

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Maite Murphy, Circuit Court Judge

RECEIVED

FEB 29 2016

SC SUPREME COURT

ERICK WANNAMAKER

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001772

A P P E N D I X

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

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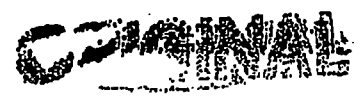
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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF ORANGEBURG) No. 2011 GS 38 0371
) 2011 GS 38 2048
 3

4 STATE OF SOUTH CAROLINA)
)
 5)
)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
)
 8 ERIC WANNAMAKER)
)
 9 Defendant)



10 Orangeburg, South Carolina
 11 August 7, 2012
 12

13 B E F O R E :
 14 HONORABLE EDGAR DICKSON, Presiding Judge
 15

16 A P P E A R A N C E S :
 17 For the State: BOWMAN, Esq.
) Assistant Solicitor
 18
 19 For the Defendant: D. MELLARD, Esq.
) Public Defender
 20
 21 Reporter Present: HARRY DOT WALKER
 22

23 HARRIET P. BENNETT
 24 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 25 Summerville, S.C. 29485

1 (The within matter came before the Court for hearing
2 on August 7, 2012)

3 SOLICITOR: Your Honor, standing before you is Eric
4 Wannamaker. He is pleading guilty to two counts of as-
5 sult and battery of a high and aggravated nature.

6 They are both true billed Indictments, 2011 GS 38 0371
7 and 2011 GS 38 2048.

8 The State is recommending a cap of ten years.

9 (Whereupon, Defendant Wannamaker was sworn by the
10 Clerk of purposes of this matter)

11 SOLICITOR: Your Honor, can I interrupt?

12 THE COURT: Sure.

13 SOLICITOR: I forgot that Mr. Wannamaker was also
14 evaluated at the Department of Mental Health and found to
15 be competent by the examiners.

16 I have a copy of that report, and I would ask that
17 Ms. Harry Dot mark this as Court's 1.

18 THE COURT: All right.

19 (Nine page evaluation report marked Court's Exhibit
20 Number 1)

21 THE COURT: Mr. Mellard, have you had an opportunity
22 to review that document?

23 MR. MELLARD: I have, yes, sir.

24 THE COURT: Do you have any competing documentation
25 about his competency?

1 MR. MELLARD: No, sir.

2 THE COURT: All right, Ms. Harry Dot. Introduce the
3 evaluation as Court's 1, please, maam.

4 Thank you, maam.

5 THE COURT: Mr. Bowman, anything you need to tell me
6 on that?

7 SOLICITOR: No, Your Honor.

8 THE COURT: All right, Mr. Wannamaker, you are thirty-
9 two years old, is that correct?

10 DEFENDANT: Yes.

11 THE COURT: Mr. Wannamaker, the first number in your
12 social security is zero?

13 DEFENDANT: Yes, sir.

14 THE COURT: You were born where? New York?

15 DEFENDANT: Yes, sir.

16 THE COURT: And when did you move here? How old were
17 you?

18 DEFENDANT: Eight years old.

19 THE COURT: Okay, have you still got family in New
20 York?

21 DEFENDANT: Cousins, two -- well, actually on two
22 branches.

23 THE COURT: Okay. All right, sir. Mr. Wannamaker,
24 how far did you go in school?

25 DEFENDANT: Twelfth grade.

1 THE COURT: Did you graduate?

2 DEFENDANT: Yes, sir.

3 THE COURT: From what high school?

4 DEFENDANT: Orangeburg-Wilkerson.

5 THE COURT: And after you were done did you get any
6 more education?

7 DEFENDANT: Recently -- before my incarceration I was
8 going to OC Tech.

9 THE COURT: What were you studying at Tech?

10 DEFENDANT: I was going to get my welding actually,
11 while working at (inaudible). I was doing weld there.

12 THE COURT: Okay, so before you got incarcerated you
13 were working at (inaudible)?

14 DEFENDANT: Yes.

15 THE COURT: Okay, had long had you been there?

16 DEFENDANT: Back and forth, off and on, between work-
17 ing at a sport bar and there, for about four months. In
18 some of that time I was at the bar.

19 THE COURT: Okay. Mr. Wannamaker, have you ever had
20 any mental health issues or been treated for any?

21 DEFENDANT: No, sir.

22 THE COURT: Okay, taking any kind of medication?

23 DEFENDANT: Naproxen. That's for pain.

24 THE COURT: For pain?

25 DEFENDANT: Yes, Naproxen for pain for my shoulder.

1 THE COURT: Okay. Are you under the influence of any
2 alcohol or illegal drugs?

3 DEFENDANT: No, sir.

4 THE COURT: Okay, does the medication affect your
5 ability to understand what you're doing today?

6 DEFENDANT: No, sir.

7 THE COURT: Are you thinking clearly?

8 DEFENDANT: I am, sir.

9 THE COURT: You know exactly what you're doing?

10 DEFENDANT: Yes, sir.

11 THE COURT: Okay, I've just got to ask those ques-
12 tions, you know.

13 DEFENDANT: Yes, sir.

14 THE COURT: I'm told you are here to plead guilty to
15 two charges of assault and battery of a high and aggravated
16 nature. Is that correct?

17 DEFENDANT: I am, sir.

18 THE COURT: And the max on that is . . .

19 SOLICITOR: Twenty years.

20 THE COURT: The maximum charge on either one of those
21 is twenty years. The State has indicated that they are
22 recommending a cap of ten years.

23 DEFENDANT: Yes, sir.

24 THE COURT: Is that your understanding?

25 DEFENDANT: Yes, sir, it is.

1 THE COURT: Okay. Other than that, has anybody prom-
2 ised you anything or threatened or forced you in any way
3 to get you to plead guilty here today?

4 DEFENDANT: No, sir.

5 THE COURT: You are doing this freely and voluntar-
6 ily then?

7 DEFENDANT: I am.

8 THE COURT: Okay. I note that Mr. Hinds is standing
9 up there with Mr. Mellard, is that correct?

10 DEFENDANT: Yes, sir.

11 THE COURT: You have met with both attorneys?

12 DEFENDANT: Yes, sir.

13 THE COURT: And I am sure, but I need you to confirm
14 this -- they have gone over the evidence on these cases
15 with you. Is that correct?

16 DEFENDANT: They have.

17 THE COURT: They have advised you of the law, your
18 possible sentences and your constitutional rights?

19 DEFENDANT: Yes, sir.

20 THE COURT: Have you understood everything they've
21 told you?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that you have the right
24 to remain silent, but if you plead guilty you give up that
25 right?

1 DEFENDANT: Yes, sir.

2 THE COURT: Okay, do you understand that both of these
3 charges -- a charge of assault and battery of a high and
4 aggravated nature is a violent and a serious offense, each
5 one of them?

6 DEFENDANT: Yes, sir.

7 THE COURT: And you understand they count as strikes?

8 DEFENDANT: Yes, sir.

9 THE COURT: Your attorneys have gone over what that
10 means to you?

11 DEFENDANT: Yes, sir.

12 THE COURT: You understand that if you get too many
13 strikes you could then-- you would be subject to -- in a
14 future court you could be subject to a life without parole
15 sentence? Do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: All right, sir. Now, do you understand
18 you have a right to have a jury trial on each one of these
19 charges, or on either one of them?

20 You are aware of that?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do you want a jury trial on either one
23 of these charges?

24 DEFENDANT: No, sir.

25 THE COURT: Okay. Are you satisfied with the services

1 of your attorneys?

2 DEFENDANT: I am.

3 THE COURT: Do you need any more time to talk with
4 them?

5 DEFENDANT: No, sir.

6 THE COURT: All right, sir. Mr. Wannamaker, what I
7 am going to do now is just review the allegations in each
8 one of these indictments to make sure you understand them,
9 to make sure you agree with the terms of these Indictments,
10 and ask you whether you plead guilty or not guilty to the
11 charge.

12 DEFENDANT: Yes, sir.

13 THE COURT: All right, sir. The first Indictment I
14 have, 2011 GS 38 2048, was true billed by the Grand Jury
15 on May 16, 2012, and this was an Indictment for attempted
16 murder.

17 The allegations are that you did in Orangeburg County
18 on or about April 23rd, 2011, with the intent to kill,
19 attempt to kill Stanley Bowman with malice aforethought,
20 either express or implied, by shooting a gun at the vic-
21 tim. Do you understand what the allegations of this In-
22 dictment are?

23 DEFENDANT: Yes.

24 THE COURT: Okay, as a result of this event, the State
25 after talking with your attorneys is allowing you to plead

1 to assault and battery of a high and aggravated nature.

2 Is that correct?

3 DEFENDANT: Yes, sir.

4 THE COURT: Okay, how do you plead to this charge of
5 assault and battery of a high and aggravated nature, guilty
6 or . .

7 DEFENDANT: I plead guilty.

8 THE COURT: Thank you, Mr. Wannamaker. The next In-
9 dictment I have is 2011 GS 38 371 which was true billed
10 by the Grand Jury on April 20, 2011, and it is also a
11 charge for attempted murder.

12 The allegations are that this occurred in Orangeburg
13 County on or about January 8, 2011, and it alleges that
14 you with intent to kill attempted to kill with malice
15 aforethought, either express or implied, Daniel Gershan
16 Edgar Mayes, by shooting toward his head while he lay on
17 the ground.

18 Do you understand the allegations contained in this
19 Indictment?

20 DEFENDANT: Yes, sir.

21 THE COURT: Okay, do you understand as a result of
22 this event your attorneys have talked with the State and
23 the State has allowed you to plead to the charge of assault
24 and battery of a high and aggravated nature. Is that cor-
25 rect?

1 DEFENDANT: Yes, sir.

2 THE COURT: How do you plead to this charge of as-
3 sault and battery of a high and aggravated nature?

4 DEFENDANT: I plead guilty.

5 THE COURT: Thank you, sir.

6 SOLICITOR: Thank you, Your Honor. The first inci-
7 dent took place on January 8, 2011. It happened around
8 five in the morning. It took place at
9 I believe that is actually an incident location known as
10 the Dancer Club.

11 Your Honor, the victim in that case is Daniel Mayes.
12 It is my understanding that Mr. Mayes and Mr. Wannamaker
13 had been acquaintances for some time before this incident.

14 According to Mr. Mayes, he and Mr. Wannamaker got into
15 a physical altercation at the club that night in which the
16 Defendant Wannamaker pulled out a handgun and fired several
17 shots possibly toward the ground.

18 One of those shots, Your Honor, hit Mr. Mayes in the
19 hand; got one of his fingers.

20 The second incident, Your Honor, took place on April
21 23rd of 2011. This happened at the county fairgrounds in
22 Orangeburg County.

23 The victim in this case, Your Honor, was a Stanley
24 Bowman. It is my understanding there was some sort of a
25 party or a reception at the fairgrounds that night inside

1 one of the buildings.

2 Mr. Bowman was outside of that building talking on his
3 cell phone and a female was standing nearby. The Defendant
4 came outside and he was upset. He believed that Mr. Bowman
5 was speaking with the female. The female was of some re-
6 lation or friendship to either Mr. Wannamaker or Mr.
7 Wannamaker's brother.

8 At that point, Your Honor, Mr. Wannamaker and Mr.
9 Bowman exchanged words. Mr. Wannamaker, Your Honor, then
10 pulled out a gun and fired several shots. One of them
11 struck Mr. Bowman in the arm.

12 His prior record, Your Honor, is common law assault
13 and battery of a high and aggravated nature. I'm not sure
14 if he got time on the front end but I know he did end up
15 going to the Department of Corrections. It may have been
16 on more of a violation.

17 THE COURT: Okay.

18 SOLICITOR: We've been in touch with each of these
19 victims although they are not present today. However, they
20 are in agreement with this plea.

21 Mr. Mellard, Your Honor, has calculated the jail time
22 for Mr. Wannamaker that the State is in agreement with.

23 THE COURT: Okay.

24 SOLICITOR. We agree that's the right number, and we
25 would just ask that Your Honor -- we're recommending a cap

1 of ten years, Your Honor, and we'd ask Your Honor consider
2 that cap.

3 THE COURT: Okay. All right.

4 Mr. Mellard, Mr. Wannamaker indicated that you went
5 over the evidence and his constitutional rights with him?

6 MR. MELLARD: Yes, sir.

7 THE COURT: And after reviewing the evidence and ad-
8 vising him of the law, he has indicated to you that he
9 wishes to plead guilty?

10 MR. MELLARD: Yes, sir.

11 THE COURT: Do you believe it is in his best interest
12 to plead guilty to these charges?

13 DEFENDANT: Yes, sir.

14 THE COURT: You believe it is in his best interest to
15 do so?

16 MR. MELLARD: Yes, sir.

17 THE COURT: All right. Mr. Wannamaker, you heard
18 what the Solicitor told me about the circumstances that
19 led to your arrest on both of these charges, is that cor-
20 rect?

21 DEFENDANT: Yes, sir.

22 THE COURT: He also told me you had a prior ABHAN, is
23 that correct?

24 DEFENDANT: Misdemeanor ABHAN.

25 THE COURT: A misdemeanor ABHAN -- okay.

1 DEFENDANT: Yes, sir.

2 THE COURT: Nothing else, is that correct?

3 DEFENDANT: No, sir.

4 THE COURT: All right, Mr. Wannamaker. Do you under-
5 stand if I accept your guilty plea to these charges, again,
6 they will show up as convictions on your record and each
7 one counts as a strike? Do you understand that?

8 DEFENDANT: Yes.

9 THE COURT: Okay. You know you've got ten days to
10 appeal my decision?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you want me to accept your guilty
13 plea to these two charges?

14 DEFENDANT: Yes, sir.

15 THE COURT: All right. Mr. Wannamaker, I find your
16 decision to plead guilty is freely, voluntarily and intel-
17 ligently made.

18 I find that you have had the advice and counsel of a
19 competent attorney or competent attorneys -- excuse me.

20 DEFENDANT: Yes, sir.

21 THE COURT: I find there is a factual basis for you
22 to plead guilty to each one of these charges, and I am
23 going to accept your guilty plea to each one of them

24 Mr. Mellard?

25 MR. MELLARD: Yes, sir. He's thirty-two years old as

1 you heard. He was working at (inaudible) and going to OC
2 Tech.

3 I would tell the Court that this looks bad on paper,
4 and we understand that, but in each of these situations
5 Mr. Wannamaker did not seek out the trouble. These people
6 came to him to cause trouble.

7 I will tell the Court that the victims in these cases
8 are people who are well known to the Solicitor and the Pub-
9 lic Defender's Office. They are known because they've been
10 in trouble with the law before.

11 Eric believed these people were there to cause him
12 harm. He's pleading to two charges. The first charge
13 with Mr. Bowman at a birthday party for his mother. Eric
14 had paid Two Hundred Dollars to rent a place at the fair-
15 ground. His sister had put in another Two Hundred Dollars.

16 The victim had no right to be at this party but the
17 victim did come to the party. Problems resulted.

18 On the second charge with Mr. Mayes, I will tell the
19 Court that took place at a club owned by Eric Wannamaker's
20 mother.

21 Again, the victim had no business being there. He
22 was not wanted there.

23 In these two incidents, in both of these things, Eric
24 had a right to be where he was and where the victims were
25 not welcome.

1 THE COURT: All right.

2 MR. MELLARD: So Eric Wannamaker is not a person who
3 seeks out trouble. He has no burglary convictions, no drug
4 convictions. He pretty much keeps to himself with his
5 family.

6 The only charges he has resulted from a situation
7 where he believed he was going to be in danger, either at
8 that point or in the future.

9 I would ask the Court to take all this into consider-
10 ation in sentencing him. He has family here who would like
11 to address the Court.

12 THE COURT: I'll be happy to hear from them.

13 MR. MELLARD: Okay.

14 THE COURT: Come on up, please. Your name,
15 please, sir?

16 PASTOR HUGHES: I'm Pastor Samuel Hughes, pastor and
17 minister at Reconciliation.

18 THE COURT: Pastor Hughes.

19 PASTOR HUGHES: Yes, sir. Pastor at 1090 (inaudible)
20 Avenue.

21 THE COURT: All right. What would you like to tell
22 me, sir?

23 PASTOR HUGHES: I'm just here to speak in behalf of
24 Eric, a fine young man. He was put in a bad situation,
25 and we had to make a decision, and I'm just here to ask for

1 leniency and that you have as much mercy on him as you pos-
2 sibly can.

3 I think he has great potential to really be productive
4 in the community.

5 THE COURT: All right, and how long have you known
6 him?

7 PASTOR HUGHES: I've known him for over twenty years.

8 THE COURT: Okay. He attends your church?

9 PASTOR HUGHES: Yes, sir.

10 THE COURT: Has he been active in the church?

11 PASTOR HUGHES: Not fairly active but he comes, and
12 if I can hold onto a little thread I hold tight to that to
13 get more.

14 THE COURT: All right, sir, I understand. First you've
15 got to get them in the door, and if you get them in the
16 door hopefully you can get them closer.

17 PASTOR HUGHES: Yes, sir.

18 THE COURT: All right, anything else you want to tell
19 me about him?

20 PASTOR HUGHES: He's just a fine young man. I think
21 the world of him.

22 THE COURT: All right, I appreciate it.

23 PASTOR HUGHES: Thank you.

24 THE COURT: Thank you, sir.

25 MR. GADSON: How are you, sir?

1 THE COURT: I'm doing well.

2 MR. GADSON: I'm Calvin Gadson, and I'm one of the
3 deacons at the church. I work with the youth counsellor
4 and I have a program at the high school with troubled stu-
5 dents.

6 This one here I speak in his behalf. He's a fine
7 young man, and he does support the kids and we know he
8 has been around, and we're just asking the Court for mercy,
9 on behalf of his kids. We know a lot of kids that don't
10 have fathers. He's good to them, and being incarcerated --
11 we know he's got to pay his debt to society but we pray
12 for mercy so he can get back with his family and be there
13 for his kids.

14 THE COURT: Okay, Mr. Gadson, thank you.

15 MR. GADSON: Thank you, sir.

16 THE COURT: Yes, maam, your name?

17 MS. POLITE: (First name not audible) Polite.

18 THE COURT: Yes, maam, Ms. Polite.

19 MS. POLITE: I just wanted to let you know that I've
20 been dating Mr. Wannamaker prior to his incarceration, and
21 he would always accompany me to functions and if he felt
22 something was coming up he would say he wanted to leave and
23 avoid the situation, which we always tried to do.

24 He has always been there for his kids as well as for
25 mine. Again, with your sentencing I wish you would take

1 that into consideration.

2 He has a sister who is in Charlotte and she sent a
3 letter but she couldn't be here. I'd like to read it to
4 you.

5 THE COURT: If you'd like to hand it up, you can do
6 that.

7 (Brief pause while letter handed up to be read by
8 the Court)

9 THE COURT: All right, anything else?

10 MS. POLITE: No, sir.

11 THE COURT: Is that it?

12 MR. MELLARD: I think there is probably one more,
13 Your Honor.

14 THE COURT: Okay.

15 MS. JEFFERSON: How you doing, sir?

16 THE COURT: Doing fine. Your name, please, ma'am?

17 MS. JEFFERSON: I'm Sheryl Jefferson. I'm the oldest
18 sister of Eric. My mom had eight children.

19 I'm just here to ask you to have mercy on Eric. He's
20 a wonderful individual, very strong. The family needs him
21 and his children need him.

22 (Portion not audible on cassette)

23 Like they say, trouble came to him. He didn't go to
24 it. Things happened and my brother didn't have a chance.

25 THE COURT: Thank you.

1 MS. JEFFERSON: He try to prevent trouble but it came
2 to him anyway, and, like I say, his family needs him.

3 MR. MELLARD: Thank you, Your Honor. There is only
4 one other thing I want to say, and I think Eric wants to ad-
5 dress you briefly.

6 He has been in for six hundred and one days, and I
7 believe that's the time the Solicitor referred to.

8 THE COURT: Is that correct?

9 SOLICITOR: Yes, Your Honor.

10 THE COURT: All right. Mr. Wannamaker, you've had a
11 lot of people say nice things about you. Did you want to
12 tell me anything?

13 DEFENDANT: Yes, sir.

14 THE COURT: Okay.

15 DEFENDANT: First I want to say I appreciate my friends
16 and family for being so supportive, and, I mean, I know
17 I'm in a situation that don't look good.

18 Like they say, I mean, these guys are known -- they
19 got a reputation where I felt if I didn't do it in time
20 or at that moment then I would have been the victim, if
21 not dead, at that one point in time.

22 I mean, I'm sure they know what type of people they
23 are, you know, but it wasn't -- this was going to be a
24 trial because even though I felt that I did what I was
25 supposed to do, I did what I did to defend myself at that

1 time, when it come to the elements of the law and the cir-
2 cumstances, you know, and the evidence, it didn't came in
3 my favor.

4 Even though I felt like I was right, in the law's eyes
5 it wasn't, if you know what I mean. So I'm here for those
6 reasons.

7 I don't go around to start no trouble. I'm a person
8 that don't do no drugs, I don't drink when I get paid. I
9 don't do nothing at all. I spoil my kids. I got eight
10 kids and I support them and am there for them if they need
11 me.

12 My sister came to see me yesterday and she told me --
13 she said, we need you, and she told me sometimes you just
14 got to call the police, but at the time -- sometimes you
15 feel if you don't do what you got to do at that time it's
16 going to be you.

17 All I'm saying is that I don't look for no trouble.
18 It comes to me. I want them to stay away from me, stay
19 away from my family, you know. I'm not going to let no-
20 body do nothing. These guys -- they've been known to do
21 things. They're like dogs, chasing around people, kids,
22 fighting other people, other dogs, like dogs.

23 So even though I get put in a situation with that
24 going on, you know -- I just want to ask you to give me
25 another chance, even though I got this time. I ask that

1 you consider that and all the circumstances in the case. I
2 ask that you think about and consider a suspended sentence.
3 That's what I ask today. I appreciate it, Your
4 Honor.

5 THE COURT: Thank you, Mr. Wannamaker.

6 UNKNOWN PERSON SPEAKING: Your Honor, if I may just
7 add one thing?

8 THE COURT: Yes, maam.

9 UNKNOWN PERSON: Pretty much everybody on this side
10 of the Courtroom is friends or family of Mr. Wannamaker.
11 He does have an extensive support group.

12 He has alluded to the extensive discussions we've
13 had about these charges. Mr. Wannamaker has been forth-
14 right.

15 He's been very involved with us, and we have discussed
16 problems we might have with a self defense theory. Ulti-
17 mately he is standing before you taking responsibility for
18 his actions.

19 He tells me this is all over with and he'll deal with
20 whatever time he has to do. Then when he gets out, he's
21 going to stay home. That's all he has to do -- stay home,
22 and I believe he means it.

23 Thank you for the Court's time.

24 THE COURT: All right, thank you.

25 I'm going to take a few minutes so I can think about

1 something.

2 (Brief pause in proceeding)

3 THE COURT: All right. Mr. Wannamaker, I have appre-
4 ciated what you have said, and I have appreciated what
5 your family has said.

6 Also, I think the Solicitor's Office was appropriate
7 in changing the charges, you know, and giving you a cap.
8 That was appropriate as well.

9 The problem I have with your case -- I understand or
10 think I understand the circumstances but the problem I have
11 is you shouldn't have a gun and you shouldn't been shooting
12 people.

13 I understand you were worried about that and worried
14 they were going to do something to you, but the gun just
15 bothers me. Okay? You shouldn't have one, shouldn't be
16 carrying one like that, you know.

17 You know that if you get into any more trouble you're
18 in a bad way. Okay? So I'm hopeful that what you've told
19 me is honest and sincere. I think it is but I can't look
20 into the future.

21 You've done two events, and I would have hoped you would
22 have learned from the first one and not done the second one,
23 but you didn't. So I have real competing thoughts about
24 how I should sentence you on this, to be honest with you.

25 However, after saying all of that, what I'm going to

1 do -- the sentence of this Court in each one of these cases
2 is that you be committed to the State Department of Correc-
3 tions for a period of nine years.

4 The sentences are concurrent, and I'll give you credit
5 for the six hundred and one days.

6 ---- END OF REQUESTED TRANSCRIPT OF RECORD ----

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CERTIFICATE

1
2 I, HARRIET P. BENNETT, Official Court Reporter for
3 South Carolina Court Administration, hereby certify that
4 the foregoing Transcript was prepared from records of Harry
5 Dot Walker to the best of my ability, having been heard in
6 the Court of General Sessions for Orangeburg County on
7 August 7, 2012.

8 FURTHER, That I am neither of kin nor counsel to any
9 party to this action, nor do I have any interest in the
10 matter.

11 October 16, 2013.

12 *Harriet P. Bennett*
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FORM 5

STATE OF SOUTH CAROLINA)

2013 JUN 14 10:06 AM IN THE COURT OF COMMON PLEAS

County of Orangeburg)

Erick Wannamaker # 321756)

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

v.)

State of South Carolina)

2013-CP-38-00719

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 Kershaw Correctional Institution
2. Name and location of Court which imposed sentence First Judicial Court in the State of South Carolina County of Orangeburg
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 GS38-0371
 - (b)

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 7, 2012 2013 JUN -4 _____

(b) 9 years _____

(c) _____

FILED FOR
WISCONSIN
CLERK
COURT

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO _____

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) ~~no reason~~ ~~on appeal~~ ~~reason~~. My attorney didn't informed me on me having the right to appeal the sentencing, After discussing the discrepancy on the judge decision of 9 years after a negotiated plea of 0-10.

(b) Also it was my understanding that I would fall under the new law that I would serve 65% of my sentence with good time and work credits.

(c) I was only affirmed that I can only go back to court under Ineffective Assistant Counsel.

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

(a) Ineffective Assistance Counsel

(b) Miscarriage of Justice

(c) _____

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

(a) I was not informed on the appeal right after discussing not being satisfied with the judge's decision.

(b) Also my attorney had me in belief that I would be serving 65% of

(c) whatever sentence that was imposed by the judge, because of the law and sentencing guidelines had changed for violent offenders.

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? yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (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. Deputy Public Defender Peggy Hind @ Public Defender's Office @ The Orangeburg County Courthouse Office
 - ii. Assistance Public Defender Douglas Mellard @ Public Defender's Office @ The Orangeburg County Courthouse Office
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea arraignment and sentencing
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application: -7
 1) sentence reconsideration and or ^{2013 JAN -4} Alteration, modification or rescission of order; petition upon good cause ^{FILED FOR PET} preponderance of evidence.
 ew ~~alteration of justice~~
20. Are you now under sentence from any other court that you have not challenged?
 No

STATE OF SOUTH CAROLINA)
 County of Lancaster)

VERIFICATION

I, Erick Wannamaker # 321756, 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.

Erick Wannamaker
Erick Wannamaker

SWORN to and subscribed before me this 22
 day of May, 2013.

Catharine A. Arneson (L.S.)
 Notary Public

My Commission Expires: ~~My Commission Expires~~ **December 22, 2018**

2013 JUN -4 PM 12:07

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

I, Erick Wannamaker # 321756, 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.

Erick Wannamaker
Erick Wannamaker Applicant

SWORN or affirmed to and subscribed before me this 22 day of May, 2013.

Catharine A. Crossed
Notary Public

My Commission Expires: ~~My Commission Expires~~ December 22, 2018

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Erick Wannamaker, #321756,

2013-CP-38-0719

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed June 4, 2013, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was true bill indicted during the April 2011 of the Orangeburg County Grand Jury for Attempted Murder (2011-GS-38-0371) and Possession of a Firearm During the Commission of a Violent Crime (2011-GS-38-0372). Robert Douglas Mellard, Esquire, represented Applicant. On August 7, 2012, Applicant appeared before the Honorable Edgar W. Dickson and pled guilty to the lesser included offense of Assault and Battery of a High and Aggravated Nature. Judge Dickson sentenced Applicant to confinement for nine years; the remaining weapons charge was dismissed pursuant to the plea. Applicant did not appeal his conviction or sentence.

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

Department of Corrections, and the guilty plea transcript¹. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel; and
 - “I was not informed on the right appeal right after discussing not being satisfied with the judge’s decision.”
 - “Also my attorney had me in beleif [sic] thatI would be serving 65% of whatever sentence that was opposed by the judge because of the law and sentencing guidelines has changed for violent offense.”
2. “Miscarriage of justice.”

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

III.

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

¹ Applicant's guilty plea transcript has been ordered and will be forwarded upon receipt.

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

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

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

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

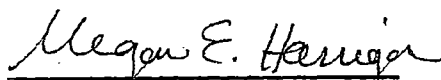
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

September 30 2013.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

2013-CP-38-0719

ERICK WANNAMAKER, #321756

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 Waller, Esq.
The Law Office of Jonathan Waller, LLC
1720 Main Street
Suite 104
Columbia, SC 29201

DATED this 30th day of September, 2013.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
2013-CP-38-0719

ERICK WANNAMAHER

) TRANSCRIPT OF RECORD

VS.

STATE OF SOUTH CAROLINA

) MAY 19, 2015
) ST. GEORGE, SC

B E F O R E:

THE HONORABLE MAITÉ MURPHY

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

JONATHAN D. WALLER, ESQUIRE
Attorney for the Applicant

J. CLAYTON MITCHELL, ESQUIRE
Attorney for the State

Ruth L. Mott, RPR, CRR
Certified Court Reporter

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
ERICK R. WANNAMAKER				
MR. WALLER	4		22	
MR. MITCHELL		20		
ROBERT DOUGLAS MELLARD				
MR. MITCHELL	23			
MR. WALLER		27		
CERTIFICATE OF REPORTER	31			

E X H I B I T S

NO.	DESCRIPTION	ID	EVD
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(NONE MARKED)

1 MR. MITCHELL: Your Honor, may it please the Court,
2 we're going to go forward with Mr. Erick Wannamaker versus
3 the State of South Carolina. It's 2013-CP-38-00719.
4 Mr. Wannamaker was indicted by the Orangeburg County grand
5 jury for two counts of attempted murder. He was represented
6 on these charges by Mr. Doug Mellard and Ms. Peggy Hinds. He
7 pled guilty before Judge Dickson on August 7, 2012. He pled
8 guilty there to the lesser included -- or he waived
9 presentment to two counts of ABHAN in exchange for dismissal
10 of the attempted murder charges. He was sentenced to nine
11 years imprisonment. He did not file an appeal on those
12 convictions or sentences.

13 He's filed this application for post-conviction relief
14 on June 4th, 2013, where he's alleged that counsel was
15 ineffective for failing to advise him that he would be
16 required to serve only 60 percent of his sentence. We filed
17 a return September 30th, 2013, and I'd note for the record
18 that Mr. Wannamaker is present and represented by
19 Mr. Jonathan Waller, and at this time I'll turn it over to
20 him.

21 THE COURT: Mr. Waller.

22 MR. WALLER: Thank you, Your Honor. If I can clarify
23 just a little bit as to Mr. Wannamaker's allegations. Your
24 Honor, it's his contention that he was informed by his
25 attorneys that instead of 85 percent, that he -- his charge

1 he's currently serving, he would be serving 65 percent. And
2 in the alternative that during the plea, the solicitor
3 changed their -- the plea agreement from a cap of ten to then
4 recommending ten years during the actual plea ceremony or
5 plea hearing and that that was a -- that his attorneys were
6 ineffective for failing to attempt to withdraw his plea at
7 that time.

8 At this time I would call Erick Wannamaker.

9 THE COURT: Mr. Wannamaker, if you'd come over here to
10 the witness stand.

11 ERICK R. WANNAMAKER,

12 being first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. WALLER:

14 Q. I need you to speak up just a little bit for me. I know
15 you're a little soft spoken. She has to take down everything
16 that you say.

17 A. Okay.

18 Q. Mr. Wannamaker, how old are you?

19 A. I'm 34 years old.

20 Q. Okay. And where are you from?

21 A. I was born in New York, but I stay in Orangeburg.

22 Q. How long have you lived in Orangeburg?

23 A. Since I was eight years old.

24 Q. Okay.

25 A. Yes, sir.

1 Q. Do you have any family here?

2 A. I do.

3 Q. Who all lives here?

4 A. Well, right now my sisters and my brothers, they stay
5 here. My stepfather and my mom, she just passed, so she was
6 living here.

7 Q. I'm sorry to hear that.

8 A. Yes, sir.

9 Q. Mr. Wannamaker, I want to take you back to January 8th
10 of 2011. Do you remember that day?

11 A. Yes, sir.

12 Q. Okay. And did you get arrested that day?

13 A. No, sir.

14 Q. Well, did you get arrested from something stemming from
15 that day?

16 A. Yes, sir.

17 Q. And what did you get arrested for?

18 A. Attempted murder.

19 Q. Okay. And you got a lawyer for that charge?

20 A. I was appointed a public defender.

21 Q. And who was that?

22 A. Mr. Mellard, Mr. Douglas Mellard.

23 Q. Okay. And were you locked up or were you able to make
24 bond after that?

25 A. I made bond.

1 Q. While you were out on bond for that charge, were you and
2 Mr. Mellard able to meet?

3 A. No, sir.

4 Q. Okay. Why were you not able to meet with him?

5 A. Because I just -- I think the first time I was supposed
6 to go to -- to roll call I missed roll call because another
7 incident happened in April.

8 Q. Okay. So there just wasn't time between then and when
9 you picked up another charge for you all to meet?

10 A. Yes, sir.

11 Q. When did you pick up that other charge?

12 A. It was April 18th, I believe.

13 Q. And also of 2011?

14 A. Yes.

15 Q. And what charge was that?

16 A. That was also attempted murder charge.

17 Q. Were you able to make bond again?

18 A. No. When I got locked up, they didn't give me a bond.

19 Q. Okay. Now, did Mr. Mellard represent you on that charge
20 as well?

21 A. Yes.

22 Q. Okay. Now, you -- in your meetings with Mr. Mellard,
23 what did you all talk about?

24 A. We discussed the charges, all of the charges, even 2006
25 charge that -- that I still had pending, and the new -- the

1 new charges, and that's basically what we talked about.

2 Q. What was the 2006 charge?

3 A. It was assault and battery with intent to kill.

4 Q. And that was from 2006?

5 A. Yes.

6 Q. Do you know why it was pending that long?

7 A. No. I started going to roll call. They said they would
8 call me and they never did call me and the charges came back
9 up when the January 2011 charges came up. And then when the
10 April charges came up, they just kept the 2006 charge as
11 well.

12 Q. Okay. Had you spent any time in the county detention
13 center on that 2006 charge?

14 A. Yes, I did. And then I went to prison. When I went to
15 prison, the charge was still pending.

16 Q. Okay. So you went to prison after, while that charge
17 was still pending?

18 A. Yes, for a misdemeanor ABHAN charge.

19 Q. Okay. Now, I want to talk about the 2011 charges for a
20 little bit. Did you and Mr. Mellard discuss the elements of
21 those two charges?

22 A. You mean like...

23 Q. What the State would have to show against you.

24 A. Well, it was already -- we talked about it and I told
25 him what happened. I told him, you know, what I did and how

1 I was willing to plea in self-defense. And, you know, he
2 talked to me and he told me a lot of things, you know, but as
3 far as the elements, as far as what they have to have, I just
4 assumed that they really -- you know, I don't remember, but
5 I'm sure they already had everything because I was willing to
6 accept responsibility for the charge and what happened and
7 there was a reason behind it.

8 Q. Okay.

9 A. So we talked about it.

10 Q. Okay. Now, you were evaluated before you plead guilty;
11 is that right?

12 A. Yes, sir.

13 Q. Okay. And all that came back that you were competent to
14 stand trial?

15 A. Yes, sir.

16 Q. Did you and Mr. Mellard discuss any potential defenses
17 that you might have?

18 A. Yes, we did.

19 Q. Okay. What did you all talk about?

20 A. It just -- we kind of -- we kind of -- I just felt we
21 kind of didn't get along, but we talked about it, but I
22 just -- I just kind of felt that he was kind of just
23 frustrated with my type -- my situation and, you know, me
24 wanting to plea in self-defense and me having to have
25 evidence and stuff like that. Just -- it just, I think

1 because of all the charges that I had, he wasn't, you know,
2 convinced that, you know, my reason for me doing whatever I
3 felt I had to do, you know, as far as the -- the assault and
4 batteries and the attempted murders or whatever.

5 Q. Okay. Well --

6 A. So I just felt he was kind of frustrated with me.

7 Q. When you say "plea self-defense," what are you saying?

8 A. I was going -- I was going to plea in self-defense
9 because of the -- the victims in the case, they was just
10 known for different stuff, people jumping on people, shooting
11 people, and they've been getting away with it in the
12 neighborhood and doing all kind of stuff and, you know, they
13 had a reputation and I was trying to explain that to him and
14 explain that to them and, you know, they -- you know, he --
15 he kind of got it, you know, with the help of Ms. Hinds.

16 And, you know, I had to go and try to get him relieved
17 off my case because, you know, we kind of just had
18 differences. I didn't feel that he was helping me, but
19 Ms. Hinds, with the help of Ms. Hinds and him together, it
20 came together and it kind of got a whole lot better as far
21 as --

22 Q. Okay. Let me back you up just a little bit.

23 Did you and Mr. Mellard or you and Ms. Hinds or all
24 three of you all, did you all discuss what evidence the State
25 actually had?

1 A. Well, we did discuss -- yes, we discussed it and, you
2 know, we just -- we talk about the -- the statements and
3 stuff and the witnesses that we probably would have, but the
4 main thing is the self-defense, the theory that Ms. Hinds
5 felt that it just would have been hard to actually prove
6 that, but she was willing to go until the offer came about,
7 when the offer came about I guess with the both of them. We
8 just considered that it will be in my best interest to take
9 the plea and not take a chance.

10 Q. Okay. Now, you all were actually about ready to start a
11 trial; is that right?

12 A. Yes, we was going to trial actually the same week that I
13 went to take the plea.

14 Q. Okay. Now, what did you and Mr. Mellard or all three of
15 you all talk about in you making your decision to plead
16 guilty?

17 A. We talked about all the charges that I had. They said
18 that, okay, you got -- you got the two new charges and you
19 got the old charge, and even if you beat this charge, they
20 gonna plead. They gonna have you go back to trial on the
21 other charge, and every charge that I go to court on, they
22 gonna make me go to trial on.

23 And if I beat one, I go to trial on the other one, but
24 if I get convicted for one, then they gonna give me the max
25 on it. Once I get the max on it, they gonna go ahead and

1 take me to court on the other one. They take me to court on
2 the other one, they gonna career me out and I probably end up
3 with a life sentence due to the two violent offenses.

4 Q. Okay. So you came to the decision to plead guilty; is
5 that right?

6 A. Yes.

7 Q. Okay. What was your understanding of what you were
8 pleading to, what the plea agreement was?

9 A. The plea agreement was that I had a zero to ten. They
10 said that it was gonna be up to the discretion of the judge
11 and that solicitor would make a recommendation, not even my
12 attorneys. They can't make a recommendation. I kept asking
13 them, but they said we can't make a recommendation because
14 it's up to the judge. They gonna leave everything up to the
15 judge.

16 So I was like, "Well, what about the charges?" And I
17 was like, you know, talking about 2006 charge. They said
18 they was gonna drop that charge. They was gonna get me to
19 plead to the two ABHAN charges. So I said, "Well, what about
20 my plea because I been in the county on the 2006 charge and
21 went to prison on the charge?"

22 And so they said they would talk to the solicitor and
23 try to get them to give me time credit for the 2006 charge.

24 But so I was asking about, you know, the law being
25 changed being 85 to 65 and 65 to 51 and we talked about it.

1 They said I have to check on it. I have to check on it. So
2 when I was incarcerated on my last incarceration for ABHAN,
3 it was nonviolent.

4 So, you know, I've been reading the law books and going
5 to the law library recently, so, you know what I'm saying? I
6 kind of know the difference in the law changing in 2010 and
7 the law before that now, but I didn't know that then, but I
8 was under the assumption that it was a nonviolent offense.

9 So I asked them, you know, "Am I gonna be nonviolent?
10 Am I gonna be nonviolent and did the law change?"

11 They said they was gonna check on it. But then I was
12 like -- we talked about the credit that I was gonna get and I
13 was supposed to be getting some of the credit that I had on
14 the 2006 charge. And they said -- well, they said they would
15 talk to the solicitor about it.

16 And they went and they talked, but everything was fine
17 and I was gonna get the credit for the 2006 charge until the
18 day we went to court. And we didn't -- the day we went to
19 court, they said, no, they're not gonna give you all that
20 credit, but they're gonna give you 180 days of it.

21 So I was like, you know -- but they, you know, still
22 spoke me, but I was still kind of skeptical about accepting
23 the plea and -- but I thought about the zero to ten, and then
24 they said "Well, you got zero to ten. I don't think they
25 will give you all of it," which they didn't give me all of

1 it. They gave me all of it but a year, so I guess she was
2 correct, but I didn't think they was gonna give me almost all
3 of the ten years.

4 Q. Mr. Wannamaker, you just threw a lot of information at
5 us. Let me back you up a little bit.

6 The January 2011 charge that you were originally charged
7 with attempted murder; is that right?

8 A. Yes.

9 Q. What did you actually plead to?

10 A. I pled to ABHAN.

11 Q. Okay. ABHAN -- because it was a 2011 charge, it was the
12 new ABHAN; is that right?

13 A. Well, yes; because up under the new charge, but I
14 didn't -- that wasn't my intentions. I didn't think I was
15 pleading up under no 2000 --

16 Q. Okay. And the April 2011 charge, what were you
17 originally charged with?

18 A. Attempted murder.

19 Q. Okay. And what did you actually plead guilty to?

20 A. ABHAN.

21 Q. Okay. And the 2006 charge, what happened to that
22 charge?

23 A. It was -- they dismissed the charge.

24 Q. Okay. So your understanding was you were pleading
25 guilty to the two reduced charges from attempted murder to

1 ABHAN and they were going to dismiss the 2006 charge; is that
2 right?

3 A. Yes.

4 Q. And that you were going to be sentenced under a cap of
5 ten years; is that right?

6 A. Yes.

7 Q. Okay. Now, you mentioned some credit from the 2006
8 charge. Why were you given credit for the 2006 charge on the
9 2011 charge? What was your understanding of why you were
10 given credit?

11 A. It wasn't -- it wasn't understanding. I just -- you
12 know, it was more like I felt like an incentive to go ahead
13 and accept the plea, it was just my understanding that, okay,
14 they're just gonna give me 180 days. And if I would have
15 took the trial, I was just saying that, you know, I just felt
16 it was kind of like incentive because it wasn't guaranteed
17 that I was, you know, I could have got that.

18 They didn't have to give it to me, and because they knew
19 that if I didn't get none of the credit, I probably wouldn't
20 have pled guilty there then.

21 Q. Okay.

22 A. So I would have went on and went to trial.

23 Q. So you testified that you asked both Mr. Mellard and
24 Ms. Hinds about the charge being 85 or 65 percent. Did you
25 ever get an answer to that?

1 A. No. They just said they was gonna look into it. They
2 was gonna look into it.

3 Q. Now, when the plea hearing actually started, what was
4 your understanding of the range of years that you were
5 looking at?

6 A. I was looking at a zero to ten and the discretion was up
7 to the judge, but then, you know, I just didn't think that I
8 was gonna get all of it, almost all of it anyway. But I
9 thought the way they was talking, it's like they just -- they
10 just had me, you know, with good hopes, like, you know, you
11 gonna be all right. It's gonna be all right. They're not
12 gonna give you all of it, you know. I got almost all of it.

13 Q. Okay. Did the solicitor, during the plea, change the
14 plea agreement?

15 A. Yes.

16 Q. Okay.

17 A. Solicitor did, because before I was going to court,
18 everything was all right as far as me getting -- it was a
19 whole bunch of credit time towards the 2006 charge that I had
20 that I was incarcerated because it was pending. But yes,
21 because I just thought that they was gonna give me the time
22 credit for the charges that -- the 2006 charge that I had
23 credit towards the other charges I've been incarcerated
24 because I still had all of them pending.

25 Q. Okay. Did you notice when the solicitor asked the judge

1 to give you the ten years?

2 A. When he said I recommend the cap, and to be honest, it's
3 a lot in the transcript that I -- that -- that's not in the
4 transcript that was said and I heard was said and it's not in
5 the transcript and -- and that I remember that's actually not
6 in the transcript that should have been in the transcript
7 that would have said more. You know I'm saying?

8 It's just like it's been modified. Not modified to, you
9 know, hurt me or to help me, but, like, more important things
10 that I felt that was important that I thought I heard was not
11 in the transcript. So when he said it sounded like he was
12 saying more like he wanted me to have all of it, yes.

13 Q. But did you notice it at the time? Did it stand out to
14 you?

15 A. No, I can't -- I can't say that I do because I done read
16 my transcript, so I know what it says, so I'm not going to
17 say that I noticed it.

18 Q. Did your attorney clarify what the plea agreement
19 actually was on the record after the solicitor changed?

20 A. No, he didn't say that.

21 Q. Okay.

22 A. Say nothing that the solicitor said, recommended the
23 cap.

24 Q. Okay.

25 A. The maximum.

1 Q. Okay. Did you bring it to his attention that it had
2 changed?

3 A. No, not right then. I wasn't satisfied with it at the
4 beginning when I talked with Ms. Hinds after the plea, and
5 she -- you know, she just said, you know, you can go back on
6 ineffective. And I said, you know, I didn't want to do that
7 because she was -- they was, you know, she was really good to
8 me and she helped me out a lot.

9 Mr. Mellard, he helped me out, you know, when they was
10 together and I felt like they really did a good job and, you
11 know, I kind of -- they been -- I just felt they did all
12 right and I didn't want them to feel like they didn't do what
13 they was supposed to do or did the best they could, you know,
14 but I just felt something wasn't right.

15 Q. You testified earlier that you went to prison on an
16 ABHAN charge before; is that right?

17 A. Yes.

18 Q. When was that?

19 A. That was in -- that was in 2007.

20 Q. Okay. And who was your attorney for that charge?

21 A. Mr. Mellard.

22 Q. Did you and Mr. Mellard discuss your prior record when
23 talking about the 2011 charges?

24 A. No, not the prior record. We talked about the prior
25 charge from the 2006 incident, but the only other charge I

1 ever had on my record was the ABHAN charge.

2 Q. But he represented you you said?

3 A. Yes.

4 Q. So he knew you had a previous ABHAN?

5 A. And I was incarcerated and I didn't -- and I haven't
6 went to court the whole time.

7 Q. After you plead guilty, did you all come back in front
8 of the judge at one point?

9 A. For the 2006 charge?

10 Q. No, sir. After you plead guilty in front of
11 Judge Dickson, did you all come back in front of him?

12 A. Yes. I had -- me and Mr. Mellard went back, because
13 part of my plea agreement that I was telling him about my
14 godmama not being able to come see me. And during my last --
15 my last incarceration, she wasn't able to come see me.

16 And then when I talked to Mr. Mellard and Ms. Hinds
17 about it, they said, "We'll talk to the judge," but then
18 when -- after the plea was over with, I told Mr. Mellard, I
19 said, you know, "We didn't tell him about my mom, my godmom
20 being able to visit."

21 So he brought me back in front of the judge and we spoke
22 to the judge and the judge said that when you get where
23 you're going, get with Mr. Mellard and let me know and I do
24 whatever I need to do to get them -- allow them -- her to be
25 able to visit me. And I got letters in here from him and he

1 said he contacted Mr. Mellard to try to get her to be able to
2 be allowed to visit me but SCDC won't approve it. They
3 won't -- he can't.

4 Q. Okay. But Judge Dickson asked that she be able to
5 visit; is that right?

6 A. Yes.

7 Q. And was that part of the plea agreement when you all
8 were going back and forth?

9 A. Yes, it was part of the reason why I did accept the zero
10 to ten that way.

11 Q. Okay. Had you known that the -- that what the solicitor
12 was asking for was ten years for an 85 percent sentence, what
13 would you have done? Would you have pled guilty?

14 A. No, I would have -- I would have went to trial, actually
15 would have went to trial. I was ready to go and I felt that,
16 you know, due to the guy's reputation and they records and
17 they capabilities, I had a chance. I just felt that I did,
18 so I would have went to trial.

19 Q. You thought you had a self-defense claim?

20 A. Yes.

21 Q. Mr. Wannamaker, I've asked all the questions that I have
22 of you. Is there anything you think I've left out or that
23 I've failed to mention to the Court that you want the judge
24 to be aware of?

25 A. I think -- I think you kind of got most of it. It's

1 just that, you know, everything -- I think that's it. I
2 ain't -- I'm not -- I think you -- you kind of did
3 everything. I appreciate it.

4 Q. Thank you. I have no further questions. Please answer
5 any questions Mr. Mitchell has.

6 A. Yes.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION BY MR. MITCHELL:

9 Q. Good morning, Mr. Wannamaker.

10 A. How you doing, sir?

11 Q. Pretty good. Pretty good.

12 Let's see. So you had three pending attempted murder
13 charges at one point; is that right?

14 A. Yes.

15 Q. Then you pled down, pled guilty to two ABHANS.

16 A. Right.

17 Q. And then they dismissed one of the attempted murders,
18 correct?

19 A. No. I apologize. I must have said that wrong. I
20 misinterpret what you said at first. I had two attempted
21 murder charges and one assault and battery with intent to
22 kill separate.

23 Q. That's right. One ABWIK from '06, two attempted murder
24 charges from 2011, right?

25 A. Yes.

1 Q. Dismissed the ABWIK in exchange for your plea, right?

2 A. Yes.

3 Q. So the deal, in your eyes, was that they would -- there
4 would be a cap of ten years, correct?

5 A. Yes.

6 Q. And you received nine years, correct?

7 A. Yes.

8 Q. So it wasn't outside of the cap?

9 A. No.

10 Q. Isn't that right?

11 A. Yes, sir.

12 Q. Okay. Now, your issue really is that you think you
13 should be serving 65 percent; is that correct?

14 A. I was under the assumption that I would be up under the
15 nonviolent code to where I would be getting more credits and
16 good time.

17 Q. So you think now you're serving time for -- you think
18 you'll be serving 85 percent of your nine-year sentence,
19 right?

20 A. Yes.

21 Q. Instead of 65 is what you're saying?

22 A. 65 percent, yes, sir --

23 Q. Okay.

24 A. -- is what you get when you -- when you earn work
25 credits and good time.

1 Q. So you pled guilty because you didn't want to risk going
2 to trial on attempted murder; is that right?

3 A. No, that ain't why I pled guilty. I pled guilty because
4 my attorneys felt that this was -- was in my best interest
5 and I had an opportunity for zero to ten and I could have
6 went home. They said I could have went home, but the judge
7 can go over ten, but it's up to his discretion, so --

8 Q. And he was within the ten at nine, right?

9 A. Yes.

10 MR. MITCHELL: Okay. No further questions. Thank you.

11 THE COURT: Anything further?

12 MR. WALLER: Just one, Your Honor.

13 REDIRECT EXAMINATION BY MR. WALLER:

14 Q. Mr. Wannamaker, when you went to the Department of
15 Corrections on your prior ABHAN, what percentage sentence
16 were you under?

17 A. I was under the 65 percent.

18 MR. WALLER: No further questions.

19 THE COURT: You may step down, sir. Thank you.

20 Any further witnesses?

21 MR. WALLER: Applicant rests, Your Honor.

22 THE COURT: Mr. Mitchell, do you have any witnesses?

23 MR. MITCHELL: Your Honor, State calls Mr. Doug Mellard.

24 ROBERT DOUGLAS MELLARD,

25 being first duly sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. MITCHELL:

2 Q. Good morning, Mr. Mellard.

3 A. Good morning.

4 Q. Thanks for being here with us today.

5 Let's see. How long have you been practicing law?

6 A. Since '97.

7 Q. Where are you currently employed?

8 A. Orangeburg Public Defender's Office.

9 Q. How long have you been there?

10 A. Since 2005.

11 Q. How did you become involved with Mr. Wannamaker's case?

12 A. It was originally, I think it was transferred to me by
13 Ms. Hinds, I believe, in -- the first case I was involved
14 with, let me clarify this, it was the 2006 case, and that was
15 the first case I got. And when I got his case, I believe he
16 was in Turbeville Correctional Institution, so that's the
17 first case.

18 Q. So then he was charged in 2011 and you represented him
19 on those additional charges?

20 A. Correct. He got out of Turbeville and then he got two
21 more charges.

22 Q. Can you give us a brief rundown of the facts of these
23 attempted murder charges?

24 A. The first allegation was November 10th, 2006. He
25 supposedly shot a fellow by the name of Terrence Carmichael.

1 I believe Carmichael was shot in the head and the groin area,
2 and he was charged with assault and battery with intent to
3 kill based on that.

4 The next allegation was April 24th, 2011. Apparently
5 there was a family gathering at the fairgrounds. At this
6 point he shot a Stanley Bowman, shot him in the upper arm and
7 left side of his back. And then it was alleged that he stood
8 over him and tried to fire another shot, but the gun didn't
9 go off.

10 And then he got another charge January 8, 2011. This
11 was outside of a club, Bonanza Inn Club. I believe his
12 family ran that club, maybe his mom, somebody like that.
13 Anyway, he shot a fellow by the name of Gamuel Mays. That's
14 the basic gist of the charges.

15 Q. Okay. Well, how did plea negotiations come about in
16 this case?

17 A. We were going to, getting ready for trial and just from
18 talking with the solicitor, and I believe the solicitor
19 was -- maybe it wasn't Tommy Scott, but I believe it was --
20 it was either Scott or Sorenson. I don't remember off the
21 top of my head. But just from talking with them, trying to
22 get him the best deal possible, we ended up working out a cap
23 of ten.

24 Q. So what was your understanding of the plea deal?

25 A. The plea deal? He would plead to -- first of all, he

1 was charged under the new law. He had two charges of
2 attempted murder.

3 Q. Right.

4 A. So we were going to reduce those charges to the new
5 assault and battery of a high and aggravated nature, and he
6 would plea to that for a cap of ten.

7 Q. Did you advise him of the plea deal before he entered
8 into it?

9 A. Oh, yes. Mm-hmm. And it wasn't a last-second plea
10 deal. This is a number we'd been working out for some time.

11 Q. So negotiations had gone back and forth a bit?

12 A. Correct.

13 Q. And when you say change in the ABHAN, we keep hearing
14 new ABHAN. Can you explain a bit of that?

15 A. I guess back in 2006 there were -- there was assault and
16 battery with intent to kill and then there was ABHAN, which
17 was a misdemeanor ABHAN. They changed the law back in I
18 think 2010. I can't remember, June or something like that.
19 And they created the crime of attempted murder, and that was
20 zero to 30 years. It's most serious. It's all that kind of
21 stuff. Then they also created a statutory ABHAN, which is
22 below that. And then they created assault and battery first,
23 second and third.

24 So all those were new crimes -- well, they weren't new,
25 crimes but they were new statutory crimes that were created

1 back in 2010. So by pleading down from attempted murder, he
2 was pleading down to the statutory ABHAN.

3 Q. And all these charges would have been 2011?

4 A. Correct.

5 Q. Or at least the two that he pled to would have been
6 under the new change?

7 A. Correct, under the new rule.

8 Q. On the 85/65 percent, what did you advise Mr. Wannamaker
9 of the time that he would serve, or did you even advise him
10 of that?

11 A. If we advised him of anything, we advised him that it
12 would be 85 percent. I had sent him letters letting him know
13 that the charges he was looking at, attempted murder, was 85
14 percent. But we did -- we did try to work out where he would
15 get some credit for time served, try to help him out on that.

16 Q. Do you recall how much credit he got?

17 A. I don't recall. I know we had calculated that we wanted
18 601 days I believe is what we wanted. Whether he got that or
19 not, I don't know.

20 Q. If the record reflects 601 days, would that go in line
21 with what you think?

22 A. Correct, mm-hmm.

23 Q. So he did receive the credit that he was hoping to get
24 or that you all were hoping to get?

25 A. If that's what it says, yes, because I remember 601.

1 Q. As far as your recollection, did the transcript
2 accurately reflect the proceeding that took place?

3 A. To my knowledge, it does. I mean, I know he said that
4 there were other things that were said. I don't recall any
5 other things that were said.

6 MR. MITCHELL: No further questions. Thank you. Please
7 answer anything Mr. Waller has for you.

8 THE COURT: Counsel.

9 MR. WALLER: Just briefly, Your Honor.

10 CROSS-EXAMINATION BY MR. WALLER:

11 Q. Mr. Miller, the Omnibus Crime bill kind of messed
12 everybody up for a little bit, didn't it? It was a little
13 confusing?

14 A. Yes, we all sat down and read it and kind of created a
15 cheat sheet when it came out.

16 Q. I know you spoke a little bit of it, and they created
17 the statutory ABHAN, but essentially the statutory ABHAN was
18 the old ABWIK; is that correct?

19 A. Pretty close, yes.

20 Q. And the old ABHAN, common law ABHAN became statutory
21 assault and battery first; is that right?

22 A. Yes, it's pretty close, except it's not a misdemeanor.

23 Q. Sure.

24 Now, Mr. Wannamaker testified that you had represented
25 him on a common law ABHAN back in 2007?

1 A. I don't remember that, if I was his lawyer. I do
2 remember getting the case, the 2006 case from Peggy Hinds and
3 him being up in Turbeville, but I don't recall whether I
4 represented him on the ABHAN, the old ABHAN.

5 Q. As part of the discovery you received in the two 2011
6 cases, would that have included a rap sheet?

7 A. Yes, it would have.

8 Q. So were you aware that he had had a misdemeanor ABHAN on
9 his record?

10 A. I -- I would have known that because I tried to go up to
11 Turbeville to see him and that's what he said he was up there
12 for.

13 Q. Do you have anything in your file or do you recall
14 discussing with him the differences between the new ABHAN
15 versus the old ABHAN?

16 A. No, hm-mm.

17 Q. Okay. You testified that your understanding of the plea
18 agreement was that it was a cap of ten years; is that
19 correct?

20 A. That's correct.

21 Q. Okay. Was -- in your plea negotiations was there ever
22 any understanding that the solicitor would ask for -- would
23 recommend the ten?

24 A. That I don't recall. Usually what we'll do is we'll run
25 it over with the judge. Sometimes we'll sit down, just kind

1 of tell the judge what we're looking for. Usually we'll tell
2 the judge we're going to ask low. Solicitor will tell the
3 judge he's going to ask high.

4 Q. Did you notice the shift during the plea hearing where
5 the solicitor switches from saying cap of ten to asking the
6 judge for ten?

7 A. I didn't notice it as a change in the negotiations, if
8 that's what you're asking.

9 Q. Okay.

10 A. I mean, it's like I said, the solicitor always asks for
11 the high end of the cap and we always ask for the low end of
12 the cap.

13 Q. So it was your understanding that they were going to ask
14 for the high end of the cap or it was just going to be a cap?

15 A. They're going to -- what we usually do is they cap it,
16 and that gives the judge discretion, zero to whatever, zero
17 to ten in this case. And we usually go and ask as low as we
18 think it's possible, and then the solicitor will ask for the
19 higher end of the cap.

20 Q. In this specific case, do you have any recollection of
21 the solicitor telling you before they were going to ask for
22 the high end of the cap?

23 A. I don't have a recollection. I can't say for sure, but
24 that's usually what they do.

25 MR. WALLER: Okay. Beg the Court's indulgence one

1 second.

2 (Brief pause.)

3 Q. Do you recall what you asked for in this, in mitigation?

4 A. I don't remember. I believe -- and you've got the
5 transcript, but I believe we had some family members come up.
6 And maybe that's -- I believe we did. Usually in these kind
7 of things, I would -- when you've got these situations, I
8 would ask for -- usually maybe ask for the mercy of the court
9 or something, but I don't know exactly what I said in the
10 transcript.

11 MR. WALLER: Okay. No further questions, Your Honor.

12 THE COURT: Anything further?

13 MR. MITCHELL: Nothing further. Thank you.

14 THE COURT: You may step down, Mr. Mellard. Thank you.

15 Any other witnesses?

16 MR. MITCHELL: No further witnesses from the State.

17 THE COURT: All right. The Court will review the record
18 and notify you of an opinion.

19 MR. WALLER: Thank you, Your Honor.

20 MR. MITCHELL: Thank you, Your Honor.

21 --- END OF TRANSCRIPT OF RECORD ---

22

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24

25

1 CERTIFICATE OF REPORTER
 2 STATE OF SOUTH CAROLINA
 3 COUNTY OF ORANGEBURG
 4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
 6 for the State of South Carolina, do hereby certify that the
 7 foregoing is a true, accurate and complete transcript of
 8 record of all the proceedings had and evidence introduced in
 9 the matter of the above-captioned case, relative to appeal,
 10 in the 1st Judicial Circuit Court for Orangeburg County,
 11 South Carolina, on the 19th of May, 2015.

12 I further certify that I am neither related to nor
 13 counsel for any party to the cause pending or interested in
 14 the events thereof.

15 October 26, 2015

16
 17 *Ruth L. Mott*

18 Certified Court Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Erick Wannamaker, #321756,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-38-0719

ORDER OF DISMISSAL

FILED
2015 JUL -1 P 2:25
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 4, 2013. Respondent made its Return on October 1, 2013, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire was appointed by the Orangeburg County Clerk of Court. An evidentiary hearing was held on May 19, 2015, at the ^{Dorchester} Orangeburg County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, R. Douglas Mellard, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was true bill indicted during the April 2011 of the Orangeburg County Grand Jury for Attempted Murder (2011-GS-38-0371) and Possession of a Firearm During the Commission of a Violent Crime (2011-GS-38-0372). Counsel Mellard and Margaret E. Hinds, Esquire, represented Applicant.

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

On August 7, 2012, Applicant appeared before the Honorable Edgar W. Dickson and pleaded guilty to the lesser included offense of Assault and Battery of a High and Aggravated Nature (ABHAN). Judge Dickson sentenced Applicant to confinement for nine years; the remaining weapons charge was dismissed pursuant to the plea. Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of counsel in that:
 - a. Applicant believed he would serve 65% of his sentence, rather than 85%.
 - b. Applicant believed he was entering into a plea agreement where the State would ask for a range of 0-10 years' and would not make a recommendation for the full amount.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he and his close family are from Orangeburg, South Carolina. He testified he was arrested on January 8, 2011, and charged with attempted murder. Counsel Mellard was appointed to represent him. He testified Counsel Mellard discussed and reviewed with him a prior 2006 charge of assault and battery with intent to kill (ABWIK) that was still pending at the time of his arrest. Applicant testified that Counsel Mellard did discuss the elements of the charges and went over what it would take to present a self-defense case to a jury. They also discussed the evidence the State planned to present against Applicant. Applicant testified Counsel Hinds became involved with the case as it neared a trial date.

Applicant testified he ultimately decided to plead guilty after accepting a plea offer where the State would recommend a cap of ten (10) years' imprisonment. He testified the State dropped the 2006 charge and allowed him to plead to ABHAN in exchange for his guilty plea. Applicant

conceded that he understood the sentencing would be in the plea judge's discretion. Applicant said that he asked Counsel Mellard about whether he would serve 65% of that sentence and that he said he would look into it. Applicant testified he never received an answer to that question. Applicant testified he did not believe he would receive a sentence towards the high end of the range. Applicant also believed he would receive credit for the time he served. Applicant also testified he believed a lot of discussions that took place during the plea hearing were not included in the transcript. Applicant did acknowledge he signed a form checklist that Counsel Hinds reviewed with him which included all rights, waivers, and details of the plea agreement. He admitted he was advised of the plea agreement again by Counsel Hinds in that Applicant could not receive a sentence longer than ten (10) years.

Counsel R. Douglas Mellard's Testimony

Counsel testified he had been practicing law since 1997 and was appointed to represent Applicant through his position with the Orangeburg County Public Defender's Office. He testified he met with Applicant numerous times in preparing his case for trial. Counsel testified the plea deal came about after discussions with the prosecuting solicitor. He testified the plea deal allowed Applicant to plead guilty to ABHN and to have a cap of ten (10) years'. He testified that even though the solicitor asked the plea court to consider a sentence near the upper end of the cap. He explained that in most instances, defendants ask for the lower end of a range and the State asks for the high end. He did not believe this to be a breach of the plea agreement.

Counsel testified Applicant did receive credit for the time he served pretrial and actually received credit for 601 days' service which is reflected on the sentencing sheet. Counsel Mellard testified the law regarding ABHN changed in 2010 and described those changes. He also

testified he wrote a letter explaining to Applicant that he would be required to serve 85% of his sentence since ABHAN is now classified as a violent crime.

III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he

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

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Involuntary and Unintelligent Guilty Plea

Applicant argues Counsel was ineffective in improperly advising him that he would serve 65% of his sentence. He also alleges that the plea agreement was violated when the State asked the plea court to consider the cap of ten (10) years'. This Court finds these allegations without merit and dismisses them with prejudice.

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). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

Violent/Non-Violent Offenses

Applicant alleges he was improperly advised that he would serve 65% rather than 85% of his sentence. This Court finds Applicant's testimony not credible and in turn finds Counsel Mellard's testimony credible and persuasive on the matter. Counsel Mellard testified he advised Applicant he must serve 85% of his sentence because ABHAN is classified as a violent offense. See S.C. Code Ann. § 16-1-60 (2012). Applicant has failed to show that Counsel was deficient in any regard.

Applicant also has failed to meet his burden of proof in showing he would have gone to trial but for Counsel's alleged misadvice. This allegation is denied and dismissed with prejudice.

Plea Agreement

Applicant further alleges the plea agreement was violated when the prosecuting solicitor asked the court to consider the cap of ten (10) years'. The Courts of this state have held plea agreements are subject to contract principles, especially in regard to enforceability. See State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994); Reed v. Becka, 333 S.C. 676, 685, 511

S.E.2d 396, 401 (Ct. App. 1999) (finding “[w]hile plea agreements are a matter of criminal jurisprudence, most courts have held they are subject to contract principles.”). As the Fourth Circuit articulated: “Plea bargains rest on contractual principles, and each party should receive the benefit of its bargain.” United States v. Ringling, 988 F.2d 504, 506 (4th Cir. 1993). “The court must enforce an unambiguous contract according to its terms, regardless of the contract’s wisdom or folly, or the parties’ failure to guard their rights carefully.” State v. Compton, 366 S.C. 671, 678, 623 S.E.2d 661, 665 (Ct. App. 2005). The court noted that “a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based.” Thrift, 312 S.C. at 293, 440 S.E.2d at 347.

This Court finds the plea agreement was not violated. The evidence before the Court shows that the plea agreement was that the State would recommend a cap of ten years’. Applicant takes issues with the prosecuting solicitor stating to the court: “we’d ask Your Honor consider that cap,” (Trial Trans. p. 11, line 24 – p. 12, line 2). This Court finds the plea deal was not violated when the solicitor asked for the higher range of the cap. It is noteworthy that this was not a negotiated plea deal, and the sentencing judge was free to sentence Applicant within the 0-10 range which he did by sentencing Applicant to nine (9) years’ imprisonment with credit for 601 days’ service. This Court finds further that Applicant reaped the benefit of the bargain and received a sentence in accord with the agreement. This Court finds Applicant’s testimony on the matter to be not credible. The credible testimony presented by Counsel Mellard is persuasive. This Court finds Applicant failed to meet his burden in proving Counsel was ineffective in any regard of his representation.

This Court finds Applicant failed to meet his burden in proving he pled guilty involuntarily and unknowingly. This Court also finds Applicant cannot prove prejudice. This allegation is denied and dismissed with prejudice.

All Other Allegations

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

V. CONCLUSION

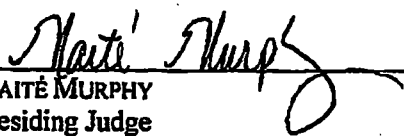
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry,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

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

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 24 day of June, 2015.


MAITÉ MURPHY
Presiding Judge

St. George, South Carolina

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805302

Arrested: June 23, 2011

ACTION OF GRAND JURY
TRUE BILL

[Signature]

Date **MAY 1 6 2012**

Foreperson of Grand Jury
Date: May 16, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-2048

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

May 14, 2012 TERM

THE STATE
vs.

Erick Tomlinson Wannamaker

Indictment for

ATTEMPTED MURDER
ATTEST: TRUE COPY
Winnif B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-29

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

Defendant

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

Defendant

Witness:

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

FILED TO RECORD
WANNAMAKER & CLARK
CLERK OF COURT
ORANGEBURG COUNTY
Winnif B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

2012 MAY 16 AM 11: 22

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS Erick Wannamaker
AKA:
Race: B Sex: M Age: 32
DOB: SS#:
Address:
DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-2048
AW#: M805302
Date of Offense: 4/23/2011
S.C. Code § 16-3-29
CDR Code #: 3410

SENTENCE SHEET

CDL: Yes [] No [] CMV: Yes [] No [] Hazmat: Yes [] No []

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

[] CONVICTED OF or [X] PLEADS

TO: Assault and Battery of a High and Aggravated Nature

In violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

[] NON-VIOLENT [X] VIOLENT [X] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lowd Act)

The charge is: [X] As Indicted, [X] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury, (Defendant Initial)

The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [X] Recommendation by the State.

ATTEST:

Thos B. Scott III 15881 Erick Wannamaker Attorney for Defendant 13521
Scott, III, Thomas B SC Bar# Erick Wannamaker SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 9 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.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 8/7/12

[X] 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 Dept. of Corrections

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-85 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [X] Ordered

Total: \$ plus 20% fee: \$

Payment Terms: Winnifred B. Clark

[] set by SCDPPPS Clerk of Court

Recipient:

*Fine: \$

14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1)(Conv. Surcharge) \$100 \$ 100.00

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

§ 56-5-2985 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$150 \$

§ 60-21-114 (BLI Breath Test Fee) \$50 \$

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§ 44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

V. Orena Clerk of Court/Deputy Clerk

Court Reporter: Harry D. Walker

PTUP _____

_____ days/hours Public Service Employment

Obtain GED []

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling []

Random Drug/Alcohol Testing []

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

[] Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.

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

PRESIDING JUDGE [Signature]

Judge Code: 2153

Sentence Date: 8/7/12

WITNESSES

Jarred Kittrell

Orangeburg County Sheriff

ARREST WARRANT NUMBER

M214694

Arrested: February 7, 2011

ACTION OF GRAND JURY
TRUE BILL

APR 20 2011

Diore Bloome
Date 4-20-11

Foreperson of Grand Jury

Date: April 20, 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS38-0371

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

April 18, 2011 TERM

THE STATE

vs.

Erick Tomlinson Wannamaker

Indictment for

ATTEMPTED MURDER

ATTEST: TRUE COPY

Winnifia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-29

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

Defendant

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

Defendant

Witness:

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

ATTEST: TRUE COPY
Winnifia B. Clark
CLERK
WINNIFIA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2011 APR 20 A 10:50

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

INDICTMENT
 2011GS38-0371

At a Court of General Sessions, convened on April 18, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

That in Orangeburg County, South Carolina, on or about January 8, 2011, the Defendant, Erick Tomlinson Wannamaker, did, with the intent to kill, attempt to kill with malice aforethought, either express or implied, the victim, Gamuel Gershon Edgar Mays, by shooting towards his head while he lay on the ground. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

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



Harrison Bell, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE Erick Tomlinson Wannamaker
AKA:
Race: B Sex: M Age: 32
DOB: 0 SS#
Address:
DL#: SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-0371
AW#: M214684
Date of Offense: 1/8/2011
S.C. Code § 16-3-29
CDR Code #: 3410

SENTENCE SHEET

CONVICTED OF or PLEADS

CDL: Yes No CMV: Yes No Hazmat: Yes No

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

TO: Assault and Battery of a High and Aggravated Nature

In violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (Defendant Initial)

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

ATTEST:

Scott, III, Thomas B 15891 Erick Tomlinson Wannamaker Attorney for Defendant 13521 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 9 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: 8/7/12
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 Dept. of Corrections
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135. 60 days

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: ATTESTED TRUE COPY. Ordered PTUP

Total: \$ plus 20% fee: \$
Payment Terms: Winnie B. Clark

set by SCDPPPS CLERK OF COURT
ORANGEBURG COUNTY, SC

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, 73.3, 1B TP (Law Enforce. Funding) \$25, 33.7, 1B TP (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, 44-53-450(C) (Conditional Discharge) \$350, 3% to County (if paid in installments) \$, TOTAL \$133.90

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

Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.

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

PRESIDING JUDGE

Judge Code: 2153

Sentence Date: 8/7/12

V. Chenn Clerk of Court/Deputy Clerk
Court Reporter: Harry Det Walker