

RECEIVED

NOV 12 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Ernest Kinard, Jr., Circuit Court Judge

DUSTIN RAY SIMMONS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000526

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CLAY MITCHELL
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED AUGUST 14, 2013	1
INDICTMENTS AND SENTENCING SHEETS.....	26
APPLICATION FOR POST-CONVICTION RELIEF	41
RETURN	46
POST-CONVICTION RELIEF TRANSCRIPT DATED DECEMBER 9, 2014.....	52
ORDER OF DISMISSAL	79

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2013-GS-40-01996
		2013-GS-40-01997
		2013-GS-40-01999
		2013-GS-40-02105
		2013-GS-40-02000
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DUSTIN RAY SIMMONS,	)	
	)	
DEFENDANT,	)	

August 14, 2013
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

HANS PAULING, ASSISTANT SOLICITOR
Attorney for the State

COURTNEY GIBBES, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

> > > < < <

: CERTIFICATE OF REPORTER 26

C O U R T ' S E X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	mental evaluation	6	

1 DUSTIN SIMMONS, after being duly sworn,
2 testified as follows:

3 MR. PAULING: Thank you very much, Your Honor. May
4 it please the Court. Standing before you is Dustin Ray
5 Simmons joined by his attorney, Courtney Gibbes, of the
6 Richland County Public Defender's Office.

7 Mr. Simmons is here, Your Honor, to plead guilty
8 today to one count of kidnapping, one count of assault and
9 battery first degree, a burglary first degree that has
10 been reduced to burglary second degree non-violent and two
11 counts of resisting arrest while assaulting a police
12 officer. This incident took place on July 24th, 2011, and
13 the State does have a recommendation, Your Honor.

14 THE COURT: What's your recommendation?

15 MR. PAULING: Your Honor, the State is recommending a
16 cap of 15 years. We will leave the sex offender registry
17 up to the Court. The State is in favor of the registry.

18 THE COURT: The sex offender registry would come
19 under the kidnapping; is that right?

20 MR. PAULING: Yes, Your Honor.

21 THE COURT: All right. So we're under the ten year
22 resisting arrest?

23 MR. PAULING: Yes, sir. It's zero to ten.

24 THE COURT: Thank you for writing the sentencing.

25 MR. PAULING: I do that for everybody, Your Honor.

1 THE COURT: I appreciate that. Okay.

2 All right. Mr. Simmons, are you under the influence
3 of any alcohol or drugs today?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you from Dillon?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you ever received any mental health
8 treatment?

9 THE DEFENDANT: Yes, sir.

10 MS. GIBBS: Yes, Your Honor, and if I may approach, I
11 do have a report from the Department of Mental Health
12 where he was evaluated for competency. I would like to
13 make it a part of the record.

14 Just to be clear, he is on -- since he's been in
15 jail, he's been back on antipsychotic medication. He has
16 been taking Risperdal, as well as Zoloft. We talked about
17 this. It does not get in the way of his ability to
18 understand what's going on today, but it actually helps
19 him. If I may approach?

20 THE COURT: What's the conclusion of the report?

21 MS. GIBBS: He has had several diagnoses over the
22 years from bipolar to the DMH, the official diagnosis, I
23 believe, is depressive disorder not specified and alcohol
24 dependency. It's very broad. Throughout the years, he
25 was diagnosed as low functioning, IQ, bipolar.

1 Right now, definitely after two years, he is -- he is
2 doing very well on his medication and is very clear
3 headed.

4 THE COURT: All right. We're going to mark this as a
5 Court's Exhibit.

6 (WHEREUPON, Court's Exhibit No. 1 was marked for
7 identification only.)

8 THE COURT: All right. For the record, the report of
9 the Department of Mental Health I've marked as Court's
10 Exhibit number one. It does state that Mr. Simmons is
11 competent to stand trial.

12 Mr. Simmons, do you understand what's going on here
13 today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Who is this young lady standing next to
16 you?

17 THE DEFENDANT: Courtney Gibbes.

18 THE COURT: What is she supposed to do for you?

19 THE DEFENDANT: She is supposed to have --

20 THE COURT: Okay. Is she a lawyer?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. You may not know his name, but
23 what side is this young gentleman on, Mr. Pauling?

24 THE DEFENDANT: The solicitor.

25 THE COURT: All right. And do you understand what my

1 role is?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that everybody's role
4 in the courtroom is?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Have you taken your medicine as
7 prescribed by a physician?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Does it help or hurt your ability to
10 understand what's going on?

11 THE DEFENDANT: It helps me.

12 THE COURT: All right. Do you understand what's
13 going on today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. If at any item you don't
16 understand something or you don't understand something I
17 say, if you need to talk to Ms. Gibbes, you just let me
18 know.

19 THE DEFENDANT: Okay.

20 THE COURT: That's not going to bother me or upset me
21 at all. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Now, I have a bunch of questions I
24 need to ask you. If at any time you need to talk to her,
25 just let me know. They tell me you want to plead guilty

1 to kidnapping which carries up to 30 years and has the
2 potential for sex offender registry. Do you understand
3 that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: They also tell me that you want to plead
6 guilty to assault and battery first degree which carries
7 up to 10 years. Is that true?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: They tell me you want to plead guilty to
10 burglary in the second degree nonviolent which carries up
11 to ten years, is that true?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: They tell me that you want to plead
14 guilty to an aggravated form of resisting arrest which
15 carries up to 10 years. Is that true?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And another resisting arrest which
18 carries up to ten years, is that true?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Now, in regards to your kidnapping
21 charge, that is a violent offense. That's a designation
22 by the legislature. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that can change your
25 classification at SCDC?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That's also a most serious offense. Have
3 you and Ms. Gibbes talked about what most serious means?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Have you ever heard of two or
6 three strikes you're out?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. This would be a two strike
9 you're out, okay. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. One more most serious offense
12 in your life, and you're going to get a mandatory life
13 without parole. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. And do you understand that both of
16 those are classifications created by our legislature that
17 neither I nor Mr. Pauling nor Ms. Gibbes can change in any
18 way, shape or form. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Now, because of that on your
21 kidnapping charge, you understand that it's what we call a
22 no parole offense?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Or some people call it an 85 percent
25 offense. Have you heard that term?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That means you're going to serve at least
3 85 percent of whatever active sentence I impose before you
4 can be relieved from the Department of Corrections. Do
5 you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Now, are you on probation or
8 parole now?

9 THE DEFENDANT: No, sir.

10 THE COURT: When you plead guilty, you give up
11 certain important constitutional rights. The first is
12 your right to remain silent. Do you understand that
13 right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you want to give up that right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: The second is your constitutional right
18 to a jury trial. Do you understand that right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you want to give up that right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is this all one incident?

23 MR. PAULING: Yes, sir.

24 THE COURT: Okay. The third is your right to
25 confront your accusers, call witnesses on your behalf, and

1 present any defense you may have. If you plead guilty,
2 none of that is going to happen. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Now, you need to understand
5 with the kidnapping charge, that under the statute that
6 whether or not you're placed on the sex offender registry
7 is a decision that I will make here today.. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, that's not part of your
11 negotiations. Well, I guess it kind of is. It's part of
12 your negotiation that it's going to be left in my
13 discretion or my decision as to whether or not you go on
14 the sex offender registry. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that the sex offender
17 registry will stay with you for the rest of your life if I
18 give it to you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that there's dead
21 people that are still on the sex offender registry? It's
22 that hard to get off of. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And has all kinds of what I would call
25 collateral consequences to involve where you can live,

1 where you can go, when you can go out, who you can be
2 around, everything else that could -- that will impact you
3 if I decide that is appropriate in your case for the rest
4 of your life, essentially. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. All right. Your first indictment
7 says that on July 24th, 2011 in Richland County, you did
8 assault, beat or wound a law enforcement officer named
9 Paul Myers who was attempting to arrest you. How do you
10 plead to do the charge?

11 THE DEFENDANT: Guilty, sir.

12 THE COURT: Your second indictment says that on
13 July 24th, 2011 you did assault, beat, or wound Officer
14 Williams while attempting to arrest you. How do you plead
15 to that charge?

16 THE DEFENDANT: Guilty.

17 THE COURT: Your next indictment for burglary -- he
18 is pleading to a burglary second, right?

19 MR. PAULING: Yes, sir.

20 THE COURT: Says that on or about July 24th, 2011,
21 you did enter without consent and with the intent to
22 commit a crime therein the home of Carol Smith. How do
23 you plead to that charge?

24 THE DEFENDANT: Guilty.

25 THE COURT: Your next indictment says that on

1 July 24th, 2011 you did commit a serious bodily injury and
2 an assault and battery upon Carol Smith. How do you plead
3 to that charge?

4 THE DEFENDANT: Guilty.

5 THE COURT: And your last indictment says that on or
6 about July 24th, 2011 in Richland County, you did
7 unlawfully seize, kidnap, abduct, or carry away Carol
8 Smith without authority of law. How do you plead to that
9 charge?

10 THE DEFENDANT: Guilty, sir.

11 THE COURT: Now, let's make sure we have the
12 negotiations on the record. The recommendation is a cap
13 of 15 years. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And that sex offender registry is left in
16 my discretion. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Outside of that, has anybody promised you
19 anything to get you to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anybody forced you or threatened you
22 to get you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you pleading guilty freely and
25 voluntarily?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you satisfied with the services of
3 your attorney?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you need any more time to meet with
6 her, talk to her, discuss your case, go over documents,
7 anything like that?

8 THE DEFENDANT: No, sir.

9 THE COURT: And are you pleading guilty because you
10 are guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You have ten days from today's date to
13 appeal this plea, but you must do so in writing to this
14 Court. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Yes, sir.

17 MR. PAULING: Thank you, Your Honor. If it please
18 the Court. July 24th, 2011, approximately 12:30 in the
19 afternoon at [REDACTED], Irmo, South Carolina,
20 Richland County, the victim Carol Smith had returned from
21 church a little earlier on a Sunday morning.

22 Ms. Smith saw some people in the garage next door.
23 She shared some brief conversation. She then went inside
24 her house to change clothes and then returned to her front
25 porch to work in the yard. The people she had spoken with

1 appeared to have left except for the defendant,
2 Mr. Simmons.

3 The defendant then walked into her yard. He
4 continued to make conversation with the victim. The
5 victim then went into her house.

6 As she opened the door, the defendant raced up the
7 yard onto the porch towards her and grabbing her around
8 the neck. The victim fought back. She struggled. She
9 screamed.

10 The defendant then pushed her inside the door and
11 down on the floor in the living room. Ms. Smith kept
12 screaming. She kicked. She twisted. She tried to get
13 away.

14 The defendant then grabbed her by the legs and
15 dragged her through the living room towards the kitchen.
16 At one point, the defendant again put his hands around her
17 throat while reaching towards his pocket.

18 Ms. Smith at that time believed the defendant had a
19 weapon. She panicked struggling even more, ferociously
20 trying to escape. She did eventually get loose and was
21 able to crawl across the living room floor to the front to
22 have.

23 The defendant came up behind her and said, "You're
24 not going to tell anyone about this, are you? I'm sorry."

25 The victim then fled to the neighbor's house, called

1 law enforcement. Once the police arrived, they had to
2 locate the defendant, Mr. Simmons.

3 I had actually gone to [REDACTED] where he
4 encountered two Columbia police officers, Williams and
5 Myers. The defendant actively fought off both officers
6 kicking at them resulting in minor injuries to both
7 officers.

8 Ms. Smith, Your Honor, is present in court today with
9 her husband. Both the victim and the State do feel very
10 strongly that despite that there were no criminal charges
11 for any criminal sexual conduct that were levied on the
12 defendant that date, that it seems clear from the facts
13 that the defendant did have an intention to sexually
14 assault the victim. The victim would like to address the
15 court at the appropriate item.

16 THE COURT: Record?

17 MR. PAULING: Your Honor, his criminal history dates
18 back to August 5th, 1997. He has a burglary second, I
19 believe he received an active Youthful Offender;
20 April 9th, 2003, grand larceny, one to \$5,000, an active
21 two-year sentence; later that same year, attempted grand
22 larceny and failure to stop for a blue light. Again, a
23 two-year active sentence.

24 In North Carolina, April 5th, 2006, he received a
25 conviction for assault of a female and assault of a

1 government employee. I could not discern whether or
2 not -- the length of time on an active sentence; then
3 February 27th, 2009, assault and battery high and
4 aggravated nature here in South Carolina. He received a
5 one-year active sentence.

6 THE COURT: Is all that true?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. One other thing I forgot to
9 tell you earlier is that because you're pleading to a
10 burglary charge and you have a prior burglary, if you get
11 another burglary in your life, it's going to be bumped up
12 to a burglary first. You're going to be facing 15 years
13 to life. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Burglary is one of those offenses that
16 gets worse over time. It's your second one. If you get
17 another one, you're going to be at burglary first. Do you
18 got it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I'll accept this plea. I'll find there
21 is a substantial factual basis for the plea. He's
22 pleading guilty freely and voluntarily. It's knowingly
23 and intelligently made, that he's had the advice of a very
24 competent attorney with whom he tells me he is satisfied.

25 Ms. Gibbs?

1 MS. GIBBS: May it please the Court, Your Honor.
2 Just a little bit about the facts. This -- this case is
3 really -- it's sad, and it's kind of terrible because the
4 day of this incident, Mr. Simmons -- I mean, he tells me
5 he barely remembers anything of this event, and I don't
6 say this to mitigate his responsibilities.

7 He has said to me over and over and over again, "I
8 have nobody to blame for this but myself," but he is off
9 his medication. He had been up there for three days.
10 He had been taking bath salts and cocaine, as well as
11 alcohol. He was completely out of his mind.

12 As you can see from the DMH report, he has had a
13 lifetime of mental issues. He was in Special Ed classes
14 growing up. He quit school very early. He has a very low
15 functioning IQ, and I think the problem with all of his
16 record, it occurs when he gets off his medication and uses
17 alcohol and drugs. I believe he self-medicates, and that
18 leads to disaster.

19 In all my conversations with him at the jail, I've
20 seen a huge difference. He's been in jail over two years
21 since the issuance date. They got him back on his
22 medication.

23 He is extremely clear headed. He is extremely well
24 aware of what he did, what was wrong, and due to -- I
25 don't know if it's his mental abilities or just who he is,

1 he is not somebody who does not hide his emotions.

2 You can tell when he is being sincere. I can tell
3 you that he -- he has had to get on an antidepressant. He
4 cannot sleep at night because he feels so guilty about
5 what he did to that woman.

6 That's what -- he says he doesn't even remember what
7 she looks like. He remembers grabbing her, and he just --
8 he knows what he did was completely terrible. I would --
9 just a little bit about the facts to show the mindset he
10 was in, when they did attempt to arrest Mr. Simmons, he
11 was screaming, "Get these demons off me."

12 At some point, he took his clothes off and was
13 running around the west region naked and vomiting. They
14 actually had to sedate him and Taze him several items.
15 They took him to the hospital. He spent the night.

16 He is said he was sedated so heavily that for the
17 first week-and-a-half in jail, he basically slept. So I
18 think that shows his mindset. It, obviously, doesn't
19 mitigate his responsibility, but I do know this is just --
20 he's somebody who is truly sorry.

21 He never -- we waived bond at the very beginning. He
22 has been in jail over two years. He never wanted a bond
23 reduction, never wanted a trial. He just really wanted an
24 opportunity to say how sorry he is and how guilty, and he
25 knows he needs to stay on this medication or this could

1 happen again.

2 His family is from Dillon. I do want to point out
3 his mother lives in Dillon, could not be here today. He
4 also has a brother who travels for his work who lives in
5 northern Virginia but cares about him very deeply and is
6 very concerned about his case, would be there if they
7 could.

8 He -- while he's not educated, he does -- I mean, the
9 reason he was in this area of town is the friend who is
10 next door neighbors to the victim got him a job in
11 Greenville working at a power plant. So he was stopping
12 there. He was supposed to start work on a Monday. This
13 happened on a Sunday. That's the only reason he was
14 there, to get some work. He was going to move on.

15 He tells me he has learned from this experience. He
16 has never been in jail like this before. He knows -- his
17 family has always been on him: "You have to stay on your
18 medication."

19 He, in Dillon, was treated by, I believe, Tri-County.
20 That's where he gets his mental health services, so he is
21 going to be able to do in a eventually.

22 Judge, as far as the sex offender registry, if I may
23 approach, I got him evaluated by Dr. McKee as far as
24 whether or not he is a sexual violent predator. If I may
25 approach, and I shared this report with the solicitor.

1 THE COURT: Thank you.

2 MS. GIBBS: As you can see, I mean, he is not -- Dr.
3 McKee does not believe he -- basically, he said he is
4 likely -- he would not be a good candidate -- there is a
5 likelihood that he may reoffend of some sort in the
6 future, but not sexual in nature, not a sexually violent
7 predator.

8 As stated, I -- we very strongly disagree that this
9 was a sexual -- there was any sexual intention. As I
10 said, he barely remembers what happened, but we very
11 strongly ask that he not be on the registry.

12 When he gets out, he will be monitored on community
13 supervision. I think the most important thing is to make
14 sure he is taking his medication. He was talking about he
15 needs to check into Bryan Center or some place to keep him
16 off alcohol, drugs. Now, I mean, I think that will be a
17 good way to monitor him.

18 If appropriate, Judge, he would -- I think I can talk
19 as much as I want, but I would -- he very much would like
20 to apologize to the victim, so whenever is appropriate.
21 If may maker that report a part of the record, as well.

22 THE COURT: Sure. Let me read it, please.

23 MS. GIBBS: Okay.

24 THE COURT: Is there something pending in Dillon?

25 MS. GIBBS: He does have a charge pending in Dillon

1 from -- I'm not sure of the year. It's like a very old
2 charge.

3 THE COURT: What is that?

4 MS. GIBBS: It's just a CSC involving a child, but
5 that has been pending, I believe, since 2008, maybe. I
6 mean, he says he plans to take that to trial.

7 I would just ask that you not consider those facts in
8 your determination. That will be addressed at some point,
9 and another determination of the sex offender registry
10 will be made at that point as those charges are just
11 pending. I don't know enough about the facts, obviously.

12 THE COURT: All right. Does Ms. Smith want to be
13 heard from?

14 MR. PAULING: Your Honor, I don't believe that the
15 victim wishes to be heard from. I would like to reiterate
16 the State's position, and even having reviewed the report
17 handed to me by defense counsel, I actually look at it
18 slightly differently than she does.

19 It's clear that from his diagnosis, that Mr. Simmons
20 suffers from borderline personality disorder, a lifelong
21 pattern of intense, unstable relationships, sexual
22 impulsivity, substance abuse dependence. These diagnoses
23 have all been associated with increased risk of harm
24 towards others. That's how I read this evaluation.

25 I do believe the sex offender registry is

1 appropriate. I know, having spoken to the victim, that
2 Mr. Simmons left the house immediately once she fled. He
3 did not take anything from the house, so if there was
4 robbery motive or whatever, that didn't happen.

5 I don't understand why he would abduct a woman in her
6 front yard, take her into her home on Sunday morning and
7 pin her to the floor. Again, Your Honor, I just believe
8 that this is a case that requires registry.

9 THE COURT: Is that Ms. Smith?

10 (There was no response).

11 Does she want to be heard from?

12 MR. PAULING: No, sir.

13 THE COURT: Okay.

14 All right. Yes, sir, Mr. Simmons, what would you
15 like to tell me?

16 THE DEFENDANT: I would -- I want to apologize to the
17 victim for what I done. I'm very sorry. I want to ask
18 for forgiveness.

19 THE COURT: How long have you been on meds?

20 THE DEFENDANT: Since I was little.

21 THE COURT: Do you remember what age you started?

22 THE DEFENDANT: Right around -- I believe around
23 about 14, 15.

24 THE COURT: These mental health issues that the Court
25 deals with are just, you know, I know you have significant

1 mental health issues and I know that -- you know, when you
2 go to the Department of Corrections, they're not -- I
3 mean, there's not going to be any treatment there for you?

4 THE DEFENDANT: No.

5 THE COURT: I know that, and I understand that. I'm
6 also balancing that against the fact that if you're not in
7 custody and you're out in the community and you choose to
8 self-medicate or do illegal narcotics or drink alcohol or
9 choose to give yourself whatever prescription you have on
10 you at the time, you then become a danger to everybody
11 else. You probably would not be if you were taking
12 everything appropriately. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. All of these sentences are
15 going to be run concurrent. He is going to be given
16 credit for time served. He is to have no contact with the
17 victim, that being the police officers and/or Ms. Smith in
18 any way, shape, or form. If available, he is to receive
19 mental health counseling.

20 Do either one of your police officers need to be
21 heard from?

22 MR. PAULING: No, Your Honor. I actually spoke with
23 them before they went to the grand jury. They're fine.

24 THE COURT: Okay. On the resisting arrest, the
25 sentence of this Court is ten years. On the second

1 resisting arrest, the sentence is ten years. Again, these
2 are all concurrent. On the burglary second, ten years.
3 On the assault and battery first, ten years. On the
4 kidnapping, I sentence you to 13 years. I am going to
5 order that you be on the sex offender registry.

6 I find that based on the facts that are presented to
7 me, based on the history that's been presented to me and
8 based on the information that I've been provided, this was
9 not a situation where he was attempting to rob her or go
10 in the house to steal things or burglary.

11 There was no other cause to abduct, for lack of a
12 better term, Ms. Smith other than to commit some form of a
13 sexual assault upon her, which thankfully was not
14 completed due to her actions that day.

15 Again, all are concurrent, mental health counseling,
16 no contact with the victim, and credit for time served.

17 Good luck to you, sir.

18 MS. GIBBS: Thank you, Judge.

19 MR. PAULING: Thank you, Your Honor.

20

21 (Whereupon, the proceedings were concluded.)

22

23

24

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th 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 General Sessions for
Richland County, South Carolina, on the 14th day of
August, 2013.

March 7, 2014

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

WITNESSES

(S) Inv. W. H. Montgomery – Columbia
Police Department

ARREST WARRANT NUMBER

K689256

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: **MAR 15 2013**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-01996

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

007 March TERM 2013

**THE STATE
vs.**

DUSTIN RAY SIMMONS

**Indictment for
KIDNAPPING**

**SC Code: 16-03-0910
CDR Code: 0095**

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
J. Garrett Williams
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA
26

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Dustin Ray Simmons did in Richland County on or about July 24,
2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry
away one Carol Smith, without authority of law, in violation of Section 16-
03-0910, S. C. Code of Laws, 1976, as amended

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


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. W. H. Montgomery - Columbia
Police Department

ARREST WARRANT NUMBER

K689257

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 15 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-01997

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2013

007

**THE STATE
vs.**

DUSTIN RAY SIMMONS

**Indictment for
ASSAULT AND BATTERY 1ST DEGREE**

**SC Code: 16-03-600(c)(1)
CDR Code: 3412**

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
J. W. H. Montgomery
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 13 2013, the
Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That Dustin Ray Simmons did in Richland County on or about July 24,
2011, commit an assault and battery upon the victim, Carol Smith,
constituting an unlawful act of injuring the victim likely producing death
and/or great bodily injury. All in violation of S.C. Code of Laws, §16-03-
0600(c)(1)

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


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. W. H. Montgomery – Columbia
Police Department

ARREST WARRANT NUMBER

K689258

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 15 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-40-01999

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2013

007

THE STATE

vs.

DUSTIN RAY SIMMONS

**Indictment for
BURGLARY 1ST DEGREE**

SC Code: 16-11-0311

CDR Code: 0079

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED

James W. W. W. W.
C.C.C. P&G.S.

RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the
Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

That Dustin Ray Simmons did in Richland County on or about
July 24, 2011, enter the dwelling of Carol Smith located at 41
Bradstone Circle, Irmo, without consent and with the intent to commit
a crime therein and when, in effecting entry or while in the dwelling or
in immediate flight, the defendant causes physical injury to non-
participant in crime, in violation of Section 16-11-0311(A), 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.


DAN JOHNSON, SOLICITOR

WITNESSES

INV WH MONTGOMERY CPD

✓(S) Gilbert D Williams - Columbia
Police Department

ARREST WARRANT NUMBER

K689259

ACTION

TRUE BILL

Foreperson of Grand Jury
Date:

APR 10 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-02000

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2013

007

**THE STATE
vs.**

DUSTIN RAY SIMMONS

**Indictment for
RESISTING ARREST WHILE ASSAULT
ON POLICE OFFICER**

**SC Code: 16-09-0320(B)
CDR Code: 0256**

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

Defendant

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

* Dustin Simmons
Defendant

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 13 2013
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

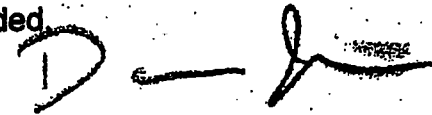
INDICTMENT

At a Court of General Sessions, convened on APRIL 10, 2013, the
Grand Jurors of Richland County present upon their oath.

RESISTING ARREST WHILE ASSAULT ON POLICE OFFICER

That DUSTIN RAY SIMMONS did in Richland County on or about July 24,
2011, knowingly and willfully assault, beat or wound one G D Williams, a
law enforcement officer of this State, whom the defendant knew or
reasonably should have known was a Law Enforcement Officer, in violation
of §16-09-0320(B), S.C. Code of Laws, 1976, as amended

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Paul Myers - Columbia Police
Department

ARREST WARRANT NUMBER

K689260

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 13 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-02105

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2013

007

**THE STATE
vs.**

DUSTIN RAY SIMMONS

**Indictment for
RESISTING ARREST WHILE ASSAULT
ON POLICE OFFICER**

**SC Code: 16-09-0320(A)
CDR Code: 0256**

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jesse W. Wray, Jr.
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

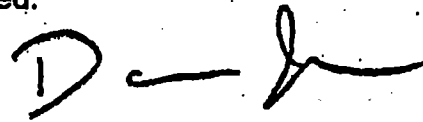
INDICTMENT

At a Court of General Sessions, convened on MARCH 13, 2013, the
Grand Jurors of Richland County present upon their oath:

RESISTING ARREST WHILE ASSAULT ON POLICE OFFICER

That DUSTIN RAY SIMMONS did in Richland County on or about July 24,
2011, knowingly and willfully assault, beat or wound one Paul Myers, a law
enforcement officer of this State, whom the defendant knew or reasonably
should have known was a Law Enforcement Officer, in violation of §16-09-
0320(B), S.C. Code of Laws, 1976, as amended

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



DAN JOHNSON, SOLICITOR

COUNTY OF Richland
STATE VS.Dustin Ray Simmons

AKA:

Race: WHITE Sex: M Age: 32DOB: SS#:

Address:

City, State, Zip: DILLION, SC 29536DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / KidnappingINDICTMENT/CASE#: 2013GS4001996 ✓A/W#: K689256Date of Offense: 7/24/2011S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials) PSThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Pauling, Hans SC Bar# 68602 x Dustin Simmons Defendant Attorney for Defendant SC Bar# 77593WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 13 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP days/hours Public Service Employment
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to clerk during probation.CERTIFIED TRUE COPY
OF ORIGINAL FILED,J. Jeanette McBride
C.P.&G.S.
2 RICHLAND COUNTY
SOUTH CAROLINA
7/27/11

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Dustin Ray Simmons

AKA:

Race: WHITE Sex: M Age: 32DOB: SS#:

Address:

City, State, Zip: DILLION, SC 29536DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault / Assault & Battery 1st degreeINDICTMENT/CASE#: 2013GS4001997A/W#: K689257Date of Offense: 7/24/2011S.C. Code § : 16-03-600(c)(1)CDR Code #: 3412

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Pauling, Hans

SC Bar#

Defendant

Century 9

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 56-1-286 (DUI Breath Test) \$25

Proviso 47.9 (Public Def/Prob) \$500

§ 14-1-212 (Law Enforce. Funding) \$25

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (BUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

Proviso 90.5 (SCCJA Surcharge) \$5

3% to County (if paid in installments)

TOTAL \$

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: NO CONTACT w/ VICTIM
☐ Appointed PD or appointed other counsel
 § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

 CERTIFIED TRUE CO.
 OF ORIGINAL FILED

 Re 1407 C.C.P. & G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

38
STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Dustin Ray Simmons
AKA:
Race: WHITE Sex: M Age: 32
DOB: SS#: [REDACTED]
Address:
City, State, Zip: DILLION, SC 29536
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Burglary 2d Degree (NV)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4001999 ✓
A/W#: K689258
Date of Offense: 7/24/2011
S.C. Code §: 16-11-0311
CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-312(C)(1) of the S.C. Code of Laws, bearing CDR Code # 0080
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Hans W. Pauling 688602 Dustin S. County Clerk 74575
Pauling, Hans SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-3-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCJA Surcharge) \$5 \$
3% to County (if paid in installments) \$
TOTAL \$

PTUP
 days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

NO CONTACT w/ VICTIM

☐ Appointed PD or appointed other Counselor
§ 47.12 requires \$500 be paid to the State during probation.

CERTIFIED TRUE COPY
ORIGINAL FILED

Jeannette McBride
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA
8/14/13

Clerk of Court/ Deputy Clerk Jeannette McBride
Court Reporter: Amboziak
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

39

COUNTY OF Richland
 STATE VS.
Dustin Ray Simmons
 AKA: _____
 Race: WHITE Sex: M Age: 32
 DOB: _____ SS#: [REDACTED]
 Address: _____
 City, State, Zip: DILLION, SC 29536
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2013GS4002000 ✓
 A/W#: K689259
 Date of Offense: 7/24/2011
 S.C. Code §: 16-09-0320(B)
 CDR Code #: 0256

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Resisting / Assault, beat, or wound police officer serving process or while resisting arrest

in violation of § 16-09-0320(B) of the S.C. Code of Laws, bearing CDR Code # 0256
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Hansw Pauling 68602 Dustin S. County Jhs 77315
Pauling, Hans SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

NO CONTACT w/ VICTIM

☐ Appointed PD or appointed other counsel
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

RECEIVED TRUE COPY
 OF ORIGINAL FILED,
 8/1/11
 J. C. C. P. & G. S.
 RICHLAND COUNTY
 SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Dustin Ray SimmonsINDICTMENT/CASE#: 2013GS4002105 ✓A/W#: K689260Date of Offense: 7/24/2011S.C. Code § : 16-09-0320(B)CDR Code #: 0256

AKA:

Race: WHITE Sex: M Age: 32DOB: SS#: [REDACTED]

Address:

City, State, Zip: DILLION, SC 29536DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADSTO: Resisting / Assault, beat, or wound police officer serving process or while resisting arrestin violation of § 16-09-0320(B) of the S.C. Code of Laws, bearing CDR Code # 0256☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Hans Pauling 680602 X Dustin Si County J 74595
Pauling, Hans SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ § 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 3% to County (if paid in installments) \$ TOTAL \$

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

CERTIFIED TRUE COPY

OF ORIGINAL FILED,

JUL 27 2011

RICHLAND COUNTY

SOUTH CAROLINA

STATE OF SOUTH CAROLINA

County of RichlandRay Simmons #243368
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.2014C P4000071
In the Court of Common PleasAPPLICATION FOR
POST-CONVICTION RELIEF2014 JAN -1 AM 10:33
JAN 11 2014
CLERK OF COURTINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence Richland county court of GENERAL SESSIONS
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2013-GS-40-01996 (KIDNAPPING-13 YEARS, SEX OFFENDER REGISTRY)
 - (b) 2013-GS-40-01999 (BURGLARY 1ST DEGREE, REDUCED TO BURGLARY 2ND DEGREE-10 yrs)
 - (c) 2013-GS-40-01997 (ASSAULT & BATTERY 1ST DEGREE-10 yrs) • 2013-GS-40-02000 (RESISTING ARREST-10 yrs) • 2013-GS-40-02005 (RESISTING ARREST-10 yrs)
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 14, 2013 (13 YEARS)
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty

Guilty PLEA

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

YES

7. If you answered "yes" to (6), list

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

i. SOUTH CAROLINA COURT OF APPEALS

ii.

iii.

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

i. DISMISSED

ii.

iii.

(c) the date of each such result:

i. NOVEMBER 5, 2013

ii.

iii.

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

i. N/A

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a)

N/A

(b)

(c)

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

(a) 6th 3rd 14th AMENDMENT VIOLATION

(b)

(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) UNINTELLIGENT GUILTY PLEA

(b) INVOLUNTARY GUILTY PLEA

(c) INEFFECTIVE ASSISTANT OF COUNSEL

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

(a) which grounds have been presented:

- i. N/A
 ii. _____
 iii. _____

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

- i. N/A
 ii. _____
 iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) ~~N/A~~ First PCR Application
 (b) _____
 (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. COURTNEY ANN GIBBES (Richland County Public Defender)
P.O. Box 192
 ii. Columbia, SC 29202
 iii. _____

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

- i. Guilty PLEA
 ii. _____
 iii. SENTENCING

18. State clearly the relief you seek in filing this application.

REVERSED and REMAND For NEW Trial

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

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of Richland County

I, Ray Simmons, 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.

Ray Simmons

SWORN to and subscribed before me this 19th
day of December, 19 2013

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, Ray Simmons, 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 therefor.

Ray Simmons
Applicant

SWORN or affirmed to and subscribed before me this
19th day of December, 19 2013

Ludrean Bryant
Notary Public

My Commission Expires May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dustin Ray Simmons, #243368,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2014-CP-40-00071

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT**

Respondent, making its Return to the Application for post-conviction relief filed January 7, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the March 2013 term of the Richland County Grand Jury for Kidnapping (2013-GS-40-1996), two counts of Resisting Arrest While Assaulting a Police Officer (2013-GS-40-2105, -2000), Burglary in the First Degree (2013-GS-40-1999), and Assault and Battery in the First Degree (2013-GS-40-1997). Applicant was represented by Courtney Ann Gibbes, Esquire. On August 14, 2013, Applicant appeared before the Honorable Robert E. Hood and pled guilty as indicted to Kidnapping, Assault and Battery in the First Degree, one count of Resisting Arrest While Assaulting a Police Officer, and the lesser included offense of Burglary in the Second Degree. Judge Hood sentenced Applicant to thirteen years for kidnapping, and ten years for each additional charge, all of which are being served concurrently.

Applicant filed a notice of appeal from his guilty plea. However, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required

by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The Remittitur was sent on November 21, 2013.

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

II.

In his Application, Applicant alleges that he is being held in custody unlawfully because his guilty plea was unintelligent and involuntary, and because he received ineffective assistance of counsel.

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

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

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

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

IV.

In his application, Applicant alleges that he is being held in custody unlawfully based on "unintelligent guilty plea," "involuntary guilty plea," and "ineffective assistance of counsel." However, Applicant has wholly failed to set forth any "facts which support each ground" or to

explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to *"specifically set forth the grounds upon which the application is based."* S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and plea counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRPC.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

March 25, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2014-CP-40-00071

DUSTIN RAY SIMMONS, #243368)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

DATED this 25th day of March, 2014.


Kelly Oppenheimer, Legal Assistant
For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Fifth Judicial Circuit
County of Richland	)	2014-CP-40-00071

Dustin Ray Simmons,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

December 9, 2014
Columbia, South Carolina

B e f o r e :

The Honorable J. Ernest Kinard, Jr., Judge

A p p e a r a n c e s :

Anna Good, Esquire
Attorney for the Plaintiff/Appellant

Clay Mitchell, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/Mr. Mitchell	4
DIRECT CROSS REDIRECT RECROSS	
DUSTIN RAY SIMMONS	
Ms. Good	5
Mr. Mitchell	10
COURTNEY GIBBS	
Mr. Mitchell	16
Ms. Good	22
Decision by the Court	25
Certificate Page	27

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
------------	--------------------	-------------	------------

-- NO EXHIBITS ENTERED --

1 MR. MITCHELL: May it please the Court?

2 THE COURT: Sure.

3 MR. MITCHELL: Your Honor, the next case is *Dustin Ray*
4 *Simmons vs. the State of South Carolina*, Case No. 2014-CP-
5 40-00071. He was indicted in March 2013 term of the
6 Richland County Grand Jury for kidnapping, two counts of
7 resisting arrest while assaulting a police officer, first
8 degree burglary, and assault and battery in the first
9 degree. He was represented on those charges by Ms.
10 Courtney Ann Gibbs.

11 Applicant pleaded guilty on August 14, 2013, before
12 the Honorable Judge Hood. He pled guilty to kidnapping,
13 assault and battery in the first degree, one count of
14 resisting arrest while assaulting a police officer, and a
15 lesser included of burg second. Judge Hood represented --
16 excuse me. Judge Hood sentenced the applicant to 13 years
17 for kidnapping and 10 years each on the additional
18 resisting arrest charges. All those were to be served
19 concurrently.

20 Applicant filed a timely notice of appeal from his
21 guilty plea where the South Carolina Court of Appeals
22 dismissed that appeal for failure to provide sufficient
23 explanation as required by the rules. Applicant filed this
24 application for post-conviction relief January 7, 2014,
25 where he alleged various aspects of ineffective assistance

1 of counsel.

2 Mr. Simmons is here today and represented by Ms. Anna
3 Good. At this time, I'll turn it over to her.

4 THE COURT: Okay.

5 MS. GOOD: Thank you, Your Honor. Applicant calls Mr.
6 Simmons.

7 THE COURT: All right. Mr. Simmons, come around.

8 DUSTIN RAY SIMMONS, having been first
9 duly sworn, testifies as follows:

10 THE CLERK: Please have a seat. State your full name
11 for the record.

12 DIRECT EXAMINATION BY MS. GOOD:

13 Q Please state your full name for the record.

14 A Dustin Ray Simmons.

15 Q And you go by "Ray"?

16 A Yes, ma'am.

17 Q Okay. And you just heard the Attorney General outline
18 all the charges you pled to on August 14, 2013, correct?

19 A Yes, ma'am.

20 Q And at that time, who was your attorney?

21 A Courtney Gibbs.

22 Q And how long did you have Ms. Gibbs as your attorney?

23 A Since I'd been in the jail for it.

24 Q So you had her the entire time?

25 A Yeah, the entire time.

1 Q Okay.

2 A Yeah.

3 Q And over the course of her rep -- representation of
4 you, how many meetings did you have with Ms. Gibbs?

5 A If I ain't mistaken, I believe it was two.

6 Q Okay. Two.

7 A Or it might have been three, but it was ...

8 Q Okay. In the -- in -- in the first meeting, do you
9 remember what happened in that meeting?

10 A No. She just asked me a lot of questions.

11 Q Okay. And about how long did that meeting last?

12 A I'd say about 10/15 minutes.

13 Q Okay. So it was a bit introductory in nature? Just
14 introducing each other and going over charges?

15 A Yeah. Yeah.

16 Q Okay. And at that point, were you on any medications?

17 A Yes, ma'am.

18 Q What medications were you on?

19 A Zoloft, Risperdal.

20 Q Okay. And at some point, you had a mental evaluation
21 done, correct?

22 A Yes, ma'am.

23 Q And you were found to be competent?

24 A Yes, ma'am.

25 Q Okay. And today you understand everything that's

1 going on, correct?

2 A Yes, ma'am.

3 Q Okay. About five months later, did you meet with Ms.
4 Gibbs again?

5 A I might -- I might have did, yeah.

6 Q Okay. And during any of these meetings with her, did
7 she ever go over the discovery with you?

8 A The ...?

9 Q The evidence in the case?

10 A I can't say no or yeah. I mean, it's -- my mind, I
11 really don't think right. So she probably did, I really
12 don't --

13 Q Okay. And at some point, did y'all begin discussing a
14 plea on this case?

15 A No, we didn't never discuss no plea. She just said
16 that the -- the victim wanted 13 years.

17 Q Okay. And when you went to plea on the day in August
18 of 2013, what were you under the impression that your
19 sentence was going to be?

20 A Well, she had told my brother I was going to do seven
21 or eight years, but she said that I wasn't going to do the
22 whole 13 years. I thought I was going to do about six or
23 seven.

24 Q Okay. So you thought you were going to be doing about
25 six or seven years?

DIRECT EXAMINATION BY MS. GOOD - DUSTIN RAY SIMMONS

8

1 A Yeah.

2 Q Okay. And eventually you went to the courthouse for
3 the plea and you spoke with Ms. Gibbs. And again, did she
4 reiterate to you that you were going to get seven or eight
5 years?

6 A No, she didn't actually tell me that.

7 Q Okay. What did she tell regarding ---

8 A But she had told my -- she'd told my brother that.
9 That's what my brother said.

10 Q Did she tell you anything regarding your sentencing
11 and what you could potentially get?

12 A No, ma'am.

13 Q Okay. After the plea, can you tell me your
14 interaction with Ms. Gibbs?

15 A What's that mean?

16 Q Did y'all speak after the plea?

17 A Oh. Yes, we did. Yeah.

18 Q What did y'all talk about?

19 A She -- she sent me the paperwork to appeal it, but I
20 was denied ---

21 Q So she sent you the paperwork to appeal? You had to
22 do it yourself?

23 A Yeah, I had to do it myself.

24 Q Did she ever say anything to you about what happened
25 during the plea and her feelings on the sentence?

1 A I believe she acted like that she didn't know I was
2 going to get the whole 13 years. I didn't know that
3 neither. I wouldn't have never pled to it.

4 Q Okay. So you wouldn't have pled to it if you thought
5 you were going to be getting 13 years?

6 A Yeah.

7 Q Okay. And did you discuss with her at that time a
8 motion to reconsider your sentence?

9 A I don't know what that means.

10 Q Excuse me, I ---

11 A I don't know what that --

12 Q At that -- after the plea, did you discuss with her a
13 motion -- her filing a motion to reconsider your sentence?

14 A I'm not understanding that -- the question.

15 Q Did ---

16 A Can you explain it?

17 Q Did she ever discuss with you filing something with
18 the judge who gave you 13 years?

19 A No. Oh, no, ma'am. No, ma'am. PCR, no.

20 Q Okay. So did y'all ever discuss filing something with
21 him so he could maybe think about it and change it, to
22 reconsider his sentence?

23 A I don't know.

24 Q Basically, to conclude, pleading that day, you were
25 under the impression you were getting seven or eight years?

CROSS-EXAMINATION BY MR. MITCHELL - DUSTIN RAY SIMMONS 10

1 A Yes, ma'am.

2 Q Would you have pled guilty if you had known that you
3 could have potentially gotten 13 years?

4 A No, ma'am.

5 Q Okay.

6 MS. GOOD: No further questions, Your Honor.

7 CROSS-EXAMINATION BY MR. MITCHELL:

8 Q All right. Good morning, Mr. Simmons.

9 A Good morning.

10 Q You pled guilty on August 14, 2013; isn't that right?

11 A Yes, sir.

12 Q And that was before Judge Hood?

13 A Yes, sir.

14 Q Do you remember that pretty well?

15 A A little bit.

16 Q Okay. Now, at -- at that plea hearing, the State
17 recommended a cap of 15 years; isn't that right?

18 A A cap?

19 Q You could not be sentenced over 15 years.

20 A Yes, sir.

21 Q So you knew going in that that was what the plea
22 negotiations came about, right?

23 A Yes, sir.

24 Q Okay. Now, we talked about your first few meetings
25 -- or your first meeting with Ms. Gibbs where she asked you

CROSS-EXAMINATION BY MR. MITCHELL - DUSTIN RAY SIMMONS 11

1 a lot of questions. She asked you questions about the
2 events that took place on that day of the incident?

3 A No, sir.

4 Q She didn't ask you about what the charges -- or what
5 events led up to you being charged?

6 A Oh, yeah, yeah. She told me. Yes, sir.

7 Q She did?

8 A Yeah.

9 Q She asked you about, you know, what happened that day,
10 right?

11 A Yeah.

12 Q Okay. Did y'all talk -- you talked about you being on
13 different kinds of medication; isn't that right?

14 A Yes, sir.

15 Q And you were on a few different things, Zoloft,
16 Risperdal, right?

17 A Yes, sir.

18 Q Okay. And Ms. Gibbs knew that; isn't that correct?

19 A Yes, sir.

20 Q At the plea hearing, that was relayed to the Court,
21 also; wasn't it?

22 A Yes, sir.

23 Q Judge Hood knew that you were on different
24 medications, right?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. MITCHELL - DUSTIN RAY SIMMONS 12

1 Q And he questioned you on whether those affected your
2 ability to understand what you were doing that day; isn't
3 that right?

4 A Yes, sir.

5 Q Okay. And there was also a competency evaluation
6 done; isn't that right?

7 A Yes, sir.

8 Q And you -- and the conclusion there was that you were
9 competent to stand trial, right?

10 A Yes, sir.

11 Q Okay. And we talked a little bit about discovery.
12 You talked about with Ms. Gibbs what the State was going to
13 present as evidence against you?

14 A Yeah.

15 Q You did?

16 A Yes, sir.

17 Q Okay. Now, the plea was just -- there's a
18 recommendation for a cap of 15 years; isn't that right?

19 A Yes, sir.

20 Q Okay. Now, you discussed that with Ms. Gibbs?

21 A No, I -- no, I didn't know -- know about it until I
22 got to the courthouse.

23 Q Okay. But she -- did she tell -- she told you there
24 at the courthouse what the plea -- what the plea was going
25 to be; didn't she?

CROSS-EXAMINATION BY MR. MITCHELL - DUSTIN RAY SIMMONS 13

1 A (No audible response.)

2 Q Did she -- did she tell that it was going to be a max
3 of 15 years that day and that was -- that was the most they
4 could sentence you to.

5 A I really don't know. I ain't want to say no lie.

6 Q Okay.

7 A I really don't know.

8 Q Now, you were sentenced to 13 years, right?

9 A Yes, sir.

10 Q And that was under the cap of 15.

11 A Yes, sir.

12 Q Okay. Now, did you ask Ms. Gibbs to file an appeal in
13 the case, to appeal the guilt -- to appeal your guilty
14 plea?

15 A No. Not to appeal it, I didn't.

16 Q Okay. Did you -- excuse me. Now, Judge Hood went
17 over with you that the most he could sentence you to was 15
18 years; didn't he?

19 A Yes, sir.

20 Q He did a pretty thorough job of that, really. He
21 asked you over and over whether you were sure that you
22 wanted to plead guilty; isn't that correct?

23 A Because I -- I know that I had done something wrong
24 and I was ready to get it over with. I had been in the
25 county like two years.

CROSS-EXAMINATION BY MR. MITCHELL - DUSTIN RAY SIMMONS 14

1 Q Uh-huh.

2 A I was just ready to get out.

3 Q And you agreed with the facts as the solicitor
4 presented them at the plea; didn't you?

5 A Sir?

6 Q When the solicitor went through the events that led up
7 to your charges ---

8 A Yes, sir.

9 Q --- you agreed with what she was saying; isn't that
10 right?

11 A Yeah. Oh, yeah.

12 Q Okay. And Ms. Gibbs also had an evaluation done on
13 whether you were a sexual predator or had any issues
14 sexually; isn't that right?

15 A Yes, sir.

16 Q And that came out to be that you most likely did not.

17 A Yeah. Yeah.

18 Q Okay. Another issue was whether you were put on the
19 sex offender registry; isn't that right?

20 A Yes, sir.

21 Q And Ms. Gibbs argued you -- you should not be put on
22 that ---

23 A Yes, sir.

24 Q --- isn't that right?

25 MR. MITCHELL: All right. No further questions.

1 Thank you.

2 THE WITNESS: Okay.

3 MR. GOOD: Nothing further, Your Honor.

4 THE COURT: You can step down.

5 (The witness complies and is removed from the
6 courtroom.)

7 MR. GOOD: Your Honor, I'm not sure where they just
8 took my client. I would like him in here for the remainder
9 of the hearing.

10 THE COURT: Catch him.

11 THE DEPUTY: The one that just left?

12 MS. GOOD: Yeah.

13 (Whereupon, applicant was brought back into the
14 courtroom.)

15 MS. GOOD: Nothing further from the applicant, Your
16 Honor.

17 THE COURT: Okay.

18 MR. MITCHELL: Your Honor, the State calls Ms.
19 Courtney Gibbs.

20 COURTNEY GIBBS, having been first
21 duly sworn, testifies as follows:

22 THE CLERK: Please have a seat and state your full
23 name for the record.

24 THE WITNESS: Courtney Gibbs.

25 DIRECT EXAMINATION BY MR. MITCHELL:

1 Q Good morning, Ms. Gibbs.

2 A Good morning.

3 Q Thank you for being here with us today.

4 A Sure.

5 Q How long have you been practicing law?

6 A About seven years.

7 Q Have you had a chance to review your file in
8 preparation for this hearing?

9 A I have. I actually do not have it with me, though,
10 because it's still in archives and there was a mistake made
11 in the name when I went to get it this morning, so ... But
12 I believe I know enough about it to testify.

13 Q Do you remember -- how did you become involved in this
14 case?

15 A I was appointed through the Public Defender's Office.

16 Q Okay. In your initial meeting with Mr. Simmons at the
17 jail, that he referenced earlier, do you recall that
18 meeting and what was discussed there?

19 A Yes. I mean, I believe it was very basic, just
20 meeting face to face and talking a little bit. I didn't
21 know much about the facts when you first get a case, but
22 you just a little bit about it. It was very open about
23 what he believed and what happened and he was very
24 remorseful.

25 I mean, I met him more than two times in the jail,

1 probably, at least, 15 times. And noted we talked about
2 his mental history and things like that.

3 Q Did you discuss the charges that he was facing and the
4 -- the consequences if he was convicted of those charges?

5 A I did. I mean, I -- I might not have gone through all
6 that at the first meeting --

7 Q Uh-huh.

8 A -- but we definitely did, throughout our meetings,
9 talk about the charges and the consequences.

10 Q So he was charged with kidnapping, assault and
11 battery, first degree burg, and two counts of assaulting a
12 police officer; isn't that right?

13 A Yes.

14 Q Can you give us a bit of a factual background of the
15 events that led up to these charges?

16 A If I ---

17 Q If you remember.

18 A Yeah. If I recall, there -- the victim was out in
19 front of her house. And Mr. Simmons, he was off his
20 medication and quite intoxicated; and grabbed -- grabbed
21 her, drug her into the house, and tried to hold her down.
22 And then it stopped very abruptly. I believe the victim
23 believed there was more sexual undertones to it, which we
24 were obviously arguing against.

25 Q So he told you that he was on different kinds of

1 medications?

2 A Yes.

3 Q And did that prompt you to request a competency
4 evaluation?

5 A Yes. And his demeanor as well. I mean ---

6 Q Okay.

7 A --- he admitted to being kind of fuzzy-headed and not
8 remembering some things.

9 Q So your interactions with him drew you to believe he
10 may -- may or may not be competent ---

11 A Yes.

12 Q --- to stand trial? What was the conclusion reached
13 at -- at the competency evaluation?

14 A That he was competent.

15 Q Okay. He was also evaluated whether he was a sexually
16 violent predator. What -- what prompted you to ask for
17 that evaluation?

18 A One, just because of the nature of the -- because it
19 was a kidnapping, the Judge could consider that for
20 purposes of sentencing. And in my conversations with the
21 solicitor, he made it clear that he was going to ask for
22 the sex offender registry, that the victim truly believed
23 that it was sexual in nature. And so that's why I had him
24 evaluated.

25 Q And if you recall, what were the results of that

1 evaluation?

2 A I believe it -- it basically was by Dr. McKie that he
3 was not likely to offend or things like that. I -- I don't
4 remember exactly. I think it's in the ---

5 Q All right.

6 A --- transcript but ...

7 Q Okay. And the record will speak for itself on that.

8 With regards to the sentencing -- actually, let me
9 back that up. The judge went over -- the judge had this
10 competency evaluation and the SVP evaluation at the plea
11 hearing; is that right?

12 A He did.

13 Q Okay. Now, with the maximum sentence he could receive
14 here, what -- what was your advice on the sentence that he
15 was facing?

16 A Well, we spoke about the kidnapping. I think the goal
17 was always, one, to get the burglary first degree reduced
18 to burglary second. And also to try and get the kidnapping
19 dismissed, or at least get some sort of negotiation on a
20 number on that because -- because it's a strike and it --
21 and it also carries, you know, 85 percent.

22 And I think -- I've heard him say seven or eight
23 years. I think that's what we hoped to get was seven or
24 eight years. I know he knew it was up to the judge. We
25 discussed that. We discussed he was facing zero to

DIRECT EXAMINATION BY MR. MITCHELL - COURTNEY GIBBS 20

1 fifteen. But the kidnapping, that was the biggest issue
2 just because it carried more time.

3 Q Okay. Did you review this -- the discovery -- would
4 you -- first off, did you file a Rule 5 *Brady* motion in
5 this case?

6 A I did.

7 Q Did you receive those materials from the State?

8 A I did.

9 Q What did you relay to Mr. Simmons from those discovery
10 materials?

11 A We -- we definitely -- I mean, we went through them.
12 And -- and I believe I gave him a copy of it. And I
13 apologize, I do not have the file in front of me with the
14 -- usually, I get them to sign a receipt.

15 But we definitely -- even without that, we did go
16 through it. There was not much discovery. I mean, it
17 wasn't a lot. So we did go through it and we talked about
18 it a lot.

19 Q What -- what would have been included in there:
20 victim's statement or ...

21 A Victim's statement, photographs. I don't remember if
22 he made a statement or not. Incident report, witness
23 statements from the neighbors, I believe.

24 Q You filed a notice of appeal in this case; isn't that
25 correct?

1 A Yes.

2 Q And on the motion for reconsideration, what -- what
3 were your conversations about a motion for reconsideration
4 with Mr. Simmons?

5 A We didn't -- we never talked about those words. After
6 the plea, obviously, he was upset and we talked about, you
7 know, he -- how can we -- he wanted help. He basically
8 just said, "Help me."

9 And so I took that to mean file an appeal, so I filed
10 an appeal. He never said the words "motion to reconsider",
11 but we may just of been talking about different things.

12 Q Okay. As far as the sex offender registry goes, you
13 argued that he should not be placed on it; isn't that
14 right?

15 A Right.

16 Q And that was part of the State's theory of the case, I
17 guess, that it was -- that his intentions were sexual in
18 nature ---

19 A Yes.

20 Q --- when he took the victim into the house?

21 A It was.

22 Q Okay. And you argued he should not be placed on the
23 sexual -- sex offender registry?

24 A I did.

25 Q Okay.

1 MR. MITCHELL: Thank you, Ms. Gibbs. Please answer
2 any questions that Ms. Good has for you.

3 CROSS-EXAMINATION BY MS. GOOD:

4 Q You stated you were aware he was on medication for
5 different mental issues, correct?

6 A Correct.

7 Q When it got time for sentencing, can you tell me
8 exactly what you told him regarding the sentencing?

9 A I believe we talked about with the cap, we know it's
10 going to be zero to fifteen. Fifteen is the highest that
11 the judge can give you with the -- these negotiations.

12 But we also talked about the kidnapping being --
13 that's why we wanted to get less time on the kidnapping
14 because it was non-parolable and 85 percent.

15 Q You testified that y'all had hoped to get seven or
16 eight years. What was the discussion regarding the seven
17 or eight years with Mr. Simmons?

18 A I believe he knew -- he knew he was not going to get
19 out. We talked about this was not going to be a probation
20 case, that he was likely to get time. And I believe seven
21 or eight is kind of what he was comfortable with and what
22 we had talked about. And I think the biggest issue was the
23 kidnapping carrying more time just because it was 85
24 percent --

25 Q Did you -- sorry, go ahead.

1 A No. You're fine.

2 Q Did you request seven or eight years during the
3 hearing?

4 A I do not recall. I may not have, reading the
5 transcript.

6 Q Okay. And you testified that after he was sentenced
7 to the 13 years, that y'all had a discussion. He basically
8 said "help me," correct?

9 A Basically, yes.

10 Q And did you go into specifics with him about what
11 "help me" meant?

12 A I remember talking about, you know, we can file an
13 appeal. We have 10 days to do that. If we -- I don't
14 recall talking about a motion to reconsider sentence. I
15 took it to mean that he wanted an appeal is what we were
16 talking about.

17 Q And you're aware when you file notice of appeal on a
18 plea, you have to state grounds for the appeal, correct?

19 A Correct.

20 Q What were the grounds that you stated for that appeal?

21 A I believe it's if -- if my client tells me to file it,
22 then I need to file it.

23 Q But there was no specific grounds under the statute
24 that you put into the actual appeal?

25 A No.

1 Q Did you -- at that time when you were looking at the
2 possibility of appeal, did you consider a motion to
3 reconsider as a better option since you knew there were no
4 statutory grounds for an appeal?

5 A I did not.

6 Q Okay. Did you ever try to discuss that or kind of
7 figure out what he meant by "help me" afterwards? You just
8 assumed it was appeal?

9 A Yes.

10 Q Okay.

11 MS. GOOD: No further questions, Your Honor.

12 MR. MITCHELL: No further questions.

13 THE COURT: You can step down.

14 THE WITNESS: Thank you.

15 (The witness exits the stand.)

16 MR. MITCHELL: The State has no further witnesses at
17 this time.

18 THE COURT: Okay. How can I help anybody?

19 MS. GOOD: Your Honor, we'll just leave it in your
20 discretion. Based on the testimony heard, we believe that
21 Mr. Simmons was under the impression that he was receiving
22 seven or eight years. And after the plea, based on the
23 discussions he had with Ms. Gibbs, I believe the record was
24 clear that there was no statutory grounds for an appeal. A
25 motion to reconsider would have been a better option, and

1 it was nothing that she even discussed with him regarding
2 an option for changing his potential sentencing.

3 THE COURT: Well, you know, I listen to these motions
4 to reconsider arguments at every PCR, but in actuality, 26
5 years, I think I might have set one aside. And I would say
6 I'm an average judge.

7 MS. GOOD: Yes, sir.

8 THE COURT: Judge Barber -- I read the entire
9 transcript. I represent to you that I'm a speed reader.
10 And he covered everything in -- in detail, and he -- he's a
11 somewhat tougher sentencer than some other judges, you
12 know.

13 But he explained his reasons for it. He went into why
14 he found that he needed to registry as a sex offender, even
15 though the attorney did a good job and got some
16 psychiatrist to say he probably was not going to be. He
17 had no history of that before. So he could have not
18 required him to register as a sex offender.

19 Kidnapping carried, you know, all the way up to 30.
20 It was capped off at 15. Judge Barber explained all that
21 to him in detail, about what a strike was and so forth and
22 also they -- he did not object when the attorney indicated
23 that he'd been in jail two years. He didn't even ask to be
24 let out on a bond. He didn't want a jury trial. He only
25 wanted to plead guilty and apologize to the victim because

1 it was uncharacteristic what he did. He was just off of
2 his medications and was out of control.

3 As far as the appeal goes, he has the burden of
4 showing the appeal would have been successful. He didn't
5 put up any evidence about any of that.

6 While he has, you know, bipolar and so forth and so
7 forth -- and I'm not going into any of that because the
8 record indicates that he had health problems since an early
9 age and -- and so forth. He was at his peak of
10 understanding at the time of the guilty plea because he was
11 on his medications for about two years. So he has not met
12 his burden. I'm sorry. Okay.

13 MR. MITCHELL: Thank you, Your Honor.

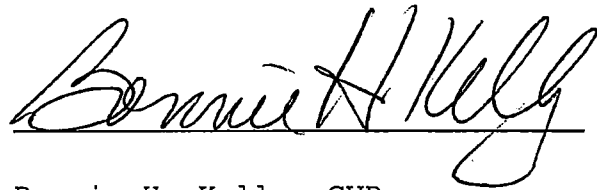
14 MS. GOOD: Thank you, Your Honor.

15 -- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 9th day of December, 2014.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

June 2, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dustin Ray Simmons, #243368,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-00071

ORDER OF DISMISSAL

2015 MAR -2 AM 11:18
JANETTE M. FORD
C.C.P. & E.S.
RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 7, 2014. Respondent made its Return on March 28, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court. Applicant filed an Amended Application for PCR on April 24, 2014.

An evidentiary hearing was held on December 9, 2014, at the Richland County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's plea counsel, Courtney A. Gibbes, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the March 2013 term of the Richland County Grand Jury for Kidnapping (2013-GS-40-1996), two counts of Resisting Arrest While Assaulting a Police Officer (2013-GS-40-2105, -2000),

Burglary in the First Degree (2013-GS-40-1999), and Assault and Battery in the First Degree (2013-GS-40-1997). Applicant was represented by Courtney Ann Gibbes, Esquire. On August 14, 2013, Applicant appeared before the Honorable Robert E. Hood and pleaded guilty as indicted to Kidnapping, Assault and Battery in the First Degree, one count of Resisting Arrest While Assaulting a Police Officer, and to the lesser included offense of Burglary in the Second Degree. Judge Hood sentenced Applicant to thirteen (13) years for kidnapping, and ten (10) years for each additional charge, all of which are being served concurrently.

Applicant filed a notice of appeal from his guilty plea. However, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The Remittitur was sent on November 21, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Unintelligent and involuntary plea in that counsel misadvised Applicant as to the sentence he would receive and that counsel failed to review discovery with Applicant prior to the plea.
2. Ineffective assistance of counsel in that counsel failed to file a motion for reconsideration on Applicant's behalf.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified Counsel was appointed to represent him after he was indicted on the charges he is currently challenging. Applicant testified he met with Counsel multiple times where, at first, they discussed the charges he was facing and the rights he was guaranteed. Applicant testified he was taking medication when he pled guilty. He also testified that he was evaluated and found competent to stand trial. Applicant could not recall whether Counsel

reviewed discovery with him and concluded that she may have. Applicant testified Counsel failed to discuss his option of pleading guilty and the specifics of the deal that he ultimately entered into. Applicant asserted that Counsel advised him he would receive between 6-8 years imprisonment. Applicant confirmed that no motion for reconsideration was made by Counsel.

Counsel Courtney A. Gibbes's Testimony

Counsel testified she was appointed to represent Applicant through her employment with the Richland County Public Defender's Office. Counsel recalled her first meeting with Applicant where she reviewed the facts of the case, the charges he was facing and the possible sentences he was facing. Counsel described Applicant as very open and very remorseful and testified how Applicant never wanted to go to trial. Counsel gave a brief recitation of the underlying factual background where she explained that Applicant, while off his medications, confronted the victim in her yard and forced his way into her house. While in the house, Applicant attempted to pin her down. Counsel stated that the solicitor and the victim believed the attack to be sexually motivated. In an attempt to combat these accusations, Counsel had Applicant evaluated by a doctor who diagnosed him with several mental disorders but found him competent to stand trial. Applicant was also evaluated by another doctor as to whether he is a sexual predator. That doctor concluded Applicant may be likely to reoffend in the future but not in a sexual nature. Counsel testified this was in an attempt to keep Applicant from being required to register as a sex offender.

Counsel explained how she advised Applicant that it was her belief Applicant would receive a sentence around 7-8 years of imprisonment. Counsel further testified that Applicant agreed to plead guilty with the solicitor recommending a cap of fifteen (15) years imprisonment. This was fully explained to Applicant. Counsel testified how she went through discovery with

Applicant and even provided him a copy. Counsel testified Applicant never asked her to file a motion for reconsideration and that she saw no reason to file one in his case.

III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he

would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

Applicant argues he did not plead guilty knowingly and voluntarily. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). 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." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000)

(citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims Counsel advised him he would receive a sentence between 7-8 years of imprisonment, thus rendering his guilty plea involuntary. This Court finds this contention without merit. This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding her preparations and advice concerning the case and the amount of time Applicant was facing. The record reflects Applicant admitted his guilt to the plea court. This Court finds Applicant's testimony regarding a promise of a particular sentence not credible. The record reflects that Applicant was further advised by the plea court of the maximum sentence he could receive on each charge. (Plea Tr. P. 7); See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about sentence length cured by colloquy at guilty plea hearing). Applicant was fully informed of the nature and consequences of his plea. Correspondingly, this Court finds Applicant's testimony regarding his potential sentencing range to be neither credible nor supported by the record.

This Court finds Applicant's allegation that Counsel failed to review discovery with him to be meritless. Counsel's credible testimony on the issue is persuasive. Counsel met with

Applicant and reviewed the discovery materials turned over by the State. Counsel also provided Applicant with a copy of the discovery.

This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

Failure to File a Motion for Reconsideration

Applicant also alleges that Counsel was ineffective for failing to file a motion for reconsideration of the sentence imposed. Applicant testified Counsel never advised him of the right to ask for reconsideration. This Court finds this allegation to be without merit. Under Rule 29(a), SCRCrimP, "post-trial motions shall be made within ten (10) days after the imposition of the sentence." Counsel was never asked by Applicant to file the motion to reconsider within the ten (10) day timeline, nor did counsel have any reason to believe Applicant wanted such a motion filed. Counsel also found no reason to file a motion for reconsideration. This Court finds Counsel's performance was objectively reasonable under the prevailing professional norms.

Further, Applicant has failed to prove resulting prejudice. The record before this Court and testimony provided at the hearing firmly convinces this Court Applicant would have been no better off in filing a motion for reconsideration as there was no new evidence or information that was not already provided to the plea judge.

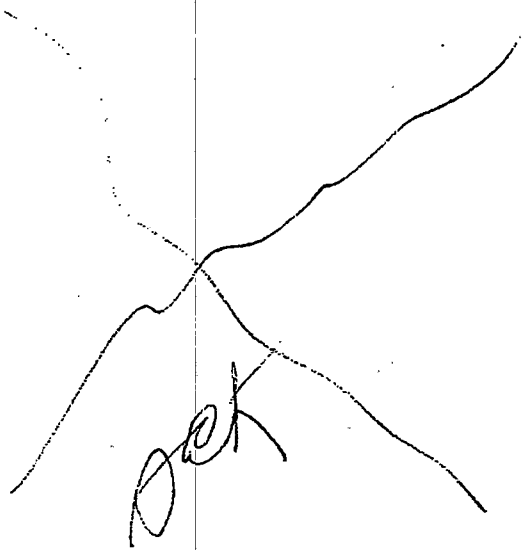
All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

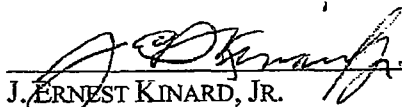
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 19 day of February, 2015.


J. ERNEST KINARD, JR.
Presiding Judge

Camden, South Carolina

88
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
Ray #243368 Simmons

FORM 4

JUDGE IT IN A CIVIL CASE

CASE NUMBER: 2014CP4000071

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 2 March 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Ray #243368 Simmons

Anna Rawl Good

Megan Harrigan Jameson

Ray #243368 Simmons

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Dustin Ray Simmons

Plaintiff,

vs.

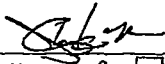
State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-00071

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Anna R. Good, Bar No. 72808 Address: PO Box 7284 Columbia, SC 29202 Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: Clay Mitchell, Bar No. 101443 Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax: _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant 2/13/15 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCANNED