Crayton?

2 A. Yes, sir.

3 MR. JOHNSON, SR.: Referring the Court to Page 8 of
4 the transcript.

5 BY MR. JOHNSON, SR.:

6 Q. You did do that, didn't you?

7 A. Yes, sir.

8 Q. So that was a confusing thing for me. This would
9 have been a prime opportunity for you to say, 'Hey, Your
10 Honor, I'm not happy with my lawyer. This is not right.
11 I want a trial. I want a new lawyer. I want more time to
12 talk with my lawyer'?

13 A. She done convinced me to go on and plead guilty, so I
14 mean at the time I was satisfied with her. I mean, but
15 she wasn't -- she wasn't prepared for no trial though.
16 You know, she told me my best -- I put my good faith in
17 her. She ---

18 Q. I understand. I understand what you're saying, but
19 my question is ---

20 A. You can't understand that. You can't understand what
21 I'm saying if you're asking.

22 Q. I'm listening. Yes, sir.

23 A. All right.

24 Q. What I'm asking you is the part during the plea where
25 you said, "Yes, Judge, I'm happy with Ms. Crayton." And

1 just to be clear you did tell him you were happy with the
2 work that she had done?

3 A. I'm happy until I got my sentence.

4 Q. Sir?

5 A. I was happy until I got the sentence.

6 Q. Until you got your sentence?

7 A. That we didn't agree upon.

8 Q. Now, referring again to Page 8, Judge Baxley asked
9 you are you happy with Ms. Crayton. He asked you some
10 other questions. He also asked you do you think she's
11 done a good job for you. Remember your answer to that
12 question?

13 A. Yes, sir.

14 Q. Yes, sir, you told her -- you told him yes, sir.
15 Then he asked you another important question, "Have you
16 had enough time with her to discuss this." Do you
17 remember what you told Judge Baxley?

18 A. Yes, sir.

19 Q. You told him, yes. He asked you another important
20 question. He asked you, "Now, this decision to plead
21 guilty is it yours or someone elses." What was your
22 answer?

23 A. Yes, sir.

24 Q. That it was your decision; isn't that true?

25 A. Yes, sir.

1 Q. Now, wouldn't that have been the perfect time to say,
2 'Your Honor, it's not my decision. Ms. Crayton is making
3 me plead guilty'? That would have been perfect, wouldn't
4 it?

5 A. Yes, sir.

6 Q. But you didn't do that, did you?

7 A. No, sir.

8 Q. Another time when Judge Baxley asked Ms. Crayton
9 whether or not she felt that the state could prove the
10 charges against you?

11 MR. JOHNSON, SR.: Referring the Court to Page 6 of
12 the transcript.

13 BY MR. JOHNSON, SR.:

14 Q. "Do you believe he would be convicted if he goes to
15 trial?" Ms Crayton's response is, "Yes." Wouldn't this
16 have been a perfect time to say, 'wait. Stop. I've got a
17 good case. I've got a defense. I want a trial in this
18 matter'? Wouldn't it?

19 A. I mean we wasn't prepared to go to no trial. The
20 best thing for me to do was plead out.

21 Q. I've just been counting the opportunities that you
22 had to stop this plea. Several opportunities to stop it,
23 and at each very important juncture when you had the prime
24 opportunity to stop your plea and insist on a trial you
25 did not do that, did you?

1 A. Listen. The only time I was after all that, you
2 know, after all the plea I didn't get what we was
3 promised. What I was promised I didn't get that, so, you
4 know, we sat down and negotiate and I didn't get what I
5 was supposed to get as far as sentencing wise. You know,
6 she wasn't prepared for no defense for me or anything no
7 way if I wanted to go to trial. You know, going out there
8 knowing I ain't prepared to go to trial.

9 Q. Where during the plea was it stated by the Court or
10 counsel that this is a negotiated sentence?

11 A. I don't know.

12 Q. So you're saying you don't have a recollection at any
13 point during the plea when anyone said, 'this is a
14 negotiated sentence'?

15 A. No, but I know we was -- me, her and the Solicitor
16 was in the room together. It was a negotiated sentence,
17 but when we got in front of the Judge I don't know what
18 they said.

19 Q. All right. And getting on to your allegation of
20 misconduct, professional misconduct?

21 A. Yeah.

22 Q. You're claiming that you disagree with the fact, and
23 it's in the transcript, but there was some disagreement
24 with the facts as given by the Prosecutor. But you had a
25 chance to raise this disagreement with Judge Baxley,

1 didn't you?

2 A. I didn't hear you.

3 Q. Well, when you said no or something like that you
4 indicated that the facts as they were given you didn't
5 completely agree with them. Do you remember that?

6 A. Yes, sir.

7 Q. And I think your dispute was regarding some rivalry?

8 A. They just mispronounced that on the transcript. I
9 didn't mean rivalry. I meant robbery.

10 Q. Robbery.

11 A. Robbery. The words sound alike so she put rivalry on
12 there, but it was robbery.

13 Q. Okay.

14 A. She was reading the statement of the Prosecutor
15 stating that I had robbed and making all this right here,
16 and stuff that I had. That's what I said.

17 Q. Yes, sir. So in allowing -- making allowance for
18 your disagreements with some of the facts Judge Baxley
19 didn't cut to the heart of the matter and just ask you
20 flat out is it true that you stabbed him with a shank, and
21 then your answer was, "yes, sir." And we've covered that
22 testimony already?

23 A. That's what I said.

24 Q. So there was some disagreement with something the
25 Prosecutor said. What it all boils down to is that you

1 were not disputing that you stabbed another man. That's
2 why you were standing in court that day, right?

3 A. Yeah, that's the whole point in me pleading.

4 Q. All right.

5 MR. JOHNSON, SR.: Beg the Court's indulgence one
6 moment.

7 THE COURT: Sure.

8 MR. JOHNSON, SR.: Your Honor, I think that's all the
9 questions I have for the witness. Please answer any
10 questions Mr. Biddle might have.

11 THE COURT: Re-direct?

12 REDIRECT EXAMINATION

13 BY MR. BIDDLE:

14 Q. Mr. Inman, you were asked by the Attorney General's
15 Office regarding, you know, whether you were pleading
16 guilty and whether you agreed with what the Prosecutor
17 said of not. Do you believe that you were prejudiced by
18 the statements whether you agreed with them or not that
19 the Prosecutor made to the Judge?

20 A. Yes, sir.

21 Q. Do you think it affected the sentence you got?

22 A. Yes, sir.

23 Q. Now, when you met with your lawyer, and I believe
24 your testimony was after the plea, that she said you
25 didn't get the deal that you were expecting?

1 A. Yes, sir.

2 Q. So, obviously, she had a deal in her mind that y'all
3 had agreed to, and you know, the truth is you were happy
4 with her up until the point that you didn't get the
5 sentence you were expecting?

6 A. Yes, sir.

7 Q. Which is what you believe was the negotiated
8 sentence; is that correct?

9 A. Yes, sir.

10 Q. And I believe your testimony was, and he talked to
11 you about this, regarding that you wanted a trial. And
12 you discussed this with your lawyer?

13 A. Yes, sir.

14 Q. But it was apparent to you and her and the Prosecutor
15 that she wasn't ready for trial and that this was the deal
16 you needed to plead to; is that correct?

17 A. Yes, sir.

18 Q. And that was her advice to you. And you were pleased
19 with her services until you got a sentence that wasn't
20 what you thought it was going to be; is that correct?

21 A. Yes, sir.

22 Q. Okay. And it was some questions regarding a new
23 trial for a plea negotiation from the Attorney General's
24 Office. And I believe that your testimony is that you may
25 be willing to talk about another plea negotiation. And

1 just to correct that I mean if you got an opportunity for
2 a new trial and they offered you in a plea agreement
3 something other than ten or 20 years you would be willing
4 to look at all avenues in order to either plead guilty
5 again to something lessor than what you had received or
6 you may be willing to go to trial; is that correct?

7 A. Yes, sir.

8 Q. When you said that the Attorney General offered that
9 you would look at all avenues is that what you meant when
10 you said if they offer you a plea arrangement?

11 A. Yes, sir.

12 Q. Okay. But if you had to go back and try this case
13 you would go back and try it; is that correct?

14 A. Yes, sir.

15 Q. Okay.

16 MR. BIDDLE: I have no further questions, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. JOHNSON, SR.:

19 Q. With regard to Mr. Biddle's question regarding
20 prejudice. How do you perceive the Prosecutor's comments
21 prejudiced your case? Did you think that while
22 incarcerated that you could inflict this kind of injury on
23 another person without a consequence and then come and
24 plea and get a concurrent sentence with zero consequences?

25 A. What do you mean zero consequences?

1 Q. Well, if you had gotten a concurrent sentence then
2 there would have been no punishment. You would have
3 served the sentence you already had.

4 A. I got punishment in the institution. This jumpsuit
5 is for institution.

6 Q. Yes, sir?

7 A. You know what I mean? Matter of fact twice when I
8 broke the rules that's what I been in jail -- I mean in
9 jumpsuit for.

10 Q. Yes, sir.

11 A. You know, I'm not in regular population because of
12 that incident.

13 Q. Right. Now you are.

14 A. Yeah.

15 Q. But you expected a concurrent sentence which would
16 have been basically no punishment for you; is that right?

17 A. No. I mean if, you know, it might be probation. It
18 might have been, you know, when I go home or it might have
19 been, you know, I'm in the institution getting punished.
20 To me that's double jeopardy, but you know, you can still
21 do that as far as the law. So I don't really know how it
22 works.

23 Q. Okay.

24 MR. JOHNSON, SR.: That will do it.

25 THE COURT: Thank you. You can step down. You may

1 call you next witness.

2 MR. BIDDLE: Your Honor, I call Emily Crayton.

3 EMILY CRAYTON, after being duly sworn, testified
4 as follows:

5 MR. BIDDLE: Thank you, Your Honor. May it please
6 the Court.

7 DIRECT EXAMINATION

8 BY MR. BIDDLE:

9 Q. Ms. Crayton, I'm Marshall Biddle. I represent Mr.
10 Inman in the P.C.R. matter. You were his trial attorney
11 or appointed attorney in this case; is that correct?

12 A. Yes, sir.

13 Q. And I believe you've heard the testimony. You met
14 with Mr. Inman at Evans Correctional Institute; is that
15 correct?

16 A. Yes, sir.

17 Q. Okay. And tell me about that meeting, how it went.
18 What your plans were. What were your thoughts. What were
19 your ideas on the trial of this case?

20 A. Yes, sir. And I could just back up to that first
21 question. Technically, the Public Defender's Office was
22 appointed, and I was assigned as his attorney through the
23 Public Defender's Office.

24 Q. Okay.

25 A. So, technically, I was not the appointed attorney.

1 Q. Sure.

2 A. But assigned by them. I received this case. It was
3 assigned to me in August. And immediately after being
4 assigned to the case I found out that Mr. Inman would be
5 moved from the facility in Evans to another facility.
6 Turbeville I think is where he was being moved.

7 Q. Sure.

8 A. So I went to see him as soon as possible which I was
9 assigned on the 12th, August 12th, and I went and saw him
10 on August the 17th, I believe. I went there with a
11 colleague of mine from the office as well, and we went to
12 that facility and met with Mr. Inman. I did speak with
13 the investigator. The investigator's name is Stuckey,
14 Investigator Stuckey. And I did speak with him while I
15 was there, but he was not present for my meeting with Mr.
16 Inman.

17 Mr. Inman had to be escorted everywhere he went in
18 the prison because of the violent nature of this crime.
19 So I could not by prison policy be alone with him. But
20 the investigator was not the person present. It was a
21 younger gentleman that was wearing a prison uniform. Mr.
22 Stuckey did not wear the prison uniform that the guards
23 wear.

24 Q. They give you an opportunity to meet with him with a
25 barrier between the two of you?

1 A. No. We sat in -- with -- at a round table.

2 Q. Okay. And how close was the person that was guarding
3 him if you know?

4 A. He was actually extremely close given the fact that
5 Mr. Inman actually had to wear sort of like a dog collar
6 that had an leash attached to it. It was very severe what
7 he had to be -- how he had to be confined due to the
8 nature of the -- this act, this stabbing.

9 Q. Did you explain to Mr. Inman that anything that he
10 told you would not be covered by the attorney/client
11 privilege?

12 A. I don't remember whether we discussed that or not.

13 Q. Okay. Did you know that anything that he told you
14 would not be covered by the attorney/client privilege
15 because that third party was there?

16 A. Yes. I believe we covered that in law school.

17 Q. Do you think it would have been prudent to explain
18 that to him?

19 A. I don't remember whether I did or not.

20 Q. Okay. You have any notes whether you explained that
21 to him or not?

22 A. As I stated I do not remember whether I did or not.

23 Q. Do you have any notes from that meeting?

24 A. I just have -- I probably did take notes. Our system
25 at the Public Defender's Office was computerized so -- but

1 I wasn't allowed to use my computer in the prison. So I
2 probably -- I'm positive actually I went back to the
3 office and wrote in some minor notes about the meeting.

4 Q. Sure.

5 A. Just that I met with him.

6 Q. What was, since there is no attorney/client privilege
7 as you have testified because there was a third party
8 present there, what did my client tell you at that
9 meeting?

10 A. If I can refer to my notes? Will that be okay?

11 Q. Sure.

12 A. We met and he -- we spoke a little bit about the
13 evidence, about the Rule Five. And he explained to me
14 that he would like for me to work on a plea offer for him
15 and begin that negotiation even though he was not sure at
16 that time whether he wanted to plea or have a trial. I
17 did begin that negotiation on his behalf.

18 Q. Okay. And is that normal? Do they generally, when
19 you go in and say, 'hey, look, I think we can work this
20 out, but you're probably looking at this or you're
21 probably looking at that'? Of course, he's a different
22 circumstance than someone that's free but he's out. Or
23 he's in prison, and that this is going to be either
24 concurrent or consecutive. Is that something you would
25 have discussed with him?

1 A. That was a very long question. I'm sorry. Can you
2 repeat that?

3 Q. Would you have discussed with him -- would you have
4 discussed with him options or alternatives to a trial or a
5 plea? I mean would you have given him the advice -- I
6 guess a number of items, I guess, you would have said,
7 'these are our options for what we need to do with this
8 case'. Did you discuss those options with him?

9 A. Okay. To answer the first part of that question in
10 every case we will always discuss a plea offer. The
11 Solicitor's Office or the A.G.'s Office represents all --
12 will almost always give a plea offer. It's very rare to
13 have a case that is completely without a plea offer.

14 Q. Okay. Did you have a plea offer when you met with
15 him in August?

16 A. No. As I stated I was assigned the case on the 12th
17 and went to see him on the 17th, and in that five days I
18 was not able to negotiate a plea offer.

19 Q. Okay. What kind of information did you have -- how
20 long had this case been going on? I mean what -- how long
21 had the case been going, do you know?

22 A. It had been in our office since April.

23 Q. Okay. And somebody else handled the administrative
24 stuff like sending the Rule Five request? And so what
25 items did you have in your file at the time you went to

1 meet with him? Did you have the discovery?

2 A. I cannot recall what I had or did not have at that
3 time.

4 Q. Were you given anything by the investigator when you
5 were there at the prison that day?

6 A. I don't recall if he gave me anything or not.

7 Q. Okay. But you did have a meeting with him?

8 A. I did speak with him at that -- after I met with Mr.
9 Inman I then met with -- actually, I don't remember if it
10 was before or after, but I did meet with Mr. Stuckey.

11 Q. Okay. Did you discuss with Mr. Stuckey any
12 administrative alternatives that were being -- or
13 punishment that was being expressed by the prison against
14 Mr. Inman?

15 A. I don't recall, but I know that Mr. Inman was
16 punished administratively, but I don't recall how I
17 learned of that.

18 Q. Do you know whether the person -- I think during the
19 plea and in the transcript there is a discussion regarding
20 Mr. Inman being attacked as retribution for this crime.
21 Do you recall that?

22 A. Yes. I don't recall who told me that. I knew that
23 Mr. Inman had been stabbed 13 times as retaliation. I
24 believe I actually told the Judge that.

25 Q. Okay. Do you know at that -- do you know or have any

1 information regarding whether that inmate actually was
2 prosecuted or by the County?

3 A. No. And I don't believe it was relevant.

4 Q. Okay. But I think it was mentioned in the transcript
5 that that person was not prosecuted; is that correct?

6 A. I don't remember that being in the transcript.

7 Q. Okay. If I pulled the transcript and showed it to
8 you would that refresh you? You have the transcript?

9 A. Yes, I do. If you tell me the page number that would
10 be great.

11 Q. Sure. Actually, I gave him my copy of the transcript
12 this morning.

13 MR. BIDDLE: Your Honor, I hate to ask this, but I
14 need to grab my transcript from his paperwork. I let him
15 read it. Thank you. I apologize, Your Honor.

16 THE COURT: It's okay.

17 BY MR. BIDDLE:

18 Q. While that's going on do you know whether you have
19 any knowledge of whether that person was prosecuted?

20 A. No. I did not work for the Solicitor's Office and
21 had no control over that person being prosecuted or not.

22 Q. Okay. Do you know whether that person was
23 administratively punished?

24 MR. JOHNSON, SR.: Your Honor, I'm going to have to
25 object to relevance.

1 THE COURT: What is the relevance of that?

2 MR. BIDDLE: Well, the relevance is that she -- there
3 was a discussion made to the Judge. Let me pull the
4 transcript and point out the page number to you if you
5 will.

6 BY MR. BIDDLE:

7 Q. And you were present in Court the day that he pled
8 guilty; is that correct? If you will look at Page 15?

9 MR. JOHNSON, SR.: Your Honor, we will have a pending
10 objection.

11 THE COURT: The relevance is that, you know, that it
12 was important enough to mention that he had been -- it was
13 important enough to mention it to the Judge that he had
14 been attacked. And it was also important enough for it to
15 be offered whether there was any prosecution of that or
16 not.

17 I mean the relevance is whether there was any
18 punishment and whether that punishment would have weighed
19 on the Judge; whether he was prejudiced by the Judge
20 giving him the consecutive versus a concurrent sentence,
21 you know, I believe is relevant as to whether there were
22 comments made. And it's in the transcript that he was a
23 member of a gang and a very violent person, and -- but
24 there was also testimony that he had been attacked and
25 that there was no retribution prosecutorial against that

1 inmate. And it was in this process I believe that that's
2 relevant, Your Honor.

3 THE COURT: I can't understand why is it relevant?

4 MR. BIDDLE: It's relevant because, Your Honor, she
5 felt it enough to mention to the Judge that he was
6 attacked.

7 THE COURT: Okay.

8 MR. BIDDLE: And I think it's relevant based on the
9 fact that if she mentioned it for information to that, and
10 it actually was determined that he wasn't. I mean if she
11 was present in Court that day she heard the testimony.
12 That's all my question is is whether she was aware, based
13 on the transcript, she was present and the investigator
14 mentioned that that person was not prosecuted and was only
15 affected -- the question is only whether she was aware
16 that that person was not prosecuted and was only
17 administratively punished as opposed to be prosecuted.
18 That's the only part that I'm asking about.

19 THE COURT: Now, tell me what is the relevance of
20 that ---

21 MR. BIDDLE: I think it goes to the prejudice -- I
22 mean goes to the prejudice of whether the Judge felt like
23 he was -- you know, he had been severely punished or not.
24 I think it just goes to that argument.

25 THE COURT: All right.

1 MR. BIDDLE: It goes to the argument of the fact ---

2 MR. JOHNSON, SR.: Your Honor, if I may. The only
3 what that that would be in a direct appeal and not a
4 P.C.R. What we often see are P.C.R.'s in an attempt to
5 take direct appeal issues and try to throw those in the
6 preservation of the record. But it would have not bearing
7 on the question, the two prong question, of the statement
8 of ineffectiveness of counsel and prejudice.

9 THE COURT: I agree. I sustain the objection.

10 MR. JOHNSON, SR.: Thank you, Your Honor.

11 BY MR. BIDDLE:

12 Q. Did you object to those statements to the Court?

13 A. To what statements?

14 Q. To the statements by the Prosecutor. I apologize.
15 Prosecutorial statements. I double checked on them. You
16 heard the facts recitation by the Solicitor?

17 A. Yes.

18 Q. And you were prepared that day, correct?

19 A. Yes.

20 Q. Okay. And did you object to his rambling, if you
21 will, in the transcript?

22 A. I made no objection.

23 Q. Okay. And why not?

24 A. Why did I not make an objection to the facts that
25 were given by the Solicitor that they believed they could

1 prove in Court?

2 Q. Okay. Let's talk about that.

3 A. No, sir. I'm asking you is that what you're asking?

4 Q. Hang on a second.

5 A. Okay.

6 Q. You made a comment, and I'm going to go back and go
7 through that. So you believe the statements ---

8 A. Could you please ---

9 Q. --- made by the Prosecutors were the facts in the
10 case and that they could be proved in Court. Is that what
11 you just said?

12 A. No. I'm sorry. Can you -- I was asking a question,
13 but can you point me to a point in the transcript where
14 they're talking about?

15 Q. Absolutely. Bottom of Page 9 beginning at Line 20.
16 Says, "Thank you, Your Honor. May it please the Court.
17 The incident occurred on the 2nd of February 2010. The
18 victim, Joseph Martoon. This occurred at Evans
19 Correctional Facility here in Marlboro County. Joseph
20 Martoon had gone to the restroom and while he was in the
21 restroom the defendant busted in and proceeded to stab him
22 with a shank.

23 He was cut in the back of the neck, the face and the
24 shoulder area. The wound to the neck took ... it actually
25 affected," blah, blah, blah, etc. Then it goes down all

1 the way to where it goes to Line Number 11. Okay. "Those
2 are the facts that give rise to this case and the plea;"
3 is that correct?

4 A. I think the facts continue. I think that his, Mr.
5 Redmond, was giving his entire fact scenario until he
6 finished. I mean I think that he continued through. It
7 was a long statement of facts. I mean Mr. Redmond ---

8 Q. So you're saying that the Items 12 through 25, those
9 lines, you're saying that is continued fact base for this
10 matter? And, again, this is what we argued as
11 prosecutorial misconduct, but you're saying that those are
12 facts?

13 A. I'm saying that was the Solicitor's -- his
14 opportunity to give what he believed was the statement of
15 the facts were of the case, how he met each element of the
16 crime and would prove that in Court. I believe that it
17 continues down and he talks about S.C.D.C. records and
18 that sort of thin. Yeah, I believe that that is his
19 version of the facts.

20 Q. Okay.

21 A. We don't always agree with the Solicitor's version of
22 the facts, and we do correct. Mr. Inman was given an
23 opportunity to correct the Solicitor's version of the
24 facts.

25 Q. Okay. Well, my question is why didn't you correct

1 the Solicitor's version of the facts? Did you not
2 disagree with them?

3 A. I had no knowledge of that being true or not true.
4 At that time I had no reason to object to those statements
5 because Mr. Inman had never told me that any of those
6 statements were not true.

7 Q. Okay. So had you heard those statements prior to
8 your -- this day in Court?

9 A. I really don't remember whether I did or not.

10 Q. Okay. But you met with this client and had a
11 discussion as to the facts of this case?

12 A. Yes.

13 Q. Did he tell you that this had gone on through -- did
14 you interview Investigator Stuckey?

15 A. I met with him several times.

16 Q. Did you talk about all of this stuff with him?

17 A. I really don't remember. I don't see that that would
18 be particular relevant to a trial or a plea. Something
19 that I would be concerned with and it may not have been
20 the right time to. I really don't remember.

21 Q. Generally in a plea -- and you are the Assistant
22 Solicitor; is that correct?

23 A. I am currently, yes.

24 Q. Generally in a plea they discuss the facts based in
25 the indictment; is that correct, in your experience?

1 A. It depends. Sometimes we expand on those facts.
2 Sometimes the indictments are boilerplate language and we
3 try to expand to let the Judge know. And often the Judges
4 ask questions or have us expand on that.

5 Q. Do you know what the indictment in this case said?

6 A. I have a copy of it somewhere, I'm sure. I'm sure it
7 was very boilerplate language as it normally is.

8 Q. Were you prepared for trial on this date, on the
9 25th?

10 A. Yes, sir. And it was not called for trial on that
11 day.

12 Q. Okay. Did you have that discussion with Mr. Inman
13 that you were not going to try this case?

14 A. No. I have never told a client that I would not try
15 his case, and I've tried numerous cases.

16 Q. Okay. So you met with him on the 25th of May, I
17 believe, and discussed the options with the Prosecutor
18 present, is that correct?

19 A. No, sir. I do not remember that the Prosecutor being
20 present. If he was present -- Mr. Redmond often will come
21 in and give a -- tell someone what he's offering to do. A
22 personal plea offer, if you will, but I do not remember
23 that at this time. I remember he and I spoke personally
24 without anyone present.

25 Q. Do you remember how much time y'all spent talking

1 about it?

2 A. I have no idea.

3 Q. Okay.

4 A. I could not tell you.

5 Q. Did you tell him that if he wanted to try this case

6 that you were ready and prepared to try this case?

7 A. I'm sure I told him if he wanted a trial he could

8 have a trial. I never told him that it would be that day

9 or that week cause his case was not scheduled for trial.

10 It was not on the trial list.

11 Q. Okay. Did you ask him did he wanted the case to be

12 tried?

13 A. Yes. We discussed having it tried or a plea.

14 Q. Okay.

15 A. Originally he wasn't sure what he wanted to do. He

16 never said that he definitely wanted a trial.

17 Q. Okay. And what did you tell him regarding the plea?

18 A. I said that it was a reduction from the assault and

19 battery with intent to kill to an assault and battery

20 first degree, and it carried up to ten years. He could

21 get up to ten years.

22 Q. Okay. Did you tell him whether that was non-violent

23 and most serious or?

24 A. Yes. We discussed that, and actually that came about

25 afterwards where he was -- I talked to him about it being

1 non-violent. And that was a concern that came up
2 afterwards because he actually wrote me and said that
3 S.C.D.C. was declaring it with a violent offense. But I
4 actually e-mailed S.C.D.C. and followed up and they were
5 declaring it non-violent. And that -- he was concerned
6 for that I think for this parole date.

7 Q. Okay. And do you know what was checked on the
8 sentencing sheet?

9 A. I don't know that anything was checked.

10 Q. If I showed you this checked, 'most serious', would
11 that surprise you?

12 MR. BIDDLE: She has it right there. May I approach,
13 Your Honor?

14 THE COURT: Sure.

15 MR. BIDDLE: Yes. Thank you.

16 THE WITNESS: I have a copy of it.

17 BY MR. BIDDLE:

18 Q. Okay.

19 A. I believe I have a copy. No, it wouldn't surprise me
20 it was declared most serious. Basically, the defendant
21 was more concerned about whether it was violent or
22 non-violent.

23 Q. Okay. You know that document is not checked as to
24 whether it was without negotiation or recommendation;
25 whether it's negotiated or whether it's recommended. Any

1 of those boxes checked?

2 A. No, sir.

3 Q. Okay.

4 A. The Solicitor's Office prints this form. We, the
5 Public Defender's Office, did not have the capability to
6 print a sentencing sheet.

7 Q. No, I understand some things. I familiar with that
8 process as well, but literally, you go in there and there
9 is either -- it's either -- there are three boxes there
10 and one of them has got to be checked. Either without
11 negotiation or recommendation, negotiated or
12 recommendation?

13 A. No. I disagree with you that one of them has to be
14 checked.

15 Q. Okay. Explain to me why neither one of those boxes
16 has to be checked? Is there a statute that says that?

17 A. Is there a statute that says they have to be checked?

18 Q. I don't know. I'm asking you. You're the Solicitor?

19 A. No. I've had cases that none of those boxes have
20 been checked.

21 Q. So if ---

22 A. And if ---

23 Q. So it doesn't matter if it's without recommendation
24 and negotiation or negotiated or -- do you believe this is
25 a negotiated sentence?

1 MR. JOHNSON, SR.: Wait a minute. If we can have an
2 opportunity for her to answer these questions, Your Honor.

3 THE COURT: Go ahead now.

4 THE WITNESS: I'm very confused about what the
5 question was. Can you ---

6 BY MR. BIDDLE:

7 Q. Let's move on. How about that. I'll withdraw the
8 question and move on. Do you -- was this a negotiated or
9 sentenced with a recommendation?

10 A. Is that a two part question? Is it a ---

11 Q. It is.

12 A. Okay. What was the first part?

13 Q. Is this a negotiated plea?

14 A. No. Judge Baxley at that time would not accept
15 negotiated pleas. So there is no way that Mr. Redmond or
16 I would have assumed that this was a negotiated plea
17 considering that Judge Baxley would have never accepted it
18 at that time.

19 Q. What was your understanding that -- what was your
20 understanding of the results of the plea at that time?

21 A. I understood that his charge from A.B.W.I.K. was
22 being reduced to A and B first. This is, in my
23 professional opinion, the type of case where I don't check
24 a box because without negotiation would imply that the
25 person is pleading straight up to what they're indicted.

1 He was not.

2 Negotiated would mean that we are agreeing to
3 something. We did not. And recommending would mean that
4 the Solicitor was recommending something. We were not.
5 So in my opinion I would have never checked one of these
6 boxes either cause they don't apply.

7 Q. All right. But your testimony or at least my
8 client's testimony was when he went back after the plea
9 you told him that, 'well, that didn't go the way we
10 expected'. So what were the expectations?

11 A. I never said that.

12 Q. Okay. So your testimony is that you never met with
13 him after the plea?

14 A. I'm sure I met with him after the plea, but I never
15 recall saying anything like that.

16 Q. Okay.

17 A. Now, we did ask for it at the time to be concurrent,
18 and the Judge did not give us that like we asked.

19 Q. Okay. So if you would have said that was that what
20 you were referring to?

21 A. I'm not saying that I said that.

22 Q. Okay. But if you would have do you think that that
23 is what you were responding to?

24 A. I'm sorry. You want me to speculate that if I would
25 have said that what I would have been referring to?

1 Q. No. It's a complex question I asked you. I'll move
2 on. Thank you. Did you tell Mr. Inman that today was his
3 day in court and that he needed to plead to this to the
4 day that -- on the day that he pled?

5 A. No. I would never tell a defendant that he needed to
6 plead to anything. I would recommend that he plead to
7 something, but that is his decision. And I have had
8 trials where I would prefer the defendant to plead for
9 their own benefit and they had not and I went forward with
10 the trial.

11 Q. How long had passed since you first met Mr. Inman at
12 the jail?

13 A. I met him on 8/17 of 2010. He pled guilty on May 26
14 of 2011.

15 Q. Okay. So 11 months. During that process what did
16 you do in preparation for his case to be tried?

17 A. I'm sorry. I don't believe that was 11 months that
18 -- I'm sorry.

19 Q. I'm sorry?

20 A. It ---

21 Q. Did I say 11 months?

22 A. Yeah, you did.

23 Q. Okay. I apologize.

24 A. Okay.

25 Q. During that period of time what did you do in

1 preparation of this case for trial? What investigative
2 work did you do beyond just meeting with him at the jail?

3 A. Okay. I spoke with the investigator several times.
4 I spoke with the Solicitor. I met with the Solicitor
5 several times. At that point we weren't sure if we were
6 going to prepare for trial or if we were going to have a
7 plea. So I continued to negotiate the plea on his behalf.

8 Q. And did you ---

9 MR. JOHNSON, SR.: Your Honor, she's still answering
10 the question.

11 THE COURT: You're interrupting her again.

12 THE WITNESS: Thank you. Until Mr. Inman told me
13 that he absolutely did not want to plea and wanted a trial
14 or the case was put on the trial list we would not have
15 begun to prepare for trial given the fact that our
16 caseloads does not allow up to prepare for a trial for
17 every case.

18 MR. BIDDLE: Your Honor, I'd like her last answer to
19 reflect that that was not in response to my question. The
20 reason I was interrupting her is cause she had answered my
21 question.

22 BY MR. BIDDLE:

23 Q. My question is what else did you do in the
24 investigation, and did you contact Mr. Inman and discuss
25 that with him. And you gave me the investigation portion.

1 You said you had not discussed it with him; is that
2 correct?

3 A. No. We wrote letters back and forth. I had not seen
4 him again because he was located in Turbeville, and our
5 schedules as public defenders did not allow me to visit
6 him as much as I would like. That is why he was brought
7 back to Marlboro County at that time.

8 Solicitors often -- Solicitor's Office often brings
9 people that are located at S.C.D.C. back to Marlboro
10 County for the Public Defenders Office and private
11 attorneys to meet with them to make sure whether we want
12 to put this on the trial list or if a plea can be
13 negotiated.

14 Q. Okay. And did you impress upon Mr. Inman that this
15 was the best deal he was going to get on that that day?

16 A. I don't remember telling him it was the best deal or
17 not. I'm sure I recommended he should take it.

18 Q. Okay. So you encouraged him to take this deal; is
19 that correct?

20 A. Like I just said I recommended for him to take it.
21 It was my professional opinion that he would be
22 unsuccessful at trial.

23 Q. Okay. And the basis for your recommendation was that
24 they were lower it from A.B.W.I.K. to A.B. first degree;
25 is that correct? Was that the basis for your

1 recommendation?

2 A. No. Well, I mean, yes, but not just that. The way
3 you're making that sound is that that was the only thing.
4 No, I did not believe he would be successful at trial.
5 And given the fact that they were reducing it from I
6 believe a 20 year charge to a ten year at most charge he
7 was getting considerable benefit. He was already doing a
8 nine year sentence for strong armed robbery, and he did
9 feel it was in his best interest as well as he did at that
10 time to plead guilty.

11 Q. What did you base your decision or your
12 recommendation on that you would not be successful at
13 trial? On what -- what was that based on?

14 A. My conversations with the Solicitor as well as the
15 investigator as well as Mr. Inman.

16 Q. And that was the initial conversation you had with
17 him nine months before he was brought in for the plea; is
18 that correct?

19 A. Yes, I think nine months.

20 Q. How far is Turbeville from Florence?

21 A. I don't know.

22 Q. Okay. You ever been to Turbeville Jail -- Prison?

23 A. I have not.

24 Q. Okay. You ever been to Turbeville?

25 A. Not that I'm aware of.

1 Q. Okay. Would you believe that it's probably the same
2 distance to Bennettsville as it is to Turbeville?

3 A. I could not speak to that.

4 Q. But your testimony is that you -- that your
5 recommendation based on talking with Mr. Inman, Mr.
6 Stuckey and the Solicitor ---

7 A. As well as the Rule Five, and as I said ---

8 Q. What were the results of the Rule Five?

9 A. I don't recall. It was all the evidence, the
10 warrants, I believe. I know I gave him the warrants and
11 the incident report. I don't remember what else if
12 anything I gave the defendant.

13 Q. Do you know anything about any D.N.A?

14 A. I don't recall.

15 Q. Did you do a multiple request for discovery from the
16 Solicitor's Office?

17 A. I don't recall.

18 Q. Did you tell Mr. Inman that you had done multiple
19 requests for ---

20 A. I don't remember whether I did tell him that or not.
21 I really don't remember.

22 Q. And your file would be there. If you communicated
23 with him by letter you would have those in front of you;
24 would you not?

25 A. Not necessarily, no. As I said our computer -- our

1 system was a computer based system. So it was often times
2 that we would write letters and they would not be attached
3 to the file.

4 Q. Okay. Do -- in the Public Defender's Office do you
5 write the letter or do you have a secretary that does the
6 letters for you?

7 A. No. I would wrote the letter.

8 Q. Okay.

9 MR. BIDDLE: I would like to have three letters dated
10 March 11th, July 25th and August 12th 2011 from you to Mr.
11 Inman marked for identification. We can just mark them as
12 one exhibit if that's okay unless you want to do them
13 separately.

14 (WHEREUPON, Applicant's Exhibit Nos. 3 THROUGH 5 were
15 marked for identification only.)

16 MR. BIDDLE: Okay. We've marked them individually.

17 BY MR. BIDDLE:

18 Q. Let me give you what's been marked for identification
19 purposes, Plaintiff's Exhibit Three, Four and Five and ask
20 if you can identify those for me, please?

21 A. Apparently, these are letters that I wrote to the
22 defendant, but he's written all over them, so.

23 Q. Okay. But for purposes of -- let's assume that the
24 handwriting is excluded, but those letters are letters you
25 wrote to him; is that correct?

1 A. Hold on. I haven't finished reviewing.

2 Q. Sure.

3 A. Yes. One of -- two of these are actually not prior
4 to his plea. They're after his plea that he was concerned
5 about his assault and battery first degree charge being
6 classified as non-violent or violent instead of violent.
7 I followed with Office of General Counsel of the South
8 Carolina Department of Corrections, and they ensured me
9 and did respond to my request that it was classified as
10 non-violent. And I was responding to letters after his
11 plea cause this is the only letter that was done prior to
12 the plea.

13 Q. And both -- the other two letters deal with the Rule
14 Five discovers; is that correct? One is in March? One is
15 in April; is that correct?

16 A. No. One -- the original -- the first letter is in
17 March, and this is prior to his plea where I sent him the
18 Rule Five that I had in my files. The other two letters,
19 one is from July and one is from August, I again tell him
20 I have sent him the materials that I had in my file.

21 Q. Okay. So you did in fact request on more than one
22 occasion or just on one occasion the Rule Five discovery
23 from the Solicitor's Office?

24 A. I think I've already answered that question, and my
25 response was I'm not sure how many times that was

1 requested from the Solicitor's Office. It should have
2 been requested at least once in writing by our staff, but
3 I cannot tell you how many times I verbally or written --
4 if a written request was made.

5 Q. Okay. But you represented to Mr. Inman that you had
6 at least requested it once; is that correct?

7 A. Yes. A Rule Five request is made in every case by
8 the Public Defender Office staff, not by the attorney
9 himself, and my boss at that time, Michael Stephens,
10 signed those. I had no dealings with those. If I made an
11 oral or second written request I would have done that.
12 But I can't say whether I did or didn't, and I cannot tell
13 you how many times it was requested.

14 Q. So you don't have that record in your file there?

15 A. No.

16 Q. Okay. What do you have in your file there.

17 A. These are actually all the P.C.R's here today. This
18 is what the Attorney General's Office sent me. This is
19 not just Mr. Inman's file.

20 Q. Okay. That works. I was beginning to think that was
21 a pretty big file.

22 A. No. Yeah. I have numerous P.C.R's today as you're
23 well aware.

24 Q. Did you tell Mr. Inman on the date he pled guilty
25 that you were prepared to take this case to trial?

1 A. I don't remember saying that. I cannot say whether I
2 did or did not. I know on that date I was not prepared
3 for trial because his case was not called for trial, nor
4 had Mr. Inman told me that this is absolutely a trial.

5 Q. Okay. Was this just a roll call thing?

6 A. No, because Mr. Inman was in prison. They don't have
7 roll call day, but I had only been given one opportunity
8 to speak with him. And the Solicitor often does this, has
9 the defendant brought back to Marlboro County so we can
10 speak to them. They just want to make sure that all
11 negotiations are done with and we put them on the trial
12 list if we need to. He had not been given, to my
13 recollection, a plea offer at that time.

14 Q. Okay.

15 A. I know there was never an offer for five years. I
16 can tell you that.

17 Q. Okay. You have anything in your record that shows
18 the ten year offer that was made? You have any document
19 from them regarding that?

20 A. I don't believe so. I believe it was most of our
21 offers from Marlboro County from that Solicitor's Office
22 are made orally or by e-mail. It is very rare to receive
23 a written offer.

24 Q. Okay.

25 A. Especially from Mr. Redmond.

1 Q. Okay. Did you tell Mr. Inman you were there that day
2 on a plea day to plead guilty?

3 A. Do you want me to continue looking in my file to make
4 sure or?

5 Q. Sure.

6 A. Okay. I just -- I do not have any written plea offer
7 in my file.

8 Q. Okay. How long were you with the Public Defender's
9 Office in Marlboro County?

10 A. I was with the Fourth Circuit Public Defender's
11 Office for two years. I was never assigned specifically
12 to Marlboro County. I had cases in all four counties.

13 Q. Okay. How many cases did you try during your two
14 years?

15 A. I could not even tell you.

16 Q. More than one?

17 A. Yes.

18 Q. More than ten?

19 A. Probably so. I can't tell you.

20 Q. Okay. Had you tried any cases for inmates in prison
21 that you can recall?

22 A. Not that I can recall. I did prepare for trial a
23 murder where he was in prison. I'm not sure that relevant
24 to this case.

25 Q. Okay. Did you file an appeal of Mr. Inman's plea?

1 A. No. It seemed as though I -- he wrote to me and
2 let's see. I responded back to him on August 12th that --
3 he asked me -- I don't have his letter in front of me, but
4 I have my response which I say, "I'm not able to assist
5 you in file a P.C.R.

6 And as the Judge and I informed you to appeal this
7 decision you had to file a Notice of Intent to Appeal
8 within ten days of sentence." And at that time it was two
9 months after the sentence, so at that time the appeal
10 would not have been timely. And I did inform him of that.

11 Q. Okay. But you did file an appeal on his behalf?

12 A. No. He never, and the letter continues, "Since you
13 did not file a Notice of Appeal or ask me to file a Notice
14 of Appeal the appeal at this time would be untimely."

15 Q. Okay. But wouldn't you agree that you were the
16 attorney of record until this matter was either resolved?
17 Did you have a duty to advise him of his right to file an
18 appeal?

19 A. I ---

20 MR. JOHNSON, SR.: Your Honor, I think she just said
21 ---

22 THE COURT: Sustained. I sustain the objection.

23 BY MR. BIDDLE:

24 Q. After the plea you met with my client or according to
25 his testimony you met with him. Did he ask you at that

1 time to file an appeal?

2 A. He never asked me to file an appeal until he wrote me
3 apparently sometime in August, and I responded to him that
4 an appeal would be -- he asked me to file a P.C.R.,
5 apparently, and an appeal. And I informed him that he had
6 -- I and the Judge had previously informed him that he had
7 ten days to file that appeal. He did not ask me to file
8 an appeal so none was filed.

9 Q. Okay. Do you -- did he express at that time that he
10 was pleased with his sentence?

11 A. I believe at that time he was upset because it was
12 being declared -- he believed it was being declared a
13 violent offense, and at the beginning of this letter I
14 continue to tell him, "As I stated in my previous letter
15 assault and battery first degree is a non-violent offense
16 and your charge is being classified as non-violent," which
17 I had confirmed with S.C.D.C. General Counsel.

18 Q. Okay. But you didn't file a Notice of Appeal for him
19 did you?

20 A. No, and he never asked me to.

21 Q. Okay. So your testimony is that unless he asks you
22 you have no obligation to file a Notice of Appeal?

23 A. I -- yes, I believe I might commit malpractice if I
24 filed an appeal that someone did not request or I did not
25 advise and we agreed upon. Yes.

1 Q. Okay.

2 A. It's not my right to appeal. It's his right.

3 Q. I understand, but he's in prison, and he was
4 dissatisfied with the result of his guilty plea, was he
5 not?

6 A. He was dissatisfied with his classification at that
7 time.

8 Q. Did he tell you, 'I'm dissatisfied with my
9 classification'?

10 A. Yeah.

11 Q. He told you that? In those words?

12 A. No, not in those words. He said he believes his
13 offense was being classified as violent when I told him it
14 was non-violent, and he was right. I did tell him it was
15 non-violent because it is non-violent.

16 Q. And at the guilty plea he told you he was unhappy
17 with his classification?

18 A. No.

19 Q. My question to you is did he express to you his
20 discontent with the result of his guilty plea?

21 A. I don't remember whether he did or didn't. I'm sure
22 he was upset that it ran consecutive instead of
23 concurrent. Is that what you're looking for?

24 Q. Yes.

25 A. I'm sure he wasn't.

1 Q. Okay. Now, based on that you would not express to
2 him you're dissatisfied, give him the option of you can
3 file an appeal?

4 A. Of course I gave him the option to file an appeal
5 which I testified to numerous times now.

6 Q. Okay. And you're saying he said, "Aw, don't worry
7 about it?"

8 A. No. He never asked me to file an appeal until he
9 sent me a letter in August sometime.

10 Q. And don't you believe that as the attorney of record
11 he's dissatisfied and he expresses that he's dissatisfied
12 you have a duty to file the appeal?

13 MR. JOHNSON, SR.: Your Honor, there are three
14 questions that he's asked and I've not objected, but he
15 asked the same questions over and over.

16 MR. BIDDLE: She hasn't answered the question yet,
17 Your Honor.

18 THE COURT: I'll let you ask it again, but you have
19 to ask one question and can't pose a compound question.

20 MR. BIDDLE: Okay.

21 BY MR. BIDDLE:

22 Q. No compound questions.

23 A. Thank you.

24 Q. Did you have a duty to file an appeal for him?

25 A. Without him requesting it I believe it would be

1 malpractice for me to file an appeal if he had not
2 requested or we had not agreed upon it.

3 Q. So you believe it would be malpractice to file
4 something that is in the client's best interest?

5 A. When he did not request it, and it is not my right to
6 file an appeal, yes, I believe it would be malpractice.

7 Q. All right. So anything that you did in connection
8 with his work that he didn't request is that malpractice?

9 A. No. As attorneys we have certain things that we can
10 do and certain things we cannot do. Just like I cannot
11 force him to plead guilty. I cannot request an appeal if
12 he does not want or request.

13 Q. He's in jail, and you believe it's in his best
14 interest to appeal because he expressed dissatisfaction to
15 you ---

16 A. I did not ---

17 Q. --- about --- I'm asking a question. About the
18 dissatisfaction of the results of his guilty plea; you're
19 the attorney of record. You're going to leave it up to
20 him to file the appeal or are you going to file the
21 appeal?

22 A. I never said I wouldn't file it for him. He has to
23 express the wanting of an appeal. I can't just appeal a
24 decision because I don't like the results.

25 Q. Did you advise him that you were not going to file an

1 appeal unless he requested it?

2 A. No, I didn't advise him. I -- we talked about
3 wanting -- that he could have an appeal. He never said he
4 wanted it until August. We told him, 'you have ten days
5 to file an appeal. You need to let me know if you want to
6 appeal'. He never let me know in those ten days. He let
7 me know almost two months later, and at that point you
8 cannot file a Notice of Intent to Appeal after that time.

9 Q. Did you advise him that he needed to file that appeal
10 within ten days?

11 A. Yes, numerous times. As I stated in my letter and
12 the Judge advised him and I advised him.

13 Q. Did you write him a letter to that effect?

14 A. That's what I just said. August 12th 2011, it says,
15 "As I stated in my previous -- well, it says right here,
16 "As the Judge and I informed you to appeal this decision
17 you had to file a Notice of Intent to Appeal within ten
18 days of sentencing."

19 Q. Okay. My question is did you notify him within the
20 ten days that he needed to file the appeal within ten days
21 in writing?

22 A. No, and that's not required of me.

23 Q. It's not?

24 A. No, it is not required that I tell him in writing
25 that he needs to file an appeal within ten days if he

1 would like to file an appeal.

2 Q. But isn't it your job to ensure that he understood
3 what his rights were, you as his lawyer, for you to advise
4 him what his rights are? He's dissatisfied with the plea.
5 You tell him he can file an appeal, but you wait until 45
6 days after it's done or two months and then say, "Sorry.
7 It was ten days?"

8 A. No, I informed him at that time, as I have testified
9 numerous times, that he had ten days to appeal. I told
10 him. The Judge told him, and on the record ---

11 Q. But ---

12 THE COURT: Let her finish.

13 THE WITNESS: It was on the record. I'm not sure
14 exactly how clear -- more clear I can make that.

15 BY MR. BIDDLE:

16 Q. Your testimony is that you have not duty as the
17 attorney of record to file an appeal?

18 MR. JOHNSON, SR.: Asked and answered many times,
19 Your Honor.

20 THE COURT: I'll sustain the objection. You've asked
21 the question ten times.

22 MR. BIDDLE: Okay. But I agree and I just want to
23 make sure that her testimony is, and it is, she believes
24 that she does not have an affirmative duty to file an
25 appeal on behalf of an indigent client.

1 THE WITNESS: That is not what I said. If he not
2 requesting an appeal. If he would have requested an
3 appeal I have a duty to ---

4 BY MR. BIDDLE:

5 Q. Can you show me where that is in the attorney ethics
6 rules that we only file appeals if our clients request us
7 to?

8 A. I don't ---

9 MR. JOHNSON, SR.: Your Honor, we are way outside of
10 what is relevant for a belated appeal. That is what they
11 are seeking.

12 MR. BIDDLE: I'm not asking for an appeal, but my
13 question -- the issue is.

14 MR. JOHNSON, SR.: If they're not asking for a
15 belated appeal then it's completely irrelevant.

16 MR. BIDDLE: The issue is ineffective assistance of
17 counsel which is why he's got a P.C.R. because he didn't
18 get an appeal and he an ineffective assistance of counsel
19 because she didn't object to the prosecutorial comments
20 made. That's the whole issue. This goes to the
21 ineffective assistance of counsel because she didn't file
22 an appeal, she didn't object to the prosecutorial
23 language, and she didn't do what she was supposed to do
24 for this client. That's the issue.

25 THE COURT: That's your legal argument. She's

1 already told you why she didn't do it.

2 MR. BIDDLE: Okay. All right.

3 MR. JOHNSON, SR.: If I might add one thing, Your
4 Honor. If the argument is that they're not seeking a
5 belated appeal then the matters relating to whether the
6 was advised about his rights to appeal become irrelevant.
7 And I assume that they were going to ask for a belated
8 appeal with would make those types of questions perfectly
9 clear.

10 And the reason I did not object they're not seeking
11 belated appeal. Those questions are completely
12 irrelevant, and I would that they be stricken from the
13 record.

14 MR. BIDDLE: Your Honor, arguing what's in his P.C.R.
15 application is ineffective assistance of counsel,
16 prosecutorial misconduct and the 6th and 14th Amendments.
17 It doesn't have anything about a belated appeal. He asked
18 for it, and that's why I'm arguing it, Your Honor.

19 THE COURT: Okay. I'm denying that motion to strike.

20 MR. JOHNSON, SR.: Thank you, Your Honor.

21 MR. BIDDLE: I think I'm done, Your Honor. Let me
22 just gather my thoughts for a moment. I have nothing
23 further, Your Honor.

24 MR. JOHNSON, SR.: I don't think I'll be too long. I
25 just have a few questions.

1 THE COURT: Sure.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON, SR.:

4 Q. I want to follow up on a couple of areas and maybe go
5 into a little bit more detail on a couple of things. I
6 want to start with the Rule Five discovery and if I
7 mischaracterize something you just testified I want you to
8 correct me. But you did make a Rule Five Discovery
9 Request; is that correct?

10 A. My office did. I didn't personally make it.

11 Q. All right. So you received something in response to
12 that?

13 A. Yes.

14 Q. And I think this is where Mr. Biddle handed up the
15 letter which referenced you sending those things to Mr.
16 Inman, correct?

17 A. I sent him the initial Rule Five that I received. A
18 lot of times we receive initial Rule Five and then we
19 would receive subsequent Rule Five. Marlboro County
20 Solicitor's Office was not known for giving everything at
21 one time. So I sent him initially what I had which was
22 the incident report and the warrant. And that's what I
23 sent him in the letter saying that's what I have at this
24 time.

25 Q. So this clarifies that portion of the letter which

1 states that there -- I'm paraphrasing. That there may be
2 more to come?

3 A. Exactly.

4 Q. Okay. So this is what I have?

5 A. Right now.

6 Q. And so you reviewed those documents yourself?

7 A. Yes.

8 Q. All right. And at some point did you have the
9 opportunity to discuss the information you gained through
10 the Rule Five with the Applicant?

11 A. Yes. We spoke about that when he came to Marlboro
12 County prior to his plea.

13 Q. Do you feel like you answered his questions about the
14 Rule Five discovery?

15 A. Yes.

16 Q. Did he give you his version of the facts?

17 A. Yes.

18 Q. With regard to discovery that the State had provided
19 to you, what he had told you initially, and now having
20 seen this, what did he tell you?

21 A. He did not -- he didn't contest anything that the
22 State was saying at that time. They had not at that time
23 informed me of any gang involvement or anything like that.
24 I do remember asking him about some of his tattoos. Just
25 doing this job for a while I do know a lot of times gang

- 1 members will have specific tattoos. So I did ask him
2 about his tattoos which is did say were not gang related.
3 I do remember that.
- 4 Q. What did he tell you with regard to whether or not he
5 had stabbed a person?
- 6 A. He said he did.
- 7 Q. He never denied it?
- 8 A. No.
- 9 Q. And then did he have witnesses he wanted you to make
10 a call to or call? Did he give you any names ---
- 11 A. No.
- 12 Q. --- of people to talk to?
- 13 A. But we had not yet begun for trial because he never
14 said that he absolutely wanted a trial.
- 15 Q. I guess what I'm asking you is he didn't offer at
16 this time ---
- 17 A. No.
- 18 Q. --- names of witnesses?
- 19 A. No, sir.
- 20 Q. How cooperative was he in defense of his case?
- 21 A. He was pretty cooperative.
- 22 Q. Do you feel like you had ample time to do your own
23 investigation?
- 24 A. Yes.
- 25 Q. Do you feel that you had time to adequately discuss

1 the case and to prepare the case?

2 A. For -- we were not prepared for trial, so I don't
3 know exactly what you're saying, 'prepared for the case',
4 but I had not had enough conversations with the defendant
5 to prepare him for testimony if he was going to testify.
6 But that case had not made it on the Solicitor's trial
7 list, and that's when we start preparing is when the
8 client actually notices us that they want a trial instead
9 of a plea. And he had not done that.

10 Q. Did you discuss with him that he was not on the trial
11 list at this time?

12 A. I'm sure I did. I don't remember exactly what I told
13 him then.

14 Q. Would you have typically have done that at this kind
15 of a meeting with a client? Is that something that you
16 would have incorporated into your normal ---

17 A. Yes, because when they're brought a lot of times they
18 don't know why they're brought. Whether it's for a bond
19 hearing or --- especially when they're brought from
20 S.C.D.C. they have no idea why they're brought. So I'm
21 sure I would have told him that we're just here to discuss
22 what we're going to do in the future on this case.

23 Q. Would you have told him that on this particular day?

24 A. Yes, I believe I would have.

25 Q. And would you have told him that you're here for a

1 plea?

2 A. No. I would never have told him that he was there to
3 plead guilty. That is completely his decision which I
4 always tell the defendant.

5 Q. Would you have told him that today you have the
6 opportunity to plead if you choose to?

7 A. I would not have said those exact words. I would
8 have told him that we had a plea offer, and he could take
9 that plea offer today if he liked to.

10 Q. I realize it's been some time, but do you remember
11 specifically telling that and do you remember what his
12 response would have been?

13 A. I remember we thoroughly talked about the plea offer
14 and whether he wanted it or not or wanted to go forward
15 with a trial instead. And I don't remember exactly what I
16 told him, but I am pretty sure that I told him that but
17 that trial would not be today.

18 Q. You specifically remember telling him?

19 A. No. And I'm sure I probably even told him it
20 wouldn't be that soon. At that point Solicitor's docket
21 was pretty full, and his case would not have come up, I
22 would think, for several more months.

23 Q. Do you remember his response when you told him that?

24 A. His response to the plea -- I mean we fully talked
25 about it, and he decided that he wanted to take it. I

1 remember that.

2 Q. Do you remember why he said he wanted to take it?

3 A. It was a good offer. It was a reduction from the ten
4 years -- from the 20 years to the ten years. And it was a
5 good offer.

6 Q. He was basing his decision on that it was reduction
7 from the potential of 20 down to ten?

8 A. I think that and the fact that I mean he admitted on
9 the stand that he was guilty. I think coupled with the
10 fact that it was a reduction to the ten year statute.

11 Q. All right. Now, part of what he's claiming, as I
12 understand it, is that he was expecting to have a
13 concurrent sentence not a consecutive sentence. Did you
14 make any?

15 A. We discussed that prior, and I explained to him that
16 I would be asking for this charge to run concurrent with
17 his nine year sentence of strong armed robbery, but that I
18 couldn't guarantee that.

19 I would never said that it was negotiated because
20 Judge Baxley absolutely at that time refused to take
21 negotiated pleas. And so I would have never told him it
22 was negotiated because we would have had to wait and put
23 it in front of another judge. And Mr. Redmond never would
24 have said that either.

25 Q. Okay. Let me make sure I understand this. Before

1 coming out into the courtroom to enter the plea did you --
2 your testimony is that you told him that you were asking
3 for the time to run concurrent?

4 A. We discussed it. I would ask for this time, it's up
5 to ten years, to run concurrent with his current sentence
6 of strong armed robbery that was a nine year sentence.
7 I'm not sure exactly how much he had left on his sentence
8 at that point. But that I could not guarantee that, and
9 it was up to the Judge.

10 Q. And you were clear that you couldn't guarantee it?

11 A. Absolutely I made that clear.

12 Q. And when you told him that it was going to be up to
13 the Judge whether to run it concurrent or not how did he
14 respond?

15 A. I don't remember him responding at all to that. I
16 usually ask, and have always done this, ask do you
17 understand. Do you understand that, and I actually ask
18 that a lot when I'm talking to him about that, and he
19 never said that he didn't understand any part of it.

20 Q. All right.

21 MR. JOHNSON, SR.: Beg the Court's indulgence.

22 BY MR. JOHNSON, SR.:

23 Q. Based on your review of discovery and your meetings
24 with him and you experience at the time did you have an
25 opinion as to whether the State would be able to prove

1 beyond a reasonable doubt the charge against him?

2 A. Yes, I believe they would find him guilty beyond a
3 reasonable doubt at trial which is why I did advise him to
4 take the reduction in the charge.

5 Q. If he had said to you, "I refuse to enter a plea
6 today. I want a trial whenever that may be," what would
7 you have done?

8 A. He would have been sent back to S.C.D.C. and at that
9 point we would have begun preparing for trial. We would
10 have talked to the Solicitor about when -- what month this
11 case would have been tried.

12 And normally the Public Defender's Office you have
13 more than one person on a trial, so I would not have tried
14 it just myself. One of the other attorneys would have
15 tried it with me. I'm not sure who it would have been at
16 that time. So that I along with that attorney would have
17 visited him often, discussed it, began coming up with a
18 witness list if we had any witnesses or if we were going
19 to put up any evidence.

20 We would have discussed whether he wanted to testify
21 or not and prepare his testimony if he was going to. We
22 would have done things like get him clothes so that he did
23 not have to appear in his prison uniform and those types
24 of things along with just investigating the case more
25 thoroughly and talking to any witnesses that might have

1 been at Mr. Inman's request.

2 Q. Let me bounce back up to the question that I asked
3 you and might have cut you off a little bit. This charge
4 had been reduced from a no parole to a parole? In other
5 words he went from having a no parole situation to having
6 a parolable situation?

7 A. That sounds right, but I can't really recall whether
8 A.B.W.I.K. is a no parole. That sounds right to me, but I
9 can't really testify to that without the statute in front
10 of me.

11 Q. So if he had asked you to go forward and try his case
12 you would have been willing to try the case?

13 A. Absolutely. We like to have trials at the Public
14 Defender's Office. It was, you know, more entertaining
15 than a plea day that's for sure. And it provided us with
16 something different. We would have absolutely done it.

17 I have tried numerous cases where I thought the
18 defendant should have pled guilty and thought it was in
19 their best interest and had advised them of that if they
20 ask to go forward. And we do that all the time. We don't
21 get to make the decision whether we have a trial or not.
22 That's up to the defendant.

23 Q. During the plea colloquy when Judge Baxley was asking
24 him about whether or not he understood the rights he was
25 waiving. The trial rights, the rights pertinent to a

1 trial. Did you feel that -- did he express any
2 reservation or objection while you were standing there
3 with him?

4 A. No. And he never did prior to that. When we were
5 discussing the plea he never said, "No. I want a trial."

6 Q. If he had, while you're standing there and Judge
7 Baxley is going over the rights that you're waiving.
8 These are very important rights. Going down the list. If
9 he had expressed any reservation would you have stopped
10 the plea?

11 A. Yes, I would have asked Judge Baxley at that time. I
12 would have said, "Your Honor, may I have some time to talk
13 to my client, and can we stand this down." And Judge
14 Baxley would have done it. That has happened before, and
15 we have, of course, stood it down before and the Court
16 moves on to something else.

17 Q. All right. I believe that's all the questions I have
18 for you. Please answer any questions Mr. Biddle may have.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MR. BIDDLE:

22 Q. I believe your testimony was that you had met with
23 Mr. Inman and discussed his version of the facts. And
24 that you had met and also talked to the Solicitor, and
25 during your investigation I believe your testimony was

1 that there was no gang involved and that you had ---

2 A. Can you repeat that. I'm sorry. One question at a
3 time. I'm sorry. Can you repeat the first part of -- the
4 last part of that question?

5 Q. I believe you said -- your testimony was you met with
6 the Solicitor regarding he facts and you also met with the
7 client regarding his version of the facts. And I have it
8 in brackets here that says that you -- through your
9 investigation he asked you about it. You came to the
10 conclusion that there was no gang involvement?

11 A. No. I don't believe that's exactly what I testified
12 to. I said I asked him about the tattoos, and Mr. Inman
13 said that they were not gang related tattoos. And I
14 believe I said I do not recall whether anyone said it was
15 gang related or not.

16 Q. Okay. Was there -- I thought you testified that
17 there wasn't any gang relation regarding that in your
18 investigation based on the questions that he asked you.
19 Did you have any knowledge of any gang related activities
20 in this case prior to that ---

21 MR. JOHNSON, SR.: Judge, I think that's outside the
22 scope of what -- I didn't ask her about that.

23 MR. BIDDLE: No. You asked her, but she testified
24 about gang related and that it was not gang related and
25 talked about his tattoos. My question is, you know, this

1 is the issue. I'll take that as an objection. My issue
2 is that the comments made by the Prosecutor were that it
3 was gang related. If she had not had any inkling that
4 this was a gang related matter and he says, 'gang related'
5 that's obviously a red flag for her to say, 'I object'.

6 So my point was I thought she testified in response
7 to your question that there was no inkling that this was
8 gang related and that she thought it might be. She even
9 asked him about the tattoos, and he confirmed to her, no,
10 they are not gang related tattoos. So that's why I'm
11 asking her about that.

12 THE COURT: All right. So the question you want to
13 ask her is what?

14 MR. BIDDLE: The question I want to ask her is that
15 she, through her investigation, there was no idea that
16 this was a gang related crime.

17 THE COURT: Can you answer that question?

18 THE WITNESS: Yes, I can answer that question. That
19 is -- that's not what I said to you earlier. What I said
20 was that I don't recall whether it was -- whether anyone
21 said to me it was gang related or not. I don't recall. I
22 did specifically ask Mr. Inman about his tattoos cause he
23 has several tattoos around his head and face area and
24 asked what those tattoos represented. I don't know if I
25 specifically asked if they were gang related, but his

1 response was that they were not gang related.

2 BY MR. BIDDLE:

3 Q. Okay.

4 A. Now, specifically about his tattoos. Not about this
5 crime.

6 Q. Okay. You testified that you had ample time to do
7 your own investigation in this matter; is that correct?

8 A. Yes.

9 Q. Okay. And that you said that you don't start
10 preparing the case until after it's on the list, the
11 Solicitor's list?

12 A. No. What I said is we do not begin preparing for
13 trial.

14 Q. Okay. Until it's on the list?

15 A. Until -- no. We do not begin preparing for trial
16 until our client tells us that there will be a trial or
17 the Solicitor puts it on the list or we discuss when that
18 case will be tried. There has to be some discussion about
19 a trial before we begin preparing for trial. Our
20 caseloads would not allow us for -- to prepare for trial
21 on every case that we were assigned.

22 Q. Okay. And I believe your testimony was that he
23 didn't give you -- he didn't tell you he wanted a trial?

24 A. No. When we met initially he said he wasn't sure
25 yet. He wanted me to begin negotiations on a plea, but he

1 wasn't sure yet what his decision was going to be
2 regarding a trial or a plea.

3 Q. Okay. And you helped your client through that
4 discussion of whether they want a trial or don't want a
5 trial?

6 A. I tell them their options. I tell them my
7 professional opinion, but I always make them understand
8 that this is their decision and I can't make it for them.
9 Even if they ask me to make it for them I can't make it
10 for them.

11 Q. Okay. Did you tell him that Judge Baxley didn't take
12 negotiated pleas?

13 A. No, I never said the words, 'negotiated plea' to him.

14 Q. Okay. You believe that if he had gone to another
15 judge or there would have been another judge that day that
16 did take negotiated pleas you think you would have had a
17 different outcome?

18 A. I cannot speculate as to what a judge would do or
19 would not do in another situation. The offer was not a
20 negotiated plea. I can tell you that.

21 Q. What was the discussion between you and Mr. Redmond
22 and Mr. Inman regarding the plea?

23 A. I believe that Mr. Redmond just told him what the
24 offer was. It was a reduction from the A.B.W.I.K. to the
25 A and B first.

1 Q. Okay. Was there any speculation as to concurrent?
2 Consecutive? Was there any discussion regarding that?

3 A. No.

4 Q. No discussion whatsoever?

5 A. No. Not between Mr. Redmond. You're asking me, Mr.
6 Redmond, Mr. Inman? Is that what you're asking?

7 Q. Yes.

8 A. No. Mr. Redmond was not in the room when me and Mr.
9 Inman spoke about that.

10 Q. Okay. And I believe you said that preparing for
11 trial you don't prepare for trial until after it's on the
12 trial list; is that correct?

13 A. No, that's not correct. I believe I've already
14 corrected you once on that.

15 THE COURT: She's already testified about three times
16 about that.

17 MR. BIDDLE: Okay.

18 BY MR. BIDDLE:

19 Q. And you said that at trial is -- that you like trials
20 in the P.D.'s Office, and that they're more entertaining
21 than plea days?

22 A. A lot of times they are, yes. I think the judges
23 feel like that as well.

24 Q. Okay. So it's in your client's best interest for you
25 to be entertained as opposed to representing ---

1 MR. JOHNSON, SR.: I'm going to object to that as
2 speculative, Your Honor.

3 THE COURT: I'm going to sustain the objection.

4 BY MR. BIDDLE:

5 Q. And it's, again, your testimony was that it's up to
6 him whether he wants a trial and it's up to him regarding
7 when he pleads or doesn't plead?

8 A. That's correct. Always up to the defendant.

9 Q. Did you discuss options with him of whether he may
10 get another judge versus Judge Baxley on a negotiated
11 plea.

12 A. We never discussed a negotiated plea.

13 Q. Okay.

14 MR. BIDDLE: I have no further questions.

15 THE COURT: Re-cross?

16 MR. JOHNSON, SR.: No, sir, Your Honor.

17 THE COURT: All right. Thank you, ma'am. You may
18 step down.

19 THE WITNESS: Thank you, sir.

20 MR. BIDDLE: You may call your next witness.

21 THE WITNESS: That's the Plaintiff's showing, Your
22 Honor.

23 THE COURT: All right. Plaintiff rests?

24 MR. BIDDLE: Yes, Your Honor.

25 MR. JOHNSON, SR.: State rests, Your Honor.

1 MR. BIDDLE: We just have argument.

2 THE COURT: Tell me when you're ready to proceed.

3 MR. BIDDLE: You ready?

4 THE COURT: Ready.

5 CLOSING STATEMENT BY MR. BIDDLE

6 MR. BIDDLE: Thank you, Your Honor. Your Honor, as
7 you well know this is a post-conviction relief matter.
8 The statute requires show an ineffective assistance of
9 counsel. It's clear in this matter that Ms. Clayton --
10 Crayton was ineffective. She did not appropriately meet
11 with the client. She was absent from him for more than
12 nine months, brings him into a plea day at court, sits
13 down with him and says, "Beyond a shadow of a doubt
14 they're going to find you guilty. You know, there is no
15 question. You need to plead to this. This is the best
16 deal you're going to get."

17 My client testified that this is a -- you know, it
18 was a negotiated plea. He didn't care about the ten days.
19 They had a long -- or the ten years. They had a long
20 discussion about it. It was going to be six more months
21 beyond what he was currently in there. He felt her
22 recommendation was that. He expressed it. She told him
23 that it was either this or nothing, and he felt like it
24 was a pretty good offer.

25 She said that there were discussion regarding whether

1 it was concurrent or consecutive. He expressed an opinion
2 after the fact that it was consecutive; that it was in
3 disregard. I wholeheartedly disagree with Ms. Crayton
4 that she doesn't have a duty of file an appeal for an
5 indigent client when that client has expressed a
6 dissatisfaction with the results of either a plea or a
7 trial.

8 And that I certainly disagree that it is malpractice
9 for her to do so because it is protecting the rights of
10 somebody who doesn't have the ability to do so otherwise
11 because he is confined to the South Carolina Department of
12 Corrections.

13 The fact is that Ms. Crayton failed to object to the
14 language by the Solicitor dealing with the gang related
15 activities. She failed to advise him of his opportunity
16 and other alternatives to pleading guilty that day. There
17 certainly was plenty of time. He was in a different
18 situation than a client that is out roaming the street.
19 Obviously, he's in jail for another nine years.

20 Whether he pled that day or six months from now his
21 days weren't going to change. If she believed it was in
22 his best interest to have another judge accept the guilty
23 plea on a negotiated plea she should have done so. She
24 did not. That was ineffective assistance of counsel.

25 She did not object. That was ineffective assistance

1 of counsel. She failed to properly advise the client of
2 his rights to have another judge hear it. She didn't
3 advise him of his right to file an appeal other than the
4 Judge saying so. You know, it is true that, yes, he was
5 happy with her services, but her services did not stop
6 when he pled guilty based -- and as opposed to her
7 testimony and her letter.

8 She had an obligation. He was dissatisfied and he is
9 in jail to file the appeal. I think he did a pretty good
10 job to get his appeal filed in the amount of time that he
11 did, but had his lawyer done her job we would have been
12 dealing with an appeal issue as opposed to a P.C.R.
13 matter, and he probably would have already been
14 resentenced and probably already be out of jail at this
15 point in time.

16 Obviously, the language was prejudiced. She failed
17 to object. And his amend -- his Sixth and 14th Amendment
18 rights have been violated by her being an ineffective
19 counsel for him, and we would ask that this matter be
20 overturned and remanded for a new trial and that he be
21 given another opportunity to answer for the case
22 associated with this matter, Your Honor.

23 THE COURT: All right. Thank you.

24 CLOSING STATEMENT BY MR. JOHNSON, SR.

25 MR. JOHNSON, SR.: Your Honor, I think we went on the

1 facts, having reviewed the very beneficial deal that Ms.
2 Crayton obtained for him. But I'd like to spend the
3 majority of my time arguing the law cause I think we
4 clearly win on the law.

5 A similar case here is Strickland v. Washington where
6 it was established that the Applicant has the burden of
7 proving that the representation fell below an objective
8 standard of reasonableness. And, further, they must show
9 that there is a reasonable probability that but for
10 counsel's errors the results would have been different.
11 That's Strickland v. Washington.

12 Hill v. Lockhart further applied this test to pleas.
13 It said that in this situation the defendant must show
14 that there is a reasonable probability that but for
15 counsel's errors he would not have pled guilty and would
16 have insisted on going to trial.

17 The remaining four cases that I think are very
18 important for us to look at are State v. Stroker. That is
19 230 SE 2d 2d, 816. It's a 1976 case. The whole in there
20 is where the Applicant admitted in open court his guilt
21 further review is not necessary as in the alleged error
22 could not have been prejudicial.

23 What this means for us is even assuming that the
24 Court were persuaded that there was some error of counsel
25 because of the open and candid admission of guilt by this

1 Applicant there could be no prejudice as a matter of law.
2 The guilty plea acts as a waiver of all non-jurisdictional
3 defects. The defects including the comments by the
4 prosecutor, all the other issues regarding the other
5 matters which were argued here.

6 This is a Rivers v. Strickland case, "Guilty plea
7 acts as a waiver of all non-jurisdictional defects and
8 defenses including the claims of a violation of
9 constitutional rights." A guilty plea acts as a waiver.

10 Additionally, this Applicant had decided to enter to
11 a plea. He already made the decision. What happened here
12 is there was wishful thinking regarding the sentence, and
13 we have a case, Wolf v. State, 485 SE 2d 362 that is
14 essentially -- "wishful thinking regarding sentencing does
15 not equal misapprehension concerning the possible range of
16 sentences."

17 He was advised what the range of sentences were. He
18 was advised that we don't know what Judge Baxley is going
19 to do. He still sent forward and made the decision to
20 enter a plea. Any possible misconceptions about his
21 rights, charges, potential range of sentences were cured
22 by Judge Baxley's colloquy during the plea when these
23 questions were asked and answered by the Applicant.

24 And I'll add when Judge Baxley advised about the time
25 to appeal. So based on this the State contends that we're

1 entitled to a dismissal as a matter of law. A dismissal
2 with prejudice in this case.

3 DECISION OF THE COURT

4 THE COURT: All right. Thank you, Mr. Johnson. All
5 right. On the issue of the trial attorney's failure to
6 appeal, I find that the Defendant was advised of his right
7 and the timeframe in which it was to be done. Did not ask
8 for it, and in fact find that there is no separate ongoing
9 legal obligation on the part of the trial attorney to file
10 an appeal absent some evidence with the trial -- that the
11 trial attorney believe would have -- would be successful,
12 and there is no evidence that she believed that.

13 There is no, on the issue of the language used by the
14 Solicitor to describe the Defendant and/or the event as
15 complained of by the Applicant there is no evidence that
16 the results would have been any different.

17 There is also no evidence that another judge who may
18 have heard the plea would have treated the plea any
19 differently or ruled any differently or sentenced any
20 differently. In fact could have been exactly the
21 opposite. In fact, there is there is no evidence that the
22 results would have been different in anything in this
23 case.

24 The, including but not limited to, the trial
25 attorney's alleged failure to investigate and spend more

1 time preparing for trial there is no evidence that
2 spending more time would have resulted in additional
3 evidence, exculpatory evidence being discovered or
4 additional witnesses being discovered or defenses being
5 pursued. There is no evidence of any of that. It's all
6 speculation.

7 The -- I also find that the record does not support
8 the Defendant's allegation that this was a negotiated
9 plea. In fact, the opposite appears to be true.

10 Appears to the Court that the plea of the Defendant,
11 actually, was entered into freely and voluntarily.

12 And as I said a moment ago the Applicant has failed
13 in his burden to prove any of the allegations, and the
14 application must be dismissed.

15 I ask that the Attorney General please prepare an
16 order consistent with these rulings. Additional grounds,
17 additional findings that either believe the Court should
18 say on the record or address that the Court did not
19 address?

20 MR. JOHNSON, SR.: I think you've addressed them all,
21 Your Honor.

22 MR. BIDDLE: I believe so, Your Honor.

23 THE COURT: Okay. Anything else?

24 MR. BIDDLE: No, Your Honor.

25 MR. JOHNSON, SR.: Nothing, Your Honor.

1 THE COURT: All right. Court's adjourned..
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO)
)
 Cody Inman, 311682)
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)
)
 Applicant,)
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 v.)
)
 State of South Carolina,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 11-CP-34-222

**A CERTIFIED
 ORDER OF DISMISSAL
 William B. Sunderland
 CLERK OF COURT
 MARLBORO COUNTY**

FILED
 2013 FEB 11 PM 4:07
 WILLIAM B. SUNDERS
 CLERK OF COURT
 MARLBORO COUNTY, SC

This matter is before this Court by way of an application for post-conviction relief (PCR) filed November 2, 2011. The State made a timely return. A hearing on the matter was convened at the Darlington County Courthouse on January 9, 2013. Applicant was present and represented by J. Marshall Biddle, Esquire. The State was represented by Tyson Andrew Johnson, Sr. of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His plea counsel, Emily Crayton, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's guilty plea proceeding, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. The Applicant was indicted at the May 2010 term of the Marlboro County Grand Jury for Assault and Battery With Intent to Kill (ABWIK), 2010-GS-34-0367). He was represented by Emily Crayton, Esquire. On May

25, 2011, the Applicant pled guilty as indicted and was sentenced by the Honorable J. Michael Baxley to six years imprisonment, to run consecutively with his existing prison sentence.

ALLEGATIONS

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

1. "Ineffective assistance of counsel"
2. "Prosecutor Misconduct"
3. "Sixth and Fourteenth Amendment violations."

Applicant seeks to have his conviction reversed, plea agreement withdrawn, and remanded for trial as a result of this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective

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 CLERK OF COURT
 MARLBORO COUNTY, S.C.

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performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). 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); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2009).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant's expectation of a lower sentence

Applicant alleges that he only met with counsel once, and then the investigator on the case was in the room. Applicant failed to call this person as a witness, or otherwise to identify them, so whether the person overheard discussions about the case was not established. Applicant avers he told Mrs. Crayton he did not want to enter a plea, and that instead he wanted a trial. He

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alleges that he only met with her once. Applicant avers that Crayton told him if he would plea, he would get ten years non violent, and that it would run concurrently with his existing sentence and that therefore he agreed to this plea. Applicant claims on the day of his plea he still did not have his Rule 5 materials, yet counsel encouraged him to enter a plea. Applicant claims he was not prepared to try the case on the day of his plea, and neither was his lawyer. Applicant finally claimed he asked counsel to file an appeal for him, but that she did not.

Applicant also objected to comments by the prosecutor during the portion of the plea where the Solicitor puts the factual basis for the plea on the record. Applicant claims the Solicitor "went his own way."

On cross examination, Applicant admitted he had an opportunity to contest the facts as given by the Solicitor directly with his plea judge. Applicant also admitted that he was not denying that he "shanked" or stabbed a fellow inmate.

Counsel testified she was with the Fourth Circuit Public Defender for roughly two years and thereafter joined the Solicitor's office. Counsel was assigned the defense of Applicant's case on August 12th 2010 and met with Applicant at Evans Correctional Institution on or about August 17th 2010. While a person from SCDC was in the room as per their safety policy, the case investigator was not in the room and there was no opportunity for a barrier room/partition room for the meeting.

Counsel testified that at this meeting, Applicant wanted her to work on a plea offer for him. Counsel indicated Applicant never gave her names of witnesses to be called at a trial, but that he was fairly cooperative in her investigation.

When asked whether she would have discussed any offers by the State at that time, she indicated she always discussed offers with her clients, and that she thoroughly talked about the

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CLERK OF COURT
MARLBORO COUNTY, N.C.

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plea offer with Applicant. When asked by counsel for Applicant if she was prepared for trial on the day Applicant entered a plea, counsel indicated she was not prepared for trial because the case had not been called for trial. Had the case been on the trial list and had it been called for trial, counsel would have adequately prepared. Counsel told Applicant if he wanted a trial he could have a trial, but counsel was clear in her testimony that Applicant never said he wanted a trial. Further, counsel testified that she told Applicant on the day of his plea that his trial "would not be today."

Regarding sharing the Rule 5 discovery with Applicant, counsel testified that she gave Applicant the warrants and incident report, and that was all the Rule 5 responses she received at the time of the plea, with the suggestion more could be forthcoming but that all that was produced at that time.

When counsel for the State asked Crayton why she recommended that Applicant accept the plea, she indicated that in her professional opinion she did not believe he would be successful at trial, and that he had not asked for a trial. Counsel testified that Applicant decided to accept the plea as he felt it was a good offer reduced from 20 to 10 years.

Counsel remembered that she specifically told Applicant she was asking the Court to run Applicant's time concurrently, but that Judge Baxley refused to do that. Crayton indicated she told Applicant that was up to the judge. Crayton also testified that if Applicant wanted a trial she would have tried the case and if Applicant had expressed any reservation in entering a plea that she would have stopped the plea, but he expressed none. Regarding the appeal, Crayton indicated she did not file a notice of intent to appeal because Applicant did not ask her to.

Counsel indicates she never promised Applicant how much time he would receive or even attempted to predict how much time Applicant would receive when he pled guilty.

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CLERK OF COURT
MALBORO COUNTY, S.C.

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Through this trial, Applicant admitted his role in stabbing the victim who was a fellow inmate.

This Court finds that applicant was aware of the charges, elements of the offense, and potential defenses. Further, this Court finds that Applicant was not coerced, pressured, or promised anything in return for his guilty plea. Applicant admitted his guilt at the plea hearing and acknowledged his involvement at the PCR hearing. Under these circumstances, Counsel's advice to Applicant to plead guilty was well within the professional norms of competent representation. This Court further finds Counsel's testimony credible and gives it great weight, finding in particular that Counsel did not promise Applicant a lighter or concurrent sentence.

This Court finds Applicant's testimony to the contrary lacks credibility. Further, Applicant's hopes for a lighter sentence does not render his plea involuntary where he was advised of the possible sentences he could receive and chose to plead guilty. *See Wolfe v. State*, 326 S.C. 158, 164-165, 485 S.E.2d 367, 370 (1997) (finding "wishful thinking does not equal misapprehension as to the possible sentence the applicant would receive). This Court denies this allegation.

CONCLUSION

Based on 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 advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right

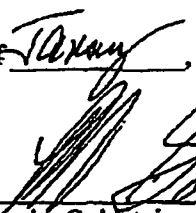
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to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

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 this 30 day of January, 2013.


 Brooks Goldstein
 Presiding Judge
 4th Judicial Circuit

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 WILLIAM B. FUNLERBURN
 CLERK OF COURT
 MARLBOROUGH COUNTY, S.C.


 _____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

CODY INMAN, 311682

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.



AFFIDAVIT OF SERVICE BY MAIL

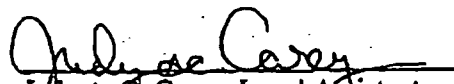
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WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

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

J. Marshall Biddle, Esquire
Post Office Box 50460
Myrtle Beach SC 29579

DATED this 5th day of February 2013.


Judy A. Carey, Legal Assistant
For Respondent

WITNESSES

Robert Stuckey

Evans Correctional Inst.

Law Enforcement Case #: 021471

Shirley Robert Stuckey 347
 WAIVER OF PRESENTMENT

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

 Defendant

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

 Defendant

ARREST WARRANT NUMBER
 I079450

ARRESTED ON: 2010-03-25

ACTION OF GRAND JURY

Travis Bell
Will. B. Rogers
 Grand Jury Foreperson
 Date *5-6-2010*

VERDICT

 Petit Jury Foreperson

 Date

DOCKET NUMBER:
 2010-GS-34-0367

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
 May 2010

THE STATE

vs.

Cody Inman

INDICTMENT FOR

Assault and battery with Intent to Kill
 (ABWIK)

§16-03-0620

CDR Code: 0014

 William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO) Assault and battery with Intent to Kill (ABWIK)

§16-03-0620

At a Court of General Sessions, convened on May 6, 2010, the Grand Jurors of Marlboro County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

CDR: 0014 16-03-0620

That Cody Inman did in Marlboro County on or about February 2, 2010, commit an unlawful act of violent injury to the victim, Joseph Martone, with malice, by Cody Inman, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S. C. Code of Laws, 1976, as amended.

A CERTIFIED
TRUE COPY

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MARLBORO COUNTY

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CLERK OF COURT
MARLBORO COUNTY, S.C.

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MARLBORO COUNTY, S.C.

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

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR