

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Deadra L. Jefferson, Circuit Court Judge

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S.C. Supreme Court

KEITH JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000819

A P P E N D I X

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

ALICIA OLIVE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS
2012-GS-42-1808 et al.

THE STATE of SOUTH CAROLINA

-VS-

KEITH ANTHONY JOHNSON,
Defendant.

TRANSCRIPT OF RECORD

June 28, 2012
Spartanburg, South Carolina

Ordered: June 5, 2013

Delivered: August 10, 2013

B E F O R E:

THE HONORABLE LARRY B. HYMAN, Presiding Judge.

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

MR. BARRY BARNETTE, Esquire
Seventh Circuit Solicitor Appearing for the State

MR. JACK SWERLING, Esquire
MR. LAWRENCE CRANE, Esquire
MR. JOHN RECKENBEIL, Esquire
Attorneys Appearing for the Defendant

MR. WILLIAM RHODEN, Esquire
Attorney Appearing for the Victim

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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E X H I B I T S

State's Exhibits:	Marked:	Received:
1 - (Case Summary)	4	30
2 - (Incident Report - Cherokee Co.)	4	30
3 - (MAIT Report)	4	30
4 - (SLED Report - Toxicology)	4	30
5 - (Incident Report - Spartanburg Co.)	4	30
6 - (Incident Report - Escape)	4	30
7 - (Offense Report - 8 pages)	4	30
8 - (Incident Report - City)	4	30
9 - (Color Photograph)	4	30
10 - (Color Photograph)	4	30
11 - (Color Photograph)	4	30

EXHIBITS

State's Exhibits:	Marked:	Received:
12 - (Color Photograph)	4	30
13 - (Rap Sheet)	4	30
14- (Ten -Year Driving Record)	4	30
15 - (Affidavit of Victim)	4	30

Defendant's Exhibits:	Marked:	Received:
(None)		

Court's Exhibits:	Marked:	Received:
(None)		

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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

1 June 28, 2012

11:05 a.m.

2 (Off-the-Record Comments)

3 (The Defendant stepped forward with his attorneys for the plea.)

4 (Whereupon, State's Exhibit 1 through fifteen were marked for
5 identification prior to the plea commencing.)

6 (Off-the-Record Comments)

7 MR. BARNETTE: May it please the Court, Your Honor?

8 THE COURT: Yes, sir.

9 MR. BARNETTE: I'd like to call the case of *The State vs. Keith*
10 *Johnson*.

11 THE COURT: All right.

12 (Brief Pause)

13 MR. BARNETTE: May it please the Court, Your Honor?

14 THE COURT: Yes, sir.

15 MR. BARNETTE: Your Honor, there are going to be eleven (11)
16 charges involved with this defendant, Your Honor. He has three attorneys,
17 Your Honor. This is a straight up plea.18 What I'm going to do is list the Gaffney or the Cherokee County
19 charges first so he can waive jurisdiction. Mr. Jack Swerling represents him
20 on those charges.21 The Cherokee County charges, Your Honor, have all been true billed;
22 10-GS-11-822, Your Honor, which is grand larceny more than ten thousand
23 dollars (\$10,000), Your Honor. Then, 10-GS-11-821, which is possession of
24 stolen pistol, Your Honor, in this case.

25 (Brief Pause)

1 **MR. BARNETTE:** 10-GS-11- 820, Your Honor, is possession of
2 Lortab in the second offense, Your Honor; 10- GS-11-819, Your Honor, is
3 resisting arrest Section (a) or Section I;

4 10-GS-11-818, Your Honor, is failure to stop for a blue light. And,
5 then, 10-GS-11-805, Your Honor, is felony DUI with great bodily injury, Your
6 Honor. And these are all Cherokee County charges.

7 I talked to Mr. Swerling. He's indicated that the Defendant is going to
8 waive jurisdiction on these.

9 **THE COURT:** Is that correct, Mr. Swerling?

10 **MR. SWERLING:** That's correct, Your Honor.

11 **THE COURT:** All right.

12 **MR. BARNETTE:** Okay. And, then, the Spartanburg County
13 charges, Your Honor, are as follows: the first one, the oldest one of those, is
14 11-GS-42-4450, which is trafficking in marijuana first offense, Your Honor.

15 Then, the next one, Your Honor, is an escape charge, 12-GS-42-2646.
16 Your Honor, that's an escape charge on the home detention program, zero
17 (0) to ten (10), the common law robbery one.

18 And, then, the last incident, Your Honor, was three indictments from
19 that — oh and I forgot. There's also a 10 -- that's all right. I've already
20 announced that.

21 Then, there's 12-GS-42-3488, which is possession of marijuana first
22 offense, Your Honor. And, then, 12-GS-42-1808, Section (a), Your Honor.
23 He's pleading to assault and battery of a high and aggravated nature on
24 count one, Your Honor.

25 And on count two, Your Honor, he's pleading to possession of a

1 weapon during a violent crime Your Honor, in this case. All of those have
2 been true billed also, Your Honor.

3 Mr. Larry Crane represents him only on the trafficking marijuana
4 charge, which is 11-GS-42-4450, Your Honor. Mr. John Reckenbeil
5 represents him on the other charges, Your Honor.

6 **THE COURT:** Okay.

7 **MR. BARNETTE:** And as I announced, Your Honor, these are
8 straight up pleas.. I do have 15 exhibits I'd like to enter as part of the facts of
9 this case.

10 **THE COURT:** All right. Is that -- that's 11 charges; is that
11 correct?

12 **MR. BARNETTE:** Yes, sir, it is.

13 **THE COURT:** Okay.

14 **MR. BARNETTE:** May I pass these up, sir?

15 **THE COURT:** Certainly.

16 **(Document handed up.)**

17 **THE COURT:** Thank you.

18 **MR. BARNETTE:** And we do have victims and officers that would
19 like to speak at the appropriate time, Your Honor.

20 **THE COURT:** All right. Okay. Did you want to present your
21 exhibits now or are you going to do it when you ---

22 **MR. BARNETTE:** Can I just do it when I give you my facts?

23 **THE COURT:** Okay. Okay. Mr. Johnson ---

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** — good morning.

1 **THE DEFENDANT:** Good morning.

2 **THE COURT:** Mr. Johnson, you are represented I believe by Mr
3 Swerling, Mr. Crane, and Mr. Reckenbeil; is that right?

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

5 **THE COURT:** And each of these attorneys represents you on
6 charges arising out of different incidents; is that correct?

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

8 **THE COURT:** Okay. Now, have your attorneys had an
9 opportunity to explain to you the nature of these offenses -- and I'm about to
10 name them.

11 When I say the nature of the offenses, what I'm talking about is have
12 they told you what constitutes the offense? What you did or what the State
13 alleges that you did that results in the charge?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Felony DUI with great bodily injury, correct?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Possession of a stolen pistol?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Grand larceny more than ten thousand dollars
20 (\$10,000)?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Resisting arrest Section (a)?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Failure to stop?

25 **THE DEFENDANT:** Yes, sir.

1 THE COURT: Possession of Lortab?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Escape?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Trafficking in marijuana second offense?

6 THE DEFENDANT: Yes, sir.

7 MR. CRANE: First offense, Judge.

8 THE COURT: First offense. I'm sorry.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: I think he was initially charged with second and,
11 then, it was determined that it could not be counted because it was more than
12 five. Okay.

13 MR. CRANE: That's correct.

14 THE COURT: Okay. Assault and battery of a high and
15 aggravated nature?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Possession of a weapon during a violent
18 crime?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And poss — possession of marijuana?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So you understand what constitutes these
23 charges; is that correct?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And have your attorneys advised you as to the

1 potential penalties?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** I want to go over that with you. Trafficking in
4 marijuana, up to ten (10) years. Do you understand that?

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

6 **THE COURT:** Escape, up to ten (10) years?

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

8 **THE COURT:** Possession of less than an ounce of marijuana or
9 hash first offense -- that's six months, isn't it, gentlemen?

10 **MR. RECKENBEIL:** Thirty (30) days, Your Honor.

11 **THE COURT:** Thirty (30) days. I'm sorry. Less than an ounce?
12 Okay. Assault and battery of a high and aggravated nature, up to twenty (20)
13 years. Do you understand that?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Felony driving under the influence resulting in
16 great bodily injury, a minimum of thirty (30) days up to fifteen (15) years ---

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** --- do you understand that?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Okay. Failure to stop for a blue light first offense,
21 up to three (3) years. Do you understand that?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Resisting arrest -- is that the one-year statute?

24 **MR. BARNETTE:** Yes, sir.

25 **THE COURT:** On the one-year statute; do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Possession of a controlled substance?

3 And that would be the Lortab case?

4 MR. BARNETTE: Yes, sir.

5 THE COURT: That carries up to one year; do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And the grand larceny carries up to ten (10) years.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And receiving stolen goods, less than a thousand
11 dollars (\$1000), carries up to thirty (30) days; do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Was that an enhanced property crime?

14 MR. BARNETTE: No, sir, I don't believe it is.

15 THE COURT: Okay. All right.

16 MR. BARNETTE: I think he has both charges --- other convictions,
17 but I don't think it is.

18 THE COURT: Okay. You didn't enhance it?

19 MR. BARNETTE: No, sir.

20 THE COURT: Okay. All right. Now, Mr. Johnson, in the course
21 of your representation by the attorneys, did each of the attorneys
22 representing you, on these various charges, have an opportunity to discuss
23 with you and review with you the discovery materials or the evidence in these
24 cases?

25 THE DEFENDANT: Yes, sir.

1 **THE COURT:** And did your attorneys, during those discussions,
2 explain to you how the evidence might be used by the State against you in a
3 jury trial?

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

5 **THE COURT:** So there's no question that your attorneys
6 discussed with you your right to a jury trial?

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

8 **THE COURT:** You understand that?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Do you realize that you have an absolute right to a
11 jury trial on each of these charges?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** And you could have multiple jury trials; do you
14 understand that?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** And did your attorneys advise you that you are the
17 only person who could waive your right to a jury trial?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. And do you understand that?

20 **THE DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** Do you wish to waive your rights to a jury trial?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you understand that, if you plead guilty, that is
24 precisely what you are doing?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** Okay. Now, Mr. Johnson, whenever a person
2 waives his right to a jury trial, he gives up many, many, many other rights that
3 are associated with the jury trial. There are so many that, if I sat down with
4 your lawyers and with you, we could talk for years about the rights that are
5 applicable to a jury trial situation. Do you understand that?

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

7 **THE COURT:** I want to give you a few that are, at least in my
8 view, some of the most important ones. And I give these to you just by way
9 of illustration.

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Right: You have a right to remain silent; that is, no
12 one can make you testify if you had a jury trial. You could testify if you
13 wanted to. That would be your right also.

14 But, if you chose not to, I would tell the jury that they could not even
15 consider that, could not even talk about it during their deliberations. Do you
16 understand that?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** You'd, of course, have the right to be represented
19 by an attorney throughout the trial. It would probably be the attorneys
20 representing you now, but it would be some attorney. And that attorney
21 would be provided to you at no cost if you are unable to afford an attorney.
22 Do you understand that?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Do you understand that you also would have the
25 right to require the State to prove your guilt beyond a reasonable doubt?

1 That is, the State would have to convince each and every juror of your guilt,
2 beyond a reasonable doubt, as to each and every charge; do you
3 understand?

4 **THE DEFENDANT:** Yes, Your Honor.

5 **THE COURT:** Again, these are just some of the rights that you
6 have. Doesn't it just make sense that you give up all your rights to a jury trial
7 whenever you waive your right to a jury trial?

8 **THE DEFENDANT:** (No Response)

9 **THE COURT:** Doesn't that make sense?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** All right. I ask you again: Is that what you want to
12 do?

13 **THE DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** Okay. Now, this decision to enter this -- these
15 pleas, is that has been a decision that was reached mutually between you
16 and your attorneys?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Is it as much your idea as it was theirs?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Is any attorney trying to force you to plead to the
21 charges that he represents you on?

22 **THE DEFENDANT:** No, sir.

23 **THE COURT:** Okay. Are you satisfied with the representation
24 that you've received from your three attorneys?

25 **THE DEFENDANT:** Yes, Your Honor.

1 **THE COURT:** All right. Do you need any more time with them?
2 Do you need to discuss this matter further with them?

3 **THE DEFENDANT:** No, sir.

4 **THE COURT:** I cannot give you any legal advice, but I can
5 explain to you this procedure that we're following here today. Do you have
6 any questions for me?

7 **THE DEFENDANT:** No, Your Honor.

8 **THE COURT:** Any more questions for them?

9 **THE DEFENDANT:** No, sir.

10 **THE COURT:** Or — or anything you need to talk to them about?

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** Are you fully and completely satisfied with each of
13 your attorneys?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Have they all met your expectations?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** All right, sir. Mr. Swerling, as to the charges that
18 you represent Mr. Johnson on, do you feel that the State does have sufficient
19 evidence to convince a jury of his guilt beyond a reasonable doubt?

20 **MR. SWERLING:** Yes, Your Honor.

21 **THE COURT:** Do you concur in that, Mr. Johnson?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Mr. Crane, I ask you the same question about
24 your representation of Mr. Johnson?

25 **MR. CRANE:** Yes, sir.

1 **THE COURT:** Do you believe that the State does have sufficient
2 evidence?

3 **MR. CRANE:** Yes, sir.

4 **THE COURT:** Do you concur in that, Mr. Johnson?

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

6 **THE COURT:** And Mr. Reckenbeil, do you also believe that the
7 State has enough evidence to convince a jury of his guilt in the cases that
8 you represent him on?

9 **MR. RECKENBEIL:** I do, Your Honor.

10 **THE COURT:** And do you agree with that, Mr. Johnson?

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

12 **THE COURT:** Okay. Now, Mr. Johnson, I see here that you're
13 thirty-six (36) years of age; is that correct?

14 **THE DEFENDANT:** Yes, Your Honor.

15 **THE COURT:** And the sentencing sheets indicate that you are
16 from Spartanburg. Is that also correct?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Are you married?

19 **THE DEFENDANT:** No, sir.

20 **THE COURT:** Do you have children?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** How many children do you have?

23 **THE DEFENDANT:** I have a daughter.

24 **THE COURT:** Okay. Does she live with you by any chance?

25 **THE DEFENDANT:** No, sir.

1 THE COURT: Do you support her?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Mr. Johnson, tell me what sort of work you
4 do.

5 THE DEFENDANT: I was working at the time of my own home
6 detention for Cherokee Roofing and Stucco Company.

7 THE COURT: Okay. Were you doing roofing ----

8 THE DEFENDANT: Yes, sir.

9 THE COURT: --- roofing work? Okay. Mr. Johnson, how far did
10 you go in school?

11 THE DEFENDANT: To the eighth (8th) grade.

12 THE COURT: All right. Have you gotten your GED?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Good for you. Mr. Johnson, have you ever had
15 any problems with mental health issues?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you ever had any addiction issues?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you taken any drugs or alcohol in the last 24
20 hours?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Mr. Johnson, can you think of anything going on in
23 your life that might prevent you from understanding, fully and completely,
24 what we are doing here today?

25 THE DEFENDANT: No, sir.

1 **THE COURT:** All right. Listen very carefully as the Solicitor
2 describes the facts that give rise to your charges.

3 **MR. BARNETTE:** Your Honor, if I could introduce the exhibits
4 first ---

5 **THE COURT:** Certainly.

6 **MR. BARNETTE:** State's Exhibit Number 1, Your Honor, is a case
7 summary that was done by the Gaffney Police Department, Your Honor. It
8 consist of two pages.

9 State's Exhibit Number 2, Your Honor, is the actual incident report that
10 was done by Officer Scruggs in this case. It consist of three pages.

11 State's Exhibit 3, Your Honor, is the MAIT Team. What happened
12 was, once the cruiser was involved in the wreck you'll understand after the
13 facts -- the Highway Patrol was called in. They did an accident reconstruction
14 and that's State's Exhibit Number 3 is the Foothills MAIT Team from the
15 Highway Patrol's report.

16 State's Exhibit 4, Your Honor, is the SLED toxicology report that was
17 done concerning the Defendant. State's Exhibit Number 5, Your Honor -- and
18 those was all the Gaffney charges, Your Honor, in Cherokee County.

19 **THE COURT:** Okay.

20 **MR. BARNETTE:** That would be with Mr. Swerling. Then, the one
21 with Mr. Crane, Your Honor, was the trafficking case. I made that State's
22 Exhibit Number 5, Your Honor.

23 And that statement consist of a two-page incident report that was done
24 in this case. They interviewed Mr. Johnson. He gave a statement in this
25 case, Your Honor, that consists of six (6) pages.

1 And, then, on the back end of that, Your Honor, I put the drug report
2 showing how much marijuana was found. And it was tested to be marijuana.
3 It was done by Ashley Harris at the Spartanburg County Sheriff's Office, Your
4 Honor. And that consist of five (5) pages. And it's all put together in one
5 exhibit.

6 State's Exhibit 6, Your Honor, is the escape report that was done by
7 Nancy Benson (phonetic) when he was on home detention and had escaped
8 from that, Your Honor. That consist of one page.

9 And, then, State's Exhibit 7, Your Honor, is the -- it's an eight-page
10 report from the Spartanburg County Sheriff's Department concerning the
11 incident. And these are the ones Mister -- John Reckenbeil -- he had
12 actually represented him on the escape and this is the ABHAN, the
13 possession of a weapon during a violent crime, and the other drug offense of
14 possession of marijuana.

15 This is -- the Sheriff's Department actually saw it first, Your Honor. It
16 occurred in the City of Spartanburg in Spartanburg County. He did report in
17 this case, Deputy Hawkins. I'd like to make that State's Exhibit 7.

18 State's Exhibit 8, Your Honor, was done by Jeffrey Powell (phonetic)
19 and Investigator Gardner (phonetic) from the City who took over the
20 investigation afterwards; did their incident reports and supplemental write-
21 ups.

22 It consist of five pages, plus the drug report showing the marijuana that
23 was tested that it was marijuana.

24 State's Exhibit Number 9, Your Honor, is a picture of the Defendant
25 that was taken afterwards. And I'll talk about why that is relevant and the

1 people that was in car with him after the ABHAN occurred and the
2 possession of weapon.

3 State's Exhibit 10, 11, and 12 are pictures of individuals that were in
4 the car with him. They'll be relevant when I go through the facts.

5 State's Exhibit 13, Your Honor, is a copy of his rap sheet in this case
6 I've included in there.

7 State's Exhibit Number 14 is a copy of his driving record. I would also
8 enter that in, Your Honor. And State's Exhibit 15, Your Honor, there was a --
9 Mr. Crane actually represented him on a burglary and a grand larceny charge
10 that was older than any of these charges.

11 The victim in that case, Ms. Bigsby (phonetic), does not want to
12 prosecute. And she has told our office that and she gave an affidavit to Mr.
13 Crane. So we're not prosecuting those cases per her request in this case.
14 I'll put that on the record, Your Honor.

15 And there is a drug charge where another defendant claimed the
16 drugs. So that will not be -- that's also going to be dismissed.

17 **THE COURT:** All right. I understand that there's going to be a
18 burglary first, a grand larceny, two thousand (\$2,000) to ten thousand
19 (\$10,000), and a trafficking crack charge that will be dismissed pursuant to
20 this plea; is that correct?

21 **MR. BARNETTE:** That's correct, Your Honor.

22 **THE COURT:** All right. Is that your understanding, Mr. Swerling?

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

24 **THE COURT:** Mr. Crane?

25 **MR. CRANE:** Yes, sir.

1 THE COURT: And Mr. Reckenbeil?

2 MR. RECKENBEIL: The one with the ---

3 MR. BARNETTE: Oh, there is a possession of meth charge, Your
4 Honor. It wound up being marijuana instead of math in that case. And that
5 will also be dismissed. That was ---

6 THE COURT: But he was charged with the marijuana though?

7 MR. RECKENBEIL: He was charged with the ---

8 THE COURT: Meth, but he's ---

9 MR. RECKENBEIL: Right.

10 THE COURT: He's pleading to the marijuana?

11 MR. RECKENBEIL: Marijuana, yes, Your Honor.

12 MR. BARNETTE: Yes, sir.

13 THE COURT: Now has — has that indictment been true billed?

14 MR. BARNETTE: The meth ---

15 THE COURT: Was he re-indicted?

16 MR. BARNETTE: The meth was a — a direct indictment

17 THE COURT: Okay.

18 MR. BARNETTE: Originally.

19 THE COURT: All right. And how are we getting the marijuana?

20 MR. BARNETTE: The marijuana has been directly indicted, Your
21 Honor.

22 THE COURT: Okay. So it has been indicted?

23 MR. BARNETTE: Yes, sir.

24 THE COURT: All right. Thank you.

25 MR. BARNETTE: From there, Your Honor. And, Your Honor, going

1 through the facts of the case, starting with the case that happened in
2 Cherokee County in the city of Gaffney, Your Honor, this occurred on June
3 23rd, 2010 at approximately 3:05 a.m. at Floyd Baker Boulevard at Beltline in
4 Gaffney in the city of Gaffney, Cherokee County, Your Honor.

5 They were working a public safety checkpoint in Gaffney, the police
6 department was. Sergeant Blackly (phonetic) walked up to the subject and
7 started talking to him in the vehicle. At that time, Officer Scruggs was called
8 over, Your Honor, and stated that in checking he could smell the odor of an
9 alcoholic beverage coming from his person.

10 At that time, he had the subject step out of the truck, went to the front
11 of his patrol car, he performed field sobriety tests. He failed on those, Your
12 Honor, had stigmas in both eyes in that case. Did a walk and turn, Your
13 Honor, couldn't keep his balance after being told, could not touch heel to toe
14 or step and use his arms, Your Honor.

15 And, after he did the testing, Your Honor, he placed the subject under
16 arrest, read him the *Miranda* rights. He asked him if he had anything to do
17 with the smell of marijuana and he said "I have some pills."

18 At that time, he reached into his front pocket and handed him a baggie
19 which had two white pills of Lortab.

20 He placed subject in the rear of his patrol car on the driver side and
21 shut the door. Lieutenant Smith with the Gaffney Police Department found a
22 loaded gun under the front driver's seat of the truck that he was driving, Your
23 Honor.

24 "He went back and he asked Mr. Martin..." -- he originally told them
25 that he was Mr. Martin; they found out that, that was not a true name, Your

1 Honor; that, "...the gun was his in the truck and what wrecker did he want to
2 pick up his truck (phonetic).

3 "He told me to call any wrecker. He did not know anything about the
4 gun being in the truck. I was walking back to the truck, and then, when I was
5 walking, I heard a door behind me shutting. I turned around and saw subject
6 going to the driver's door.

7 "I took off running to the car, was able to open the car door. I reached
8 in and tried to grab the subject, but the car started taking off, I had to let go of
9 the car door.

10 "Officer Bass (phonetic) and Officer Wilson jumped in there patrol cars
11 and took after subject. He went up Floyd Baker and turned into Frederick
12 and went to the left to Logan and was going at a very high rate of speed,
13 Your Honor, at the time."

14 He hit a sign on the gas station but -- and was able to get back on
15 Logan Street, Your Honor, heading north on Logan, and then left on North
16 Limestone, where he lost control, spun out of control, and hit it a black
17 Honda.

18 The black Honda was been drove at that time by Janice Downey
19 (phonetic), Your Honor. She was injured in that and received injuries, a great
20 bodily injury, which Bill Rhoden is her attorney, Your Honor, on those cases.
21 And he will describe in detail her injuries to you here shortly.

22 At that time, he was captured, Your Honor. He was taken to the
23 hospital and they found out his real name was Keith Johnson at that time,
24 Your Honor.

25 And he was arrested on those charges, Your Honor; the charges of

1 resisting arrest, possession of a weapon -- or the stolen weapon ---

2 **THE COURT:** The weapon was stolen?

3 **MR. BARNETTE:** Yes, sir.

4 **THE COURT:** Okay.

5 **MR. BARNETTE:** It was found to be stolen in this case, Your Honor.

6 He was also charged with that failure to stop, the fel — the felony DUI at the
7 time, Your Honor.

8 He was also driving under suspension. I think that case was probably
9 handled in City Court, Your Honor. But his license was under suspension at
10 the time.

11 **THE COURT:** Was the grand larceny the automobile?

12 **MR. BARNETTE:** Yes, sir.

13 **THE COURT:** Okay.

14 **MR. BARNETTE:** And it was over \$10,000, the value of the cruiser,
15 Your Honor.

16 **THE COURT:** All right. So the facts that you just set out would
17 be the basis for the felony DUI, the possession of a stolen pistol, grand
18 larceny, resisting arrest, failure to stop, and possession of Lortab?

19 **MR. BARNETTE:** Yes, sir. And the damage to the wrecker [sic] was
20 \$33,000, was the — the police vehicle that was stolen.

21 **THE COURT:** All right. Now, Mr. Johnson, as to that group of
22 charges, is that what you did?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** And is that why you're pleading guilty?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** And are you guilty of those charges?

2 **THE DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** All right. Very well. Okay.

4 **MR. BARNETTE:** And, Your Honor, just for the information, State
5 Exhibit 4 was the -- his blood alcohol was point oh nine two (.092) when it
6 was taken. He tested positive for THC, Your Honor, as well as hydrocodone
7 in that case, Your Honor. And that would show him being under the
8 influence, Your Honor.

9 The MAIT team report talks about his speed, Your Honor, in this case.
10 It was a high rate of speed in that. I believe the miles was up over a hundred
11 (100) miles per hour at some points.

12 **THE COURT:** Okay.

13 **MR. BARNETTE:** Then, Your Honor, going to the trafficking in
14 marijuana, that occurred on November 5th, 2009, Your Honor, at
15 approximately 6:11 a.m. in this case. They were working - - the narcotics unit
16 was working, Your Honor, and received CI information, Your Honor, that the
17 Defendant was Ricky Mack (phonetic), who would be taking possession of a
18 large quantity of marijuana. And the drug transaction was to take place at
19 1599 Highway 101 S., which is in Spartanburg County, Your Honor.

20 They did surveillance on the location, Your Honor. Ricky Mack was
21 seen driving a beige 1997 Acura, Your Honor. Subject one was him. Subject
22 two was Keith Johnson. He was observed exiting the Acura, Your Honor, and
23 entering a white Ford Bronco, Your Honor.

24 While approaching the vehicle, Your Honor, Mr. Mack was located the
25 backseat of the driver side of the vehicle. Keith Johnson was located in the

1 front passenger side of the vehicle, Your Honor.

2 They found a -- a black duffel bag in the vehicle, Your Honor. It had
3 five wrapped packages of green plant material in the front seat, Your Honor,
4 a large sum of US currency in there, Your Honor.

5 Based off that, Your Honor, they arrested him for the marijuana charge
6 in this case. Mr. Mack has claimed the cocaine in this case, Your Honor.

7 **THE COURT:** What was the weight on the marijuana?

8 **MR. BARNETTE:** The marijuana was six thousand, two hundred and
9 thirty-one point nine (6231.9) grams.

10 **THE COURT:** Okay. Over ten (10) pounds?

11 **MR. CRANE:** About — about thirteen (13).

12 **THE COURT:** Okay.

13 **MR. CRANE:** Somewhere right around twelve (12) or thirteen
14 (13), yes, sir.

15 **MR. BARNETTE:** Your Honor, he gave an interview to Investigator
16 Norris (phonetic) and Joe Ferris (phonetic) of the Sheriff's Department, Your
17 Honor. In that case, he claimed the marijuana; said the marijuana was his,
18 Your Honor.

19 **THE COURT:** Okay.

20 **MR. BARNETTE:** And I included that statement with State's Exhibit
21 5 as well as the testing that was done on the weight of the marijuana.

22 State's Exhibit 6, Your Honor, -- would you want to handle that one
23 with Mr. Crane before I go on ---

24 **THE COURT:** Yes. Was there an escape involved in — in that
25 set or was the escape ---

1 MR. BARNETTE: It's separate.

2 THE COURT: Who represents him on the escape?

3 MR. BARNETTE: John Reckenbeil has got him on that, Your Honor.

4 THE COURT: All right. So that set of facts relates only to the
5 charge of trafficking marijuana; is that correct?

6 MR. BARNETTE: Yes, sir.

7 THE COURT: All right. Mr. Crane -- or Mr. Johnson, is that what
8 happened as to the charge of trafficking in marijuana?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Did you possess over six thousand (6,000) grams
11 of marijuana? That's about thirteen (13) pounds.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And are you pleading guilty because you are guilty
14 of that offense?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Thank you.

17 MR. BARNETTE: Thank you, Your Honor.

18 THE COURT: Is -- is that the only charge you have, Mr. Crane?

19 MR. CRANE: Yes, sir.

20 THE COURT: Trafficking? Okay.

21 MR. BARNETTE: Okay, Your Honor. The next one is State's Exhibit
22 6. The escape actually occurred after all of these.

23 THE COURT: Okay.

24 MR. BARNETTE: But I -- but I put this right here, the escape ---

25 THE COURT: And I understand it has something to do with his

1 bond detention order or whatever?

2 **MR. BARNETTE:** Right. He was released on bond on the ABHAN
3 and the possession of a weapon during a violent crime, and we made a
4 motion to revoke bond. And after that he did not appear for that.

5 Home detention went out, found his bracelet cut.

6 **THE COURT:** Okay.

7 **MR. BARNETTE:** And he had ran and was captured at a later date,
8 Your Honor.

9 **THE COURT:** And who represents him on that charge?

10 **MR. BARNETTE:** Mr. Reckenbeil.

11 **THE COURT:** Mr. Reckenbeil? Okay.

12 **MR. BARNETTE:** Okay. And reading that, Your Honor, it occurred
13 on November 28, 2011. That's when we was doing the bond revocation in
14 front of Judge Cole, Your Honor, here -- as a matter fact, in this courtroom.

15 About 9:46, they went out and checked on him when they didn't get a
16 signal — or got a tamper alert on it, Your Honor. And plus I had called him
17 making him aware that he needed to be in court.

18 They went out and found that he was not there, Your Honor. He was
19 captured several days later in southern Spartanburg County on that charge.

20 And State's Exhibit 7, Your Honor, talking about the incident that
21 occurred November 19, 2011. This is the ABHAN, possession of a weapon
22 during a violent crime, and the possession of — simple possession of
23 marijuana.

24 Deputy Hawkins (phonetic), Your Honor, was on patrol from the
25 Sheriff's Department. He was actually in the city limits at that time, Your

1 Honor. He was sitting stationary at Southport Road and John B. White, Sr.
2 Boulevard.

3 He heard gunshots to his right, Your Honor. He observed a black male
4 standing in the parking lot of the Kangaroo Express at 105 John B White, Sr.
5 Boulevard, wearing a red jacket and black jeans firing a black semi-automatic
6 pistol in the direction of John B. White Boulevard.

7 "I, then, exited my patrol car, began advancing towards subject, who
8 was standing on the Southport Road side, and began giving commands,
9 'Drop the gun,' 'Get on the ground.'

10 "Subject was surrounded by other civilians so a clean shot could not
11 be taken. As he was firing towards another black male who at this time was
12 lying beside the gas pump screaming.

13 "The shooter looked at me, ran and got into a gold SUV with three
14 other people. I ran back to my patrol car, told dispatch to hold the channel; I
15 had a shooting that just occurred at the Kangaroo, which is in the city of
16 Spartanburg in Spartanburg County, Your Honor, at John B. White and
17 Southport Road, Your Honor.

18 The gold SUV then circled the Kangaroo Express before turning left on
19 Southport Rd., Your Honor. He turned on his blue lights, Your Honor. The
20 vehicle began to flee. "I dispatch to vehicle." The vehicle reached in excess
21 of one hundred miles per hour (100 mph), Your Honor.

22 "The vehicle approach Southport Road and Parker Keith Road
23 (phonetic). The driver turned all lights off on the vehicle." He continued down
24 the road, Your Honor, called out speeding location of the vehicle.

25 It was finally stopped in front of the Waste Management plant off

1 Southport Road, Your Honor.

2 The deputy, then, performed a felony traffic stop, Your Honor. There
3 were four occupants in the -- in the vehicle, Your Honor. They -- the shooting
4 suspect exited the vehicle with his hands in the air, still wearing the red shirt
5 and jacket that he had.

6 Then they had to rush toward the suspect to keep him from getting into
7 the Crown Vic, Your Honor. He laid down. The Crown Vic left the scene.
8 That was another part of the incident that I wanted to mention, Your Honor.

9 The other people was taken -- LaToya Allison (phonetic) was the
10 driver, Your Honor. She was arrested. The rear passenger was Tara
11 Robinson (phonetic), was arrested, Your Honor, in that case, as well as the
12 other person in there.

13 The victim in this case, Your Honor, was Brandon Miller (phonetic). He
14 was actually shot in the leg and was injured, Your Honor, in this case. And
15 he was taken to the hospital and treated there, Your Honor, in this case.

16 And the reason why I've entered State Exhibit 8 there's also the police
17 report from the -- Investigator Gardner of the city Your Honor. The reason I
18 entered those three -- those four pictures, Your Honor, the only one that has
19 the red outfit is Mr. Johnson. And that's what the deputy saw.

20 He was the one who actually shot the victim in this case. The other
21 three people, which is State's Exhibit 10, 11, and 12, don't have any red on
22 period. So I wanted to make that a part of the record to protect it, Your
23 Honor, and explain why.

24 State's Exhibit 13, Your Honor, is his rap sheet. State's Exhibit 14 is
25 his driving record. And State's Exhibit 15, Your Honor, as I stated before is

1 the reason why we dropped the burglary and grand larceny at the request of
2 the victim in this case.

3 **THE COURT:** Okay.

4 **MR. BARNETTE:** If I can make all of those part of the facts, Your
5 Honor, in case I miss anything?

6 **THE COURT:** Any objection, Counsel?

7 **MR. SWERLING:** I have none, Your Honor.

8 **THE COURT:** Any objection, Mr. Reckenbeil and Mr. Crane?

9 **MR. RECKENBEIL:** No objection, Your Honor.

10 **MR. CRANE:** Your Honor, I have no objection, but the solicitor
11 did not give you all the facts in the marijuana case. And, of course, I'll ----

12 **(Whereupon, Plaintiff's Exhibit Numbers 1 through 15 were**
13 **admitted without objection.)**

14 **THE COURT:** Okay. And did he -- I was about to go over that. I
15 -- I did note that you described the escape, the ABHAN, the possession of a
16 -- a weapon, but I didn't hear anything about the possession of marijuana.
17 Did he have marijuana on him?

18 **MR. BARNETTE:** Yes, sir, he did have marijuana. I apologize.
19 When they arrested him, they found marijuana on him. And I did include a
20 copy of the report, Your Honor. It wound up being 1.1 gram ----

21 **THE COURT:** Okay.

22 **MR. BARNETTE:** --- of marijuana

23 **THE COURT:** All right. All right.

24 **MR. CRANE:** What I -- what I -- I -- I think the solicitor should
25 probably should have put in the supplemental reports of the trafficking

1 because there's much more to it than what he has put in. And I will tell you
2 about that when the time is appropriate.

3 **THE COURT:** Okay. All right. But, as to the escape charge, the
4 ABHAN charge, the possession of a weapon during a violent crime, and the
5 possession of the marijuana charge, possession of less than an ounce, is Mr.
6 Reckenbeil's cases; is that right, Mr. Reckenbeil?

7 **MR. RECKENBEIL:** Yes, Your Honor.

8 **THE COURT:** All right. Mr. Johnson, is that what you did as to
9 those charges?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Okay. And are you pleading guilty because you
12 are guilty of those charges?

13 **THE DEFENDANT:** Yes, sir, I am.

14 **THE COURT:** And those facts are correct?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Very well. Okay. Now how about the trafficking in
17 marijuana offense ---

18 **MR. BARNETTE:** Yes, sir.

19 **THE COURT:** — which is Mr. Crane's case?

20 **MR. BARNETTE:** Your Honor, I've entered the report. You're
21 welcome to read it. I don't know -- Mr. Crane may want to add more to it, but
22 I think the facts ---

23 **THE COURT:** Wait a minute. Somehow I lost the trafficking in --
24 in -- in marijuana -- oh, yes, we did. We did that. I'm sorry.

25 **MR. BARNETTE:** Yes, sir.

1 **THE COURT:** But I didn't -- I didn't question Mr. Johnson about
2 that I don't think.

3 **MR. CRANE:** You -- you did, Judge.

4 **THE COURT:** Okay, I did. All right.

5 **MR. BARNETTE:** I apologize. We've gone through so many.
6 Actually, Your Honor ---

7 **THE COURT:** And we were. I was getting a little lost there.

8 **MR. BARNETTE:** That's why I entered all of the reports and
9 everything to make sure we covered all ---

10 **THE COURT:** That's right. That's where Mr. Johnson admitted
11 the marijuana was his and someone else ---

12 **MR. BARNETTE:** The thirteen (13) -- the thirteen (13) pounds----

13 **THE COURT:** --- claimed the cocaine?

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

15 **THE COURT:** And there were six -- six thousand (6000) ounce
16 -- grams?

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

18 **THE COURT:** All right. Now, Mister -- Mr. Johnson ---

19 **THE DEFENDANT:** Yes, sir?

20 **THE COURT:** --- has anyone promised you anything to get you
21 to plead guilty to any of these charges?

22 **THE DEFENDANT:** No, sir.

23 **THE COURT:** Has anyone threatened you, intimidated you, tried
24 to you force or coerce you in any way? Has anyone done anything
25 inappropriate to try to force you or make you plead against your free will?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you pleading freely and voluntarily as to all of
3 these charges?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. And are you pleading to all of these
6 charges because you are guilty of these charges?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you had all the time you need to consider
9 this plea?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Do you believe it is in your best interest?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you need to talk further with your attorneys or
14 do you need to ask me any questions?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. Again, do you believe this is in your best
17 interest?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Mr. Johnson -- well, let me advise you that
20 you have the right to appeal what I do here today even though this is a guilty
21 plea. Most defendants don't think that they have a right of appeal in a guilty
22 plea, but you do.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: However, in order to exercise any right of appeal
25 that you might think that you need to -- to file, you must first file a notice of

1 your intent to do so within the next ten (10) days.

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** If you fail to do that, you lose or waive your right to
4 appeal. Do you understand?

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

6 **THE COURT:** And I'm sure you don't know how to do that, or
7 where to do it, but your attorneys do and they will be more than happy to
8 assist you in getting that started if you wish. Do you understand?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** All right. I find that in each case there is a
11 substantial factual basis for the plea and that the plea is made freely,
12 voluntarily, knowingly, and intelligently, after the advice of very competent
13 attorneys, with whom Mr. Johnson tells me he is satisfied. And I will accept
14 his plea.

15 Now, Solicitor, it's my understanding that you had some officers or
16 some victims who wanted to -- to speak?

17 **MR. BARNETTE:** Yes, sir, if we could on that ----

18 **THE COURT:** Well, let's put that on the record first ---

19 **MR. BARNETTE:** All right.

20 **THE COURT:** --- and, then, I will let the attorneys address the
21 Court.

22 **MR. BARNETTE:** And one thing, Your Honor, just for jurisdictional
23 issues, if we can ask Mr. Johnson if he agrees for Mr. Swerling to ---

24 **THE COURT:** Mr. Johnson, do you agree with Mr. Swerling? Mr.
25 Swerling says that he has consented, on your behalf, to have these Cherokee

1 County matters brought over to Spartanburg.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. All right. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Thank you.

6 MR. BARNETTE: Thank you, Your Honor. Your Honor, let me start
7 first with the victim in this case. Ms. Downey is here with her husband.

8 They're actually on the front row, Your Honor, sitting behind Regina ---

9 (Off-The-Record Comments)

10 MR. BARNETTE: If you all would, if you all would stand up for just a
11 second.

12 (Victim and husband complied with the request.)

13 MR. BARNETTE: Ms. Downey was the victim in the case.

14 THE COURT: You mean the automobile accident victim?

15 MR. BARNETTE: She was the felony DUI victim, yes, sir.

16 THE COURT: Felony DUI? Okay. All right.

17 MR. BARNETTE: And Mr. Bill Rhoden can address the Court, Your
18 Honor. He represents her on the civil side and would like to go through her
19 injuries with you, Your Honor.

20 THE COURT: All right. Thank you..

21 MR. RHODEN: May it please the Court, Your Honor? I'm -- I'm
22 Bill Rhoden. I represent Janice Downey (phonetic) in regards to the felony
23 DUI charge.

24 As you've heard, it happened June 23rd, 2010. Ms. Downey was a
25 nurse at the Upstate Carolina Medical Center in Gaffney. She normally

1 worked a 12-hour shift. She had worked part of her shift. She had taken a
2 break to go get a meal. She was coming back from that break when the
3 accident occurred.

4 It was basically essentially a head-on type collision. Ms. Downey was
5 injured. She received various injuries, including three broken ribs, various
6 bruising along the chest and abdomen,. She did have her seat belt on, which
7 was the cause of some of the bruising.

8 The most significant injury she had involved her right leg around the
9 ankle, a severe fracture to her right lower leg around the ankle. She was
10 treated for that.

11 She incurred medical bills of about twenty thousand dollars (\$20,000)
12 in that regard; had a permanent disability rating to the right extremity of
13 twenty percent (20%).

14 She was no longer able to return to her nursing duties as a result of
15 the accident. She was discharged from Upstate Carolina Medical Center
16 because she could not perform her duties, which require her to work 12-hour
17 shifts and be on her feet most of the time. So she has not worked since the
18 -- since the accident.

19 It obviously was a life changing event for her. She was sixty-two (62)
20 years of age at the time of the -- of the accident and certainly was planning to
21 -- to continue to work but just was never -- never was able to go back.

22 Basically, an economic loss from lack of -- she -- she made something
23 over seventy thousand dollars (\$70,000) a year at that position before taxes.
24 So an economic loss for lost wages, loss of retirement contributions, also
25 considering her contributions around the household.

1 We have an economic evaluation of about half a million dollars of
2 economic loss in regard to the accident, Your Honor. Thank you.

3 **THE COURT:** Thank you very much.

4 **MR. BARNETTE:** Your Honor, there are two officers here from the
5 Cherokee County cases. I believe one would like to address your this time,
6 Your Honor.

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

8 **OFFICER SCRUGGS:** Thank you, Your Honor.

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

10 **OFFICER SCRUGGS:** Okay. Mister ----

11 **(Off-The-Record Comments)**

12 **OFFICER SCRUGGS:** I'm Mike Scruggs, City of Gaffney Police
13 Department.

14 **THE COURT:** All right, Mr. Scruggs.

15 **OFFICER SCRUGGS:** Thank you for letting me speak. As Mr.
16 Barnett presented his -- Mr. Johnson's criminal past, his record, he has
17 already showed to everybody in Cherokee County and Spartanburg County
18 he has no regards for anybody's safety by hurting someone in our County,
19 getting out on bond several months later, and comes to Spartanburg County
20 and, then, actually shoots someone over here.

21 So I'd ask that the Court gives him the maximum penalty because I
22 believe that he has no regard for anyone's safety in society.

23 **THE COURT:** Thank you, sir.

24 **OFFICER SCRUGGS:** Thank you.

25 **THE COURT:** Did you have the exhibit with his -- with his record

1 there?

2 **MR. BARNETTE:** Yes, sir, I do. I can read it or I can hand it up to
3 you.

4 **THE COURT:** Okay. Well, we'll do that later then, okay?

5 **MR. BARNETTE:** Okay. Yes, sir, I will.

6 **THE COURT:** Okay.

7 **MR. BARNETTE:** Your Honor, Chris Skinner (phonetic) is also here
8 on -- on part of the City, Your Honor. And I don't know if he's got anything.
9 He just wanted to be -- I wanted to recognize that he was here.

10 **THE COURT:** All right.

11 **MR. BARNETTE:** Investigator Jim Gardner's here -- is here on part
12 of the City, Your Honor, concerning the other charges involving the ABHAN,
13 possession of weapon, as well as the possession of marijuana.

14 I don't know, if he wanted to speak with the Court or not, but I wanted
15 to make sure he was recognized as being here, Your Honor.

16 **THE COURT:** Okay.

17 **MR. BARNETTE:** And I believe that's it, Your Honor, in this case.

18 **THE COURT:** All right. You want to put his record in the ---

19 **MR. BARNETTE:** Yes, sir, if I could. In 1993, I have possession of
20 beer by a minor; and loitering (phonetic) in 1994, Your Honor. Driving
21 suspension, 1995; PWID crack -- let me see just to make sure -- I think it
22 was 1995. ABHAN, Your Honor, in 1998. He received a nine (9) year
23 sentence on that.

24 **MR. CRANE:** Your Honor, may it please the Court? The -- if I'm
25 reading the same record, and unless he can steer me to it, the 1995 PWID

1 was a non-conviction.

2 **MR. BARNETTE:** I correct -- he is correct, Your Honor.

3 **THE COURT:** Okay.

4 **MR. BARNETTE:** There's actually an -- the conviction was from
5 1998, along with the ABHAN, Your Honor.

6 **THE COURT:** Okay.

7 **MR. BARNETTE:** And that was a possession of crack cocaine first
8 offense; operating an uninsured vehicle, 1997;

9 **(Brief Pause)**

10 **MR. BARNETTE:** I believe that's it on that, Your Honor. I did include
11 his driving record, Your Honor. His license was under suspension at the time.
12 He had violations in 2010, 2009, and 2004, Your Honor.

13 **THE COURT:** Okay.

14 **MR. BARNETTE:** I'm just going back the ten (10) years.

15 **THE COURT:** All right. Anything further from the State?

16 **MR. BARNETTE:** No, sir. Would you like me to hand these up to
17 you?

18 **THE COURT:** Yes, please.

19 **(Document handed up.)**

20 **THE COURT:** Mr. Swerling, Mr. Crane, and Mr. Reckenbeil, I'll
21 hear from either of you or all of you.

22 **MR. SWERLING:** Judge, I guess I can start off since my charges ----

23 **THE COURT:** All right.

24 **MR. SWERLING:** --- I guess were first. The -- and obviously I have
25 two very capable co-counsel here with me who can supplement whatever I

1 say.

2 But, as you know, he's 36 years of age. He finished the eighth (8th)
3 grade, but he did get his GED when he was in prison.

4 He had a very rough start early in life. And he lived with his mother
5 until he was about 12. And, then, he lived with his grandmother until about
6 2009, when she passed away.

7 He has had, as you can see from his record and from some of the
8 things that been described to you, a difficult time. One thing I have always
9 noticed about Keith, when I met him, when I first met him, is his candor.

10 And I've always appreciated his candor with me. He never has, as far
11 as the charges from Gaffney, from day one he has admitted what he did
12 there. And he has expressed an incredible amount of remorse about what
13 happened.

14 And I know that he, at the end of this presentation, would like to go
15 ahead and address the Court and the victim in the case because this is stuff
16 from the very beginning he knew what he had done wrong.

17 And he really does not -- cannot explain, you know, what happened to
18 him that night to cause this to happen, but obviously it was a very serious
19 event.

20 But one thing I ask-- and the officer stood up here and I certainly
21 understand his position --- but as for the maximum sentence, the maximum
22 sentence on the charge, the most serious charge, that he faces in Gaffney is
23 fifteen (15) years.

24 What I would ask the Court to do is consider his acceptance of
25 responsibility in standing up before Your Honor and pleading to those

1 charges. He's pleading to everything. And he is expressing his remorse and
2 he's accepting responsibility.

3 And, as Your Honor knows, someone who comes up and stands up
4 and accepts responsibility I think has gone a long way toward understanding
5 what he's done and rehabilitation and not going and getting back into this
6 thing again.

7 So I would ask Your Honor to consider that and not the maximum
8 sentence, as far that is concerned, but give him credit for standing up here
9 and admitting his guilt and accepting responsibility.

10 I certainly understand, and Keith understands, there's going to be
11 some sort of prison sentence involved. But I would ask Your Honor to
12 consider, you know, something less than the fifteen (15) years; possibly even
13 a range of eight (8) to ten (10) years on those charges, taking into
14 consideration what he's doing in standing up before Your Honor.

15 Judge, I wanted to -- the people here on the right side of the courtroom
16 are his family. I know his mom is sitting in the back row. And also there's --
17 there's his fiancée who's got a child with him right now and hopefully some
18 day they can form a union, but the child is on the way. He has another child
19 that's fourteen (14).

20 And he has his sisters here, his dad, his mom, some cousins, and
21 some in-laws. And I know his mother would like to address you briefly, Your
22 Honor, if you would hear her.

23 **THE COURT:** I'll be glad to hear her.

24 **MR. SWERLING:** I'll ask her to come up. And I think she'll have
25 more to say about the family as well.

1 (Family member stepped forward to speak.)

2 (Off-The-Record Comments)

3 MR. SWERLING: This is your -- this is his sister. His mom is seated
4 right there (indicating). State your name for the Court

5 MS. JOHNSON: I'm Keshia Johnson (phonetic). I'm the
6 Defendant's sister.

7 THE COURT: Pardon me?

8 MS. JOHNSON: I'm Keshia Johnson. I'm the Defendant's sister.

9 THE COURT: Sister? Okay.

10 MS. JOHNSON: Yes, sir.

11 MR. SWERLING: His mother is over here (indicating). She's going
12 to --

13 THE COURT: All right.

14 MR. SWERLING: --- she's going to come up too.

15 (Off-The-Record Comments)

16 MR. SWERLING: Okay. Fine. Just his sister.

17 THE COURT: All right.

18 MS. JOHNSON: I want to speak about my brother. He -- our
19 grandmother raised us. Slick (phonetic) is -- well Keith is addicted to
20 marijuana and pills as you can see. He keeps -- that's on file and he's been
21 spinning out of control since my grandmother died and my son got killed
22 August the 12th during a drive-by as of last summer.

23 So he's really been going out of control. But there was no reason for
24 him to do the things that he do. And he is going to take responsibility.

25 As far as him hitting that woman head on, he never once permit since

1 day one — nobody is inside his head, so they don't know how he feels, so
2 they shouldn't judge or say anything.

3 He's very, very sorry and I want the Court to give him a chance to
4 apologize to her and her family.

5 **THE COURT:** All right.

6 **MS. JOHNSON:** And that's all I have to say.

7 **THE COURT:** All right. Thank you.

8 **MS. JOHNSON:** Thank you.

9 **MR. SWERLING:** Does anybody else in the family wish to address
10 the judge? I thought the mother was, but, Your Honor, she's — she's too
11 upset to talk to you now.

12 **THE COURT:** Okay.

13 **(Brief Pause)**

14 **MR. SWERLING:** And I would pass off to Mr. Crane who is to the left
15 of me.

16 **THE COURT:** Okay.

17 **MR. CRANE:** Judge, may it please the Court? I would add to
18 what Jack said. Initially, when this felony DUI occurred, Mr. Johnson came
19 and spoke with me. And I represented him for a while on that and the
20 marijuana charge. And then he decided that Jack could assist us. And so
21 Jack took over the felony DUI.

22 But much like Jack said, Mr. Johnson, from the very beginning, has
23 always told me, "Look, you know, I'm sorry I did it."

24 And the thing that impressed me about him in the felony DUI is his
25 concern. He said, "The — the main thing that really hurts me..." — speaking

1 of Ms. Inman (phonetic) -- he said, "The main thing that really hurts me is that
2 someone else got hurt."

3 So he's always had this remorse for the lady that got hurt. And he
4 hasn't been able to express that until today and he probably will. And that's
5 all that I need to say about that.

6 On -- on the marijuana charge, Judge -- and I indicated to you that the
7 Solicitor may not have put everything on the record. This was a reversed
8 sting. Mr. Johnson did not bring thirteen (13) pounds to someone to sell it or
9 anything.

10 What happened, Mr. Johnson met up with Ricky Mack, who was the
11 co-defendant. Mr. Mack wanted to buy some marijuana. Mr. Johnson knew
12 someone in Green -- in -- in Spartanburg who was or had been in the
13 business. And they connected.

14 The rest of the report from the police indicates that there was a
15 telephone conversation about five (5) days earlier where Mr. Johnson met
16 with the confidential informant. The confidential informant actually showed
17 him some marijuana.

18 Mr. Johnson took a picture of it and gave the picture to the other
19 people. And, then, four (4) or five (5) days later they set up the buy.

20 The confidential informant, working for the police, with the police's
21 marijuana, brought it to the scene. And Mr. Johnson and Mr. Mack showed
22 up.

23 And, once the marijuana was transferred, then, the police came in. So
24 I just wanted you to understand here that he didn't bring the marijuana. It
25 was a reverse sting and he got caught in it. He's admitted that he was there.

1 He told law enforcement that the crack cocaine that was found in Mr. Mack's
2 car was not his.

3 And there was a little bit found in the backseat where Mr. Mack was.
4 So I wanted you to understand that.

5 The other thing that, when we're talking about the trafficking in
6 marijuana -- and I told Mr. Johnson I would try to tell this to you -- the way I
7 look at the statute --- and as you heard, the Solicitor said he's got a prior
8 conviction for possession of crack. I think that was the only drug conviction
9 that I heard.

10 So this -- because -- because of the way the statute reads, this is the
11 first offense marijuana. And that statute is written with particular penalties.
12 And those penalties are not less than one (1) or not more than ten (10) years.

13 And the trafficking starts at ten (10) years and goes to a hundred (100)
14 years. And -- and -- and my simple brain tells me that, if you've got ten (10)
15 pounds, and the statue starts with one (1) year, then, for ten (10) pounds you
16 get one (1) year.

17 If you've got a hundred (100) pounds, as high as the statute goes,
18 then, you get ten (10) years. If you've got fifty (50) pounds, you get five (5)
19 years. That's just, you know, common sense kind of.

20 In this case, what the police brought to him was the six thousand
21 (6,000) grams, which is about thirteen (13) pounds.

22 If you figure it the way the statute and the breaks are done, then,
23 logically Keith ought to get somewhere between one (1) and two (2) years.
24 I'm going to ask that you consider doing that; just a straight sentence, one (1)
25 or two (2) years, and be done with it.

1 And I will point out to you -- and these other attorneys may have
2 forgotten about this -- but Keith was arrested December 19th of last year and
3 has been in jail I think on all the charges -- because there was a bench
4 warrant that was served; is that right, Solicitor?

5 **MR. BARNETTE:** It was. We revoked a bond, Your Honor, and
6 issued a bench warrant on all charges. He was out on bond —

7 **MR. CRANE:** So he's been -- he's been in jail since December
8 19th of last year. And I would ask that either you begin the sentence then on
9 the paperwork that you're to sign or that you put on there that he's —

10 **THE COURT:** It's my custom to give credit for time served.

11 **MR. CRANE:** It's two hundred and twenty-three (223) days the
12 way I figure it. That's all I have to say, Judge. I know that he wants to speak
13 to you when the time is right.

14 **THE COURT:** Okay.

15 **MR. CRANE:** And I hope that you would sort of accept my
16 calculation and argument and give him a one- (1) or two- (2) year sentence
17 and be done with it and credit for time served.

18 **THE COURT:** All right. Mr. Reckenbeil?

19 **MR. RECKENBEIL:** Thank you, Judge. The benefit think of
20 having three different lawyers is that he's got three different brains bifurcating
21 all of these charges.

22 And I think it's important in this situation that we've had that because
23 there is distinct responsibility in all those separate charges as you've heard
24 Mr. Crane and Mr. Swerling talk about.

25 The first one, Judge, is the escape charge. As you've heard his sister

1 come before the Court, Keith escaped from home detention in an effort to go
2 to see his nephew who was shot in a drive-by and in the hospital.

3 He made mention to me that he tried to get in touch with the home
4 detention program in an effort to let them know he was going to the hospital,
5 but his nephew was shot and injured and Keith went to the hospital.

6 So that is the essence of one of the escape charges that he —

7 **THE COURT:** Did he remove it? I thought there was something
8 about a —

9 **MR. RECKENBEIL:** And, then, there was another issue in which
10 he, in fact, removed it. That's the second —

11 **MR. BARNETTE:** Your Honor -- Your Honor, I don't believe -- the
12 second one is the one I'm more familiar with I guess, the one we did a bond
13 revocation motion. As a matter fact, I think me and Mr. Swerling and Mr.
14 Crane was here in front of judge Cole. And that's when we called the County.

15 Now, he was on home detention in Cherokee County in that case, but
16 the -- the problem is there's a problem with Cherokee County monitoring. We
17 can't record it. In Spartanburg County we can definitely prove with no
18 question he was monitored and so forth.

19 **THE COURT:** Okay.

20 **MR. BARNETTE:** And it may be the second incident Mr.
21 Reckenbeil's talking about.

22 **MR. RECKENBEIL:** That's where we would just like to make
23 mention to the Court.

24 Further, Your Honor, he was originally charged with attempted murder
25 in the charges that I'm representing him on. The solicitor I think has seen the

1 weight of the evidence. And I think he's made a very good judgment in the
2 sense of offering to reduce the charge to ABHAN.

3 If we were just standing here, Your Honor, with the ABHAN charge, I
4 would be able to talk about those mitigating circumstances and the evidence,
5 I think it would be pointing and seeing a reduced sentence. But, in light of
6 everything, I'd be a fool to stand here and say, "Well, there you go, just send
7 him -- sentence him to something very minor because he had very little
8 involvement with it because ultimately I think the evidence would show that if
9 we were just here on the ABHAN situation.

10 But I can't. Obviously, Keith and I have had very heated discussions.
11 And I have been very honest with the Court. He gave an interview to News
12 Channel 7 which I agree completely that he's from day one accepted
13 responsibility for this auto accident in Cherokee County.

14 And I think that, that case has been pretty much the pinnacle, the high
15 point, of bringing this altogether where he's accepted responsibility for
16 everything that has taken place.

17 So I agree with Mr. Swerling and Mr. Crane that, if we could give credit
18 to Mr. Johnson for the acceptance of responsibility, if we were standing here
19 in federal court, there's actually a point reduction under the federal
20 sentencing guidelines that we know for the acceptance of responsibility.

21 And so I hope that the Court would take that into consideration in
22 fashioning a -- a reasonable sentence in this matter.

23 **THE COURT:** All right. Now I believe you said that Mr. Johnson
24 wanted to address the Court.

25 **MR. SWERLING:** Yes, sir. Judge, if I could say one thing about —

1 **THE COURT:** Yeah.

2 **MR. SWERLING:** I was not -- I was not even going into the TV
3 interview. We've had some issue about that, but since it was brought -- and I
4 don't have a problem with it -- but that does support what I was telling you
5 about his acceptance of responsibility, not only in this Court and not only
6 sense day one, when Mr. Crane started representing him, but he got on TV
7 and accepted responsibility and remorse. So -- so everybody in the area saw
8 that.

9 **THE COURT:** And I bet you loved that, didn't you?

10 **MR. SWERLING:** Well, I sort of --- I was pretty shocked when I
11 heard that. But, you know, we had a couple of discussions about it, giving TV
12 interviews without his lawyers being present.

13 But it does show that he had no problem accepting responsibility and
14 expressing remorse to not only the victim in the case but to everybody about
15 what he had done.

16 **THE COURT:** Okay.

17 **(Brief Pause)**

18 **THE COURT:** Mr. Johnson, I'll hear from you.

19 **THE DEFENDANT:** I just -- I just want to, you know, ask your
20 permission to apologize to Ms. Downey for the pain and suffering I caused
21 your family. I -- I really apologize for -- I don't know what I was into that night,
22 but truly deeply in my heart I -- I truly apologize to you for all the pain that I
23 caused you and your family.

24 **THE COURT:** Anything further?

25 **THE DEFENDANT:** That's all, sir.

1 THE COURT: Anything further from the defense?

2 MR. SWERLING: Nothing further, Your Honor.

3 THE COURT: Anything further from the State?

4 MR. BARNETTE: Your Honor, I think you got his prior record from
5 that standpoint —

6 THE COURT: Okay. Yeah, and I've —

7 MR. BARNETTE: --- we just ask you to take a look at it.

8 THE COURT: --- I've looked at it. Okay. All right. And --- and
9 actually the — your prior record involved a lot of minor things, but I think
10 there's one drug offense on there. Other than that, it's drinking and driving
11 and things of that nature. I think there's an assault charge on it as well.

12 All right, Mr. Johnson, I'll begin with the possession of marijuana first
13 offense. Of course, that is thirty (30) days, a straight sentence.

14 The next charge I will address will be possession of a weapon during a
15 violent crime, if I can find it...

16 (Brief Pause)

17 **SENTENCING**

18 THE COURT: On the charge of possession of a weapon during a
19 violent crime, you're sentenced to a term of five (5) years. As to the charge
20 of assault and battery of a high and aggravated nature, the sentence of the
21 Court is that you be confined for a period of twenty (20) years. That is
22 suspended upon fifteen (15) years followed by five (5) years' probation.

23 As to the charge of trafficking in marijuana first offense, the sentence
24 of the Court is that you be confined for a period of ten (10) years.

25 As to the offense of escape, the sentence of the Court is that you be

1 confined for a period of one (1) year.

2 As to the possession of Lortab....

3 **(Off-The-Record Comments)**

4 **(Brief Pause)**

5 **THE COURT:** As to the charge of the possession of Lortab, the
6 sentence of the Court is one (1) year. As to the failure to stop, the sentence
7 of the Court is that you be confined for a period of two (2) years.

8 As to the resisting arrest, Section (a), the sentence of the Court is that
9 you be confined for a period of one (1) year. That is the one-year statute,
10 isn't it, Mr. Barnette?

11 **MR. BARNETTE:** Yes, sir, it is.

12 **THE COURT:** Okay. As to the grand larceny more than ten
13 thousand dollars (\$10,000), the sentence of the Court is that you be confined
14 for a period of ten (10) years. As to the possession of a stolen pistol,

15 **(Off-The-Record Comments)**

16 **(Brief Pause)**

17 **MR. BARNETTE:** It may say receiving stolen goods, Your Honor.

18 **THE COURT:** Pardon?

19 **MR. BARNETTE:** It may say receiving stolen goods on it.

20 **MR. SWERLING:** I think it does, Judge.

21 **MR. BARNETTE:** Yes, sir.

22 **(Off-The-Record Comments)**

23 **THE COURT:** Is it receiving stolen goods; is that what the charge
24 is?

25 **MR. BARNETTE:** Yes, sir.

1 THE COURT: Okay. I'm sorry.

2 MR. BARNETTE: I apologize.

3 THE COURT: And that carries what, up to one (1) year?

4 MR. BARNETTE: Yes, sir.

5 THE COURT: The sentence is one (1) year. And for the felony
6 DUI great bodily injury, the sentence of the Court is -- is fifteen (15) years. All
7 of these are to run concurrent. And he is to be given credit for the time he
8 served. Good luck to you.

9 MR. BARNETTE: Thank you, Your Honor.

10 MR. SWERLING: Thank you.

11 MR. CRANE: Thank you, Judge.

12 MR. RECKENBEIL: Thank you.

13 (Whereupon the proceeding concluded at 12:05 p.m.)

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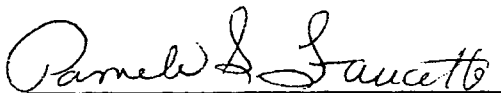
25

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 52, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

August 10, 2013



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

FORM 5

2013-CP-42-2150

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

IN THE COURT OF COMMON PLEAS

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

Keith Anthony Johnson 252251

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence 7th Circuit Judicial Court of Spartanburg County
3. Name(s) of co-defendant(s) (if any) Darius Carson, Taylor Robinson, Latoya Alverson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Indictment / Case #: 2012 GS 4201808 Assault / Assault + Battery of a Highly and Aggravated Nature
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-28-12, I was sentenced to 15 years incarceration + 5 years probation
 - (b) without recommendations or negotiation.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) I was advised that after I pled guilty, I could not

(b) appeal the decision. Cause I waived my rights, once I

(c) pled guilty.

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

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M. KORE BLACKEY

- Counsel Failed to thoroughly investigate my case, and
- (a) adequately prepare for trial. Gave me erroneous advice
 - (b) which persuaded me to give up my rights to trial by
 - (c) jury. I was denied my 6th Amendment right of the
 - (c) United States Constitution.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- Counsel failed to thoroughly investigate my case and
- (a) adequately prepare for trial. Gave me erroneous advice
 - (b) which persuaded me to give up my rights to trial by
 - (c) jury. I was denied my 6th Amendment right of the
 - (c) United States Constitution.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

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 JOSEPH LADLEY

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

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H. HOFF BLANKLEY

- (a) your arraignment and plea? yes
- (b) your trial, if any? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

- (a) the name and address of each attorney who represented you:
 - i. John G. Reckenbeil, 250 Magnolia St. P.O. Box 1633
 - ii. _____ Spartanburg, S.C. 29304
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

I ask for my sentence to be vacated, or given time served.

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

No

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 HONORABLE CLERK

STATE OF SOUTH CAROLINA)

VERIFICATION

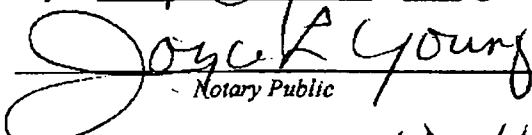
County of)

Keith A.)

I, ~~Johnson~~, 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.



SWORN to and subscribed before me this 7
day of May, 2013

 (L.S.)
Notary Public

My Commission Expires: 10.11.2021

FILED
CLERK OF COURT
2013 MAY -9 PM 2:22
M. HOFER-BLACKLEY

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

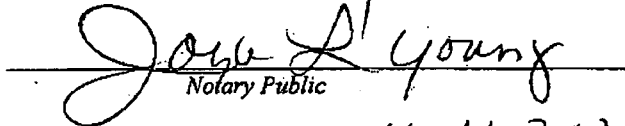
Keith A.

I, ~~Johnse~~, 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.


Applicant

SWORN or affirmed to and subscribed before me this
7 day of May, 2013


Notary Public

My Commission Expires: 10 11 2021

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2013 MAY -9 PM 2:22
M. HOPE BLADKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Keith Anthony Johnson, #252251,	)	2013-CP-42-2150
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed May 9, 2013, 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 Spartanburg County Clerk of Court. He was indicted at the April 2012 term of the Spartanburg County Grand Jury for attempted murder and possession of a weapon during the commission of a violent crime (2012-GS-42-1808, count 1 and count 2). The Applicant was represented by John G. Reckenbeil, Esquire. On June 28, 2012, the Applicant pled guilty to the lesser-included offense of assault and battery of a high and aggravated nature. The Honorable Larry B. Hyman, Jr. sentenced Applicant to twenty years, suspended to fifteen years and five years of probation. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, and the 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:

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to investigate the case,
 - ii. Counsel failed to prepare for trial,
 - iii. Counsel gave erroneous advice, which persuaded Applicant to give up his right to a trial by jury.

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, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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).

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 20, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Keith Anthony Johnson,

)
)

2013-CP-42-2150

Applicant,

)
)

v.

)
)

CERTIFICATE 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
P.O. Box 1015
Rock Hill, SC 29730



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 20th day of March, 2014.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY
3
4 KEITH ANTHONY JOHNSON,)
5 Applicant,)
6 vs.)
7 THE STATE OF SOUTH CAROLINA,)
8 RESPONDENT.)

TRANSCRIPT

OF

RECORD

2013-CP-42-2150

January 14th, 2015
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, Judge.

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

LEAH B. MOODY
ESQ.
Attorney for the Applicant

SUZANNE H. WHITE
ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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P R O C E E D I N G S

THE COURT: All right. This is Keith Anthony Johnson versus The State, 2013-2313. It's before the Court on an application for post-conviction relief. Ms. Moody represents the Applicant. Ms. White represents the State. Mr. Reckenbeil was counsel at the time of the guilty plea.

He was charged by Indictments 2012-1808, which are Counts 1 and 2, attempted murder and possession of a weapon during the commission of a violent crime. He pled guilty to the lesser offenses of assault and battery of a high and aggravated nature. Judge Hyman sentenced him to 20 years suspended to 15 years and five years probation. He did not appeal his conviction.

He asserts or alleges that his counsel was ineffective for failing to investigate, failing to prepare for trial, and gave erroneous advice, advice, which persuaded the Applicant to forego his right to a jury trial.

Ms. Moody, have you explained to your client that if he were to get the relief he's seeking that he would then expose himself to a greater sentence than that which he received, which is 30 years?

MS. MOODY: Yes, ma'am, Your Honor, and if I may?

THE COURT: Uh-huh. (Affirmative).

MS. MOODY: This plea encompassed like multiple charges

1 with three different attorneys.

2 THE COURT: Okay.

3 MS. MOODY: And so I think, in the application, it only
4 alleges the attempted murder and possession of weapons
5 during the commission of a violent crime.

6 THE COURT: Uh-huh. (Affirmative).

7 MS. MOODY: The attempted murder actually went down to
8 the ABHAN.

9 THE COURT: Yes.

10 MS. MOODY: And I believe that's all he listed on his
11 application, but all of this -- all the charges were ran
12 concurrent just to be clear. So the only charges that he
13 had with Mr. Reckenbeil, the one he takes issue with, is the
14 ABHAN.

15 THE COURT: Okay. But you've -- oh, what's the, what's
16 the maximum on ABHAN---

17 MS. MOODY: It's 20 years.

18 THE COURT: ---or is that included---

19 MS. MOODY: Twenty years.

20 THE COURT: And you've explained to him that, while he
21 got an incredibly beneficial sentence, that he would expose
22 himself to a 20 year sentence?

23 MS. MOODY: Yes, ma'am, that he starts over on his
24 charges, and I'm not quite sure that he was starting over on
25 the entire plea because he had three different attorneys,

1 two counties. So he had the Cherokee County and the
2 Spartanburg County cases.

3 THE COURT: Okay.

4 MS. MOODY: So he's here today---

5 THE COURT: But he only raised allegations about the
6 assault and battery of a high and aggravated nature?

7 MS. MOODY: Right, the Spartanburg charge.

8 THE COURT: Uh-huh. (Affirmative).

9 MS. MOODY: So he could -- I did explain to him that he
10 starts over, and he would have the 20 years, and also, with
11 that, he had some other charges---

12 THE COURT: Did you also explain to him the judge could
13 run those consecutive instead of concurrent as he did?

14 MS. MOODY: I did not say consecutive, but I think he
15 understands---

16 THE COURT: But that is the worst case scenario. That
17 is a possibility.

18 MS. MOODY: Right, that it could be set.

19 THE COURT: Uh-huh. (Affirmative).

20 MS. WHITE: And, Your Honor, I just wanted to put -- I
21 know we are talking about the potential sentence. He was
22 originally indicted for attempted murder.

23 THE COURT: He was.

24 MS. WHITE: And that carries 30.

25 THE COURT: And actually -- and -- yeah, and I knew I

1 was missing something. If he were to get the relief he was
2 requesting, it goes back to attempted murder, not ABHAN,
3 and---

4 MS. MOODY: Yes, ma'am.

5 THE COURT: ---he would be facing 30 years, which could
6 be run consecutive to these other charges, which he pled
7 guilty to.

8 And have you explained that to him?

9 MS. MOODY: I explained to him that the attempted
10 murder carried 30---

11 THE COURT: Uh-huh. (Affirmative.)

12 MS. MOODY: ---and that he pled down to the ABHAN,
13 which was 20.

14 THE COURT: Uh-huh. (Affirmative.)

15 MS. MOODY: Under the law, it's changed to 20.

16 THE COURT: Uh-huh (Affirmative).

17 MS. MOODY: I did not discuss with him---

18 THE COURT: But he -- yeah, he starts over if he gets
19 the relief. There's no ABHAN. He starts over as attempted
20 murder --

21 MS. MOODY: Right.

22 THE COURT: -- and possession of a weapon, which is 35
23 years the Court could run consecutive to his other charges.
24 Does he realize that?

25 MS. MOODY: Yes, sir. I mean yes, ma'am. Excuse me.

Keith Johnson - Direct examination
by Ms. Moody

1 THE COURT: That's okay. I'm use to being called sir.
2 That's okay.

3 MS. MOODY: I'm sorry.

4 THE COURT: And knowing that, does he wish to proceed
5 with the relief he's requesting cause he got an incredibly
6 generous sentence?

7 THE APPLICANT: Yes.

8 THE COURT: Okay.

9 MS. MOODY: Your Honor, at this time I would call Keith
10 Anthony Johnson to the stand.

11 THE COURT: Sir, if you'd come to the witness stand and
12 be sworn.

13 (Witness complies.)

14 THE COURT: Sir, raise your right-hand.

15 KEITH JOHNSON, being first duly
16 sworn, testified as follows:

17 THE COURT: You may take your seat.

18 (Witness complies.)

19 THE COURT: State your full name for the record. Spell
20 your last name for the court reporter.

21 THE WITNESS: Keith Anthony Johnson. J-O-H-N-S-O-N.

22 THE COURT: You may proceed.

23 MS. MOODY: Thank you, Your Honor.

24 THE COURT: You welcome.

25 DIRECT EXAMINATION

Keith Johnson - Direct examination
by Ms. Moody

1 BY MS. MOODY:

2 Q Mr. Johnson, can you please relate to the Court where
3 you're currently incarcerated?

4 A Broad River Correctional Institution.

5 Q Okay. And you've heard us discuss which charges you're
6 here before the Court on today?

7 A Yes.

8 Q Okay. And is that correct, according in your
9 application, that you're here on attempted murder and the
10 possession of a gun during commission of a violent crime?

11 A Yes.

12 Q Okay. And you actually pled down to assault and
13 battery of a high and aggravated nature with these charges?

14 A Yes.

15 Q Okay. And during the time that you did that plea, you
16 had three different attorneys, but, for this charge, can you
17 please tell the Court who your attorney was?

18 A Mr. John Reckenbeil.

19 Q Speak into the---

20 A Mr. John Reckenbeil.

21 Q Okay. And did you hire Mr. John Reckenbeil?

22 A Yes.

23 Q Okay. And how long -- did he represent you from the
24 beginning of these charges through your plea?

25 A He was hired on April the 2nd till -- well, that's what

Keith Johnson - Direct examination
by Ms. Moody

1 he put on, on the paperwork that I had, that he was, that he
2 was -- that I obtained him April the 2nd and my -- I went
3 to -- and I pled to the charges on June 28th.

4 Q Okay. So, from the beginning, he represented you on
5 these charges and you had no other attorney representing you
6 on these charges?

7 A No, ma'am.

8 Q Okay. And so initially we've, we've discussed that you
9 had a attempted murder charge.

10 Can you please tell the Court how you ended up getting
11 the offer for an ABHAN?

12 A well, he -- well, they came -- well, a week before I
13 came, I went to -- I came to plead guilty for the charge was
14 my only time that Mr. Reckenbeil came and seen me after I
15 obtained him as my attorney.

16 Q Okay.

17 A He came --.

18 Q Let me ask you this.

19 When you retained him as your attorney, did you
20 yourself personally hire him or did someone else hire him?

21 A well, well, my fiance, at the time, she went and paid
22 him for me because I couldn't call his office. So she had
23 to call to talk to him and he came and seen me when told --
24 he came and seen me and then I told him that she would bring
25 the money to be paid for be able---

Keith Johnson - Direct examination
by Ms. Moody

1 Q So you were in custody and he came to visit you at the
2 jail?

3 A Yes, ma'am.

4 Q Okay. And that's the first time and the only time you
5 saw him or is that---

6 A No, after, after, after that -- well, we just talked
7 with the fees and whatever it was cause I, I really wasn't
8 trying to hire him at the time. I told him I really just
9 wanted him to represent me for my preliminary hearing
10 originally. So he told me that I had to get him a retainer
11 fee of \$3,500 and I was like I don't want to pay all this
12 money for somebody I didn't shoot. So I only gave him
13 \$2,500.

14 So I -- my preliminary hearing was coming up that day.
15 So -- and I was telling him and he was like well, I need the
16 money before I can go, but I said well, but I want to go to
17 preliminary hearing and get it over with because I didn't
18 shoot the guy.

19 So on that -- on -- so April 2nd came. They never
20 called me over to preliminary hearing. So that's the day my
21 fiance, Shena Anderson, went and asked Mr. Reckenbeil why I
22 wasn't, why I wasn't brought over for my preliminary
23 hearing. He was talking about that I hadn't gave him
24 another thousand dollars, but he -- but I was like well,
25 just tell him to give my money back, and he was like well, I

Keith Johnson - Direct examination
by Ms. Moody

1 go ahead -- and after that he represented me. He took the
2 case up after that.

3 Q Okay. So you hired him and you met with him that one
4 time, that was the first meeting, and then the second time
5 you met with him was when?

6 A I'm -- let me see. That was the following Wednesday.
7 It was like a week before I went to Court. He came to see
8 me on a Wednesday. I don't remember the exact date.

9 Q Okay.

10 A I went to Court that following Thursday. I know that
11 Thursday was June 28th. He came to see me a week before
12 that. So I would say probably like around the 21st.
13 Somewhere around there---

14 Q Okay.

15 A ---in June.

16 Q So you saw him the first time when you talked to him
17 about representing you. Then you saw him a---

18 A Yes, ma'am.

19 Q ---second time when he brought you---

20 A Well, let me -- well, as far as the official visit
21 cause between then, on June 8th, I was asked to come to
22 Spartanburg to -- up to the courthouse for the solicitor's
23 office was questioning a Buccal -- a DNA Buccal swab. So
24 that was the second time that we didn't really talk cause I
25 didn't even know why I was brought over.

Keith Johnson - Direct examination
by Ms. Moody

1 I sat in the jury box and I seen Mr. Reckenbeil come
2 into the courtroom. He never came and addressed me why I
3 was here or nothing until Judge Couch this did the -- when
4 they, when they requested for the DNA, DNA -- when I went in
5 front of him, that's when he came in front of the stand and
6 stood beside me.

7 That's when I understood why, why I was gonna be -- why
8 I was brought over to Court that day. That's the second
9 time only. Then we only really discussed. Then we had a
10 heated conversation because I had gave an interview with
11 News Channel 7 and they -- and I guess that really like teed
12 him off or whatever, and so I left and went back to the
13 county. And then like a week or two later, that's when he
14 came and seen me like probably about two weeks later and
15 said well, they came with a -- they dropped it down to ABHAN
16 and this, this is what going on and everything.

17 Q Okay. So, in total, you saw him one time when you met
18 him to talk about hiring -- representing you. You saw him a
19 second time when you had a hearing for a DNA sample, and
20 then you saw him a third time when you met with him at the
21 jail, and that's when they offered -- made the -- he gave
22 you the plea offer that the State had?

23 A Yes, ma'am.

24 Q Okay. And then the fourth time was when you went to
25 Court?

Keith Johnson - Direct examination
by Ms. Moody

1 A Yes, ma'am.

2 Q Okay. Now, the third time that you met with him and
3 you went over the plea offer that was coming from the State,
4 what, if anything, did you-all discuss related to the plea
5 offer?

6 A Well, I was, I was more concerned about my -- about the
7 sentence being violent and nonviolent.

8 Q Why?

9 A Because which I had explained to him I didn't shoot
10 him, the guy that got shot or whatever, and he came to see
11 me that day and I -- he came and I, and I signed the
12 sentencing sheets. My fiance had talked to the---

13 Q Well, wait a minute. So, let's stay focused on when he
14 came to talk to you.

15 A Okay.

16 Q You signed some sentencing sheets?

17 A Yes, ma'am.

18 Q What else did y'all discuss or did y'all just sign the
19 sentencing sheets?

20 A No, I had told him because, from my understanding, my
21 other attorney, Mr. Swerling, was saying that -- something
22 about that they was trying to offer me a 15 year nonviolent
23 sentence, and so I was like I ain't -- I wasn't gonna plead
24 to no 15 violent sentence. Mr. Reckenbeil came to see me.
25 That's the first thing I told him. I said I'm not pleading

Keith Johnson - Direct examination
by Ms. Moody

1 to no violent sentence.

2 He said no, it's not -- it ain't violent. See it's
3 nonviolent. He showed me the paper. I read the paper. The
4 box was marked nonviolent. I signed the paper.

5 Q So wait a minute.

6 You said that you had a number of charges that you pled
7 to?

8 A Yes, ma'am.

9 Q And a number of sheets that you were signing?

10 A Yes, ma'am.

11 Q So which sheet are you talking about now?

12 A The -- well, I pled like, all my charges, he brought
13 all my sentencing sheets even before the Mr. Crane charges
14 and Mr. Swerling charge.

15 Q So he brought all of those charges together?

16 A Yes, ma'am.

17 Q Okay.

18 A So he -- you know, he presented me with -- he showed me
19 the ABHAN sheets. So I signed it. So he showed me the
20 possession of a weapon during commission of a violent crime,
21 and I was like -- I say I don't want to sign that because
22 they didn't, they didn't catch me in possession of a weapon.

23 He was like well, if you don't sign this sheet right
24 here, that's part of the deal. They're not gonna play ball
25 with us. The deal off the table if you don't sign this

Keith Johnson - Direct examination
by Ms. Moody

1 sheet. So I signed the sheet.

2 Okay. So we came up on the possession of
3 methamphetamine charge. I was like I wasn't charged with
4 methamphetamine. So he was like -- I like I had marijuana
5 on me that night. So he was like all right, we ain't gonna
6 worry about that. So I signed the rest of the sheets and---

7 Q So you signed sentencing sheets and you told him what
8 you didn't have on you. You talked about the possession of
9 the gun during the commission of a violent crime.

10 Did you-all discuss the amount of time and whether
11 something was considered violent, nonviolent, serious?

12 A He told me my sentence was gonna be nonviolent. This
13 the -- that was -- my sentence would be a nonviolent
14 sentence.

15 Q Okay.

16 A Because I was facing 15 years for the Felony DUI with
17 bodily injury in Cherokee County, and then I was also facing
18 up to the -- and not -- and plus I was getting the maximum
19 of ten years for trafficking the marijuana.

20 Q Okay.

21 A And I was looking like well, if I had the -- if I do
22 get the 15 nonviolent that I would be doing, I would be
23 doing -- I would have to do like eight and a half years off
24 the ten violent, and if it was---

25 Q So you're saying---

Keith Johnson - Direct examination
by Ms. Moody

1 A ---the 15 was nonviolent---

2 Q Hold on one second.

3 You're saying that, as to the ABHAN, the ABHAN was
4 suppose to be nonviolent, and based on what you were looking
5 at in terms of your other charges, you would only have to do
6 the, the eight and a half on the violent charge?

7 A That would override it cause I would of had -- end up
8 doing more off that sentence then the 15 years nonviolent.

9 Q Okay. So it turns out that your sentencing sheet that
10 you have in your case is on the assault and battery that
11 occurred on 11/19/2011 and on that sentencing sheet it has
12 violent and serious?

13 A Yes, ma'am.

14 Q Okay. And so that's what you have a complaint about
15 against your lawyer?

16 A Yes, ma'am.

17 Q Okay. Can you specifically state what that complaint
18 is?

19 A This not the paper that I signed. I only -- I wanted
20 to -- well, what I'm really wanting to do is ask the Court
21 to subpoena -- okay. Subpoena the, the sentencing sheet
22 with violent, serious, with most serious on it, present that
23 sheet to me with fresh ink. Not a copy of it. That's all I
24 asked.

25 THE COURT: Sir, I have the originals and they have

Keith Johnson - Direct examination
by Ms. Moody

1 your signature on them and violent and most serious is
2 checked on both of them.

3 MS. MOODY: May I approach, Your Honor?

4 THE COURT: Uh-huh. (Affirmative).

5 I can't give this to him, however---

6 MS. MOODY: Oh.

7 THE COURT: ---cause this is the Clerk's original file
8 and she entrusted it to me for purposes of looking at it,
9 and for possession of a weapon during the commission of a
10 violent crime, it appears to be his original signature. Of
11 course, that is not violent or serious. That is dated
12 6/28/12. It was to run concurrent with time for credit
13 served.

14 Oh, here's attempted murder. It was underneath.

15 (Pause.)

16 THE COURT: Okay. And assault and battery of a high
17 and aggravated nature, Count One, it has Mr. Barnette's
18 signature, your signature, and Mr. Reckenbeil, and violent
19 and serious are checked---

20 MS. MOODY: And---

21 THE COURT: ---and it is signed by Judge Hyman on
22 6/28/12. That is the original sentence sheet with your
23 signature with the original ink.

24 MS. MOODY: And, Your Honor, when you, just for the
25 record purposes---

Keith Johnson - Direct examination
by MS. Moody

1 THE COURT: Uh-huh. (Affirmative).

2 MS. MOODY: ---when you say checked, it's a typed x
3 mark.

4 THE COURT: It would of been in place -- it could of
5 only been put there before his signature. It can not be
6 placed there after cause these are generated by computer.
7 So it could not of been altered after he signed it. He
8 would of had to of printed an entirely new form.

9 Q Do you wish to proceed?

10 A No -- I mean, I mean it's this, is this going -- I mean
11 he told me my sentence was gonna been nonviolent. That's,
12 that's --.

13 Q well, I mean you say your attorney told you---

14 A I mean---

15 Q ---that your sentence was gonna be nonviolent. That's
16 after y'all discussed the sheets and you understood, on the
17 transcript, you were asked about your -- what -- have you
18 had enough time to talk to your attorney?

19 A Yes, ma'am.

20 Q And, and you said affirmatively yes, right?

21 A Yes, ma'am.

22 Q And also when the judge asked you if you were pleading
23 to those charges, you affirmed and said yes on the record
24 too?

25 A Yes, ma'am.

Keith Johnson - Direct examination
by MS. Moody

1 Q And then when the judge asked you anything else about
2 your case in terms of did you have any complaints or
3 anything like that towards law enforcement, your attorney,
4 or anybody, you said no?

5 A Yes, that's correct.

6 Q Okay. And now having seen this or understanding that
7 the judge is looked at the sheet, is your position, and I'm
8 assuming your position is still is that your attorney told
9 you that the assault and battery of a high and aggravated
10 nature was nonviolent?

11 A Yes.

12 Q Okay. And so the relief you're asking for is what of
13 the Court?

14 A I mean I, I mean, I mean really, originally, I really
15 got the whole sentence off the ABHAN charge. Well, I don't
16 feel like it should of been attempted murder if a guy got
17 shot in the leg and like I don't feel all my motion of
18 discovery, and if you look at my motion of discovery, they
19 said that they got a DVD from the convenience store cause
20 the incident was suppose to happen and there was video
21 cameras at the convenience store.

22 Q Listen---

23 A He told -- when I asked him about the video, he said he
24 seen the video. You couldn't really see nothing on the
25 video, but from my understanding, you wasn't, you wasn't

Keith Johnson - Direct examination
by Ms. Moody

1 given the video from the convenience store that the
2 detectives got from the convenience store.

3 Q I don't have the video, that's correct, but your
4 attorney, at the time, when you decided to plea, did you
5 have enough time to talk to your attorney about what
6 happened in the case?

7 A Yes.

8 Q Okay. And so, at the time that you talked to him, did
9 you feel like he was doing what he needed to do---

10 A I mean---

11 Q ---in terms of your---

12 A I mean he -- I mean he told me -- I mean we told him he
13 sounded good. I mean, I mean I, I mean is --.

14 Q So your biggest hangup is, and I'm just -- based on,
15 you know, what your application is, is it -- you're saying
16 that your attorney did not advise you that the charges would
17 be treated as violent?

18 A No, he did not.

19 Q Okay. And so your issue with that is because it
20 affects, it affects your sentence?

21 A Yes.

22 Q Okay. And so what you want from the Court is to give
23 you an opportunity to have that sentence -- have you
24 resentenced or what, what are you asking for from, from the
25 Court?

Keith Johnson - Direct examination
by Ms. Moody

1 A Yeah, like even -- like the day after I got sentenced,
2 I, I had the same -- I asked for a directed appeal, but I
3 had to, I had to do it through a request form from my county
4 jail because I came to Court that Thursday, and Mr.
5 Reckenbeil -- well, we couldn't -- I tried to get my fiance
6 to call him Friday. We couldn't get in touch with him.

7 So I got, I got sent to the Department of Corrections
8 the following Monday, but that Thursday, the same day that I
9 sentenced, I filed the -- I signed the, I signed the request
10 form to the Clerk of Court Office, which I have in here,
11 pertaining to that I wanted to file for a direct appeal
12 because really, after I got sentenced, I didn't know that my
13 15 years for the assault and battery was gonna be, gonna be
14 violent.

15 Q Okay. And so you -- did you have -- did you
16 communicate with your attorney at all regarding the charges
17 being violent, nonviolent?

18 A Mr. Reckenbeil?

19 Q Yes.

20 A Yes.

21 Q Well, what you---

22 A Like the day he came -- well, the day he came to me he
23 told me that the charges were gonna be nonviolent.

24 Q No, I'm talking about after you got sentenced.

25 A Yes, I wrote, I wrote him. I wrote a letter when I

Keith Johnson - Direct examination
by Ms. Moody

1 was, when I was trying to ask him to file for a motion for
2 reconsideration, but I went on and, and he wrote me back,
3 and I have, I have went on ahead and filed the motion to
4 reconsider, to reconsideration to my -- I sent it to Judge
5 Hyman and to the Clerk of Court's Office.

6 Q And what happened with that motion to be reconsidered?

7 A They -- when I filed -- when I put it in my PCR
8 application cause my understanding I couldn't have two, two
9 motions in Court at the same time, and they was like they
10 had never had nothing filed. But I mean my motion to
11 reconsideration, it was to be filed by the Clerk of Court,
12 but as far as the order being filed on it, hadn't, hadn't
13 one been filed.

14 Q So you didn't get a response as to whether it was
15 denied or---

16 A No, ma'am.

17 Q Okay. And when you communicated with your attorney,
18 Mr. Reckenbeil, when you asked him about that filing a
19 motion to reconsider, did you communicate with him again
20 after that?

21 A No, ma'am.

22 Q And so, as it stands, you didn't file a directed appeal
23 because you didn't get the motion to reconsider or you tried
24 to file a direct appeal?

25 A Well, I asked for the direct appeal the same day cause

Keith Johnson - Direct examination
by Ms. Moody

1 I was still incarcerated at our county -- at the county
2 detention center here, and so I sent a request form to the
3 Clerk's Office cause I knew -- my understanding you have
4 like within ten days to file it. So I know that I was gonna
5 be shipped from our detention center to the Department of
6 Corrections that following Monday. I have no way of getting
7 in touch with my attorney.

8 Q Okay.

9 A That was the charge I was trying to get the direct
10 appeal on.

11 Q Okay. Well, now let me ask you this.

12 How are you prejudiced by the charge being violent
13 versus nonviolent?

14 A I mean cause I ain't -- I'm not eligible for any work
15 release. I mean like with my sentence being violent, I'll
16 be -- if I max my sentence, I'll be like 50 years old by the
17 time I get out. I mean then it's not -- I mean not -- and
18 they don't have any rehabilitation programs for violent
19 offenders like in the Department of Corrections. So like
20 when I come back to society, I'm gonna be in the same
21 struggle all over again.

22 Q But didn't you already plead to a violent on the
23 trafficking marijuana?

24 Wasn't that a violent?

25 A Yes, ma'am.

Keith Johnson - Direct examination
by Ms. Moody

1 Q Okay. So how are you prejudiced by having a violent---

2 A I mean---

3 Q ---ABHAN?

4 A Because we was -- just the -- well, the trafficking in
5 marijuana I be doing like four years less than -- I'm like
6 45, which is still like -- I'll be kind of in age but
7 compared to being 50 years old by the time I get out.
8 That's the -- that was like a four year difference.

9 Q Okay. And so you feel that, because your attorney did
10 not notify you as to it being violent or nonviolent, you
11 were prejudiced?

12 A Yes, ma'am.

13 Q I got one other question I need to ask you.

14 When you talked to your fiance and she told you the
15 charge was violent, when did you talk to her?

16 A The same day. Well, I don't -- well, the day Mr.
17 Reckenbeil came and told me cause she had talked to
18 Mr. Swerling, and that when she was saying he was saying my
19 sentence was gonna be -- they was saying something about 15
20 nonviolent and I was like nah, I'm not pleading to a violent
21 sentence. That's---

22 Q But was that before or after you pled?

23 A That was before I pled.

24 Q Okay. All right. Is there anything else you wish to
25 relay, relay to the court?

Keith Johnson - Direct examination
by Ms. Moody

1 A No, ma'am.

2 Q Okay. Thank you. No further questions.

3 THE COURT: You may proceed.

4 MS. WHITE: Thank you, Your Honor.

5 THE COURT: You welcome.

6 CROSS-EXAMINATION

7 BY MS. WHITE:

8 Q Just briefly, Mr. Johnson.

9 Obviously you said you were -- you had several
10 different charges.

11 Eleven charges are what you pled to?

12 A Yes.

13 Q Okay. And you were represented by three different
14 attorneys at that time?

15 A Yes, ma'am.

16 Q All right. Isn't it true that, in regards to plea
17 offers, part of the problem was that you had given a TV
18 interview to News Channel 7 without your attorneys being
19 present or consulting with them?

20 A Yes, ma'am.

21 Q So that, that kind of hampered the, the plea
22 negotiations, is that right?

23 A I mean I don't -- I mean I really don't know because I
24 tried to call all three of my attorneys and ask them about
25 it and I couldn't get in touch with either one of them.

Keith Johnson - Cross-examination
by Ms. White

1 Q Okay.

2 (Pause.)

3 MS. WHITE: May I approach, Your Honor?

4 THE COURT: You may.

5 Q I just want to show you two letters. One is dated, if
6 you'll look with me, May 7th, 2012, to you at the detention
7 center.

8 A Yes, ma'am.

9 Q Do you recall receiving that letter?

10 A Yes, ma'am.

11 Q Okay. And that's where Mr. Reckenbeil talked to you
12 about the interview and how that might of hampered --?

13 A We never -- well, that was the day I came for the
14 Buccal swab. That's when we had, we had a heated discussion
15 after I went in front of -- the order the -- for them to get
16 Buccal swab. That was the day that --.

17 Q Okay. And it does say that Solicitor Barnette has
18 indicated he no, no longer offered any offers until he saw
19 what the interview said?

20 A Yes, ma'am.

21 Q Okay. And then do you recognize -- did you receive
22 this letter dated July 23rd?

23 A Yes, ma'am.

24 Q Okay. And this letter is asking you to give your
25 attorney, Mr. Reckenbeil, what grounds you wish for him to

Keith Johnson - Cross-examination
by Ms. White

1 file on a motion for reconsideration?

2 Is that right?

3 A Yes, ma'am.

4 Q And, and he did say that he, with his ethical
5 obligations, had to have some merit or some ground with
6 merit to file?

7 A Yes, ma'am.

8 Q Okay. So, so he received notice from you that you
9 wanted him to file that, but had asked for, for what, what
10 the basis was and there was nothing?

11 A (Witness nods affirmatively.)

12 Q Okay. And, again, you testified that you were aware
13 that the trafficking charge you're pleading -- you pled to
14 is also a violent and serious charge?

15 A Yes, ma'am.

16 Q Okay. And, as we've stated, the sentencing sheet that
17 you signed has that it is violent and serious marked?

18 A Yes, ma'am.

19 Q Okay. Thank you.

20 That's all I have, Your Honor.

21 THE COURT: Any redirect?

22 MS. MOODY: No, ma'am.

23 THE COURT: Sir, you may step down.

24 Anything further from the Applicant?

25 MS. MOODY: Your Honor, we would call Ms. Shena

Shena Anderson - Direct examination
by Ms. Moody

1 Anderson.

2 THE COURT: Please come forward and be sworn.

3 (Witness complies.)

4 THE COURT: Please raise your right hand and be sworn.

5 SHENA ANDERSON, being first duly
6 sworn, testified as follows:

7 THE COURT: You can put your right-hand down.

8 (Witness complies.)

9 THE COURT: State your full name for the record
10 spelling both your first and last name for the court
11 reporter.

12 THE WITNESS: Shena Anderson. A-N-D -- oh. S-H-E-N-A
13 is my first name. A-N-D-E-R-S-O-N is my last name.

14 THE COURT: Thank you.

15 You may proceed.

16 DIRECT EXAMINATION

17 BY MS. MOODY:

18 Q Ms. Anderson, how are you related to Mr. Anderson -- to
19 Mr. Johnson?

20 A He is my fiance, I'm his fiance, and I have a child
21 with him.

22 Q Okay.

23 THE COURT: I can barely hear you, ma'am.
24 Can you speak up for me please?

25 A He is my fiance and I have a child by him.

Shena Anderson - Direct examination
by Ms. Moody

- 1 Q Okay. And are you -- you've heard his testimony.
2 You were the individual who contacted Mr. Swerling on
3 his behalf?
4 A Yeah.
5 Q Okay. And are you the person who hired Mr. Reckenbeil?
6 A Yes.
7 Q Okay. And so can you tell the Court how you assisted
8 Mr. Johnson in this case in terms of speaking with his
9 attorneys?
10 A Basically when I would talk with Keith and anything
11 that he wanted me to relay to any one of his attorneys I
12 would just relay it to them. Whatever he wanted me to ask
13 them or if he needed to see them, he would ask me and I'd
14 tell them --
15 Q All right.
16 A -- or ask them.
17 Q So did you happen to talk to, to Keith Johnson about
18 his charges that he was pleading to?
19 A Yeah.
20 THE COURT: Ma'am, I need you to speak up please.
21 A Yes.
22 Q Okay. And as it relates to the assault and battery of
23 a high and aggravated nature, did you-all have opportunity
24 to discuss the charge and what he was pleading to?
25 A I mean we didn't discuss each charge individually, but

Shena Anderson - Direct examination
by MS. Moody

1 we discussed his sentence.

2 Q Okay. And what was your understanding of what he would
3 be pleading to?

4 A My understanding for, from both of his attorneys, was,
5 when I spoke with Reckenbeil, was 15 year nonviolent.

6 Q Okay.

7 A So when I spoke with Keith, you know, that's what I
8 told him, and I asked -- also asked him to go, when was he
9 going to see him. He told me he was going to see him
10 shortly. So --.

11 Q Okay. So this is -- when you said -- when Mr.
12 Reckenbeil was gonna meet with him, this was to sign his
13 sheets for the ABHAN or is this to do the plea?

14 A I'm not sure. I just know it was right before his,
15 right before he went to Court. Like a week or so before he
16 went to Court.

17 Q To the---

18 A Yeah, I spoke with him first and before he went to see
19 Keith, and he went and seen Keith like the week before he
20 went to Court.

21 Q Okay. But you did get -- you didn't have an
22 opportunity to look at the sentencing sheets?

23 You just discussed with Keith whether or not he was
24 gonna be pleading to violent---

25 A Yeah.

Shena Anderson - Direct examination
by Ms. Moody

1 Q ---or, or nonviolent charges?

2 A Yeah. Correct.

3 Q Okay. And so, from your understanding, he was pleading
4 to nonviolent charges?

5 A Yes, he didn't -- he specifically said that he didn't
6 want to plead to the 15 year violent. So when we spoke on
7 the phone numerous of times.

8 Q When you say when we spoke on the phone---

9 A Oh, me and Keith.

10 Q Okay.

11 A When we spoke on the phone numerous of times. That's
12 what he would tell me all the time. Even when I went to see
13 him, you know, before it even came up for him to sign, get
14 ready to sign his sheets, he was saying that, you know, he
15 didn't want to plead without any numbers being mentioned.
16 He just didn't want to do -- plead nonviolent. So --.

17 Q He wanted to plead nonviolent?

18 A He didn't want to plead -- he didn't want to plea
19 violent.

20 Q Okay.

21 A He wanted to plead nonviolent.

22 Q Okay. And is that the extent of your dealings with
23 this -- his actual plea?

24 Were you there on the day of the plea?

25 A Yeah.

Shena Anderson - Direct examination
by Ms. Moody

1 Q You were there?

2 A Yeah.

3 Q All right. And on the day of the plea, had he changed
4 his mind about pleading to a -- do you know or did y'all
5 discuss his plea to the ABHAN?

6 A No.

7 Q Okay.

8 A He just suppose to been still pleading nonviolent.

9 Q Okay.

10 All right. No further questions for this witness, Your
11 Honor.

12 THE COURT: Any questions for the witness?

13 MS. WHITE: No, Your Honor.

14 THE COURT: Ma'am, you may step down.

15 Anything further from the Applicant?

16 MS. MOODY: I beg the Court's indulgence.

17 THE COURT: Uh-huh. (Affirmative).

18 (Pause.)

19 MS. MOODY: Your Honor, no more witnesses from the
20 Applicant.

21 THE COURT: Thank you.

22 Anything from the State?

23 MS. WHITE: Just very briefly, Your Honor, we'd call
24 John Reckenbeil.

25 THE COURT: If you'd come to the stand and be sworn.

John Reckenbeil - Direct examination
by Ms. White

1 JOHN RECKENBEIL, being first duly
2 sworn, testified as follows:

3 THE COURT: You may take the stand.
4 (Witness complies.)

5 THE COURT: Please state your full name for the record
6 and spell your last name for the court reporter.

7 THE WITNESS: Yes, ma'am. John Reckenbeil. J-O-H-N.
8 R-E-C-K-E-N-B-E-I-L.

9 THE COURT: You may proceed.

10 MS. WHITE: Thank you, Your Honor.

11 THE COURT: You welcome.

12 DIRECT EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Reckenbeil, do you recall being retained to
15 represent Mr. Johnson on these charges?

16 A Yes, ma'am, I do.

17 Q And do you know when you were retained?

18 A The documents that I have demonstrate February of 2012
19 I was retained and filed the general appearance in April of
20 2012.

21 Q Okay. And obviously we talked a little bit about the
22 fact that he's facing multiple charges and had multiple
23 other attorneys.

24 Were you able to communicate with those attorneys as
25 well in, in an attempt to negotiate a deal or --?

John Reckenbeil - Direct examination
by Ms. White

1 A Yes, Jack Swerling out of Columbia and Larry Crane out
2 of Greenville. We were in contact regarding all the cases.
3 I guess being that it was kind of my home court here I was
4 kind of running, you know, go-between between Barry and the
5 other attorneys being Larry from Greenville and Jack from
6 Columbia. So I would -- I know I was doing the majority of
7 the meetings and the talkings to Barry Barnette in the
8 option -- obviously the goal was a global offer.

9 The other charges were coming up very quickly as to the
10 DUI Felony, great bodily injury in Cherokee County, and the
11 other drug charges. And so this was obviously my attempt to
12 try to facilitate a global offer.

13 Q And we talked also about and he acknowledged that you
14 had written him a letter about the fact that he gave an
15 interview without any of his attorney's knowledge or
16 presence to WSPA.

17 Did that harm your negotiations in anyway?

18 A It did cause Barry Barnette and I were in preliminary
19 discussions with a global offer, and once he did that
20 interview, which I don't have any recollection of him trying
21 to call me to say hey, I'm doing a interview with Channel 7,
22 but that's just an aside, Barry specifically said to me that
23 hey, John, I'm -- I can't go forward with any sort of
24 negotiations with you until I see this interview, and it was
25 very interesting cause I remember this distinctly Barry

John Reckenbeil - Direct examination
by Ms. White

1 calling up WSPA and WSPA just said watch the television
2 broadcast, we're not gonna send you a copy of the video,
3 which I thought was quite interesting. But so we all were
4 tuned in at that time to watch the, the interview.

5 Q Okay. And, after that point, that was shortly before
6 the plea was that -- is that correct?

7 A It was May 28th if I'm not mistaken.

8 Q Okay. And the plea was approximately one month later
9 that---

10 A June 28th.

11 Q In regards to specifically the violent nature of this
12 charge, did you ever tell the Applicant that the charge he
13 would be pleading to for ABHAN was a nonviolent charge?

14 A No.

15 Q Did, did you talk with him about the possibilities of
16 it being violent or serious or is that something you don't
17 discuss until---

18 A You, you discuss the sentence range, you discuss what
19 your sentencing requirements are for jail time, and you
20 discuss your best crystal ball, what you think it's gonna
21 happen. This was a -- well, this was a most unusual case.
22 One of the most unusual cases I've ever done.

23 Q Is that because of the, the numerous different charges
24 or the combination of attorneys?

25 A The combination of attorneys, the numerous amount of

John Reckenbeil - Direct examination
by Ms. White

1 charges, the, the allegations, the, the injuries to the
2 nurse in Cherokee County, uh-huh. (Affirmative).

3 Q And, in fact, her civil attorney was present at the
4 plea as well and spoke on her behalf, didn't he?

5 A Yes, Mr. Rhoden who was just here before.

6 Q Okay. Did you have any concern, at the time of the
7 plea, that Mr. Johnson did not fully understand that he
8 was -- what he was pleading to, the sentence, and that he
9 was pleading to this freely and voluntarily?

10 A No, I don't, I don't have any, I don't have any doubts
11 in my mind that he knew what he was pleading to going
12 through the transcript from the judge and the discussions
13 that were had by myself, Jack Swerling, and Larry Crane. I
14 didn't sit in obviously those meetings, but when we're
15 talking, at that point in time, towards the end of the
16 representation, everything of all discussion I'm assuming,
17 cause it was my discussions as well with Mr. Johnson, had to
18 incorporate everything else cause everything was contingent
19 upon each other cause this was a global offer.

20 Q So this wasn't where they would reduce attempted murder
21 and let him have an ABHAN, but then not really deal with
22 these others?

23 They were trying to group all of them and take care of
24 them all at once?

25 A Right, cause there's so many, there's so many different

John Reckenbeil - Direct examination
by Ms. White

1 facets to this. There was a reduction from the drug charge
2 down from second to first. There was a switching of the
3 escape, which is usually consecutive, but that went to --
4 we -- I was able to finagle Barry to go to the common law
5 escape where we were finding room on that to run concurrent.
6 Then there was these others -- one or two drug charges that
7 we were able to go down to the lower reduction.

8 So there was several moving parts. I'll be honest, it
9 was me. It wasn't the guys in Columbia or Greenville. It
10 was me. I was looking at it, from this standpoint, as to
11 what Barry Barnette was trying to accomplish and, of course,
12 obviously the best interest of Mr. Johnson in trying to get
13 the lowest amount of time.

14 Q And, at the time, you felt like you had been able to
15 accomplish that.

16 He was obviously pleased, not pleased that he had to
17 plead guilty and take the time, but that he had received
18 these reductions?

19 A It was a offer that I thought was the best case
20 scenario because Barry Barnette could have picked him off
21 one case at a time methodically for years to come at
22 which -- that's Barry's expression of what he said to me.
23 Said he would pick him off at one, one case at a time if he
24 didn't accept this global offer.

25 Q Okay. Thank you very much.

John Reckenbeil - Cross-examination
by Ms. Moody

1 No further questions.

2 THE COURT: Any questions for the witness?

3 MS. MOODY: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. MOODY:

6 Q Mr. Reckenbeil, in terms of the -- you described the
7 case as being the most unusual in terms of cause you were
8 basically doing the combination work of three lawyers as
9 well as the number of charges and then also the Felony DUI,
10 dealing with the Felony DUI?

11 A Yes, ma'am.

12 Q Okay. And so when you-all talk about the global offer,
13 understand you-all had a big blowup or what have you, but
14 when you-all sat down, you and Mr. Johnson sat down to
15 discuss what the offer was gonna be, what did you-all
16 discuss in terms of what sentences they carried and whether
17 or not they had violent statutes, serious status?

18 Did you-all discuss that?

19 A Yes, ma'am.

20 Q And did you discuss it by each charge or how did you
21 explain it to him?

22 A Each charge.

23 Q Did you have any kind of diagram to make sure that he
24 understood or did you just have the sentencing sheets that
25 you had?

John Reckenbeil - Cross-examination
by Ms. Moody

1 A I just had the charges that Barry and I discussed. I
2 had the, the sentencing sheets that I had for me, but I'm
3 almost certain that I went over the sentencing sheets of
4 Jack Swerling's as well if I'm not mistaken.

5 Q Okay.

6 A And so -- but when, when -- I think when I discussed
7 them I just went over all of them with the ranges. At that
8 time, you know, I was doing, doing criminal work and I just
9 basically recited to him -- kind of the sentencing ranges.

10 Q All right. Do you recall, at any point, whether he
11 talked to you about whether he wanted to or whether he
12 didn't want to plead to any kind of violent charge versus a
13 nonviolent?

14 A Yeah, he, he -- we had discussions about that, but my
15 discussions back to him were, it's just what I described to
16 the attorney general, is that, that Barry Barnette was gonna
17 pick him off one -- one case at a time, and so you can
18 decide whatever you want to do, that's fine. But realizes
19 that you're gonna be brought back from the Department of
20 Corrections each time and sat in the defendant's chair and
21 Barry Barnette made it no mistake of the fact that I should
22 explain to Mr. Johnson that it would be Barry Barnette's
23 pleasure to do that especially with the fact of what
24 happened to this lady in Gaffney is that the laws of DUI
25 Felony carry -- Barry Barnette was very adamant that they

John Reckenbeil - Cross-examination
by Ms. Moody

1 were not strong enough, especially in this kind of case, and
2 so if he did not accept his global offer, it would of been
3 Barry Barnette's pleasure to bring him back each and every
4 time and prosecute him for every single charge and convict
5 him for every single charge and ask for consecutive time.

6 Q So his first case that he was gonna bring him back on
7 would of been the Felony DUI?

8 A Absolutely.

9 Q And that carries---

10 A Fifteen---

11 Q ---up to thirty?

12 A Felony DUI with great bodily harm that he had, it was,
13 it was just the zero to 15.

14 Q Okay. And so he pled to that charge, correct?

15 A Yes, ma'am.

16 Q Okay. And as far as you talked about the sentencing
17 required jail time?

18 A Yes, ma'am.

19 Q Okay. The sentencing required jail time meaning any
20 mandatory minimums?

21 Is that what you mean?

22 A well, not so much mandatory minimums, but just the, the
23 overall general calculations that we knew from SCDC, the
24 fact that certain sentences were, at that point in time, I
25 believe it was 85 percent if I'm not mistaken. And so the

John Reckenbeil - Cross-examination
by Ms. Moody

1 certain ones that are serious and that are violent, in, in
2 estimation, were somewhere between 80 and 85 percent if I'm
3 not mistaken.

4 Q Okay.

5 A Those were the discussions.

6 Q All right. So when you-all talked about -- obviously
7 when you talked about the nonviolent ones, they're gonna be
8 less time and he had the trafficking that's violent offense
9 and then he had the ABHAN is a violent offense?

10 A Yes, ma'am.

11 Q So you did the calculations for those off of SCDC?

12 A Correct, and based upon the fact that this was not his
13 first drug charge, that this was -- I was able to negotiate
14 or, what's my charge, was able to negotiate a reduction from
15 a second to a first. Really again it was just some sort of
16 enticement for him to plead guilty. Really didn't make any
17 difference in the sentencing.

18 But if he would of gone to, you know, trial on that, he
19 could of been charged as a second with the amount of drugs
20 that he had, again wasn't my case, but the fact that -- I
21 mean he was looking at 20 years---

22 Q Right.

23 A ---on that situation.

24 Q Okay. So -- and this goes right to what he's
25 discussing in terms of his application.

John Reckenbeil - Cross-examination
by Ms. Moody

1 So are you saying that you showed him what he could be
2 getting on the ABHAN charge and what the calculation and how
3 much time he would be serving?

4 A Yes, ma'am.

5 Q Okay. So is it your testimony here today that he knew
6 that he would be serving -- that's the longest one that he
7 would be serving time on or the largest amount?

8 Since it was violent and it carried up to 20---

9 A Right.

10 Q ---and he got 15 on that one?

11 A Correct. But since that -- also the fact that we were,
12 we were extremely hopeful that Judge Hyman would run
13 everything concurrent. So everything could of been ran
14 consecutive.

15 Q Right.

16 No, I'm talking about like in terms of if you run
17 everything concurrent --

18 A Yes, ma'am.

19 Q -- the lead charge I would say with the longest amount
20 of time would of been that violent ABHAN?

21 A Correct.

22 Q Okay. And then he also knew, with the trafficking
23 charge, that that was violent as well and he knew how much
24 time he would be serving on that one as well?

25 A That's correct.

John Reckenbeil - Cross-examination
by Ms. Moody

1 Q Okay. So you went through those calculations with him
2 before signing those sheets?

3 A Yes, ma'am.

4 Q Okay. And so, I guess from your testimony here
5 earlier, is that he understood about the amount of time that
6 he would be having to serve once in the Department of
7 Corrections?

8 A Yes, ma'am.

9 MS. MOODY: Okay. No further questions for this
10 witness, Your Honor.

11 THE COURT: Any redirect?

12 MS. WHITE: Nothing, Your Honor.

13 THE COURT: Sir, you may step down.
14 Anything further from the State?

15 MS. WHITE: No, Your Honor.

16 THE COURT: Any rebuttal testimony from the Applicant?

17 MS. MOODY: No, ma'am.

18 THE COURT: Any argument?

19 MS. MOODY: No, ma'am.

20 THE COURT: Any from the State?

21 MS. WHITE: No, ma'am.

22 THE COURT: The Applicant has the burden of proving
23 ineffective assistance of counsel, and, in this circumstance
24 with a guilty plea, he would have to prove that his
25 counsel's performance fell below what is expected under

1 reasonable professional norms and that counsel's
2 performance, deficient performance, prejudiced him and the
3 prejudice that is contemplated in the guilty plea context is
4 that he would of not pled guilty, but insisted on going to
5 trial.

6 What basically Mr. Johnson alleges is that his, his
7 attorney gave him erroneous advice regarding his range of
8 penalty and that that induced him to plead guilty. He also
9 alleges counsel failed to investigate the case and failed to
10 prepare for trial.

11 But based on the posture of this case, it was never
12 gonna go to trial. It was always the goal to try to work
13 out a beneficial guilty plea for him, and there's also been
14 no testimony regarding lack of having fully investigated the
15 underlying case.

16 When determining voluntariness of a guilty plea, the
17 Court looks mainly at the contemporaneous record. That
18 being the transcript of the guilty plea that would of been
19 done on 6/28/12.

20 At that time I think what is very telling is that
21 Mr. Johnson pled guilty to 11 offenses on that date. He had
22 three attorneys representing him, and those offenses
23 included grand larceny \$10,000, possession of a stolen
24 pistol, possession of Lortab second offense, resisting
25 arrest under the A section of the statute, failure to stop

1 for a blue light, Felony DUI with great bodily injury,
2 trafficking in marijuana first offense, possession of
3 marijuana first offense, and assault and battery of a high
4 and aggravated nature, and possession of a weapon during the
5 commission of a violent crime.

6 What is also telling is the actual sentence sheets
7 themselves as they do not corroborate Mr. Johnson's
8 testimony that he did not know what he was signing and
9 somehow was misled cause the original sentence sheets very
10 clearly indicate violent, serious, assault and battery of a
11 high and aggravated nature, zero to twenty years, Count One,
12 and he signed that document. There's no indication that he
13 did not sign it freely and voluntarily and of his own
14 volition.

15 And even if I were to accept, for arguments sake, that
16 he had faulty information, he had a duty to read the
17 sentencing sheet before signing it. He is indicated, for
18 the record, that he, although he went to the eighth grade,
19 he had his GED and he was competently employed, and he
20 understood the nature of the proceedings. And as my own
21 Court will just take judicial notice that, since the
22 inception of these particular sentence sheets, they are
23 printed from computer, and all of the boxes are checked
24 prior to signatures other than the sentencing information
25 and the findings, et cetera, and any special conditions

1 regarding probation as well as restitution.

2 so the top of this form is completely filled out before
3 anyone signs it and there's no way to alter it after these
4 signatures have been affixed. You would have to print an
5 entirely new form, and it would have to be signed all over
6 again. So clearly those boxes would of been checked at the
7 time Mr. Johnson signed the sentencing sheet regarding his
8 guilty plea on the ABHAN.

9 So there's no basis in fact and no support in the
10 record that the sentence sheets were not as they were at the
11 time they were originally entered into the Court's record,
12 and they have been maintained since that time in their
13 original condition by the Clerk of Court's Office in their
14 original file.

15 It is clear from the record that he acknowledged to the
16 Court that he went over the offenses and the range of
17 penalty. That's at Pages 8 through 10. That he clearly
18 acknowledges he went over all the discovery with his
19 attorney. That's at Page 10 Lines 21 through 25 and he was
20 keenly aware of the evidence against him at Page 11 Lines 1
21 through 4. That he was clear about his right to a jury
22 trial. He went over that with his attorney as well as the
23 Court. He was well aware he was waiving his right to a jury
24 trial. That's at Page 11 Lines 5 through 25, Page 12 and
25 Page 13 Lines 1 through 10.

1 That there was no force involved in his pleading guilty
2 at Page 13 Line 20 through 22, that he was clearly satisfied
3 with the representation of counsel, Page 13 Lines 23 through
4 25, Page 14 Line 1 through 3, and, again, at Lines 8 through
5 11 where the Court asked, very specifically, do you have any
6 further questions of your attorneys or the Court and he
7 indicates that he does not.

8 He's also asked if he needs to speak with his attorneys
9 any further and that's at Page 33 Lines 13 through 14 and he
10 says no, he does not need to.

11 He also told the Court he had no mental health issues,
12 that he had his GED. That's at Page 16 Lines 11 through 16.
13 He's not under the influence of any drugs or alcohol or
14 subject to any other influence that would impair his ability
15 to understand where he was or what he was doing at Page 16
16 Line 19 through 25.

17 He allocuted to the facts and admitted his guilt, and
18 that starts, because of the breadth of the offenses, at Page
19 17 and goes all the way through Page 33 of the transcript,
20 that there were no promises to him at Page 32 Lines 20
21 through 22, no threats, Page 32 Lines 23 through 25 over to
22 Page 33 Line 1, that he's entering the plea freely and
23 voluntarily at Page 33 Lines 2 through 4, and he admits his
24 guilt to all of the offenses and reinforces that again on
25 Page 33 Lines 5 through 7, and that he believes the plea is

1 in his best interest. That's at Page 33 Lines 11 through
2 12, and that, in addition to that, he had more than ample
3 time to consider and make his decision to plead guilty at
4 Page 33 Lines 8 through 10.

5 The Court then further advised him of his right to
6 appeal and he acknowledged that right in the timeframes for
7 that at Page 33 Lines 19 through 25 through Page 34 Lines 1
8 through 9.

9 It is clear from that record that his plea was freely
10 and voluntarily given. He was fully advised of the elements
11 of each offense, the range of penalty, and even if he had
12 some question it, the Court very clearly articulated the
13 range of penalty, and if he had some concern or pause, he
14 certainly had more than ample opportunity to have raised
15 that before the Court in light of the Court's colloquy with
16 him.

17 I do not find his testimony credible that his lawyer
18 told him that these offenses were nonviolent. I do not
19 believe any promises were made to him in that regard, and
20 while Ms. -- the Court is considered Ms. Anderson's
21 testimony, she can only testify as to what she rationally
22 perceived. That being what she communicated between him as
23 a go-between with his counsel. But, ultimately, the final
24 decisions would -- and explanations would of been made
25 outside of her presence. Otherwise privilege would of been

1 viciated and she could of testified as to anything that was
2 said between he and his attorney. So she would not of been
3 present or privy to any of those conversations, and so she
4 does not have any real firsthand knowledge as to what Mr.
5 Reckenbeil would have explained to Mr. Johnson.

6 I find Mr. Reckenbeil's testimony credible that he did,
7 in fact, go over the elements of the offenses and range of
8 penalty, and he discussed at length with Mr. Johnson the
9 nature of the offenses, violent versus nonviolent, and I
10 believe his testimony when he said that a nonviolent plea
11 was never an option to him, and based on the facts as they
12 have been articulated in the transcript, I find his
13 testimony believable and persuasive regarding Mr. Barnette's
14 position regarding trying each case and it being his
15 pleasure basically to pick off each of these charges one at
16 a time, which certainly would of enured greatly to -- would
17 not of enured to his benefit to him to have gone that way,
18 but it would of been his decision.

19 But I find it credible and persuasive that he opted
20 instead for a global settlement of all of these charges, and
21 really got a quite beneficial result in that he got the
22 State to agree to let him have an escape charge that was not
23 run mandatorily conservative pursuant to the statute.

24 So, based on what is been presented to the court,
25 there's no basis in the record for the grant of an

1 application of post-conviction-relief and the relief is
2 denied.

3 MS. MOODY: Thank you, Your Honor.

4 THE COURT: Thank you very much.

5 MS. WHITE: Thank you, Your Honor.

6 THE COURT: Thank you and the attorney will provide us
7 with a proposed order within 20 days --

8 MS. WHITE: Yes, Your Honor.

9 THE COURT: -- and make any findings of fact that
10 you're welcome to.

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13 * * *END OF REQUESTED TRANSCRIPT OF RECORD* *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 14th day of January, 2015.

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

June 21st, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Keith Anthony Johnson, #252251,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-42-2150

ORDER OF DISMISSAL

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Leah B. Moody, Esquire
Respondent's Attorney:	Suzanne H. White, Esquire
Plea Counsel:	John G. Reckenbeil, Esquire
Date of Hearing:	January 14, 2015
Court Reporter:	Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 9, 2013. The Respondent made its Return on or about March 20, 2014. An evidentiary hearing into the matter was convened on January 14, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's fiancé, Shena Anderson also testified on the Applicant's behalf. John G. Reckenbeil, Esquire, testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the April 2012 term of the Spartanburg County Grand Jury for Attempted Murder¹ and Possession of a Weapon During the Commission of a Violent Crime² (2012-GS-42-1808, count 1 and count 2). The Applicant was represented by John G. Reckenbeil, Esquire. On June 28, 2012, the Applicant pled guilty to the lesser-included offense of Assault and Battery of a High and Aggravated Nature (ABHAN).³ The Honorable Larry B. Hyman, Jr. sentenced Applicant to twenty (20) years' imprisonment, suspended to fifteen (15) years' imprisonment and five (5) years of probation, to be run concurrently. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

¹ A person who commits Attempted Murder "is guilty of a [violent, most serious] felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted." S.C. CODE ANN. § 16-3-29 (2011); S.C. CODE ANN. § 16-1-60 (2011); S.C. CODE ANN. § 17-25-45 (2011).

² The offense of Possession of a Firearm During the Commission of a Violent Crime provides:

(A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five [(5)] years, in addition to the punishment provided for the principal crime. This five-year [(5)] sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

(B) Service of the five-year [(5)] sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year [(5)] sentence to run consecutively or concurrently.

(C) Except as provided in this subsection, the person sentenced under this section is not eligible during this five-year [(5)] period for parole, work release, or extended work release. The five [(5)] years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three [(3)] years of release from imprisonment.

S.C. CODE ANN. § 16-23-490 (2011).

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

1. Ineffective assistance of counsel, in that;
 - i. Counsel failed to investigate the case,
 - ii. Counsel failed to prepare for trial,
 - iii. Counsel gave erroneous advice, which persuaded Applicant to give up his right to a trial by jury.

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 his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

Summary of the Testimony

The Applicant testified that he retained three (3) attorneys to represent him on his Attempted Murder and Possession of a Firearm During the Commission of a Violent Crime (PFDCVC) charges on April 2nd, before his plea on June 28th but that Counsel represented him along with no other lawyers. The Applicant testified that Counsel met with him only three (3) times briefly. The Applicant testified that he received an offer from the State to plead to ABHAN and that the first time Counsel came to see the Applicant was one (1) week before his guilty plea. The Applicant alleged that his fiancé paid Counsel and spoke with him, but that Counsel only talked about his fees. The Applicant testified he wanted to hire Counsel to represent him only for his preliminary hearing and did not want to pay his full three thousand five hundred dollar

³ ABHAN is a violent, serious felony punishable by imprisonment for not more than twenty (20) years, S.C. CODE

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(\$3,500.00) retainer fee. The Applicant testified that he paid Counsel two thousand five hundred dollars (\$2,500.00), but because he did not forward the additional one thousand dollars (\$1,000.00) Counsel would not represent him at his preliminary hearing and was not present.

The Applicant testified that he thereafter paid Counsel the additional one thousand dollars (\$1,000.00) and saw Counsel for the second time in the courtroom. The Applicant testified that Counsel then approached him. The Applicant testified that the third time he met with Counsel was when he learned of the State's ABHAN plea offer. The fourth time he met with Counsel, the Applicant testified, was during his guilty plea hearing. The Applicant testified that he would plead to a lesser charge only if it was considered a non-violent offense. The Applicant testified that the deal was off the table if he did not sign the PFDCVC sentencing sheet. The Applicant alleged that that when Counsel brought the sentencing sheets to him prior to the plea, the sentencing sheets reflected all non-violent charges. The Applicant testified that he was concerned about the fact that he was listed as violent in the South Carolina Department of Corrections. The Applicant testified that he was also facing a fifteen (15) year sentence on a Driving Under the Influence—Great Bodily Injury charge in Cherokee County and the maximum sentence of ten (10) years on a Trafficking Marijuana charge. The Applicant alleged that his signature on the sentencing sheets was not authentic. The Applicant further testified that he did not believe he committed the offense of Attempted Murder by shooting the victim in the leg. The Applicant alleged that Counsel summarized the video evidence of the offense and said that "you couldn't really see anything from the video."

After his guilty plea, the Applicant testified, he wrote a letter to Counsel about filing a motion to reconsider sentence and sending his motion to the sentencing judge and the clerk of court. The Applicant testified that Counsel wrote him a response, but did not communicate with

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him after that time. The Applicant stated that he asked Counsel for a direct appeal on the day of his plea hearing but that Counsel did not file an appeal on his behalf. The Applicant asserted that he was prejudiced by Counsel's failure to distinguish between violent and non-violent offenses and failure to offer any rehabilitation programs because he will be fifty (50) years old when released from prison and is not eligible for work release or to return to society.

The Applicant testified to the other charges he was facing—eleven (11) in total—and that he hired three (3) lawyers in total to represent him. He testified that even considering his Trafficking Marijuana charge, his potential sentences were four (4) or five (5) years different and that he could be released from prison at the age of forty-five (45). The Applicant testified that his fiancé spoke with attorney Jack Swerling, who said he could negotiate a fifteen (15) year sentence on non-violent offenses. He testified that ultimately his attorneys hampered plea negotiations because even after writing a letter, he still could not get in touch with his attorneys. He testified that at the time he was required to submit to a Buccal swab, he got into a heated discussion with his attorneys. The Applicant testified he gave a television interview to Channel 7 local news without his attorneys present and that after the Solicitor saw his interview, he made no further offers or negotiations.

Shena Anderson, the Applicant's fiancé and mother of his child, testified that she hired Counsel and two (2) additional attorneys, including Jack Swerling, to represent the Applicant on the numerous charges he faced. She testified that she relayed information to the attorneys from the Applicant. Anderson testified that from her conversation with Counsel, she understood the Applicant was receiving a fifteen-year (15) non-violent sentence for the plea. She testified that Counsel never mentioned that the offense was violent and always represented that the charge was non-violent. She testified that Counsel said she could see the Applicant shortly before his plea

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right before he went to court. She further testified that the Applicant did not want to plead to violent offenses.

Counsel testified that he worked with two other attorneys—Jack Swerling and Larry Crane—in representing the Applicant against numerous charges and that in February 2012 the Applicant retained him and in April 2012, he filed a notice of appearance on behalf of the Applicant. Counsel testified that he was in constant contact with the other attorneys at all times, that he attended most of the meetings with the Solicitor, and that the goal was to obtain a global offer on all charges. Counsel testified that because he was located in Spartanburg, he essentially served as the main point of contact with the attorneys and the Solicitor's office. Counsel testified that after the Applicant's arrest on the charges, on May 28, 2012, he gave a news interview to WSPA a local television station, in which he was forthcoming and which "really hurt" any ongoing negotiations and the Applicant's case. Counsel testified that after the Applicant's interview, the Assistant Solicitor was no longer willing to go forward with any negotiations. Counsel could not recall whether he was informed about the Applicant's interview beforehand and that he was not provided with a copy of that broadcast.

Counsel testified that he discussed each charge and indictment with the Applicant, the sentence ranges, the potential jail time, the fact that the charge was considered violent, the South Carolina Department of Corrections time calculations, and the fact that the Applicant would have to serve his time at eighty-five percent (85%). Counsel was adamant that he did not tell the Applicant the plea would be to a non-violent offense because a non-violent offense would have never been an option for the Applicant. Counsel likewise testified that he and the Applicant discussed the facts of the offenses, the victim's injuries—especially since the nurse victim's civil attorney spoke on her behalf during the plea hearing—his and Attorney Swerling's sentencing

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sheets, a recitation of the sentencing ranges, and the "crystal ball" of sentencing hearings. Counsel elaborated that he showed the Applicant the actual calculations of his time on the ABHAN charge, which they discussed before the Applicant signed the sentencing sheets and that they were "hopeful" that the plea judge would run all charges concurrent. At the time of the plea, Counsel testified that he had no concerns that Applicant was pleading freely and voluntarily and that he had no doubts the Applicant knew the substance of his plea and that he was clear about the length of time he would spend in prison. Counsel testified that the Applicant had to know the consequences of his plea because all charges were contingent on the "global offer."

Counsel further testified about his discussions with the Applicant's other attorneys and their goal to avoid "piecemeal" guilty pleas in favor of a global offer. Counsel testified that the plea negotiations included discussions of reducing numerous drug charges from second offenses to first offenses and switching the Applicant's statutory escape charge, which is usually run consecutively to other offenses, to a common law version in order to run the Applicant's time concurrently.⁴ Ultimately, Counsel testified that the offer was the Applicant's "best case scenario." He further testified it would have been the Assistant Solicitor's intention to "have picked [the Applicant] off one case at a time" for years in order to seek the possibility of a life without parole sentence if he didn't accept a global offer. He further testified that "it would be Barry Barnette's pleasure" to obtain consecutive or LWOP sentences based on what happened with the Applicant's case. Counsel further testified that the Solicitor would have pursued the

⁴ The statutory crime of escape provides:

(A) It is unlawful for a person, lawfully confined in a prison or local detention facility or while in the custody of an officer or another employee, to escape, to attempt to escape, or to have in his possession tools, weapons, or other items that may be used to facilitate an escape.

(B) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not less than one [(1)] year nor more than fifteen [(15)] years.

(C) The term of imprisonment is consecutive to the original sentence and to other sentences previously imposed upon the escapee by a court of this State.

S.C. CODE ANN. § 24-13-410 (2011).

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Applicant at trial, beginning with the Applicant's Felony Driving Under the Influence—Great Bodily Injury charge and obtain a verdict on “each and every crime.” Counsel summarized that the Applicant was “looking at twenty (20) years” on all eleven (11) charges, including Possession of Marijuana, PFDCVC, ABHAN, Trafficking Marijuana, and Escape.

Ineffective Assistance of Counsel

In a PCR action, “the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant 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, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. See id. at 117–118, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at

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668, 104 S. Ct. at 2052). 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." *Id.* at 117-18, 386 S.E.2d at 625 (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068).

The Applicant alleges he received ineffective assistance of counsel.⁵ This Court finds the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations. This Court finds Counsel is a criminal practitioner who has experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant and discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's version of the facts, the penalty ranges associated with the charged offenses, and the potential time the Applicant could serve incarcerated. The record reflects that Counsel effectively explained the charges, their associated penalty ranges, and the consequences of pleading guilty. The record is completely devoid of any evidence that Counsel promised or guaranteed the Applicant a specific sentence. The record further reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney

⁵ Although the Applicant and Counsel provided relevant, background testimony regarding all of the Applicant's charges and his global guilty plea arrangement negotiated among three (3) attorneys, the Applicant alleges the only Counsel, John G. Reckenbeil, Esquire was ineffective. Therefore, the Applicant challenges only his ABHAN and PFDCVC convictions on collateral review before this Court.

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demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687–88, 104 S. Ct. 2052, 2064–65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687–88, 104 S. Ct. at 2064–65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Failure to Advise of Sentencing Consequences

Regarding the Applicant's allegation that Counsel was ineffective for guaranteeing him that his plea was to a non-violent offense, this Court finds that the Applicant failed to meet his burden of proof. Counsel's testimony was most credible in that he discussed the nature of the offenses, potential sentences, and the State's position on negotiating with the Applicant prior to the plea. This Court finds that the Applicant's testimony that Counsel never informed the Applicant that he was pleading guilty to violent offenses is not credible. Although this Court considered Ms. Anderson's testimony that she and the Applicant understood the plea agreement to be a fifteen (15) year sentence on non-violent offenses, this Court finds Ms. Anderson ultimately would not have been privy to confidential and attorney-client privileged conversations between Counsel and the Applicant. This Court further finds she has no firsthand knowledge of the actual plea negotiations in this case. Moreover, the Applicant pled guilty to Possession of a Firearm During the Commission of a *Violent Crime*, which, as an element of the offense references violent crimes as defined in S.C. CODE ANN. § 16–1–60 (2011). See S.C. CODE ANN.

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§ 16-23-490 (2011); S.C. CODE ANN. § 16-1-60 (2011). Therefore, based on Counsel's credible testimony that he explained the elements of each of the charged offenses to the Applicant, logically, Counsel would have also explained that ABHAN is the violent crime connected to the Applicant's PFDCVC charge. See S.C. CODE ANN. § 16-3-320 (2011); S.C. CODE ANN. § 16-23-490 (2011).

This Court finds that the Applicant has failed to meet his burden of proving that his guilty plea was rendered involuntary based on Counsel's failure to advise him of the consequences of pleading to a violent offense. See generally Randall v. State, 356 S.C. 639, 641-42, 591 S.E.2d 608, 609-610 (2004) (citing Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002)) (failure to advise of collateral consequences of parole eligibility before the applicant proceeds to trial not ineffective assistance of counsel); Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), *overruled on other grounds*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (counsel is not ineffective for failing to advise a defendant regarding parole eligibility in connection with his guilty plea because it is a collateral consequence of sentencing); Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997) (unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea); Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence). "A defendant must be advised of a mandatory punishment for the offense to which he is pleading." State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). Cf. Smith v. State, 329 S.C. 280, 284-85, 494 S.E.2d 626, 628-29 (1997) (enumerating collateral consequences of burglary conviction and holding that guilty plea not rendered invalid for counsel's failure to advise of each consequence associated with violent crimes).

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Altered or Forged Sentencing Sheets

This Court finds that the Applicant's argument that his signature on the sentencing sheets is inauthentic is without merit. Sentencing sheets are printed from a computer and presented to the attorneys, the defendant, and, ultimately, the sentencing judge to affix the required signatures. The sentencing judge and the clerk of court also make notations, such as providing special conditions in addition to the sentence. Only after the defendant signs the sentencing sheets may the court and clerk execute sentencing sheets with finality. Thereafter, the original sentencing sheets are scanned and sent to the South Carolina Department of Corrections and maintained in their original file, in the defendant's original file by the clerk of court. Based on this Court's review of the applicable sentencing sheets, this Court finds that the Applicant's argument that his signature is not genuine and authentic or that the sentencing sheets were somehow altered is without support. Specifically, the ABHAN sentencing sheet includes a digital box checked next to "violent" and "serious," which notation could have been made only by a computer print out prior to the Applicant affixing his signature. Accordingly, this Court finds that the Applicant has failed to meet his burden of proof as to this allegation.

Failure to File Motion for Reconsideration and Appeal

The Applicant asserts that Counsel was ineffective for failing to file a motion to reconsider the Applicant's sentence and failing to perfect an appeal.⁶

"The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (citing State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)). "A judge other

⁶ The Applicant filed two (2) *pro se* letters on July 17, 2012 and August 1, 2012 with the Spartanburg County Clerk of Court seeking reconsideration of his sentence.

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sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.” Hicks, 377 S.C. at 325, 659 S.E.2d at 500.

“[A]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). The South Carolina Appellate Court Rules provide the procedure for appealing a guilty plea and sentence from the Circuit Court:

If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed

SCACR 203(d)(1)(B)(iv). See Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thrift, 378 S.C. 70, 661 S.E.2d 373 (2008).

The Applicant offers no corroborating evidence in support of his assertion that he requested Counsel file a motion for reconsideration and appeal of his guilty plea immediately after the proceedings. Additionally, this Court finds that based on Counsel’s credible testimony and a review of the transcript, there is no evidence or indication that had Counsel filed a motion for reconsideration, he would have been successful. Further, based on the transcript of the colloquy, this Court finds that no evidence indicates that the Applicant would have prevailed on appeal. Rather, it appears that had the Applicant filed an appeal, it likely would have been dismissed pursuant to an Anders brief. Anders v. California, 386 U.S. 738, 741-42, 8 S. Ct. 1396, 1398-99 (1967). Accordingly, this Court finds that Counsel was not deficient in this

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regard.

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566, 566 (4th Cir. 1976).

When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 52, 106 S. Ct. at 366; Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Hill, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 443, 546 S.E.2d 805 (1994)). 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. 431, 434 (1969).

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238, 243–44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). “Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). “In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea.” Id. (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993). “Under the procedure, a defendant, before his guilty plea may be accepted, is examined under oath on the voluntariness of his plea, including particularly its freedom from coercion by threat.” Edmonds, 546 F.2d at 567. When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363–64, 527 S.E.2d 742, 747 (1999)).

Moreover,

a signed document that informs a defendant of the charges against him, such as a sentencing sheet, gives rise to a presumed regularity in the proceedings and

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STATE OF SOUTH CAROLINA
CLERK OF COURT

signifies that the defendant has been notified of the charges to which he has pled guilty. . . . In a criminal case, a defendant who chooses to plead guilty has ample opportunity to be fully notified of the charges he is pleading guilty to. . . . [A] defendant may check a box to indicate that he wishes to plead guilty. In addition, a defendant may sign the sentencing sheet, indicating the defendant is informed of the choices and has selected the box that corresponds to the course of action the defendant wants to take in the case. As a result, we believe that all of these factors indicate that the Defendant had notice of the charges to which he chose to plead guilty.

State v. Smalls, 364 S.C. 343, 347, 613 S.E.2d 754, 756 (2005).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. This Court finds most compelling the transcript of the Applicant's plea hearing. The Solicitor read each of the eleven (11) indictments and published for the record that the Applicant's plea was "straight up" (Tr. 4:15-6:5). The Applicant affirmed that he had the opportunity to discuss the nature of the crimes, the elements of the offenses, and the facts underlying each offense with his attorneys (Tr. 7:8-8:24). The Applicant told the court that he understood the potential penalties associated with each charge (Tr. 8:25-10:12). The Applicant told the court that he had an opportunity to review the discovery and evidence against him with his lawyers and discuss his right to a jury trial (Tr. 10:20-11:9). The Applicant affirmed that, after discussing them fully with his attorneys, he understood and waived his constitutional rights (Tr. 11:5-13:12). The Applicant affirmed that it was his decision to plead guilty freely and voluntarily, free of force, threat, intimidation, coercion, or promise (Tr. 13:14-22; 32:20-33:4). He also told the court that he was fully and completely satisfied with his lawyers' services, had no further questions for his lawyers or the court, and required no additional time to speak with his attorneys or to make up his mind (Tr. 13:23-14:16; 33:8-18). During the plea, the Applicant acknowledged that his attorney had discussed all of the charges and relevant discovery materials with him. Further, the Applicant indicated to the court that he had earned his G.E.D. and he did not suffer from any.

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mental illness or substance abuse, had not taken any drugs or alcohol in the last twenty-four (24) hours, and was fully able to understand the plea proceedings (Tr. 16:14–25). The Applicant allocuted to the facts of each offense and admitted his guilt (Tr. 23:21–24:2; 26:4–15; 31:3–15; 33:5–7). The Applicant was also advised on the record of his right to appeal (Tr. 33:19–34:9).

Therefore, this Court finds that the Applicant failed to meet his burden of proving that his plea was involuntary.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct did not fall below an objective standard of reasonableness. This Court finds that the Applicant failed to meet his burden of proof to support his claims. Therefore, they are denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the

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Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id.

Although the Applicant testified that he was prejudiced by Counsel's erroneous advice and ineffective assistance, he merely claimed that if he would have pled to non-violent offenses and his length of incarceration was reduced, he would be released from prison sooner. The Applicant has failed to meet his burden of proving prejudice in connection with an involuntary guilty plea. Roscoe, 345 S.C. at 21, 546 S.E.2d at 419 (citing Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991); Ray v. State, 303 S.C. 374, 401 S.E.2d 151 (1991); Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989) (applicant failed to show any "evidence supporting a finding that the defendant's plea was induced such that, but for the erroneous advice, the defendant would not have pled guilty but would have insisted on going to trial"); see also Roscoe, 345 S.C. at 20 n.6, 546 S.E.2d at 419 n.6 (citing Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997); Simpson v. State, 317 S.C. 506, 455 S.E.2d 175 (1995); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)) ("Although we have consistently held a defendant must have a full understanding of the consequences of his plea and of the charges against him, . . . the defendant must also demonstrate prejudice to be entitled to relief on PCR."))

Accordingly, The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

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

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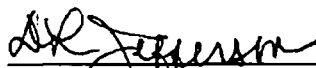
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This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31st day of March, 2015.


 Deadra L. Jefferson
 Presiding Judge
 Seventh Judicial Circuit

Charleston, South Carolina
 At Chambers

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 STATE COURT
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 M. HOPE BLACKLEY

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DOCKET NO. **12-GS-42-1808(A)**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

APR 09 2012 TERM

THE STATE

v.

KEITH ANTHONY JOHNSON

Indictment for
ATTEMPTED MURDER AND
POSSESSION
OF WEAPON DURING COMMISSION
OF A VIOLENT CRIME

SC Code 16-03-0029; 16-23-490
CDR Code 3410; 0549
Class FEL-A; FEL-F

WITNESSES

Spartanburg City Police Department

1. SENTENCE MADE **Computer**

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT RETURNED

7. ASSESSMENT AND

GENERAL CARD MADE

M-756675

8. ATTENTION COPY

M-756678

ACTION OF GRAND JURY

True Bill

MAR 29 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

FILED
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAR 24 2012 the
Grand Jurors of Spartanburg County present upon their oath:

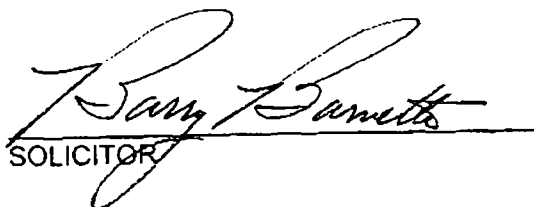
ATTEMPTED MURDER (Count I)

That the Defendant, Keith Anthony Johnson, did in Spartanburg County on or about November 19, 2011, feloniously, willfully, and with malice aforethought, attempt to kill Brandon Antonio Miller, by shooting him with a firearm, in violation of Section 16-3-0029, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT CRIME (Count II)**

That the defendant, Keith Anthony Johnson, did in Spartanburg County on or about November 19, 2011, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ATTEMPTED MURDER, in violation of Code §16-23-490. CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


SOLICITOR