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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

---

KENDALL M. BACCUS

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE #2015-001280

---

APPENDIX

---

LANELLE CANTEY DURANT  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2012-GS-21-1146
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
- vs -	)	TRANSCRIPT OF RECORD
	)	
	)	
KENDALL MARQUISE BACCUS,	)	
	)	
Defendant.	)	
	)	

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April 19, 2013  
Florence, South Carolina

B E F O R E:

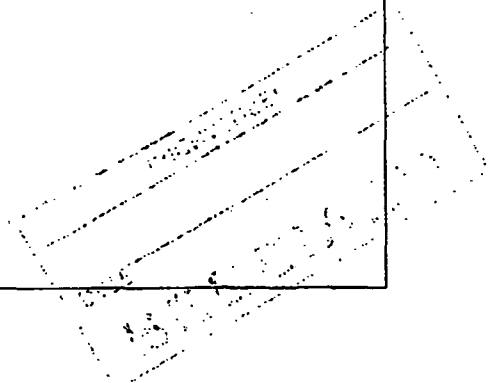
THE HONORABLE WILLIAM SEALS, Judge

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

PATRICIA PARR, Assistant Solicitor  
Attorney for the Plaintiff

WILLIAM GROVE, Esquire  
Attorney for the Defendant

KRYSTAL J. SMITH  
Court Reporter



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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 APRIL 19, 2013

2 (WHEREAS this matter was scheduled for a term of General  
3 Sessions court, the defendant appeared along with his  
4 counsel of record. The State appeared through counsel of  
5 record. The plea hearing began at 9:55 a.m.)

6 THE COURT: I'm ready.

7 MS. PARR: May it please the Court. This is Kendall  
8 Baccus. It's Indictment 2012-1146. He's represented. He is  
9 indicted for attempted murder. He can get up to thirty years.  
10 The State is recommending a cap of twenty. The -- but we do  
11 want twenty, and Mr. Harps is here, who is the victim. Your  
12 Honor, Mr. Harps would like to address the Court at the  
13 appropriate time.

14 THE COURT: Okay. Is everybody in the courtroom that  
15 might plead guilty today? That way I can just go over  
16 everybody's rights ---

17 MS. PARR: Oh, yes, sir.

18 THE COURT: --- at one time.

19 MS. PARR: Let me check and see.

20 THE COURT: Okay.

21 THE DEPUTY: Judge, we need to get one out of the holding  
22 cell.

23 THE COURT: Good. I'll wait on you. He's going to get  
24 one more.

25 (Whereupon, there is a pause in the proceedings.)

1 MS. PARR: Your Honor, they said that everybody is in the  
2 box and everybody should be here.

3 THE COURT: How about the guy in the holding cell?

4 THE DEPUTY: Here he comes, Judge.

5 THE COURT: Okay. All right. Everybody that's in the  
6 courtroom and you're here to plead guilty, you signed up to  
7 plead guilty or you're thinking about pleading guilty, I want  
8 to go over certain rights that you have and I want you to  
9 understand those rights.

10 The first thing I want to tell you is you don't have to  
11 plead guilty. If you would rather have a jury trial instead,  
12 all you have to do is ask me and I'll make sure you get one.  
13 Furthermore, I want you to understand that if you have a  
14 trial, you have nothing to prove. The burden of proof is on  
15 the State of South Carolina to prove you guilty beyond a  
16 reasonable doubt.

17 Furthermore, if you had a trial, I want you to understand  
18 that you would have a jury made up of twelve people and it  
19 would have to take all twelve members of the jury to agree  
20 unanimously to convict you before the Court could sentence  
21 you. Furthermore, at your trial your lawyer would have the  
22 right to cross examine and confront all of the State's  
23 witnesses.

24 Furthermore, at your trial you could come over here, you  
25 could be sworn in, and you could testify if you would like.

1 You can tell your side of the story. However, it's important  
2 to understand that you do not have to testify because you have  
3 the constitutional right to remain silent, and if you chose to  
4 exercise that right and not take the stand, I want you all to  
5 understand that I would tell the jury they cannot use that  
6 against you in any way.

7 I would tell the jury they cannot even talk about that  
8 fact in the jury room. I would tell the jury that the fact  
9 that you did not testify is to have absolutely no prejudice  
10 against you in their decision. Furthermore, if you have a  
11 trial or with this plea, if you're not happy with something  
12 that takes place, you can appeal it, but you've got to do so  
13 within ten days.

14 These are your rights to a jury trial. I want you to  
15 understand these rights. If you come before me and you have  
16 any questions about your rights to a trial, do not hesitate to  
17 ask me or your lawyer and we'll make sure they're cleared up  
18 for you.

19 All right. Now, Mr. Baccus, did you understand these  
20 rights to a jury trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions about your rights  
23 to a trial?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you want to give up your right to a trial

1 and plead guilty today? Do you want to plead guilty ---

2 THE DEFENDANT: Yes, sir.

3 THE COURT: --- or do you want a trial?

4 THE DEFENDANT: Plead guilty.

5 THE COURT: All right. And you are pleading guilty to  
6 attempted murder, which carries up to thirty years in jail; is  
7 that right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you satisfied with your lawyer?

10 THE DEFENDANT: Yes, sir, I am.

11 THE COURT: Has he done everything you've asked him to  
12 do?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he answered all of your questions?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Has anybody promised you any type  
17 of reward or gift to get you to plead guilty?

18 THE DEFENDANT: No, sir, Your Honor.

19 THE COURT: Has anybody threatening you or coercing you  
20 or trying to force you into pleading guilty?

21 THE DEFENDANT: No, sir, Your Honor.

22 THE COURT: All right. Are you under the influence of  
23 any drugs or alcohol?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you understood all of my questions?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you answered me truthfully?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: All right. Thank you. Solicitor?

7 MS. PARR: May it please the Court. This incident  
8 occurred on April 3<sup>rd</sup>, 2012. On that particular day, the  
9 defendant and co-defendant were in the neighborhood as to  
10 where Mr. Harps was at that time -- where Mr. Harps'  
11 girlfriend was living at that time.

12 The victim was approached by the defendant and co-  
13 defendant and began arguing with him about a matter that  
14 occurred earlier. The victim was accused of talking to or --  
15 or saying something to the co-defendant's girlfriend or  
16 something of that nature. The victim walked away. Mr. Harps  
17 walked away from the defendants and went into his residence  
18 with his girlfriend and their young child.

19 At that time as he was walking away, they pointed -- you  
20 know, pointed a handgun at him and warned him not to walk  
21 away, but he went on to avoid any confrontation and went  
22 inside his residence. When he got in, the defendants went to  
23 his house and shot through his door, wounding him in his arm.  
24 It struck him in his upper left arm. He required immediate  
25 medical assistance.

1       The children were in that vicinity as well. So it could  
2 have been a really dangerous situation. He was in the  
3 hospital and the Victim Comp paid his -- most of his medical  
4 bills, but not all of his bills were paid and he does want to  
5 tell the Court about that.

6       The defendant does not have a prior record. He did  
7 confess. Because law enforcement was dispatched there  
8 immediately and they took photographs of the scene and there  
9 are numerous photographs. And he did give a statement  
10 admitting that he, in fact, did this. He does not have a  
11 prior record.

12       THE COURT: All right. I'll be glad to hear from the  
13 victim if he would like ---

14       MS. PARR: Okay.

15       THE COURT: --- to address the Court.

16       MS. PARR: Mr. Harps, if you would, state your name.

17       THE VICTIM: Raymond Harps.

18       THE COURT: Yes, sir.

19       THE VICTIM: Considering the circumstances, I would like  
20 to see if I can get granted restitution considering I can't  
21 use my left arm properly now. That's it.

22       THE COURT: How much are his medical bills?

23       MS. PARR: Your Honor, pardon me?

24       THE COURT: How much are his medical bills?

25       MS. PARR: His medical bills ---

1 THE COURT: That are unpaid.

2 MS. PARR: I don't have -- because he said the -- what's  
3 left there is what -- I think what he missed from work. The  
4 Crime Victim's Compensation Fund paid the medical bills. They  
5 paid your medical bills.

6 THE COURT: So he has no outstanding bills?

7 MS. PARR: No. He has no outstanding medical bills,  
8 right.

9 THE COURT: All right. I'll accept the plea and find  
10 there's a factual basis for it and he is giving same freely  
11 and intelligently and with the advice of competent counsel.  
12 Mr. Grove?

13 MR. GROVE: Thank you, Judge. Before I begin, today is  
14 381 days that Kendall has been incarcerated. He was arrested  
15 not long after this incident occurred. And not to dispute any  
16 of the facts as presented, but maybe to paint a more clear  
17 picture of what happened, this actually happened within arm's  
18 reach of Mr. Harps' door. This wasn't a confrontation in one  
19 place and then later on a confrontation somewhere else.

20 And also you heard talk of wife and children --  
21 girlfriend and children and they are -- it's not disputed that  
22 they were in the home. They were not present at the time.  
23 Neither Kendall nor Mr. Addison, his co-defendant who is also  
24 his brother, they didn't know that and that doesn't make it --  
25 it doesn't make it any less dangerous by any means, but they

1 had no idea that anyone else was there. I just wanted to  
2 clarify those things for you, Judge.

3 Kendall is twenty years old. As you heard, he doesn't  
4 have so much as an arrest on his record leading up to this,  
5 and I can assure Your Honor in the last twenty and a half  
6 years if he had fifteen minutes that he could take back, it  
7 would be these fifteen minutes.

8 I don't think that this is something that is typical of  
9 Kendall. He has always been up front with me. He has always  
10 been very respectful with me. I do think that this is an  
11 unfortunate and terrible incident and one that he certainly  
12 claims responsibility for and is ready to own up to, but it's  
13 not one that is typical of the behavior that you could expect  
14 from Kendall.

15 He was for a while living in North Carolina. Before he  
16 found himself here, he was actually going through the Job  
17 Corps program in Bamberg right before this incident happened.  
18 He went as far as the tenth grade. He doesn't have any kids,  
19 at least not yet.

20 I've talked with his father a couple times. His father  
21 was actually here earlier this term. This plea has been a  
22 long time coming. I think he signed the sentencing sheet  
23 several weeks ago and it's just been a scheduling issue as to  
24 when we could get in front of a judge. But his father is  
25 obviously concerned about today's outcome, as is Kendall.

1 Judge, I think for a long time Kendall was wrestling with  
2 the wording of the charge that he's facing, attempted murder.  
3 A lot of our conversations resolved -- revolved around this  
4 wasn't how I saw this conversation going. I don't know why I  
5 brought a gun. I don't know. I didn't really have -- I  
6 didn't go there with the intention of somebody getting hurt.  
7 I certainly didn't intend for anybody to be killed. I think  
8 that that was something that he and I wrestled with as to what  
9 the charge is called, but also as to the State's burden and  
10 what they have to prove.

11 We were offered a cap of twenty years and essentially my  
12 explanation to Kendall was if we -- if we went forward with a  
13 trial, we would only -- we wouldn't be disputing the  
14 allegations. We would be disputing the appropriateness of the  
15 charge and essentially fighting for a lesser included offense,  
16 and I think as good as we could hope for would be assault and  
17 battery of a high and aggravated nature. We'd be lucky to get  
18 that, but that would be as good as we could have it turn out.

19 And given the State's recommendation of a cap of twenty,  
20 we're essentially there now and that was certainly one of the  
21 things that we talked about and that when you get yourself  
22 into the best position you can be in as far as what you could  
23 expect out of an outcome from a trial, there's no longer any  
24 sort of a need to contemplate a trial. That it becomes when  
25 to plea and how soon can we get it done, and I think that that

1 probably explains some of the delay, the 381 days that it's  
2 taken to get us here, was a little bit of confusion as to the  
3 law fitting into the facts of this particular case.

4 But we're here now and this is certainly again, Judge,  
5 something that Kendall has always expressed remorse for. It's  
6 something that he -- I don't think he ever intended to do  
7 this, but he certainly put himself in the situation and it  
8 happened and that's something that he's going to have to deal  
9 with.

10 He may like to address Your Honor at the appropriate  
11 time. Again, Judge, no record. A terrible, terrible thing,  
12 but not something that is behavior that could be expected out  
13 of Kendall. I do hope that you'll consider that and we are  
14 asking that Your Honor consider a sentence on the lower end of  
15 this cap that would give Kendall, who is twenty years old now,  
16 an opportunity for some form of a productive life when he's  
17 done fulfilling his obligation.

18 THE COURT: Does he have a juvenile record of any kind?

19 MS. PARR: Your Honor, I'm sorry. I did not check for  
20 his juvenile record, but Mr. -- I might be able to get  
21 somebody to call downstairs and see if he has something here  
22 in Florence County. But Mr. Harps wanted to see if he could  
23 address the Court again.

24 THE COURT: Mm-hmm.

25 THE VICTIM: Yes. Your Honor, the argument was between

1 me and the defendant's brother. It had nothing to do with  
2 him. But I let it be known before the altercation got real  
3 big that, you know, I wasn't going to stand there. I was  
4 getting my wife and my kids and they was asleep. So he knew  
5 that I had kids in the house and he knew, you know. Well, I  
6 think he knew what -- what he had planned to do to me when he  
7 -- when he approached my house. So I don't -- I don't  
8 understand what he's talking about.

9 THE COURT: I understand.

10 MS. PARR: Your Honor, she's gone to check on that, if we  
11 could have just a minute, and they can tell you. (Whereupon,  
12 there is a pause in the proceedings.)

13 MS. PARR: Your Honor, she's checking on that.

14 THE COURT: Okay.

15 MS. PARR: The defendant said -- he said that he's never  
16 been arrested here ever.

17 THE COURT: All right.

18 MR. GROVE: Should we stand aside for a minute?

19 THE COURT: Yeah. Let's go ahead and stand aside. Let's  
20 find out.

21 MS. PARR: Okay. That's fine.

22 (Whereupon, there is a break in the proceedings from  
23 10:12 a.m. until 10:20 a.m.)

24 MS. PARR: Okay. Your Honor, we're back on Baccus. This  
25 is the record from Family Court for ---

1 THE COURT: Okay.

2 (Whereupon, there is a pause in the proceedings.)

3 THE COURT: So it looks like he has two assault and  
4 batteries.

5 MS. PARR: Right.

6 THE COURT: As a juvenile.

7 MS. PARR: That was as a juvenile and that's what that  
8 looks like.

9 SENTENCE OF THE COURT

10 THE COURT: All right. The sentence of the Court is  
11 twenty years. I'm going to give him 381 days credit.

12 MR. GROVE: Thank you, Judge.

13 (Whereupon, the proceedings end at 10:21 a.m.)

14

15 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA )  
2 ) CERTIFICATE  
3 COUNTY OF FLORENCE )  
4

5 I, the undersigned, Krystal J. Smith, Official Court  
6 Reporter for the Twelfth Judicial Circuit of the State of  
7 South Carolina, do hereby certify that the foregoing is a  
8 true, accurate, and complete Transcript of Record of all the  
9 proceedings had and evidence introduced in the hearing of the  
10 above captioned case, relative to appeal, in the Court of  
11 General Sessions for Florence County, South Carolina, on the  
12 19<sup>th</sup> day of April, 2013.

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

15

16

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20 December 30, 2013

21

22

23

24

25

FILE FORM 5

STATE OF SOUTH CAROLINA

2014 JAN 15 } PM 3:40

IN THE COURT OF COMMON PLEAS

COUNTY OF Florence S.C.

CONNIE REEL SHEARN  
CCCP & GS  
FLORENCE COUNTY, SC

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

# 355137

v.

State of South Carolina

2014 CP-21-119

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE County Correctionals Inst.
2. Name and location of Court which imposed sentence Florence City-County Complex *General Session Court*
3. Name(s) of co-defendant(s) (if any) Nicholas Jacoby Addison
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2012-GS-21-01146
  - (b) ~~2012-GS-21-01146~~ M-379678(WN:)
  - (c) ATtempt Murder
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 19, 2013
  - (b) 20 years open plea

CERTIFIED: A TRUE COPY  
*Connie Reel Shearn*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

Revised 3/2003

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty  \_\_\_\_\_

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

Yes

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

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

i. South Carolina Court of Appeals (direct appeal)

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. NOV. 6. 2013

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

Ineffective Assistance Counsel. and my defense attorney representation was not within The Range and Scope of Competence demanded (by) "Strickland Vs. Washington" and its Progeny - also Blair vs. State

Revised 3/2008

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10): *My defense attorney NEVER made any ATTEMPT To*

- (a) *Ascertain whether or not I actually knew what the elements for the crime charged were or whether*
  - (b) *or not I understood exactly what the term "criminal*
  - (c) *elements" actually meant.*
- Also I didn't receive an Blair hearing.*

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? 10 years open plea
- (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? \_\_\_\_\_

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

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

- i. Will E. Grove City - County Complex 180 N. Luby St.
- ii. MSC - E Florence, SC, 29501
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

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

Vocate of sentence / Time Reduction

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

NO

STATE OF SOUTH CAROLINA )  
 )  
County of )

VERIFICATION

I, \_\_\_\_\_, 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.

Leonard M. Breen

SWORN to and subscribed before me this 14th  
day of January, 2014.

Mischa Michel (L.S.)  
Notary Public

My Commission Expires: 9-3-2014

FILED  
2014 JAN 15 PM 3:40  
CONNIE REEL-SHEA  
CCCP & GS  
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY  
Connie Reel Shea  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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

I, \_\_\_\_\_, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kendal M. Bonds  
Applicant

SWORN or affirmed to and subscribed before me this  
14<sup>th</sup> day of January, 2014.

Mische Michel  
Notary Public

My Commission Expires: 9-3-2014

2014 JAN 15 PM 3:40  
CONNIE REEL-SHEARER  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
Connie Reel Shearer  
CLERK OF COURT, C.P. & G.S.  
FLORENCE COUNTY, S.C.

## Post Conviction Relief Attachments Arguments.

SEC 10-11, My defense attorney Mr. Will. E. Grove never explained to ME the Pititioner Kendall M. Baccus or discussed with me how the elements of the crime and charge. And the evidence that the prosecution had planned to introduce into evidence against me. And did not discuss how the sentencing would be done, especially as it relates to the elements in the crime.

"STATE v. Boyd."

My counsel however was very ineffective in my case due to these facts, I was unaware of a lot of things. And tired to explain as my family also have to Mr. Will. E. Grove of my problems. That there could be some other help I the Pititioner could use being that I've gotten into an depressing stage as before and came from a very unbalanced background. That's because of family and my mental diagnosis, of being border-line retarded. I've always had issues coming up. In the school systems and in the foster care system.

I the Pititioner Kendall M. Baccus was very incompetent at the time I enter my guilty plea. My counsel Mr. Will. E. Grove was ineffective in failing to make and file motions for an Blair hearing in my case, given the evidence of my incident report when the officer was questioning. So that the courts could of had me examine by doctors to see if I'm able to stand trial.

STATE v. Blair, 275, SC, 529, 243, SE 2d. 536 (1981). Most recently one.

on Here: My counsel has fail to fully investigate my case and my Mental Capacity as in the Jeter - Case, 308 . SC at 233, 417 SE. 2d at 596.

Im willing to Provide documents of my records and more motions if needed, due to the facts I do understand to return a verdict of "Guilty But Mentally ill". The Burden of Proof is upon the state to Prove Beyond a reasonable doubt to the Trier of facts. That I the Pitioner also has to Prove By a Preponderance of evidence that when the crime was committed I've Been mentally ill.

Knowing That a Court may not accept a Plea of Guilty, But mentally ill unless after a hearing. The Court makes a finding upon the records that the Pitioner Proved By a Preponderance of the evidence when crime was committed he was mentally ill as provided in Section 17-24-20 As In the Case STATE v. Hornsby (SC. 1997) 326. SC. 255 (S); Mental Health 433(1) called (GBMI).

I the Pitioner has a learning disability and I've taken Special education classes. I am "Slower Than others, There are Possible records of these facts. They'll Be shown once I the Pitioner Been assigned an lawyer.

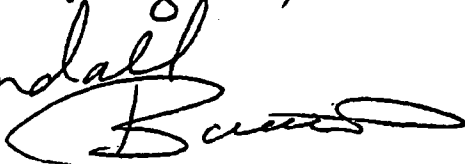
However once my assign counsel contacts me I'll Be able to Have the departments I the Pitioner has Been Seen By, As said the Departments of mental Health, Department of Disabilities and Special Needs. There Re an Preliminary Indication of a dual diagnosis of mental illness. History: 1962 Code § 32-977; 1974 (58) 2642; 1990 Act No; 419, § 1; (1990) Act No; 431, § 1 (1993) Act No; 181, § 1086.

C-R Attachments

MY Counsel fail To do a full Procedure of Analysis's. To Prove and let the Courts Be Known more of my History. And then The Court Could of seen things differently in that aspect. It's unfair To have Been sentenced To a 20) ~~Forty~~ Twenty year sentence for the results of this Crime That Was Committed. Knowing That during the time There's Been a mental illness and uses of ~~drugs~~ drugs.

2nd MY Sentencing Judge William H. Seals, Jr. Did Stated To MY Counsel Will. E. Grove He Sentenced me To The Department of Corrections due To a Charge of Simple assault in 2006 when I was 15 and recieved 16 Hours of Community Service. However That Case was never Ruled I was a minor during that time. How could he use That to Sentence me the petitioner on April 19, 2013 in The Florence County - City Complex Buliding. My adult record was Clean, I Ask that the Court of this P. C. R take my case into consideration and allow me To Present all Facts and allow a Second chance ~~on~~ my Behalf.

I'll have The full arguement of the remark of my Sentencing By The Judge Sent To your Courts soon with all other documents and Records.

Thank you,  
Kendall  


*Extra*

STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 )  
 )  
 Kendall M. Baccus, #355137, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

2014-CP-21-0119

RETURN

In response to the post-conviction relief application filed on January 15, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for attempted murder (2012-GS-21-1146). Applicant was represented by Will Grove, Esquire. On April 19, 2013, Applicant pled guilty as indicted. The Honorable William H. Seals, Jr., sentenced Applicant to twenty (20) years imprisonment.

Applicant filed a timely Notice of Appeal; however, it was dismissed by the South Carolina Court of Appeals for failing to provide a sufficient explanation under Rule 203(d)(1)(B)(iv). The Remittitur was sent on November 21, 2013.

II.

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

1. Ineffective assistance of counsel.

- a. Counsel “never made any attempt to ascertain whether or not I actually knew what the elements for the crime charged were or whether or not I understood exactly what the term ‘criminal elements’ actually meant.”
- b. Failure to conduct a Blair hearing.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant’s records from the Department of Corrections, the plea transcript, and the appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### III.

Respondent asserts that Applicant’s allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant’s attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel’s deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine

confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

IV.

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

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. CROOM HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

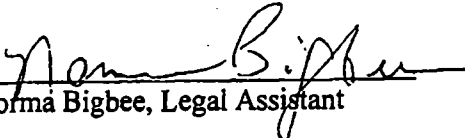
Nov. 5, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2014-CP-21-0119
	)	
KENDALL M. BACCUS, #355137	)	
	)	
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:

**Jonathan D. Waller, Esquire**  
**1720 Main St., Suite 104**  
**Columbia, SC 29201**

DATED this 5<sup>th</sup> day of November, 2014.

  
 Norma Bigbee, Legal Assistant

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2014-CP-21-00119
	)	
Kendall Baccus,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

April 16, 2015  
 Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Jonathan Waller, Esquire  
 Attorney for the Plaintiff

Croom Hunter, Esquire  
 Attorney for the Defendant

Krystal J. Smith  
 Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 APRIL 16, 2015

2 (WHEREAS this matter was scheduled for a post-conviction  
3 relief hearing, the applicant appeared along with his  
4 counsel of record. The hearing began at 9:46 a.m.)

5 THE COURT: Yes, sir?

6 MR. HUNTER: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. HUNTER: This is Kendall Baccus versus the State of  
9 South Carolina, 2014-CP-21-0119. Mr. Baccus is presently  
10 incarcerated in SCDC pursuant to the Florence County Clerk of  
11 Court's orders.

12 He was indicted the September 2012 term of the Florence  
13 County Grand Jury for attempted murder. That was 2012-GS-21-  
14 1146. He was represented by Mr. Grove.

15 On April 19<sup>th</sup>, 2013, he pled guilty as indicted. The  
16 Honorable William H. Seals Jr. sentenced Mr. Baccus to 20  
17 years' imprisonment. He filed a timely notice of appeal.  
18 However, it was dismissed by the South Carolina Court of  
19 Appeals for failing to provide a sufficient explanation under  
20 the rules. A remittitur was sent on November 21<sup>st</sup>, 2013.

21 He filed this application for PCR on January 15<sup>th</sup>, 2014.  
22 He's represented here today by Mr. Waller. The State is ready  
23 to proceed.

24 THE COURT: All right. Mr. Waller?

25 MR. WALLER: Thank you, Your Honor. We'd call Kendall  
26

KENDALL BACCUS - DIRECT BY MR. WALLER

1 Baccus.

2 THE CLERK: Please go up to the Bible. Place your left  
3 hand on the Bible and raise your right hand. Raise your right  
4 hand. Do you swear to tell the truth, the whole truth, and  
5 nothing but the truth, so help you God?

6 THE APPLICANT: I do.

7 THE CLERK: Okay. Please take your seat and state your  
8 name for the record.

9 THE APPLICANT: I'm Kendall Baccus.

10 KENDALL BACCUS, being first duly  
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. WALLER:

14 Q: Mr. Baccus, how are you this morning?

15 A: Doing all right.

16 Q: Mr. Baccus, how old are you?

17 A: I'm 22.

18 Q: Okay. And where are you from?

19 A: I'm from Florence, South Carolina.

20 Q: Okay. And how long have you lived in Florence?

21 A: Not very long. I've been in foster care pretty much the  
22 majority of my life. I want to say eight years.

23 Q: Okay. Where did you live before Florence?

24 A: Bishopville.

25 Q: Okay. How old were you when you got arrested on these

## KENDALL BACCUS - DIRECT BY MR. WALLER

1 charges?

2 A: I was 19.

3 Q: Okay. And how did Mr. Grove come to be your attorney?

4 A: It's my public -- my public defender as I caught the

5 charge.

6 Q: Okay. Was he your first lawyer?

7 A: He was my first lawyer.

8 Q: Okay. So the only one you ever had?

9 A: The only one I ever had.

10 Q: Okay. Did you make bond or were you locked up?

11 A: I never was able to make bond. Financial problems. I

12 never made bond.

13 Q: Okay. How about -- about how long were you locked up?

14 A: I'd say a year and four months.

15 Q: Okay. During that time, did -- how many times did you

16 meet with Mr. Grove?

17 A: I want to say approximately ten -- ten times.

18 Q: Okay. So a good number of times? Okay.

19 A: Yes.

20 Q: Did y'all have an opportunity during those meetings to

21 look over or -- excuse me -- to talk about the charge that you

22 had?

23 A: We -- we -- we pretty much -- we went over it. We didn't

24 -- I feel as that we didn't go full detail, but we went over

25 minor -- minor things. You know, he didn't really know much

KENDALL BACCUS - DIRECT BY MR. WALLER

1 of what was going -- what was going to take place.

2 Q: Okay. What were you charged with originally?

3 A: Attempted murder.

4 Q: Okay. Did y'all discuss the penalties of attempted  
5 murder?

6 A: We discussed the -- the situation of the crime -- of the  
7 charge, but we didn't discuss anything else other than that.

8 Q: Okay. Not specific to your case and your facts, but did  
9 y'all discuss in general, like, the possible penalties that  
10 attempted murder carried?

11 A: Yeah. He stated it carries up to 30 years.

12 Q: Okay. Did y'all discuss the elements of the offense and  
13 what the State would have to prove?

14 A: I'm not sure on that one. I'm not sure or I can't  
15 recall.

16 Q: Okay. Did you have an opportunity to look over the  
17 discovery that the State provided with him?

18 A: Actually, man, I did not even get the -- get the full  
19 understanding of my motion of discovery at all while I was  
20 incarcerated in the county jail.

21 Q: Did you have copies of anything?

22 A: I have -- I'd gotten it a little bit into my time, you  
23 know, right before I got time to get ready to go up before  
24 court.

25 Q: Okay. How long do you think you had those copies?

KENDALL BACCUS - DIRECT BY MR. WALLER

- 1 A: I'm not really sure.
- 2 Q: Okay. Let me back up a little bit. How -- how far did  
3 you go in school?
- 4 A: Tenth grade.
- 5 Q: Okay. I know you said you were in foster care. Had you  
6 ever been treated for any learning disabilities or mental  
7 issues?
- 8 A: Yes, I have.
- 9 Q: Okay. Can you describe a little bit what you've been  
10 treated for?
- 11 A: ADHD, learning disability, comprehension level. I guess  
12 that's it.
- 13 Q: Okay. And I know that was mentioned in the transcript.  
14 How does that affect you?
- 15 A: Like, it affect me a lot, you know. It affected me a  
16 lot.
- 17 Q: Okay. Do you have -- are you able to read very well?
- 18 A: I can read. I'm not very -- I'm not very good at my  
19 mathematics and stuff like that though.
- 20 Q: Okay. How about comprehending and, like, remembering  
21 what you've read?
- 22 A: That's -- I forget. I forget quick.
- 23 Q: Okay. Did you and Mr. Grove talk about that?
- 24 A: I stated all of that, including my father also.
- 25 Q: Okay. Did y'all discuss the -- any possible defenses

KENDALL BACCUS - DIRECT BY MR. WALLER

1 that you might have to this charge?

2 A: Yes. He actually -- he -- when Mr. Grove -- he stated  
3 that I could -- he would try to get me a lesser charge, you  
4 know, and that's what we agreed upon at the time, and he  
5 stated that my solicitor, Patricia -- Pat Parr, wasn't trying  
6 to, you know, give me that opportunity.

7 Q: Okay. What -- what charge -- you said lesser charge.  
8 What charge?

9 A: He wanted to drop it down to assault and battery high and  
10 aggravated, which carried up to ten years, if I'm not  
11 mistaken.

12 Q: Okay. When y'all were talking about any possible  
13 defenses, did y'all -- did you give him any information about  
14 the incident?

15 A: No, no, no. We talked about the -- the defense on -- it  
16 wasn't -- it was, like -- I can't remember, man.

17 Q: Okay. That's okay. Did you give him the list of any --  
18 or the names of any witnesses that might help you in your  
19 case?

20 A: No. No.

21 Q: Okay. You said y'all met probably ten times. What did  
22 y'all talk about during those meetings?

23 A: You know, it was basically, like, you know, like, trying  
24 to get me a lesser charge, you know, for the -- for the  
25 offense, like. He stated that he didn't know really what

KENDALL BACCUS - DIRECT BY MR. WALLER

1 happened and what took place. You know, I didn't really -- I  
2 was -- I was shocked, you know, at the time because my  
3 brother, which is my co-defendant, during the time of the  
4 crime or whatever, whatever, we got arrested at the same --  
5 same night.

6 And so, you know, we was basically trying to, you know,  
7 see what was -- how we was going to fight the situation, no  
8 matter how it occurred or whatever. And Mr. -- Mr. Grove --  
9 he -- he didn't really -- he really didn't talk to me much,  
10 man, in my favor, you know.

11 Q: Okay. Well, in those ten meetings, about how long do you  
12 think each one took on average?

13 A: I'd say a little over, like, 20 minutes. If I'm sure, it  
14 was ten, but I'm not very -- you know, I -- man, I've been up  
15 the road for some years now and I'm really -- I want to say 20  
16 minutes -- 25 -- 20 minutes or 30 minutes.

17 Q: Okay. Did y'all ever discuss going to trial on this  
18 case?

19 A: That's one thing I really wanted to do. I feel as that  
20 -- that's the main thing and I feel as that -- I feel trial  
21 would have been suitable for me, and he just wasn't really  
22 trying to understand me on that grounds. So I kind of cut  
23 into the edge of what he wanted, you know. I feel as that  
24 trial was really what I wanted.

25 Q: Okay. When y'all -- when you -- you said trial was what

KENDALL BACCUS - DIRECT BY MR. WALLER

1 you wanted. Did y'all -- had y'all started getting ready for  
2 a trial?

3 A: I asked him before -- even before that process -- I do  
4 remember now. It's coming back now. When I asked for -- when  
5 I was supposed to go up for preliminary hearing and all that,  
6 I requested for all of that, and he said that it wouldn't be  
7 any reason for going forth with a preliminary hearing. And I  
8 was like why not, and I didn't know really how much evidence  
9 was against me, what was really -- what was I facing. I  
10 didn't -- I have no clue nor idea of what -- what I was up  
11 against.

12 Q: Okay. Did Mr. Grove explain to you your right to a jury  
13 trial?

14 A: Mr. Grove -- he did state it to me. He did state it to  
15 me. He did state it.

16 Q: Okay. Did he explain to you what -- what would happen if  
17 you had a jury trial?

18 A: No. He did not explain the -- he did not explain the  
19 full -- no, he did not.

20 Q: Okay. Did he explain the -- the procedures that would  
21 take place during a trial?

22 A: No.

23 Q: Okay. Ultimately, you ended up pleading guilty; is that  
24 right?

25 A: True.

KENDALL BACCUS - DIRECT BY MR. WALLER

1 Q: Okay. And you pled to a cap of 20 years --

2 A: True.

3 Q: -- on the attempted murder charge? Okay. What did you  
4 and Mr. Grove talk about in making that decision to plead  
5 guilty?

6 A: He basically said that during that term, that court term  
7 -- well, actually before that court term, he had to set down  
8 with my solicitor, Pat Parr, and they was going over whatever.  
9 They said I was on a docket to go to trial, and I said okay.  
10 I was on a docket to go to trial. They said they had me --  
11 either you're going to take this plea right here or you're  
12 going to go forth to trial.

13 And -- and during that time, he stated to me -- before  
14 that -- before that occurred, he said, oh, man, I feel as that  
15 the best thing is -- is, you know, this opportunity that  
16 you're being given right now. This is a cap of 20 because,  
17 you know, the little evidence they had against me was that my  
18 brother -- my -- I guess he had some recorded statements or  
19 something like that. And my victim. So I was, like, that was  
20 enough to say that I committed this crime and, therefore, he  
21 said yes. So I was sure that, you know, it probably been the  
22 best thing in my interest. It was in the best of my interest.

23 Q: Okay. You said a cap of 20. Why -- how did that number  
24 come into play?

25 A: I'm not sure. It was zero -- it was supposed to be zero

KENDALL BACCUS - DIRECT BY MR. WALLER

1 to 20 with a cap on it.

2 Q: Okay. You testified earlier that y'all were attempting  
3 to get a charge to assault and battery of a high and  
4 aggravated nature?

5 A: Yes.

6 Q: Okay. Did you and Mr. Grove ever have any conversations  
7 about that charge being more appropriate?

8 A: Yes. Me and Mr. Grove -- we -- we talked on that -- on  
9 that -- on that and, like I said, he feel as that that would  
10 have been the -- the best thing for me, you know, and he said  
11 he was going to talk to Ms. Patricia on it, and she said no  
12 because she offered -- my first plea was 25 and, you know, she  
13 was -- she wasn't trying to do it and I guess he was like,  
14 well, you know, man, you know, we'll see what the best thing  
15 comes out of this, you know.

16 Q: Okay. So you pled guilty to a cap of 20 on the attempted  
17 murder; is that right?

18 A: Yes, sir.

19 Q: Before you pled guilty, did you and Mr. Grove talk about  
20 what the judge would take into account when he was coming up  
21 with a sentence?

22 A: Yes. Mr. Grove clearly stated to me that -- that as I go  
23 in front of this judge that I would not have received the full  
24 20 because I asked him during -- during the sit-in with me and  
25 my father because I was stating about all my history or

KENDALL BACCUS - DIRECT BY MR. WALLER

1 whatever, and that I feel as that, you know, I'm not -- I  
2 don't want to take this whole plea and go get the whole  
3 sentence, get the whole thing, and -- and we had to actually  
4 talk and he was like, you know, it's a -- it's a gap. It's a  
5 big gap in-between zero to 20. He said I can see the judge  
6 giving you anything in-between -- anything over I mean or  
7 higher than that 20. So I see you getting something in-  
8 between. I said okay. Well, I'm comfortable with it. I'm  
9 willing to take the chance.

10 Q: Okay. Now, you had -- you had been in trouble before; is  
11 that right?

12 A: Not -- not as an adult. Actually, I had one assault --  
13 not assault. It was a fist fight in school. I was in school  
14 back in when I was, like 14 years old in 2004 or '05.

15 Q: Okay. And what happened with that?

16 A: I was in school and -- I was in school, and me and the  
17 guy got into an altercation over a small matter, over a seat.

18 Q: Okay.

19 A: And I -- you know, I wasn't the -- I wasn't the aggressor  
20 though, not at all.

21 Q: Okay. Did you get convicted of a charge for that?

22 A: No, not at all.

23 Q: Okay. Did you have a juvenile record?

24 A: No, not at all. Not -- not any other thing during that  
25 time. It was -- I had did arbitration, DJJ arbitration, like,

KENDALL BACCUS - DIRECT BY MR. WALLER

1 community service.

2 Q: Okay. Did you have some --

3 A: Sixty hours.

4 Q: Okay. I apologize for interrupting you.

5 A: Yes, sir.

6 Q: Did you have something maybe on your rap sheet from a  
7 juvenile?

8 A: I can't see nowhere besides that right there.

9 Q: Okay. Did you and Mr. Grove talk about the fact that you  
10 had been arrested before?

11 A: I told him. I told him I never been arrested, you know,  
12 and he never asked me. He never even -- he never even dugged  
13 deeper into those details in finding out really why I said  
14 that. I've never been arrested, man. That was the only  
15 incident I had, and I told him about that once -- once the --  
16 once at the time of me getting sentenced.

17 Q: Okay. Okay. Back to your meetings before you decided to  
18 plead guilty. You testified earlier that you -- that you  
19 wanted to go to trial --

20 A: Yeah.

21 Q: -- or initially wanted to go to trial. What changed and  
22 made you decide to plead guilty?

23 A: Well, like I said, as me and Mr. Grove started -- we  
24 talked that last time and he was like, you know, right now,  
25 man, you know, you know, if you go forth to trial, you know,

KENDALL BACCUS - DIRECT BY MR. WALLER

1 you know -- he did -- he did state that, you know, if you go  
2 forth to trial, if you want, you know, to get -- it probably  
3 basically was telling me, like, I wouldn't be satisfied with  
4 it. You know what I mean? And by, you know, how much the  
5 evidence they had on me and with the recording.

6 Because I asked him about the evidence they may have had  
7 against me since I didn't go to my preliminary hearing and  
8 know really what was going on with me. And he said that, you  
9 know -- so I said okay, well, what about her offering me a  
10 plea? And she -- he said, well, that's -- that's in the  
11 range. So she offered me a plea, zero to 20, and we went over  
12 it and he said, you know, this -- pretty much, man, this will  
13 probably be the best for you.

14 Q: Okay. In y'all's discussions, do you think that the  
15 attempted murder was the correct charge?

16 A: He was unsure. He was very unsure about that. That's  
17 the big thing. He was very -- you know, he was sketchy on it,  
18 like, man, I don't think you should get charged with attempted  
19 murder for this, man. I mean I feel like we had a bond and  
20 it's just something that -- you know, I was, like -- I really  
21 didn't think I should either, but, you know, he stated that it  
22 is the State's -- you know, it's a charge for the State. So I  
23 was like, okay, well, but he was very unsure about the whole  
24 situation.

25 Q: Okay. And he advised you to plead guilty to the

KENDALL BACCUS - DIRECT BY MR. WALLER

1 attempted murder?

2 A: Basically.

3 Q: Okay. Knowing that -- knowing what you know now, would  
4 you have still pled guilty?

5 A: I would not have pled guilty.

6 Q: Okay.

7 A: I would have stand forth with a trial -- went forth with  
8 a trial.

9 Q: Okay.

10 MR. WALLER: No further --

11 Q: I don't have any more questions for you. That's all the  
12 questions I have. Is there anything you think I've left out  
13 or that you think the Court needs to be aware of that I  
14 haven't mentioned?

15 A: Being that -- that this was my first time ever being  
16 convicted, man, I tremendously want to say to the Court that,  
17 you know, I have experienced a lot in life and I learned a lot  
18 from this. I just ask that, you know, things work out in my  
19 favor.

20 Q: Okay. Please answer any questions Mr. Hunter has.

21 THE COURT: Mr. Hunter?

22 MR. HUNTER: May it please the Court.

23 CROSS-EXAMINATION

24 BY MR. HUNTER:

25 Q: Good morning, Mr. Baccus.

KENDALL BACCUS - CROSS BY MR. HUNTER

1 A: How you doing there, sir?

2 Q: So when you went to plead guilty, it was your  
3 understanding that the maximum you could receive was 20 years;  
4 right?

5 A: It was my understanding that the maximum I could receive  
6 was 20, yes.

7 Q: Okay. So you knew you could get 20?

8 A: I didn't know I could get 20. I knew I was -- I was -- I  
9 knew the -- I knew the charge carried up to 30 years, sir.

10 Q: Okay. But Mr. Grove advised you that pursuant to your  
11 plea the most you could get was 20?

12 A: The most that I could get was 20. He stated that.

13 Q: Okay.

14 A: But he stated -- yes, sir.

15 Q: Okay. Now, when you -- when you pled guilty, do you  
16 remember Judge Seals going over the rights that you were  
17 waiving by pleading guilty? What I mean by that is do you  
18 remember Judge Seals telling you that by pleading guilty you  
19 were giving up your right to a jury trial, your right to  
20 challenge the evidence against you?

21 A: Yes, sir.

22 Q: Okay. Do you recall where Judge Seals asked you if you  
23 understood that you were giving up those rights?

24 A: Yes.

25 Q: Okay. Do you recall telling Judge Seals that you were

KENDALL BACCUS - CROSS BY MR. HUNTER

1 satisfied with Mr. Grove's performance?

2 A: Yes, sir.

3 Q: Okay. Do you remember telling Judge Seals that you --  
4 that you did want to plead guilty?

5 A: Yes, sir.

6 Q: That it was your decision?

7 A: I was actually -- if I -- may I have a word? I was  
8 actually, you know, instructed into this process as I'm  
9 stating to you right now.

10 Q: Okay. So you -- you're saying that you told Judge Seals  
11 that you wanted to plead guilty because that's what Mr. Grove  
12 told you to do?

13 A: No. I didn't -- I didn't state it like that. No, but --

14 Q: Okay. So why did you --

15 A: Yes, sir.

16 Q: Why did you tell Judge Seals that you were pleading  
17 guilty?

18 A: I'm -- that's what I know. This is my -- you know, I was  
19 19 years old. I thought that's what I was supposed to do.  
20 That's what I was told -- instructed on saying -- to say.

21 Q: Well, who -- you just said Mr. Grove didn't instruct you.  
22 Who instructed you to say that?

23 A: You're saying -- say that again?

24 Q: Who instructed you to tell Judge Seals that you wanted to  
25 plead guilty?

KENDALL BACCUS - CROSS BY MR. HUNTER

- 1 A: Me and my lawyer, Mr. Will Grove, went over that at that  
2 time about taking the plea. I had already signed it and I was  
3 agreeable of saying -- just answer the questions yes and  
4 that's what I did.
- 5 Q: And you remember telling Judge Seals that you were  
6 guilty?
- 7 A: Yes, I did. Yes.
- 8 Q: Okay. And when he asked you if you were answering  
9 truthfully, you told him that --
- 10 A: Yes.
- 11 Q: -- you were telling the truth? Okay. I believe you  
12 testified that you met with Mr. Grove about ten times?
- 13 A: Yes.
- 14 Q: And each of those meetings lasted around 20 minutes or  
15 so?
- 16 A: Twenty to 30 minutes, yes.
- 17 Q: Okay. But y'all didn't really talk about much?
- 18 A: Not really much, not at all.
- 19 Q: Okay. Now, you say that you -- you wanted a trial?
- 20 A: Yes.
- 21 Q: Okay. But you gave a confession in this case too, didn't  
22 you?
- 23 A: No. I don't -- I don't see it. I haven't seen it.
- 24 Q: Okay. So --
- 25 MR. HUNTER: And, Your Honor, this is on page 9.

KENDALL BACCUS - CROSS BY MR. HUNTER

1 Q: When Ms. Parr told the judge that you had given a  
2 confession in this case, was that inaccurate?

3 A: Yes. It has to be because I never gave a confession  
4 saying that never.

5 Q: Okay. Well, why didn't you tell Judge Seals that that  
6 was not accurate?

7 A: At that time, a lot of things were running through my  
8 mind, man. Okay?

9 Q: Okay. So you're saying you never gave a confession?

10 A: No, sir.

11 Q: Okay. Now, you testified that Mr. Grove went over the  
12 fact that you -- if you had gone to trial, you could face up  
13 to 30 years; right?

14 A: Yes.

15 Q: Okay. So is it fair to say that you pled guilty in order  
16 to avoid getting a longer sentence? In other words, you pled  
17 guilty to 20 because you didn't want to possibly get 30?

18 A: Yeah, I guess.

19 Q: Okay. Thank you, Mr. Baccus. That's all I have.

20 THE COURT: Anything further?

21 MR. WALLER: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. WALLER:

24 Q: Mr. Baccus, you testified that Mr. Grove told you that  
25 the maximum you could possibly get was 20 years under your

KENDALL BACCUS - REDIRECT BY MR. WALLER

1 plea; is that right?

2 A: Yes.

3 Q: Did he tell you that you were going to get 20?

4 A: Man, he told me I wasn't going to get 20. He told me I  
5 was going to get something a little less --

6 Q: Okay.

7 A: -- in-between there in the range. He said I would -- he  
8 didn't say -- he just said I wouldn't get 20, but the judge  
9 could give me that. But I would be getting something less,  
10 man.

11 Q: Okay. Why did he tell you that?

12 A: I'm not very sure of why Mr. Grove stated that. However,  
13 I guess because, you know, probably he wanted to see within  
14 the best of me, you know.

15 MR. WALLER: No further questions.

16 THE COURT: Mr. Hunter?

17 MR. HUNTER: Nothing, Your Honor.

18 THE COURT: All right. Mr. Baccus, you may step down.

19 THE APPLICANT: Yes, sir.

20 THE COURT: Have a seat over there with your attorney.

21 MR. WALLER: Your Honor, the applicant would rest at this  
22 time.

23 THE COURT: All right. Mr. Hunter?

24 MR. HUNTER: The State would call Mr. Grove.

25 THE CLERK: Place your left hand on the Bible and raise

WILLIAM GROVE - DIRECT BY MR. HUNTER

1 your right hand. Do you swear or affirm that the testimony  
2 you are about to give will be the truth, the whole truth, and  
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: All right. Please take your seat and state  
6 your name for the record.

7 THE WITNESS: William Grove.

8 WILLIAM GROVE, being first duly  
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HUNTER:

12 Q: Good morning, Mr. Grove. How long have you been  
13 practicing law?

14 A: I was certified in November of 2009. Today actually  
15 makes three years in the Public Defender's Office.

16 Q: Okay. So you were appointed on this case?

17 A: I was.

18 Q: Okay. Do you recall how many times you met with Mr.  
19 Baccus?

20 A: I heard him earlier say about ten, and that's probably  
21 about right. The notes that I have have the first time we met  
22 was in June of 2012, and there are several meetings  
23 throughout. I count six or seven that I actually made a note  
24 of, and that would have been most likely meeting at the  
25 detention center there. There may have been a time or two

WILLIAM GROVE - DIRECT BY MR. HUNTER

1 when he was actually brought up to General Sessions and we had  
2 an opportunity to speak here in the courthouse.

3 Q: Okay. Did you or someone from your office file Rule 5  
4 and Brady motions?

5 A: Yeah. Those are generated automatically from our office.  
6 I can tell you exactly when it was, if you'd like. We opened  
7 a file. He was approved for our office in April of 2012. If  
8 you'll give me a minute, I can tell you exactly when a copy  
9 was clocked. I've got a lot of paper in here. It looks like  
10 it was in April of 2012.

11 Q: That's -- that's good enough, Mr. Grove.

12 A: Sure.

13 Q: Did you have any problems receiving discovery from the  
14 State?

15 A: No, I didn't. And I have a note in here that August 31<sup>st</sup>  
16 of 2012 I gave a copy of the Rule 5 to Kendall.

17 Q: Okay. What was the date?

18 A: August 31<sup>st</sup>, 2012.

19 Q: Okay.

20 A: That -- I can tell you that copy of the Rule 5 would have  
21 included everything except pictures and the recorded statement  
22 made by his brother, Nick. Those came on a disk. At a later  
23 time, I remember making copies of several of the pictures.  
24 There were probably a hundred or more, and some of them  
25 weren't relevant to the case itself. They took a lot of

WILLIAM GROVE - DIRECT BY MR. HUNTER

1 pictures of the inside of the victim's home, and some of them  
2 were -- the incident happened at the front door. There wasn't  
3 a whole of relevance to the pictures of the bedroom.

4 Q: Okay.

5 A: But I made a handful of copies of pictures and was able  
6 to give those to him at a later date. That 8/31/2012 would  
7 have been incident report, rap sheet, supplementals, offer  
8 sheet, stuff like that.

9 Q: I assume during your around approximately ten meetings  
10 with Mr. Baccus, you reviewed the discovery with him?

11 A: We talked about it. We talked about it a lot. And there  
12 -- it -- I don't doubt Kendall when -- when he says it didn't  
13 seem like we talked about much because there wasn't much to  
14 talk about it. It was a very short case. His brother and the  
15 victim got into an argument. Later, he and his brother went  
16 over to the victim's house. There was a confrontation at the  
17 front door. His brother later made a statement that Kendall  
18 had a gun. The victim stated that Kendall had a gun. Shot  
19 through the door. Hit the victim in the shoulder or the arm I  
20 think. And I mean that -- that was the case from start to  
21 finish.

22 Q: Okay.

23 A: So the facts were fairly straightforward and brief.

24 Q: Did -- did Mr. Baccus ever deny his involvement?

25 A: No. Aside from talking about the facts of the case,

WILLIAM GROVE - DIRECT BY MR. HUNTER

1 almost all of our discussion revolved around an appropriate  
2 charge or an appropriate sentence. He's absolutely right  
3 about that. We talked a lot about trying to get a reduction  
4 in his charge or at the very least a reduction in the amount  
5 of exposure he was looking at.

6 Q: Okay. So would you say that was -- that was your best  
7 defense was just to try to get it reduced to an ABHAN-type  
8 thing?

9 A: Certainly. You know, that's -- more than 90 percent of  
10 what I do is trying to come up with -- with an appropriate  
11 outcome. You know, there's -- very little of it is actually  
12 trying cases.

13 Q: Did you ever have this case in a trial posture at any  
14 point?

15 A: It made it to the trial list. And mostly it made it to  
16 the trial list because it had gotten some age on it because  
17 Ms. Parr and I were going back and forth. I was trying to get  
18 her to reduce the charge or come down on an offer. I think  
19 she started with no offer at all. Cap of 25 was an offer in  
20 March of 2013, and then it finally dropped down to a cap of 20  
21 in April right before we pled.

22 I still wasn't thrilled about the attempted murder  
23 portion of it, but in talking with Kendall -- and I think of  
24 it's -- I didn't bring my transcript with me. I'm sorry. But  
25 I think in the transcript I went so far as to say that's

WILLIAM GROVE - DIRECT BY MR. HUNTER

1 virtually the equivalent of a straight-up plea to ABHAN.

2 Q: Did he ever -- well, let's -- I guess I'll move on to the  
3 next question. Did you ever promise him he would get less  
4 than 20 years?

5 A: No. I don't doubt that I said I think it's a likely  
6 outcome that you get less than the cap, but I would have never  
7 promised him anything. I'm certainly not in the habit of  
8 making guarantees to clients. I know that nothing is  
9 guaranteed.

10 But we were given a cap of 20. He didn't have anything  
11 of a record. I didn't have access to his juvenile record.  
12 His adult rap sheet shows an arrest on this charge and nothing  
13 else.

14 Q: Okay.

15 A: He certainly had some mitigation going in his favor. I  
16 thought that less than the full cap was a reasonable outcome,  
17 but that's not something I would have promised him.

18 Q: Okay. And did he understand those discussions you had  
19 with him? Did he seem to understand everything you talked  
20 about as far as the possible outcomes of this plea?

21 A: Sure. Basically, the way I would explain it to any  
22 client -- and I don't -- I mean I'm not quoting myself in this  
23 particular case, but I've had this conversation enough times  
24 to know that I say it about the same way every single time.

25 It's that a cap means that the prosecutor is asking the

WILLIAM GROVE - DIRECT BY MR. HUNTER

1 judge to limit the exposure that you're looking at in a  
2 particular case and there's no minimum on this particular  
3 charge; so the judge can give you anything from zero up to 20,  
4 and we'll do our best to argue for leniency and hope that he  
5 will give you something much under the cap. I was certainly  
6 hoping that he would get something much less than 20.

7 Q: Okay. But -- but he never told you that he didn't  
8 understand anything?

9 A: No.

10 Q: Okay. Did you ever have any concerns about whether or  
11 not he needed a mental evaluation?

12 A: We -- I remember actually talking with him at the  
13 detention center once about it because he had said he wanted  
14 to get evaluated. I'm -- I don't doubt that somebody had told  
15 him you should get evaluated. Another inmate or a cellmate or  
16 something had told him get evaluated, and so we talked about  
17 his mental capacity. And he said that he had learning --  
18 learning difficulties and he said that he had ADHD.

19 I explained to him that in South Carolina there are two  
20 evaluations. One of them is competency to stand trial and one  
21 of them is criminal responsibility. And I was comfortable  
22 that he understood the criminal process. That -- that a trial  
23 would be him and me defending the charge against him and  
24 holding the State to their burden, a prosecutor trying to  
25 convince a jury beyond a reasonable doubt that he's guilty, a

WILLIAM GROVE - DIRECT BY MR. HUNTER

1 judge allowing evidence or not allowing evidence, witnesses  
2 testifying, and that's the equivalent of a Blair evaluation.

3 He seemed to know all of those things. I didn't see the  
4 need to have him evaluated.

5 Q: Prior to his plea, did you review his constitutional  
6 rights that he'd be waiving?

7 A: Sure. I mean I've done that -- I don't know -- maybe  
8 over a thousand times at this point. I've been a public  
9 defender for over four-and-a-half years.

10 Q: Okay.

11 A: And I have sort of the same way that a judge would have a  
12 plea colloquy. I kind of have the same thing over and over  
13 and over again going over all the different rights.

14 Q: Was there any discussion of a preliminary hearing?

15 A: There may have been. And I have -- I have prelims for  
16 some cases and I don't request them on others. I don't have a  
17 note about talking with him about a preliminary hearing. If  
18 we did, my guess is I would have told him I didn't see the  
19 need for a preliminary hearing in his case. His brother had  
20 stated he had done it. The victim had stated he had done it.  
21 There was testimony about the use of a weapon. There was an  
22 injury to a victim.

23 At a preliminary hearing, that's enough for probable  
24 cause. I've done enough preliminary hearings to know that  
25 that would not have been a good use of our time.

WILLIAM GROVE - DIRECT BY MR. HUNTER

1 Q: Did Mr. -- did Mr. Baccus give a statement to the police?

2 A: I don't think that he did. His brother definitely did.

3 If he gave a statement, it wasn't much of one. And I did hear

4 some testimony earlier about Ms. Parr -- somewhere in the

5 record Ms. Parr saying that he had confessed. I think she may

6 have been talking about his brother, who gave a statement at a

7 hospital.

8 Q: I may have misinterpreted that in my review.

9 A: And I don't doubt that she may have misspoken during the

10 plea. I don't think that Kendall -- I don't remember Kendall

11 giving a confession. I do remember them -- there is -- there

12 is a recorded statement in the file from his brother, who --

13 Q: Okay.

14 A: -- basically spells out the entire story from start to

15 finish.

16 Q: Okay. Finally, who -- this will be my last question.

17 Whose decision was it to plead guilty?

18 A: Kendall's. We talked about it a lot. We -- we wanted a

19 better deal. We wanted it under different circumstances, but

20 -- but it was a better alternative than a trial.

21 Q: Okay. Actually, I do have one more question. Did you

22 discuss the elements of the charges with him?

23 A: Certainly. We -- I mean that's -- again, that's part of

24 my plea colloquy that I go through with clients all the time.

25 Q: All right. Thank you, Mr. Grove.

## WILLIAM GROVE - CROSS BY MR. WALLER

1 A: Sure.

2 THE COURT: Cross-examination?

3 MR. WALLER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. WALLER:

6 Q: Mr. Grove, have you had an opportunity to review the  
7 transcript before today?

8 A: I've read it before, yeah. This -- I was given a copy of  
9 it a long time ago. I just didn't bring it into the courtroom  
10 with me. I apologize.

11 Q: Okay. If I show it to you, would that help refresh your  
12 memory?

13 A: Sure.

14 MR. WALLER: Your Honor, may I approach?

15 THE COURT: Yes.

16 BY MR. WALLER:

17 Q: Line 6.

18 A: Okay. I -- I haven't looked through this file in a long  
19 time. It says here -- I guess this is me talking. Or is this  
20 Ms. Parr talking?

21 Q: Ms. Parr.

22 MR. WALLER: Your Honor, it's page --

23 THE COURT: Nine?

24 MR. WALLER: Yes, sir. Starting at line 6 I believe.

25 BY MR. WALLER:

WILLIAM GROVE - CROSS BY MR. WALLER

1 A: And where she says the defendant does not have a prior  
2 record, he did confess, talking about Kendall, again, I don't  
3 doubt that she said that. I don't remember there being a  
4 confession. I remember him talking -- having a brief  
5 encounter with law enforcement and his brother encouraging him  
6 to cooperate, but his brother was the one that made a  
7 statement. I don't -- I don't remember Kendall making any  
8 sort of a formal statement to law enforcement.

9 Q: Did you just possibly not notice when she said that?

10 A: That's certainly possible.

11 Q: Okay.

12 A: You know, there's -- there's -- there's a lot going on  
13 during a plea. If she -- undoubtedly, she said that because  
14 it's right there in the transcript. Either I didn't catch it  
15 or I just interpreted it as a misstatement.

16 Q: Okay.

17 A: And I mean none of that would really undermine the fact  
18 that we were pleading guilty.

19 Q: Sure. You -- you said -- you testified you met with  
20 Kendall several times?

21 A: Sure.

22 Q: Okay. And y'all discussed his case each and every time  
23 y'all met?

24 A: We did.

25 Q: Okay. Is it safe to say that you were kind of torn about

WILLIAM GROVE - CROSS BY MR. WALLER

1 the appropriateness of the charge as well?

2 A: Absolutely. In my mind, based on the facts of the case,  
3 if the victim in this case had died, Kendall would have  
4 essentially been looking at the potential for a voluntary  
5 manslaughter charge and not a murder charge. And if I think  
6 that if the person ends up dead and you're not guilty of  
7 murder, if they're alive, how -- you know, attempted murder  
8 wouldn't be the appropriate charge for something that would  
9 have resulted in a voluntary if the person died.

10 They had had an argument at the front door. Things got  
11 heated and, you know, he fired one shot. I don't know that  
12 that's necessarily a murder if the guy dies; so I don't  
13 necessarily think it's a -- it's an attempted murder if he  
14 lives. I'm not in charge of indicting or making plea offers  
15 unfortunately. If I were, certainly things would have turned  
16 out a little differently.

17 Q: Okay. What did you feel was the appropriate charge?

18 A: If we went to trial, I felt like our best case scenario  
19 was assault and battery of a high and aggravated nature,  
20 ABHAN. That's a violent, serious, zero-to-20, no-parole. We  
21 were given the opportunity to plead with a cap of 20 to  
22 attempted murder.

23 I was hoping that his decision to enter a plea would get  
24 some leniency. If we go to trial and we're convicted of  
25 ABHAN, I think that's a worse scenario in terms of getting a

WILLIAM GROVE - CROSS BY MR. WALLER

1 favorable sentence than standing up and pleading and trying to  
2 gain leniency by accepting responsibility.

3 Q: Okay. And that leads me right to my next question. I  
4 believe you testified on direct examination that what he ended  
5 up pleading to with y'all's negotiations was virtually  
6 equivalent to an ABHAN; is that right?

7 A: It's very similar, yes.

8 Q: Okay. But the strikes would be different; is that right?

9 A: Certainly. The attempted murder would be a most serious;  
10 an ABHAN would be a serious.

11 Q: Okay.

12 A: That's -- so far as I can tell, I'm pretty sure that's  
13 the only real distinction between a cap of 20 on attempted  
14 murder and ABHAN.

15 Q: Okay. You're obviously not in charge of charging  
16 anybody?

17 A: Correct.

18 Q: But you felt that ABHAN was -- would have been the  
19 appropriate charge in this situation?

20 A: Correct.

21 Q: Okay. What did you and Mr. Baccus discuss about any  
22 prior record that he might have had?

23 A: I don't know that we ever really talked about a prior  
24 record because his rap sheet didn't show one. You know, he  
25 has -- and I probably would have said something to him of the

WILLIAM GROVE - CROSS BY MR. WALLER

1 effect of you don't have a record and that's certainly a good  
2 -- a good reason for a judge to not give you the full cap  
3 here. This is your first time you've ever been in any real  
4 trouble or any trouble at all.

5 I mean his rap sheet shows his arrest for attempted  
6 murder. It doesn't have anything prior to that. If we had a  
7 conversation, it would have been that short about his prior  
8 record. We may not have talked about it at all because I was  
9 under the impression that he had never had any sort of  
10 involvement with law enforcement.

11 Q: Okay. You did have a rap sheet though?

12 A: Yes.

13 Q: Okay.

14 A: Certainly.

15 Q: When Ms. -- when the judge asked first and then Ms. Parr  
16 I guess runs his juvenile rap sheet, what was your reaction?

17 A: I was taken aback by that a little bit, but even -- even  
18 so, that was a juvenile incident. I don't remember how much  
19 of it came up during the plea. I know that a little bit of it  
20 did, and it was from several years prior. At the time, I  
21 didn't really think that that would have anything to do with  
22 anything. I mean he was -- that would have been five or six  
23 years prior to the plea in this case.

24 Q: Okay. I believe in reviewing the transcript Ms. Parr  
25 didn't have it with her.

WILLIAM GROVE - CROSS BY MR. WALLER

1 A: Right.

2 Q: She had to run it. Did you have an opportunity to speak  
3 with Mr. Baccus while she was getting that run to ask him  
4 about it?

5 A: We stepped aside for a minute. I think, if I remember,  
6 we would have taken, like, a five-minute recess. She would  
7 have had to go to the DJJ office on the seventh floor here and  
8 get it. And in talking with him, I don't remember if he said  
9 he's never been arrested or if he said he had never been  
10 convicted, and it sounds like he went through juvenile PTI for  
11 this. I don't have any doubt that it shows up that he was at  
12 some point arrested. Otherwise, he wouldn't have gone through  
13 the juvenile program. But again though, that wouldn't have  
14 really raised any red flags with me at the time because that's  
15 a fairly insignificant incident five years prior to a plea  
16 that resulted in PTI.

17 Q: Okay.

18 MR. WALLER: I beg the Court's indulgence, please.

19 THE COURT: Yes, sir.

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

21 THE COURT: Mr. Hunter?

22 MR. HUNTER: Very briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. HUNTER:

25 Q: Mr. Grove, was ABHAN ever offered by the State?

WILLIAM GROVE - REDIRECT BY MR. HUNTER

1 A: No. We -- we opened with no offer. At some point, Ms.  
2 Parr offered a cap of 25, and eventually -- it may have been  
3 the week before we pled, she offered a cap of 20. And in  
4 talking with Kendall, that got us to the equivalent of -- more  
5 or less the equivalent of what we thought a reasonable outcome  
6 at trial would be, and so we took that.

7 Q: Okay. And so is it your testimony that you don't believe  
8 the juvenile -- had you not -- had you been aware or had you  
9 been more cognizant of his juvenile record, would that have  
10 changed your advice to him?

11 A: No, not at all.

12 Q: Okay.

13 MR. HUNTER: No further questions. Thank you.

14 THE COURT: Anything further, Mr. Waller?

15 MR. WALLER: Nothing, Your Honor. Just a brief argument.

16 THE COURT: All right. Sir, you may step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Yes, sir?

19 ARGUMENTS OF COUNSEL

20 MR. WALLER: Your Honor, the testimony here today was  
21 that Mr. -- Mr. Baccus met with his attorney multiple times.  
22 They were getting ready for trial and actually made it onto  
23 the trial list. They talked extensively that they both felt  
24 that he was incorrectly charged.

25 Mr. Grove testified that he thought the ABHAN was

1 appropriate because he did not feel that the facts of the case  
2 warranted an attempted murder charge because if the victim had  
3 died, there wouldn't have been -- he couldn't have been found  
4 guilty of murder.

5 Your Honor, he testified -- and I believe the quote was  
6 that it was virtually equivalent to an ABHAN, which was the  
7 offer they got, but it's not equivalent. The -- the attempted  
8 murder is a most serious offense; the ABHAN is only a serious  
9 offense. I believe he had no prior strikes. However, down  
10 the road, that could be a serious issue for him.

11 Your Honor, I think it's ineffective assistance of  
12 counsel for Mr. Grove to -- to advise and allow his client to  
13 plead guilty to something that he feels isn't appropriate and  
14 that he's not guilty of.

15 Your Honor, as far as the juvenile record goes, Your  
16 Honor, Mr. Baccus testified that he did have one arrest.  
17 Judge Seals -- it was read into the record that he had two  
18 convictions -- two assault convictions. Mr. Baccus testified  
19 that it was one arrest that went through some sort of  
20 conversionary program.

21 Your Honor, Mr. Baccus also testified that had Mr. Grove  
22 not advised him incorrectly to plead guilty to the attempted  
23 murder instead of challenging the appropriateness of the  
24 charge at trial that he would have not pled guilty, but would  
25 have insisted on going to trial.



1 insisted on going to trial.

2       The Court has reviewed the record in its entirety, as  
3 well as the trial transcript -- or -- excuse me -- the plea  
4 transcript from the defendant's plea. Furthermore, in  
5 reviewing the respective sentence sheet, when defendant pled  
6 guilty, it's clearly marked on the sentence sheet that there  
7 was a recommendation -- that there was a recommendation of 20  
8 years going into the plea by the State, and that the defendant  
9 knew and was fully advised of the potential penalty in this  
10 case, which carried up to 30 years.

11       Therefore, this Court respectfully denies applicant's  
12 request for relief under the Post-Conviction Relief Act. If  
13 you'll get me an order on that, Mr. Hunter?

14       MR. HUNTER: Yes, Your Honor. Thank you.

15       (WHEREUPON, the proceedings ended at 10:34 a.m.)

16

17       --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina )  
2 ) Certificate  
3 County of Florence )  
4  
5 I, the undersigned, Krystal J. Smith, Notary Public and  
6 Official Court Reporter for the Twelfth Judicial Circuit of  
7 the State of South Carolina, do hereby certify that the  
8 foregoing pages, numbered 1 through 40 constitute a true,  
9 accurate, and complete Transcript of Record of all the  
10 proceedings had and evidence introduced in the hearing of the  
11 above captioned case, relative to appeal, in the Court of  
12 Common Pleas for Florence County, South Carolina, on the 16th  
13 day of April, 2015.

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

16  
17 s/ Krystal J. Smith  
18 Court Reporter

19  
20 Florence, South Carolina  
21 July 2, 2015  
22  
23  
24  
25

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

2015 JUN -1 PM 2:27

Kendall M. Baccus, #355137  
Applicant,  
FLORENCE COUNTY, S.C.

Case No. 2014-CP-21-0119

v.

**ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 15, 2014. Respondent made a Return on or about November 5, 2014. The Court convened an evidentiary hearing into the matter on April 16, 2015, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, William Eugene Grove, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the September 2012 term of the Florence County Grand Jury for attempted murder (2012-GS-21-

CERTIFIED: A TRUE COPY

*Connie Reel-Strain*

CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

1146). Applicant was represented by Will Grove, Esquire. On April 19, 2013, Applicant pled guilty as indicted. The Honorable William H. Seals, Jr., sentenced Applicant to twenty (20) years imprisonment.

Applicant filed a timely Notice of Appeal; however, it was dismissed by the South Carolina Court of Appeals for failing to provide a sufficient explanation under Rule 203(d)(1)(B)(iv). The Remittitur was sent on November 21, 2013.

## **II. ALLEGATIONS**

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. Counsel "never made any attempt to ascertain whether or not I actually knew what the elements for the crime charged were or whether or not I understood exactly what the term 'criminal elements' actually meant."
  - b. Failure to conduct a Blair hearing.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **A. Summary of Testimony**

Applicant testified at the PCR hearing that Will Grove (Counsel) was appointed to represent him. Applicant testified he is twenty-two years old but was nineteen when he was

arrested. Applicant testified he met with Counsel approximately ten times, with each meeting lasting between ten and twenty minutes. Applicant testified many of their conversations concerned trying to get Applicant a plea to a lesser charge. Applicant testified Counsel did not go over the charge in great detail. Applicant testified Counsel told him the charge carried up to thirty years in prison. Applicant testified he was not sure if Counsel discussed the elements of the crime. Applicant testified Counsel did not go over all of the discovery with him. Applicant testified he has been treated for ADHD in the past, and he is not a good reader. Applicant testified he does not comprehend things very well and has a bad memory. Applicant testified he did not provide Counsel with the names of any witnesses to contact. Applicant testified his brother was a co-defendant. Applicant testified he wanted to go to trial. Applicant testified Counsel explained his right to a jury trial but did not explain the procedures of a trial. Applicant testified his case was set for trial, but Counsel felt pleading to a cap of twenty years was his best option. Applicant testified Counsel felt ABHAN was a more appropriate charge, but the solicitor would not offer a plea to ABHAN. Applicant testified Counsel told him he would not get the full twenty years. Applicant reiterated that he wanted to go to trial, but he pled guilty because Counsel told him to do so.

On cross-examination, Applicant recalled the plea judge going over the constitutional rights he was waiving by pleading guilty. He recalled telling the plea judge he was satisfied with Counsel's performance. Applicant recalled telling the plea judge he wanted to plead guilty because he was guilty. Applicant recalled telling the plea judge he answered his questions truthfully. Applicant insisted that despite the fact Counsel met with him ten times, they did not discuss much. Applicant denied confessing to the crime, despite the solicitor saying so during the

plea colloquy. Applicant testified he pled guilty in order to avoid the possibility of receiving a longer sentence as the result of a guilty verdict at trial.

Counsel testified he has been practicing law since 2009 but has been with the Public Defender's Office for three years. Counsel testified he was appointed to Applicant's case and met with him around ten times. Counsel testified Rule 5 and *Brady* motions were filed in April of 2012, and he had no problems obtaining discovery. Counsel testified there was not much discovery, but he reviewed all of it with Applicant. Counsel testified Applicant never denied his involvement in the attempted murder, and their discussions mainly centered around attempting to get a reduction in the charge he was facing. Counsel testified he discussed the elements of the charge with Applicant. Counsel testified the State had a good case against Applicant, and the victim and Applicant's brother both identified him as the shooter. Counsel testified he reviewed the constitutional rights Applicant was waiving by pleading guilty, and that Applicant never seemed to have trouble understanding him. Counsel explained the concepts of competency and criminal responsibility and felt Applicant did not need a mental evaluation. Counsel testified the State initially offered a plea to a cap of twenty five years on March 13, and they followed that offer with a cap of twenty years on April 13. Counsel testified he discussed the offers with Applicant, and he seemed to understand those discussions. Counsel testified the case was called for trial due to its age, and Applicant made the decision to plead guilty. Counsel testified he tried to get a plea deal to ABHAN, but the State would not extend one. Counsel testified he did not think there was any need for a preliminary hearing because there was plenty of probable cause to support the charge. Counsel testified he never told Applicant he would get less than twenty years.

On cross-examination, Counsel testified he did not remember Applicant ever giving a statement to police, but that it was possible he did not overhear the solicitor mention that during the plea colloquy. Counsel testified he believed ABHAN was a more appropriate charge in Applicant's case, but he had no control over how the State chose to bring charges. Counsel testified he felt Applicant's plea was essentially equivalent to a plea to ABHAN, other than being a most serious versus a serious offense. Counsel testified he was surprised when the solicitor discussed Applicant's juvenile convictions at the plea colloquy. Counsel testified he and Applicant never discussed Applicant's juvenile convictions because his rap sheet did not indicate any priors, but that Applicant having a juvenile record would not have changed Counsel's advice to take the plea.

#### **B. Ineffective Assistance of Counsel**

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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.

This Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case, and he was prepared to take Applicant's case to trial. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Counsel testified that even had he known about Applicant's prior juvenile convictions, he still would have offered Applicant the same advice. This Court further finds that based upon the solicitor's recitation of the facts at the plea colloquy, combined with Counsel's testimony at the PCR hearing, the evidence against Applicant was such that it was in Applicant's best interest to go forward with the plea. As such, Applicant has failed to show ineffectiveness of counsel, and the allegation is without merit.

### C. Involuntary Guilty Plea

Although not specifically alleged, this Court finds Applicant's allegations could be construed as alleging his plea was involuntary. This Court finds the allegation to be without merit.

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant

entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

This Court has had the opportunity to review the testimony from the PCR hearing, as well as the guilty plea transcript and finds Applicant knowingly, intelligently, and voluntarily entered his guilty plea. Applicant has presented no credible evidence to the contrary. Applicant’s testimony that he wishes he had proceeded to trial does not undermine the validity of his plea. As such, this Court finds the allegation is without merit.

#### **D. 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.

**IV. 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. 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 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), SCRCR, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

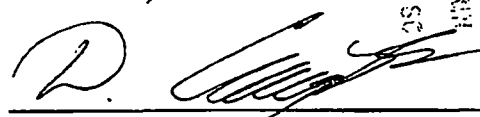
**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.


AND IT IS SO ORDERED this 26 day of May

2015 JUN - 1 PM 2:24  
 DONNIE REEL-SHEARIN  
 C.C.P. & G.S.  
 FLORENCE COUNTY, S.C.

FILED 2015

  
 D. CRAIG BROWN  
 Presiding Judge  
 Twelfth Judicial Circuit

Florence, South Carolina

CERTIFIED: A TRUE COPY  
  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

WITNESSES

Stephen Banister  
Department  
Florence Police

DOCKET NO. 2012-GS-21-01146

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2012

THE STATE

vs.

KENDALL MARQUISE BACCUS  
AND  
NICHOLAS JACOBY ADDISON

Patricia S Parr

ARREST WARRANT NUMBER

M379673 M379674

ACTION OF GRAND JURY

TRUE BILL

Indictment for

ATTEMPTED MURDER

*Arnold Brull*  
Foreperson of Grand Jury  
Date: 9-6-12

VERDICT

Foreperson of Petit Jury

Date:

CERTIFIED: A TRUE COPY  
*Chris Red Sp...*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

2012 SEP -6 AM 11:04  
CLERK OF COURT  
FLORENCE COUNTY, S.C.



COUNTY OF Florence
STATE VS. Kendall Marquise Baccus

INDICTMENT/CASE#: 2012-GS-21-01146
A/W#: M379673
Date of Offense: 4/3/2012
S.C. Code § : 16-03-0029
CDR Code #: 3410

AKA:
Race: B Sex: M Age: 20
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Murder / Attempted Murder 0-30 yrs

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
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. 204 conf

ATTEST: Parr, Patricia S SC Bar# 4342 Defendant
Kendall Marquise Baccus Defendant
Will E. ... Attorney for Defendant
77931 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 20 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. 381 days
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

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 and
Other:

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 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 \$ 1050

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

Clerk of Court/ Deputy Clerk
Court Reporter:

Presiding Judge
Judge Code: 2157
Sentence Date: 4-19-2013

# The South Carolina Court of Appeals

The State, Respondent,

v.

Kendall M. Baccus, Appellant.

Appellate Case No. 2013-000905

FILED  
2013 DEC -2 AM 11:27  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

\_\_\_\_\_  
ORDER  
\_\_\_\_\_

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

  
FOR THE COURT

Columbia, South Carolina

cc:  
William Eugene Grove  
Robert Michael Dudek  
Patricia Singleton Parr  
Salley W. Elliott  
Alan McCrory Wilson

FILED  
11/5/13  
