

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Appeal from Greenville County
Perry H. Gravely, Circuit Court Judge

MICKEY LANE MAYBERRY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001651

APPENDIX

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South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MICKEY LANE MAYBERRY,)
)
 DEFENDANT.)
 _____)

2012-GS-23-09351

2012-GS-23-09352

AUGUST 15, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE BRIAN H. GIBBONS, JUDGE

APPEARANCES:

ALLEN FRETWELL
ATTORNEY FOR THE PLAINTIFF

SCOTT ROBINSON
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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EXHIBITS

(NONE)

State of South Carolina -vs- Mickey Lane Mayberry (2012-GS-23-09351 and 09352)
Guilty Plea

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1 **AUGUST 15, 2013**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE CLERK: Your Honor, this is 2012-GS-23-
5 9351, Mickey Lane Mayberry, indicated for attempted
6 murder, armed robbery, attempted armed robbery,
7 attempted carjacking times three, possession of a
8 firearm during a violent crime, pointing or
9 presenting a firearm.

10 Pleading to armed robbery, attempted murder,
11 carjacking times three. And those have all been true
12 billed.

13 Raise your right hand. Do you swear or affirm
14 to tell the truth, the whole truth and nothing but
15 the truth, so help you God?

16 THE DEFENDANT: I do.

17 THE COURT: All right. Yes, sir, you
18 represent Mr. Mayberry?

19 MR. ROBINSON: I do so, Your Honor.

20 THE COURT: Have you had a full opportunity
21 to discuss this matter with your client?

22 MR. ROBINSON: I have, Your Honor.

23 THE COURT: After your discussions with him
24 and your representation of him, what does he indicate
25 to you that he wishes to do in regards to these

1 charges?

2 MR. ROBINSON: Guilty.

3 THE COURT: Do you agree with his decision
4 to plead guilty?

5 MR. ROBINSON: I do.

6 THE COURT: All right. You're Mickey Lane
7 Mayberry?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Mr. Mayberry,
10 you're twenty years of age?

11 THE DEFENDANT: Twenty-one.

12 THE COURT: Twenty-one years of age. Are
13 you the older brother of the previous gentleman who
14 was just in front of me?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, have you had a full
17 opportunity to discuss this matter with your lawyer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you been over this entire
20 case with your lawyer and what happened?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you told your lawyer
23 everything you know about what happened?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has your lawyer answered all

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1 your questions?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you satisfied with the
4 services of your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, you understand that what
7 you're facing, the penalty you're facing for each
8 individual indictment, I'm going to go through it to
9 make sure you understand it. Armed robbery is a
10 minimum of ten up to thirty years in jail. Attempted
11 murder is up to thirty. Carjacking is up to thirty.
12 The other carjacking is up to thirty. So if I wanted
13 to, I could conceivably give you one, two, three,
14 four, five -- a hundred and fifty years. Do you
15 understand that?

16 THE DEFENDANT: I understand, sir.

17 THE COURT: All right. Understanding that,
18 do you still wish to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you do these things?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has anybody forced, pressured,
25 coerced or made you come here today to tell me you

1 did something you really didn't do?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you under the influence of
4 any alcohol, drugs or any other mind-altering
5 substance?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you have any mental health
8 issue I need to know about?

9 THE DEFENDANT: No, sir.

10 THE COURT: Any question as to his
11 competency?

12 MR. ROBINSON: No, sir.

13 THE COURT: All right. You understand all
14 your constitutional rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you and your lawyer been
17 over those?

18 THE DEFENDANT: I don't believe so.

19 THE COURT: Well, I'm going to go through
20 them with you now. Your lawyer is indicating he has,
21 but I want to make sure you understand. You have a
22 right to a trial by a jury. Okay? And a trial --
23 and a jury has to come back with a unanimous verdict
24 of your guilt on each one of these indictments. You
25 can present evidence if you wish to. You don't have

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1 to testify if you don't want to, because you have a
2 constitutional right to remain silent. You don't
3 have to prove anything. The state of South Carolina
4 has to prove everything. They have to prove you
5 guilty beyond a reasonable doubt. You have the right
6 to confront witnesses against you. You and your
7 lawyer could cross-examine those witnesses and try to
8 attack their credibility or believability. Do you
9 understand your constitutional rights?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you wish to give up those
12 rights and go forward with this guilty plea?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anybody promised you
15 anything or held out any hope or reward to get you to
16 plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. I want you to
19 listen carefully to what the solicitor states
20 happened in this case and then I'm going to come back
21 to you, okay? Solicitor.

22 MR. FRETWELL: Your Honor, before I begin,
23 I just want to make sure that you have seven
24 sentencing sheets. The charges this defendant is
25 pleading to are the same as the previous defendant.

1 THE COURT: I only have five. I'm missing
2 the twenty year ones, which were the attempted armed
3 robberies, I believe. Did you publish those?

4 THE CLERK: Yes, because they were all in
5 the indictment.

6 THE COURT: They're all in the indictment?

7 THE CLERK: Uh-huh (affirmative), except
8 for he's pleading to attempted armed robbery times
9 two.

10 THE COURT: All right. So your exposure is
11 a hundred and ninety years, twenty years apiece for
12 each attempted armed robbery. Do you understand
13 that, Mr. Mayberry?

14 THE DEFENDANT: I understand.

15 THE COURT: The same as your brother. Do
16 you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. All right. Mr.
19 Solicitor.

20 MR. FRETWELL: May it please the court,
21 Your Honor.

22 THE COURT: Yes, sir.

23 MR. FRETWELL: Your Honor, this incident,
24 as the court is aware, occurred on January 20th of
25 2012 where victim Dunivan had returned from a church

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1 basketball game. He observed a white Volvo pulled
2 off on the side of the road near his driveway on Old
3 Easley Bridge Road in Greenville County. As he
4 slowed to let his neighbor pull into the driveway,
5 the Volvo pulled quickly into the road, blocking his
6 lane. The victim came to a stop, saw this defendant
7 and his brother get out of the Volvo and approach his
8 vehicle. Dunivan could tell that one of the
9 defendants was yelling at him, but he could not
10 understand what he was saying. The co-defendant then
11 raised his arm and pointed a small black semi-
12 automatic handgun in Dunivan's direction. Once he
13 saw the gun, Dunivan immediately feared for his safety
14 and stomped on the gas to accelerate. As he drove
15 past the defendants, Dunivan heard a loud pop and
16 knew that the co-defendant had fired the gun at him.
17 Dunivan turned into his driveway and drove up to his
18 house. As he parked he noticed a bullet hole in the
19 window just behind the driver's side door. Officers
20 would later recover a .25 caliber bullet from the top
21 of the driver's seat just below the headrest.

22 The co-defendant, while still armed, and this
23 defendant, then approached the victim Judy Sims, in
24 her Honda sedan and attempted to force her out of the
25 vehicle so they could steal it. The co-defendant who

1 was carrying the small black handgun began beating on
2 her driver's window with his forearm, still holding
3 the gun, and demanded that she get out of the car.
4 Fortunately for Sims, all of her doors were locked
5 and she was able to quickly drive away. She later
6 called 911 to report the incident.

7 After the confrontation with Sims, the defendant
8 -- the co-defendant, while still armed, and this
9 defendant then approached a 2011 Jeep Wrangler
10 occupied by victims Brian and Sharon Moore, who are
11 present in the courtroom. Their six year old son and
12 their son's friend ---

13 THE COURT: I need to interrupt. Which co-
14 defendant was carrying the weapon.

15 MR. FRETWELL: Your Honor, what the
16 evidence would provide at trial is that the defendant
17 you just sentenced had a handgun, that he fired that
18 handgun ---

19 THE COURT: But he said he didn't.

20 MR. FRETWELL: The co-defendant; right.
21 That's not what the evidence would show at trial.

22 THE COURT: Okay. Go ahead.

23 MR. FRETWELL: What the state would offer
24 for the court, based on what Ms. Moore has told
25 officers and me, is that this defendant approached

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1 her side of the vehicle -- she later identified him
2 from a photo lineup -- and that he was armed with a
3 weapon of some sort, a gun.

4 THE COURT: Okay.

5 MR. FRETWELL: The co-defendant that you
6 just sentenced, put a gun to -- or pointed a gun at
7 the driver, Mr. Moore, and said, get out of the
8 vehicle or I will kill you. The Moores got out of
9 the vehicle, got their son out. And were in the
10 process of getting the two children out of the back
11 seat, when co-defendant continued to pull on Mr.
12 Moore and said, hurry up, come on. Mr. Moore
13 believed that the defendants would kill them and his
14 children. He did not think that they were going to
15 let them get the children out of the back seat. They
16 finally were able to get them out. And of course, as
17 the court is aware, Ms. Moore's purse was tossed out
18 of the window into the ditch. Ms. Moore identified,
19 as I said, this defendant as the person who
20 approached her side of the vehicle, also armed with a
21 handgun.

22 Early the next morning, around one thirty,
23 Easley police located the abandoned Jeep Wrangler at
24 a gas station with the DVD player removed. Later
25 that same morning, Pickens County deputies located

1 these suspects on foot in Pickens County.

2 The co-defendant was found in possession of a
3 key to the jeep. And the co-defendant led police to
4 a campsite in the woods where two backpacks were
5 located, one of which contained a handgun of the same
6 caliber as the spent shell casing collected from the
7 scene of the shooting.

8 Police learned the defendants had committed an
9 earlier armed robbery in Anderson County, in which
10 they stole their father's Volvo and drove this
11 vehicle to Greenville County where the aforementioned
12 incidents occurred.

13 And Judge, that weapon used in that earlier
14 incident was a taser, according to the defendant's
15 father. As I've told the court, the school resource
16 officer at the defendant's school in Anderson, I
17 spoke with her and she indicated that at least the
18 younger brother had mentioned in a classroom setting
19 some kind of idolization of the Columbine High School
20 shooting suspects, Eric Harris and Dylan Kiebold.

21 This defendant, Your Honor, has a 2011 burglary
22 second. I believe he was, I believe he was on
23 probation for that charge when this offense occurred.
24 Obviously the same individuals are present, Your
25 Honor, Sergeant Mike Jarvis for the Greenville County

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1 Sheriff's Office, and the victims, the Moores are
2 here. This defendant has also served five hundred
3 and sixty-four days as of today.

4 THE COURT: All right. Thank you. Now,
5 Mr. Robinson, have you been over with your client the
6 enhanced penalties for these charges, since these are
7 classified as most serious offenses?

8 MR. ROBINSON: Yes, I have, Your Honor.

9 THE COURT: All right. Do you understand
10 what I was asking your lawyer, Mr. Mayberry?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand the eighty-
13 five percent, you understand all that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Have you been over
16 that with all your -- all of that with your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Thank you. Now,
19 Mr. Mayberry, did you just hear what the solicitor
20 said, the facts of what happened are?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you agree with those facts?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that what happened?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I accept your plea. Any
2 recommendation from the state or anything from the
3 victims? Any other presentation before I hear from
4 Mr. Robinson?

5 MR. FRETWELL: Yes, Your Honor. Just
6 wanted to tell the court again, as I stated
7 previously, the state has not a specific
8 recommendation, but certainly believes that this is a
9 serious offense, which warrants a sentence that is
10 commensurate with the crimes that were committed.

11 Sergeant Jarvis does not want to address the
12 court. But I believe Ms. Moore -- this is actually
13 the defendant that approached her side of the
14 vehicle, and Ms. Moore may just want to briefly say
15 something for the court to let ultimately the
16 defendant understand how her and her family's lives
17 were affected.

18 THE COURT: Yes, ma'am.

19 MS. MOORE: After this tragedy it's
20 impacted my family a great deal. Me and my husband
21 have had counseling. My son has been afraid in his
22 own home; afraid to go to his own bedroom, his own
23 playroom. Always asking where the boys are. He
24 feared for his safety. The other boy that was in our
25 car, he's had a difficult time. Afraid to be away

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1 from his parents; always needing the security of his
2 parents and knowing that everything is going to be
3 okay. Thank you.

4 THE COURT: Thank you, ma'am.

5 Mr. Robinson.

6 MR. ROBINSON: May it please the court,
7 Your Honor. My client has prepared a statement, as
8 well. But Your Honor, this is a tragedy for the
9 victims in this case. There's no other way to
10 describe it. Mickey is very remorseful, sorry, for
11 what happened. He wishes he could take it back, take
12 back that time and so forth. But he is really very
13 sorry, very contrite. Your Honor, he has, during the
14 time he's been at the jail -- I want to pass this up
15 to the court and I've shown this to the prosecutor.
16 He has taken it upon himself to get treatment for
17 drug dependence. He had plans to do something, but
18 the people that have suffered the most in this are
19 the victims, obviously.

20 We would ask the court to consider mercy in this
21 matter. Mickey doesn't have any excuse for this.
22 There's no excuse for this happening and he's very,
23 very sorry this happened. He's going to do
24 everything he can to get his life straight and do
25 something and not let this happen again. If he ever

1 meets anyone, he's going to make sure that they don't
2 do these kinds of things as well.

3 But Your Honor, he would like to make a
4 statement to you in this case. Thank you.

5 THE COURT: Mr. Mayberry, I'll certainly be
6 glad to hear from you.

7 THE DEFENDANT: I can't even begin to
8 express how sorry I am for the horrible things that
9 I've done. I know that no apology can make up for
10 the traumatic experience I put these innocent people
11 through.

12 I know that being in here for the last couple of
13 years has helped me to clean my mind of drugs and
14 helped me to set goals to better myself. Since I've
15 been in GCDC, I have completed a drug counseling
16 class. And upon my release from prison, I plan to
17 continue drug classes. Also, to stay in a positive
18 mindset and achieve my goals in life, I plan on going
19 to college so I can prove to everyone that I can be a
20 productive member of society.

21 I pray that everyone I've done wrong to will
22 find it in their hearts to forgive me.

23 MR. ROBINSON: Thank you, Judge.

24 THE COURT: Thank you, Mr. Mayberry. Of
25 course, I know you and your lawyer have been over

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1 this. You've been looking at this day. You know
2 this day begins the rest of your life. You're going
3 to be in jail for a long time. Do you understand
4 that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Even though you're in jail,
7 though, you're going to have the ability to, as you
8 said, maybe -- as your lawyer said, maybe change
9 other people's lives.

10 THE DEFENDANT: I understand.

11 THE COURT: That's going to be up to you.
12 I mean, you're going to be a fairly old man by the
13 time you get out. Do you understand ---

14 THE DEFENDANT: I understand.

15 THE COURT: --- what you're looking at?

16 THE DEFENDANT: I understand.

17 THE COURT: All right. Similar to what I
18 did with his brother, the sentence of the court is as
19 follows: On indictment 9351, the sentence of the
20 court is thirty years. I'm going to suspend that
21 upon the service of twenty-five years.

22 On indictment 9351(b) carjacking, the sentence
23 of the court is ten years. That's going to be
24 consecutive to the armed robbery sentence.

25 The remainder of the sentences will be twenty

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1 years, ten years, ten years, ten years and ten years,
2 all concurrent with what I just indicated.

3 Good luck to you.

4 MR. ROBINSON: Thank you, Judge.

5 MR. FRETWELL: Thank you, Judge.

6

7

8 END OF REQUESTED TRANSCRIPT OF RECORD

State of South Carolina -vs- Mickey Lane Mayberry (2012-GS-23-0935) and (09352)
Certificate of Reporter

19

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that
5 the foregoing is a true, accurate, and complete
6 transcript of record of all the proceedings had and
7 evidence introduced in the trial/hearing of the
8 captioned case, relative to appeal, in the Court of
9 General Sessions for Pickens County, South Carolina,
10 on the 15th day of August, 2013.

11 This transcript may contain quoted material.
12 Such material is reproduced as read by the speaker.

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

15 May 1, 2014

16

17

18

19

20



Circuit Court Reporter

WITNESSES

D A Hoover

Greenville County Sheriffs Office *mp*

1/29/2012

ARREST WARRANT NUMBER
M992447, 51-53 & 2012A2330200491

DIRECT PRESENTMENT (x4)

2012.GS2309351A,B,C,D

ACTION OF GRAND JURY

TRUE BILL

Jonathan P. Brown
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-9351

AOF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
November

TERM 2012

THE STATE

vs.

MICKEY LANE MAYBERRY


Robinson

Indictment for
3410, 0139, 0026, 2599, 0549 & 0122

ATTEMPTED MURDER, ARMED ROBBERY,
ATTEMPTED ARMED ROBBERY (X2),
CARJACKING (X3), POSSESSION OF A FIREARM
DURING A VIOLENT CRIME, & POINTING OR
PRESENTING A FIREARM

VIOLATION § 16-3-29, § 16-11-330, §16-3-1075
§ 16-23-490, & §16-23-410

County present upon their oath:

COUNT ONE

ATTEMPTED MURDER

That MICKEY LANE MAYBERRY did in Greenville County, on or about January 28, 2012, with malice aforethought and with the intent to kill, attempt to kill ADAM DUNAVANT. This is in violation of § 16-3-29 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

ATTEMPTED ARMED ROBBERY

That MICKEY LANE MAYBERRY did in Greenville County, on or about January 28, 2012, while armed with a deadly weapon or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, attempt to take by means of force or intimidation goods or money from the person or presence of ADAM DUNAVANT. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT THREE

CARJACKING

That MICKEY LANE MAYBERRY did in Greenville County, on or about January 28, 2012, take or attempt to take, by force and violence or by intimidation, a Honda Civic from ADAM DUNAVANT while he was in and operating the vehicle. This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended.

COUNT FOUR**ATTEMPTED ARMED ROBBERY**

That MICKEY LANE MAYBERRY did in Greenville County, on or about January 28, 2012, while armed with a deadly weapon or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, attempt to take by means of force or intimidation goods or money from the person or presence of JUDITH SIMS. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT FIVE**CARJACKING**

That MICKEY LANE MAYBERRY did in Greenville County, on or about January 28, 2012, take or attempt to take, by force and violence or by intimidation, a Honda vehicle from JUDITH SIMS while she was in and operating the vehicle. This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended.

COUNT SIX**ARMED ROBBERY**

That MICKEY LANE MAYBERRY did in Greenville County, on or about January 28, 2012, while armed with a deadly weapon or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a 2011 Jeep Wrangler from the person or presence of BRYAN CAREY MOORE and/or SHARON MOORE. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT SEVEN**CARJACKING**

That MICKEY LANE MAYBERRY did in Greenville County, on or about January 28, 2012, take or attempt to take, by force and violence or by intimidation, a Jeep Wrangler from BRIAN CAREY MOORE and/or SHARON MOORE while they were in or operating the vehicle. This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended.

COUNT EIGHT**POSSESSING A FIREARM DURING A VIOLENT CRIME**

That MICKEY LANE MAYBERRY did in Greenville County on or about the 28th day of January, 2012, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: ATTEMPTED MURDER and/or ARMED ROBBERY and/or ATTEMPTED ARMED ROBBERY and/or CARJACKING. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

COUNT NINE**POINTING OR PRESENTING A FIREARM**

That MICKEY LANE MAYBERRY did in Greenville County, on or about the 28th day of January, 2012, present or point a firearm at ADAM DUNAVANT and/or JUDITH SIMS and/or BRYAN CAREY MOORE and/or SHARON MOORE. This is in violation of §16-23-410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Mickey Lane Mayberry

AKA:

Race: WHITE Sex: M Age: 20DOB: 1992 SS#: Address: City, State, Zip: Powdersville, SC 29673-7790DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed RobberyIN THE COURT OF GENERAL SESSIONS 10-30 YearINDICTMENT/CASE#: 2012GS2309351A/W#: M992447Date of Offense: 1/28/2012S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Fretwell, Allen SC Bar# 170116 Defendant Attorney for Defendant SC Bar#
55351

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 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 25 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED ☐
☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning
Substance Abuse Counseling ☐

*Fine: \$ Random Drug/Alcohol testing ☐
§ 14-1-206 (Assessments 107.5%) \$ Fine may be pd. in equal, consecutive weekly/monthly
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 pmts. of \$ beginning
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$
TOTAL \$

Other:

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

Clerk of Court/ Deputy Clerk

Court Reporter: Paul B. Wickens

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 7168Sentence Date: 01/15/13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Mickey Lane Mayberry

AKA:

Race: WHITE Sex: M Age: 20DOB: -1992 SS#: Address: City, State, Zip: Powdersville, SC 29673-7790DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: CarjackingIN THE COURT OF GENERAL SESSIONS ≤ 30 YrsINDICTMENT/CASE#: 2012GS2309351A/W#: 2012A2330200491Date of Offense: 1/28/2012S.C. Code § : 16-03-1075(B)(1)CDR Code #: 2599

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: Fretwell, Allen 17011 SC Bar# Defendant Attorney for Defendant 6535 SC Bar#

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

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

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

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

SPECIAL CONDITIONS:

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

*Fine:

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

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

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

Clerk of Court/ Deputy Clerk Paul B. WinkelmanCourt Reporter: Fretwell

SCCA/217 (03/2011)

Presiding Judge FretwellJudge Code: 2168Sentence Date: 2/15/13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Mickey Lane Mayberry

AKA:

Race: WHITE Sex: M Age: 20DOB: -1992 SS# Address: City, State, Zip: Powdersville, SC 29673-7790DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Attempted MurderIN THE COURT OF GENERAL SESSIONS 430 YesINDICTMENT/CASE#: 2012GS2309351A/W#: M992451Date of Offense: 1/28/2012S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Fretwell, AllenSC Bar# 17016

Defendant

Attorney for Defendant

SC Bar# 6535

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

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

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Paul B. Widenman

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2108Sentence Date: 2/15/13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Mickey Lane Mayberry

AKA:

Race: WHITE Sex: M Age: 20DOB: 1992 SS#: Address: City, State, Zip: Powdersville, SC 29673-7790DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Attempted Armed Robbery

IN THE COURT OF GENERAL SESSIONS

≤ 20 Yrs

INDICTMENT/CASE#: 2012GS2309351AA/W#: 2012GS2309351ADate of Offense: 1/28/2012S.C. Code §: 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Fretwell, AllenSC Bar# MOIL

Defendant

Attorney for Defendant

SC Bar# 6535

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

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

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

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

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

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

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

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

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

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

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

TOTAL: Paul B. Widen

_____ 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: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Hank

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2103Sentence Date: 8/15/13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Mickey Lane Mayberry

AKA:

Race: WHITE Sex: M Age: 20DOB: 1992 SS#: Address: City, State, Zip: Powdersville, SC 29673-7790DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: CarjackingIN THE COURT OF GENERAL SESSIONS ± 30 YrsINDICTMENT/CASE#: 2012GS2309351BA/W#: 2012GS2309351BDate of Offense: 1/28/2012S.C. Code § : 16-03-1075(B)(1)CDR Code #: 2599

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
☐ 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's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Fretwell, Allen17011
SC Bar#
Defendant
Attorney for Defendant6535
SC Bar#

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 1265 239351
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Payment Terms:

☐ Set by SCDPPPSRecipient:

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

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk

Court Reporter: Paul B. Wiersma

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2165Sentence Date: 8/15/13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

520 YAS

COUNTY OF Greenville
 STATE VS.
Mickey Lane Mayberry

AKA:

Race: WHITE Sex: M Age: 20DOB: 1992 SS#:

Address:

City, State, Zip: Powdersville, SC 29673-7790

DL#:

SID#:

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

In disposition of the said indictment comes now the Defendant who was
 TO: Attempted Armed Robbery

INDICTMENT/CASE#: 2012GS2309351CA/W#: 2012GS2309351CDate of Offense: 1/28/2012S.C. Code §: 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Fretwell, Allen

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wiseman

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: _____

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

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
 2102
 4/15/13

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Mickey Lane Mayberry

AKA:

Race: WHITE Sex: M Age: 20DOB: -1992 SS#: Address: City, State, Zip: Powdersville, SC 29673-7790DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: CarjackingIN THE COURT OF GENERAL SESSIONS ≤ 30 YrsINDICTMENT/CASE#: 2012GS2309351DA/W#: 2012GS2309351DDate of Offense: 1/28/2012S.C. Code §: 16-03-1075(B)(1)CDR Code #: 2599

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
☐ 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's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Fretwell, AllenSC Bar# 17016

Defendant

Attorney for Defendant

SC Bar# 65351

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

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

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

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

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

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

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

Proviso 90.5 (SCJA Surcharge) \$5 \$ 5

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

TOTAL \$ _____

_____ 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: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Shirley

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2168Sentence Date: 3/15/13

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)Mickey L Mayberry #356630)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23-01082

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE, S.C.
FEB 27 PM 12 10**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 Lieber Correctional Inst.
PO Box 205 Ridgville, SC 29472
2. Name and location of Court which imposed sentence Greenville Court House
305 East North Street, Greenville, South Carolina 29601
3. Name(s) of co-defendant(s) (if any) James Daniel Mayberry SCDC#356631
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 12-G5-230935/1A Attempted Armed Robbery - 12-G5-230935/15 Carjacking
 - (b) 12-G5-230935/10 Carjacking - 12-G5-230935/1 Carjacking

- (c) 12-65-2309351 Attempted Murder - Armed Robbery 12-65-230933
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 8-15-13 - 30 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) A plea was made
- (b) The plea was unkept

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Unkept plea Advice
- (c) Inadequate Mitigation as for First Offence
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel's advice was not within the range of competence (over)
- (b) Erroneous advice on sentencing or collateral consequence that lead to
- (c) No consideration as for youthful offender act as law pk
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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?

Not yet

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) plea agreement at present
 (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. Scott D. Robinson - Ass. Public defender
Public Defenders Office of Greenville, SC
 ii. 305 East North Street, Greenville SC 29601
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Plea hearing
 ii. _____
 iii. _____

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

I request a trial to discover evidence as for relief
from this harsh sentence, which would be fair
and equitable in my case

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

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Mickey Mayberry, 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.

Mickey Mayberry

SWORN to and subscribed before me this 19th
 day of February, 2014.

Lucrecia Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2026

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

I, Mickey Mayberry, 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.

Mickey Mayberry
Applicant

SWORN or affirmed to and subscribed before me this
19th day of February, 2014.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-1082
COUNTY OF GREENVILLE	)	
	)	
Mickey Lane Mayberry,	)	
S.C.D.C. No. 356630,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed February 27, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2012 term of General Sessions for attempted murder (2012-GS-23-9351, count 1), two counts of attempted armed robbery (2012-GS-23-9351, counts 2 and 4), three counts of carjacking (2012-GS-23-9351, counts 3, 5, and 7), armed robbery (2012-GS-23-9351, count 6), possession of a weapon during commission of a violent crime (2012-GS-23-9351, count 8), and pointing or presenting a firearm (2012-GS-23-9351, count 9). Scott D. Robinson, Esquire represented the Applicant.

On August 15, 2013, the Applicant pled guilty to attempted murder, two counts of attempted armed robbery, three counts of carjacking, and armed robbery.¹ The Honorable Brian

¹ The indictments for possession of a weapon during commission of a violent crime (2012-GS-23-9351, count 8) and pointing or presenting a firearm (2012-GS-23-9351, count 9) were not proessed.

M. Gibbons sentenced the Applicant to concurrent terms of twenty years for attempted murder, ten years for each count of attempted armed robbery, ten years for two counts of carjacking, and thirty years suspended upon service of twenty-five years for armed robbery. Judge Gibbons levied a consecutive sentence of ten years for the third count of carjacking. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel.
2. "Unkept plea advice."
3. "Inadequate mitigation as for first offence."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

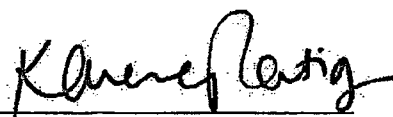
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

MAY 8, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2014-CP-23-1082

MICKEY LANE MAYBERRY, 356630)

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:

**Mickey Lane Mayberry, 356630
 Lieber Correctional Institution
 Post Office Box 205
 Ridgeville SC 29472**

DATED this 8th day of May, 2014.


 Judy A. Q. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Mickey L. Mayberry,	)	
	)	
Applicant	)	
v.	)	Case No. 14-CP-23-1082
	)	
State of South Carolina	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on June 18, 2015, before The Honorable Perry H. Gravely in the Court of Common Pleas for the Thirteenth Judicial Circuit; attended by counsel as follows:

APPEARANCES:

Mills Arial, Esq.
Greenville, South Carolina
Appearing for Applicant

Karen Ratigan, Assistant Attorney General
Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

Mickey L. Mayberry v State of South Carolina
Case No. 14-CP-23-1082
Hearing of June 18, 2015
Before The Honorable Perry H. Gravely

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INDEX OF TESTIMONY

Witness	Direct	Cross	Redirect
Mickey Mayberry	6	18	
Scott Robinson	23	32	
Allen Fretwell	36	42	

Ruling of the Court

Denied

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1

2

(APPLICANT/DEFENDANT PRESENT)

3

4

MS. RATIGAN: May it please the
Court, Your Honor?

5

6

THE COURT: Yes. I'll be glad to
hear from you.

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MS. RATIGAN: Thank you, Your Honor.
This is the case of Mickey Lane Mayberry
versus the State of South Carolina. Docket
number is 2014-CP-23-1082.

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Mr. Mayberry was indicted for
attempted murder; two counts of attempted
armed robbery; three counts of carjacking;
one count each of armed robbery; possession
of a weapon during the commission of a
violent crime; and, pointing and presenting a
firearm. He was represented on these charges
by Mr. Robinson.

19

20

21

22

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24

On August 15th of 2013, he pled
guilty to attempted murder; two counts of
attempted armed robbery; three counts of
carjacking; and, armed robbery; the two
weapons charges were nolle prossed by the
State.

25

Judge Gibbons sentenced him to

Mickey L. Mayberry v State of South Carolina

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1 concurrent terms of twenty years for
2 attempted murder; ten years for each count of
3 attempted armed robbery; ten years for two
4 counts of carjacking; and, thirty years
5 suspended on the service of twenty-five years
6 for armed robbery. He also levied a
7 consecutive sentence of ten years on one of
8 the carjacking accounts.

9 I would note Mayberry's codefendant
10 in this case was his brother James. We
11 actually handled his PCR in February. It was
12 denied in March of this year. I bring this
13 to the Court's attention because Mr. Ariail
14 also represented James Mayberry, the
15 codefendant in this CPR. Mr. James Mayberry
16 waived any conflict during that hearing but
17 out of an abundance of caution we probably
18 also need to get any kind of conflict waiver
19 on this case as well.

20 THE COURT: Mr. Ariail?

21 MR. ARIAIL: Your Honor, I did
22 represent his brother. And it's the same
23 factual scenario. I didn't see any conflict
24 in it. I notified both his brother and
25 himself of that potential, but I didn't see

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1 any conflicts. His brother waived the
2 conflict. I've spoken with Mr. Mayberry in
3 regards to it. And from my conversation with
4 him last week, my understanding is he waived
5 that and didn't have a problem with me
6 proceeding on his behalf. If you just want
7 to confirm that with him.

8 THE COURT: Yeah. Mr. Mayberry,
9 you heard the discussion by the State and by
10 your attorney, Mr. Ariail?

11 APPLICANT: Yes, sir.

12 THE COURT: You need to stand up,
13 please?

14 APPLICANT: (Complies).

15 THE COURT: Thank you. And, you
16 know, Ariail also represented your brother
17 who was also the codefendant in this case; do
18 you understand that?

19 APPLICANT: That's right.

20 THE COURT: And you don't have a
21 problem with Mr. Ariail representing you as
22 well?

23 APPLICANT: No, sir.

24 THE COURT: And you waive any --
25 if there is a conflict -- it doesn't sound

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1 like there is one, but any conflict or
2 potential conflict you're waiving that as
3 well?

4 APPLICANT: Yes, sir.

5 THE COURT: All right. I'll be
6 glad to -- and we can go forward on this one.

7 MR. ARIAIL: Thank you, Your Honor.
8 I would call Mr. Mayberry to the stand. All
9 right. Mr. Mayberry, if you'll come around.

10 (WITNESS TAKES STAND)

11 MICKEY MAYBERRY, having been duly
12 sworn to tell the truth, and nothing but the
13 truth, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ARIAIL:

16 Q. Mr. Mayberry, I just want to go
17 through a little bit of background with
18 regards to your case. You were represented
19 by Scott Robinson; is that correct?

20 A. That is correct.

21 Q. He represented you on all the
22 charges that you heard, that were, I guess,
23 set forth to the Court; is that correct?

24 A. Yes, sir.

25 Q. Okay. Now, you pled guilty at some

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1 point in time; is that right?

2 A. That is correct.

3 Q. Okay. I want to go back and get a
4 little bit of understanding of Mr. Robinson's
5 representation of you and how that
6 progressed. Tell me when -- first of all,
7 was Mr. Robinson appointed to you or retained
8 by you?

9 A. He was a public defender, sir.

10 Q. Okay. The court appointed him to
11 represent you?

12 A. That is correct.

13 Q. And then at that point in time --
14 when was the first time that you had a
15 meeting with him or discussed your case?

16 A. I believe it was about ten months of
17 my time in the county.

18 Q. Okay. So you were arrested -- do you
19 remember the exact day you were arrested?

20 A. January 28th, 2012.

21 Q. 2012. So ten months after that,
22 sometime in October or November, that's when
23 you met with him the first time?

24 A. In that area, yes.

25 Q. Okay. So did you have any

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1 discussions with any other public defenders,
2 anybody else about your case until that point
3 in time?

4 A. No, sir.

5 Q. Okay. So do you know when
6 specifically he was appointed to represent
7 you in this case?

8 A. That was the first time I knew of
9 anything. I didn't have any contact with him
10 whatsoever. He just came for a PRO-V visit.

11 Q. Okay. When he came to PRO-V and you
12 discussed your case or cases, what was the
13 discussion about?

14 A. Well, at first, early on I was
15 trying to asking if I was eligible for a YOA
16 or youth offender sentence.

17 Q. Right.

18 A. And I was asking if I could have
19 drug treatment thrown in with, you know, as
20 a part of my sentence, because I had an
21 addiction problem. And he pretty much just,
22 you know, he pretty much just shook his head
23 and just 'yeah, yeah, yeah, I'll let you know
24 what the solicitor says.'

25 Q. Did he tell you that you could you

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1 could get a YOA on these charges?

2 A. The first time I seen him, yes. He
3 said that was a deal that he was going to
4 look for.

5 Q. Okay. As part of that conversation,
6 did you discuss any discovery or any of the
7 facts of the case? Did he provide anything
8 to you?

9 A. I did. I asked him, I said -- this,
10 of course, was before I was presented a
11 motion on discovery. So I didn't know what,
12 if anything was, you know, what kind of
13 evidence that I had against me. So I asked
14 him I said, is there any chance that, you
15 know, any of these can be lessened or do
16 anything at all. He just told me that he
17 would look into it.

18 Q. Okay. Now, as part of, you know,
19 looking into -- I mean, did he come down with
20 discovery and show it to you or give you any
21 statements or anything you had said, tell you
22 what the facts of the case were?

23 A. I was given a copy of the sheriff's
24 report. So I read up on a little bit of it
25 myself, but it was pretty much just all my

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1 side, what was going on. I didn't see any
2 investigation on his part whatsoever. I
3 pretty much heard the facts about, you know,
4 this or that. He'd just tell me that 'oh, I
5 talked to the solicitor and they said this is
6 your deal and this is what we're going for.'

7 Q. Okay. I'm going to go back because
8 you mentioned a couple of things in there.
9 So you discussed a report. As part of that
10 report, did he provide you any information
11 about statements you made or things you said
12 or anything of that nature?

13 A. No, sir.

14 Q. After that conversation, I guess you
15 all ended it, he was going -- I think you
16 mentioned that he was going to go try to get
17 a deal or do something for you; is that
18 correct?

19 A. That's correct.

20 Q. So what did he tell you he was going
21 to try to do once he left?

22 A. He just told me that he was going to
23 talk to the solicitor. He was going to get a
24 deal and the next time I seen him, he come
25 back with paperwork promising me, 'Oh, yeah,

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1 we can get you ten years. Just, you know, go
2 ahead and sign this deal. It's a good deal.
3 We've got a good judge. You know, let's go
4 ahead and knock this out.'

5 Q. Let's go through that. So you had
6 the discussion the first time. He comes back
7 a second time; is that right?

8 A. That's correct. This was a few
9 months in between too.

10 Q. Okay. A few months. And you pled,
11 if I'm not mistaken -- what's the exact date?
12 Let me see -- you pled guilty on August 15th,
13 2013. So you met with him sometime the end
14 of October 2012. And then he comes back at
15 some point in time. So you think that was
16 January/February 2013?

17 A. It's probably a little bit later
18 than that.

19 Q. Okay. So at some point in time he
20 comes back and he says, 'I've got a deal for
21 you'?

22 A. Correct.

23 Q. And you're saying -- correct me if
24 I'm wrong. He's saying you're going to get
25 ten years?

1 A. That is correct.

2 Q. Okay. Was there anything in writing
3 he provided you with a plea offer or
4 something from the solicitor's office saying
5 your sentence will be ten years?

6 A. He gave me a copy of the plea
7 agreement. And as I was reading it, I
8 noticed it was ten to thirty. So I said
9 that's a pretty big gap. You know, I don't
10 know if I want to look at thirty years,
11 because at the time I wasn't but twenty years
12 old. So obviously, I was a little hesitant
13 about it. He just said, 'Well, we've got a
14 good judge again this week. We can go ahead
15 and get this knocked out. I'm pretty sure
16 that we can get you the ten years.'

17 Q. Okay. Let me make sure. Because a
18 lot of times we have these questions in
19 regards to these plea offers. Did he
20 specifically tell you he could get you ten
21 years or did he say I, you know, I'm going to
22 do my best to get you ten years?

23 A. He said as long that paper was
24 signed by that week that he could get me ten
25 years.

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1 Q. Okay. So you had that conversation
2 right there and you signed that. I guess did
3 you sign the sentencing sheets or what did
4 you sign?

5 A. I believe it was the plea agreement.

6 Q. Okay. But he had something you
7 signed that specifically said you're going to
8 get ten years?

9 A. No, I signed for the ten to thirty.
10 And he said just don't worry about that. You
11 know, that's nothing. But as long as we get
12 it there this week -- you know, like I said,
13 it was a good judge so we can get this ten
14 years.

15 Q. Okay. So how long after you had
16 that discussion did you go in front of Judge
17 Gibbon?

18 A. I believe it was two or three days
19 after, somewhere around there. It might even
20 have been a week at the very most.

21 Q. Okay. So how many times in all did
22 you meet with or discuss your case with Scott
23 Robinson?

24 A. No more than three or four times.

25 Q. Okay. And during that time did he

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1 answer your questions? Did he do everything
2 you asked him to do?

3 A. No. I asked him repeatedly about
4 getting the YOA and stuff like that because
5 he said oh, yeah. And, you know, along with
6 that 'you can get ten months and you'll be
7 home.' And, you know, so that, obviously,
8 that appealed to me. I asked him for that,
9 but, I mean, about the only thing that he did
10 that I asked for him was getting a plea
11 agreement because, I mean, after a while -- I
12 think it was -- I was in there about twenty
13 months. So, I mean, for being in the county
14 that long and not having anything to go for,
15 you know, I was just -- I was in a hurry to
16 get out of there.

17 Q. Okay. So here's my question. At
18 some point time you're talking about a YOA
19 range of ten to thirty, a plea offer. Did
20 y'all have any discussion as to why you
21 weren't going to get a YOA or whatever
22 happened to that?

23 A. He just said the solicitor wasn't
24 offering that. He said that wasn't the deal
25 that was given to him.

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1 Q. Did he ever tell you your charges
2 are not eligible for a YOA sentence?

3 A. No, sir.

4 Q. Okay. Were there things that you
5 asked him to do as part of his investigation
6 that he did not do?

7 A. Like I said, I asked him what kind
8 of evidence they had against me. And I was
9 never told anything. He just sent me a copy
10 of the sheriff's report and I had to read and
11 do my own discovery for that.

12 Q. Okay. Were there any other items
13 that you had requested that he do or things
14 that you, you know, wanted him to do that he
15 didn't do?

16 A. Not really, no.

17 Q. Okay. So your main issue is that
18 you thought you were going to get a ten-year
19 sentence, based on the representations he
20 made to you, and now you're looking at -- I
21 guess you're looking at twenty-five plus ten
22 years consecutive; is that correct?

23 A. That is correct.

24 Q. So you got, in essence, twenty-five
25 additional years from what you were saying he

1 got you or he could get you?

2 A. That is correct.

3 Q. I mean, at any point in time after
4 when you got these thirty-five years, did you
5 have a discussion with him to say 'whoa, hold
6 on a second. I didn't get what I thought I
7 was going to get'?

8 A. In all honesty, I'm kind of blind to
9 the law. So as soon as I heard those numbers
10 flying out, they didn't exactly come out and
11 tell me I had, you know, this and that's what
12 you're looking at. They didn't tell me that
13 my max-out date was 2041. They didn't tell
14 me that. They said for this charge you get
15 this much. For this charge you get this
16 much. I heard the first ten years so after
17 the rest, I thought that was irrelevant.

18 Q. Okay. Now, did you ever ask him to
19 file a Motion to reconsider or do anything
20 after the guilty plea to ---

21 A. I didn't speak with him after I was
22 sentenced.

23 Q. Okay. You ever send him any
24 letters?

25 A. Well, I tried to get another copy of

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1 my Motion of discovery whenever I tried to go
2 up to file my PCR and that's it.

3 Q. Okay. And I've got a transcript.
4 I mean, you didn't make any transcript 'well,
5 hold on a second. That's not what I was
6 promised.' Do you remember saying anything
7 like that at time?

8 A. No, I mean, in my mind I was just
9 thinking that when they asked were you
10 promised anything, I was thinking was I
11 bribed or, you know, something of that
12 nature. I wasn't at all thinking about that.

13 Q. Here's a question I know that's
14 probably going to be asked to you. At some
15 point in time during this the Judge tells
16 you, you know, he could sentence you up to a
17 hundred and fifty years. Do you remember
18 recalling that?

19 A. I do remember that.

20 Q. And why, at that time, I guess,
21 didn't you say 'hold on a second, I was
22 promised ten years.' Do you remember why you
23 didn't bring anything up about that at that
24 time?

25 A. I was just trusting my lawyer at the

1 time. Like I said, I was blind to the law.
2 I figured that being his career of choice he
3 would be, you know, I was in good hands with
4 him. I didn't even think twice about it.

5 Q. Are there any other issues that we
6 haven't talked about today that you would
7 like to bring up to the Court to consider?

8 A. I believe we've covered everything.

9 Q. I -- thank you.

10 MR. ARIAIL: I have no further
11 questions, Your Honor.

12 THE COURT: Ms. Ratigan.

13 MS. RATIGAN: Thank you, Your Honor.

14 THE COURT: You may cross-examine.

15 CROSS-EXAMINATION

16 BY MS RATIGAN:

17 Q. So Mr. Mayberry, you said you had
18 three or four meetings with Mr. Robinson?

19 A. That is correct.

20 Q. And did you tell him your version of
21 the events in this case?

22 A. Yes, I did.

23 Q. Did he review the minimum and
24 maximum sentences you could get on all of
25 these charges?

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1 A. He told the max of what I was
2 looking at, yes.

3 Q. And he never reviewed any evidence
4 with you except for the sheriff's report; is
5 that your testimony?

6 A. That is correct.

7 Q. So in these three or four meetings,
8 what were y'all talking about if you weren't
9 talking about discovery or any of the State's
10 evidence?

11 A. Pretty much just talking about plea
12 agreements and if or when I was going to be
13 able to come home.

14 Q. You testified that you didn't see
15 Mr. Robinson do any investigation for you.
16 What, specifically, did you want him to
17 investigate?

18 A. Like, I was asking him if there was
19 enough evidence that if there was a chance I
20 could have gone to trial or if something
21 could have gotten thrown out. And we could
22 have, you know, dropped some of these
23 charges, you know. I was just pretty much
24 wanting to know a grounds for what all I
25 could or could not get rid of as far as the

1 charges were.

2 Q. So you wanted him just to spend more
3 time with you talking about the case. Would
4 that be fair to say?

5 A. Yes.

6 Q. And when you saw this written plea
7 offer for ten to thirty years, when was that?

8 A. It was, I believe the first time I
9 seen it was probably about the middle of
10 2013, probably.

11 Q. So a few months before you pled
12 guilty?

13 A. That's correct.

14 Q. Now, the assistant solicitor during
15 the plea said the State had no specific
16 recommendation; do you recall that?

17 A. Not really.

18 Q. Okay. Why didn't you say anything
19 at the time? If you believed you were going
20 in there pursuant to a plea deal or
21 recommendation, why didn't you say something
22 when the solicitor told the court there was
23 no kind of recommendation?

24 A. Once again, I'm blind to the law.
25 And I didn't realize what was going on.

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1 Q. You've said that a few times, that
2 you're blind to the law. But don't you have
3 a 2011 burglary conviction?

4 A. Yes.

5 Q. And weren't you on probation for
6 that conviction when these crimes were
7 committed?

8 A. That is correct.

9 Q. So you are familiar with the
10 criminal justice system?

11 A. I'm familiar with breaking the law.

12 Q. Okay. But you've pled guilty before
13 this case?

14 A. Yes.

15 Q. And is your testimony that Mr.
16 Robinson promised you to get ten years or
17 that he was going to try and get you the
18 lowest part of that ten to thirty years?

19 A. He told me as long as that paper was
20 signed within that week he would get me ten
21 years.

22 Q. But you never sent him any kind of
23 letters. You didn't try to call him any time
24 after the plea to ask him why you didn't get
25 that ten years?

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1 A. After the plea?

2 Q. Yes?

3 A. You mean after the sentencing?

4 Q. Yeah?

5 A. (No verbal response).

6 Q. Well, if you were promised ten years
7 and you ended up getting so much more time,
8 why didn't you try and contact Mr. Robinson
9 and ask what happened?

10 A. I figured he already failed me once.
11 He'd probably lie to me again. So why
12 wouldn't I just start all my time getting the
13 PCR up and running.

14 MS. RATIGAN: That's all I have,
15 Your Honor.

16 THE COURT: Any redirect?

17 MR. ARIAIL: No, Your Honor.

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

20 (WITNESS STEPS DOWN)

21 THE COURT: Anything else from the
22 petitioner?

23 MR. ARIAIL: Your Honor, I call
24 Scott Robinson to the stand.

25 THE COURT: All right. Mr.

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1 Robinson, if you'll come around and be sworn.

2 (WITNESS TAKES STAND)

3 SCOTT ROBINSON, having been duly sworn to
4 tell the truth, and noting but the truth,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ARIAIL:

8 Q. Scott, how you doing today?

9 A. I'm doing well. Thank you.

10 Q. Good. You've heard the testimony of
11 Mr. Mayberry today?

12 A. Uh-huh.

13 Q I want to go through a little bit
14 about it. You were appointed to represent
15 him; correct?

16 A. I was.

17 Q. Okay. How many -- I guess do you
18 recall when you were appointed or how long
19 after?

20 A. I don't recall.

21 Q. Okay. How many meetings do you
22 remember having with him about his case?

23 A. I can't tell you the exact number,
24 it was at least three or four times.

25 Q. Okay. So consistent with what he

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1 said?

2 A. He said three or four times, yes.

3 Q. Okay. Now, as part of those
4 discussions, do you remember what you
5 discussed with him about his case?

6 A. (Affirmative nod).

7 Q. Tell us a little bit about those
8 discussions.

9 A. We talked about the State's evidence
10 in the case. I don't agree he just got a
11 sheriff's report. He had all the stuff that
12 I had from the State. They have an open-file
13 policy that you can see everything.

14 But the big issues in that case for
15 him is he gave statements to the police after
16 this happened, admitting to it.

17 And there was clear identification
18 by the victims because when he went to rob or
19 carjack the lady saw his face and could
20 identify him.

21 So it was a lot of identification
22 testimony or statements by him in the case.

23 Q. Okay. And you reviewed all of that
24 evidence with him?

25 A. Yes.

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1 Q. Okay. And you said he -- I know he
2 said the sheriff's report. There was more
3 information there than just the sheriff's
4 report; correct?

5 A. It's the stuff on the victims. You
6 know, pictures of the cars, that kind of
7 thing.

8 Q. Statements, various things of that
9 nature?

10 A. Yes, but he didn't really have a
11 record that you'd see in an NCIC report,
12 anything of that nature.

13 Q. So you went through that with him
14 and discussed it in detail?

15 A. Uh-huh.

16 Q. Were there any questions that he had
17 for you or things he asked you to do coming
18 out of those, I guess, meetings?

19 A. You know, I think -- and I think
20 he's a very stoic individual. He doesn't
21 really talk or have a lot of questions. He
22 kind of just, just listens most of the time.
23 So he didn't really have a lot of questions.
24 And it wasn't really -- one of the issues,
25 and I reviewed the solicitor's file a minute

1 ago. Either he or his brother had bragged to
2 the police or told the police that they
3 admired the boys that shot up the Columbine
4 High School. And they were kind of modeling
5 themselves after those fellows.

6 Q. Okay. So when you evaluated this
7 case, it was, I guess, your view this would
8 not be a case that needed to be tried?

9 A. It'd be a difficult case. I mean,
10 it would be because of the victims'
11 statements, identifications, the statements
12 that they made to the police, he and his
13 brother made to the police. A lot of the
14 stuff, but I don't think he's testified to,
15 is that a lot of what he did was kind of
16 interrelated to what his brother did, his
17 younger brother did.

18 Q. Okay.

19 A. And I think they may have spoken and
20 talked or communicated some way in jail. I
21 don't know how they did it. But he kept a
22 real close eye on what his brother did. And
23 if his brother did something or told him to
24 do something, that's the direction he would
25 go. He was very closely monitoring what his

1 brother did. When his brother, I think at
2 some point decided to plea, I think he then
3 decided to plea.

4 Q. Okay. Was he aware that, you know,
5 information that could be against his brother
6 could be used against him in his trial, all
7 of that?

8 A. I have no idea whether he was aware
9 of that, but I know he had all the informa-
10 tion that I did.

11 Q. Okay. Did y'all discuss any of that
12 with him about, you know, what -- I mean, I
13 guess his brother could potentially testify
14 against him or the stuff that was used
15 against his brother could be used against
16 him?

17 A. I don't know that we talked
18 specifically about that. We were talking the
19 issue of identification, anything,
20 statements, stuff of that nature.

21 Q. Okay. Well, at any time did he say
22 'I want a trial. I am innocent of this.'

23 A. He didn't really ever say that. He
24 acknowledged he wasn't innocent. He
25 acknowledged that and he gave several

1 statements, at least one or two statements to
2 the police admitting it. And, you know, in
3 the reports from the sheriff's department, he
4 told the deputy or someone that when they
5 came to arrest them, I think he said, 'I knew
6 you were coming. We got the cars.' I think
7 even they found the keys to the cars in his
8 house when they searched his house. The cars
9 were carjacked. But he also told the police
10 that he wanted to get caught or something
11 because he wanted -- they were homeless. He
12 and his brother were homeless. And they
13 wanted a place to stay. That was in the
14 supplemental report of one of the officers.

15 Q. Okay. And we've heard a lot about
16 this plea offer that was sent to him. What
17 is your recollection of what the plea offer
18 was?

19 A. A plea offer in this case, it's not
20 saying 'well, we're going to give you' --
21 there was no recommendation. It was these
22 are the charges. These are what the charges
23 carry. Because they normally put a little
24 thing on there that says, example, armed
25 robbery or something ten to thirty and a

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1 fine, blah, blah, blah, so forth. And that's
2 what he had. He had nothing. There was no
3 recommendation by the State.

4 Q. So I guess the recommendation, the
5 only recommendation was they were dismissing
6 some of the charges?

7 A. They nolle prossed the gun charges,
8 I think in this case.

9 Q. Okay. So there was no sentence
10 recommendations?

11 A. No sentence recommendation. It
12 really depended a lot upon as people that --
13 attorneys that do a lot of criminal defense,
14 you have to argue what you have. These were
15 really bad facts. Really bad. It was a bad
16 situation. And you had to argue for your
17 client. He really didn't have much of a
18 record, other than the burglary that he had,
19 that he was on probation for. He was a young
20 guy and you could argue a lot of different
21 things. But you can't -- it's up to the
22 judge what the sentence is. It's not up to
23 the attorney or the criminal defense attorney
24 or the solicitor. It is what the judge
25 thinks.

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1 In this case what we had, we had
2 victims that had been carjacked. And Mr.
3 Mayberry, I believe is -- they had guns
4 pointing at these people, okay?

5 Q. Right.

6 A. And that's what that's -- and she
7 identified him clearly. Because he went to
8 the window of the car where she was, from the
9 passenger's side and pointed a gun at her.

10 Q. Okay. Did at any time did you tell
11 him as long as he signed the plea offer or
12 any of the paperwork that he was going to get
13 ten years?

14 A. No, sir.

15 Q. Okay.

16 A. There was never any discussion of
17 him getting ten years.

18 Q. Okay. So there were never any
19 guarantees ---

20 A. No, no.

21 Q. --- or any promises of ten years?

22 A. I can advise him, 'Here's the
23 charge. Here are the elements of the charge.
24 Here's what the range is for the charge',
25 okay? And 'if we plead in a case, I will ask

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1 the judge to consider the minimum sentence in
2 this matter.'

3 Q. Okay. What about these allegations
4 in regards to a YOA. Did you ever
5 communicate to him that he would, that these
6 charges were eligible for YOA?

7 A. These charges were never eligible
8 for YOA. But -- I think most defense
9 attorneys will acknowledge this. We try to
10 maybe get the chargers lowered so they can
11 fit into that YOA category potentially.
12 These were violent charges. They don't
13 qualify.

14 Q. Right.

15 A. However, if there was any way of
16 maybe, you know, some way of talking to the
17 prosecutor and say, 'listen, what do you
18 think about maybe dropping these down to
19 something maybe -- or something.' You're
20 going to do everything you can for the client
21 in that situation. But because the charges
22 could not be dropped, they would not be
23 dropped by the prosecution there was no YOA.
24 He was not eligible for YOA in this case.

25 Q. Okay. Now, was there any time that

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1 he ever wavered or said, 'I shouldn't plead
2 guilty or I don't want to plead guilty'?

3 A. We talked about that. As I said
4 earlier, a lot of this was -- I think if his
5 brother had said, 'I want to go to trial',
6 that he would have gone to trial. But
7 because his brother wanted to plea, I think
8 that's why he wanted to plea.

9 Q. I want to make sure. Did he ever
10 communicate with you afterwards saying please
11 file me a motion of reconsideration, appeal
12 or anything of that nature?

13 A. No.

14 Q. Okay.

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

17 THE COURT: Any cross-examination?

18 MS. RATIGAN: Very briefly, Your
19 Honor.

20 CROSS-EXAMINATION

21 BY MS. RATIGAN:

22 Q. So Mr. Robinson you were appointed
23 in this case?

24 A. I was.

25 Q. And did you file the usual Brady and

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1 Rule 5 motions?

2 A. Yes.

3 Q. When you received those materials,
4 your testimony is that you reviewed them with
5 Mr. Mayberry?

6 A. I would.

7 Q. Did he tell you his version of what
8 happened with these incidents?

9 A. He told me the version -- he revised
10 the version, but he couldn't really -- he
11 never said he didn't do it. I can tell you
12 that. It was more of like a drug-induced
13 kind of going out to run with your brother.
14 'We're both homeless. Let's kind of make
15 this like the Dylan Klebold and Eric Harris
16 out in Columbine.' That was the kind of
17 thing that was going on. And they were
18 homeless. And I think that he thought this
19 was the way to get three meals a day and have
20 a place to stay.

21 Q. Okay. Did you review with him the
22 elements of what the state would have to
23 prove on each of these charges?

24 A. Yes.

25 Q. Did you review with him the sentence

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1 ranges on each charge?

2 A. Yes. Yes.

3 Q. Did you advise him that the judge
4 could, in his discretion, run these all
5 consecutive?

6 A. Yes.

7 Q. In your opinion, what was your
8 likelihood of success if you'd taken this
9 case to trial?

10 A. Zero.

11 Q. And did you explain that ---

12 A. It was very unlikely.. He had a very
13 good prosecutor. He had witnesses that were,
14 victims that were very strong, I thought.
15 You had statements by Mr. Mayberry or his
16 brother. You had a tremendous amount of
17 evidence against him in this case. It was
18 just an unfortunate incident that happened,
19 two young men, that should never happened.

20 Q. And did you explain to Mr. Mayberry
21 your opinion that it would be very unlikely
22 that you would win in a trial?

23 A. Yes.

24 Q. And your testimony is you never got
25 any kind of plea offer from the State?

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1 A. Nothing that we would accept. I
2 don't believe. I think at some point maybe
3 I'd gotten some plea offers. Anything we
4 would have received would have been not the
5 best plea offers. There were plea offers,
6 but they were nothing you wanted. They were
7 all pretty much the same amount of time, I
8 believe.

9 Q. And your testimony was that you
10 never promised Mr. Mayberry he would receive
11 ten years?

12 A. No.

13 Q. And did he ask you to ask the State
14 about a YOA? Do you remember?

15 A. I think we discussed a YOA, yeah.
16 Yeah. The charges were not eligible for a
17 YOA because they were violent. And with the
18 prosecutor in there, if they had a weak
19 moment, said, 'Okay, we'll do this because
20 he's got really no prior record. He's
21 young.' But that didn't happen.

22 Q. Did you ask the State, did you ask
23 the prosecutor to reduce the charges down to
24 kind of get them under YOA?

25 A. I don't know if I did or not. I

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1 mean, I'm not sure I can answer that. I'm
2 not sure. I don't recall that.

3 Q. Okay.

4 A. I would have done anything I could
5 to help in this situation.

6 Q. Okay.

7 MS. RATIGAN: That's all I have,
8 Your Honor.

9 MR. ARIAIL: No further questions,
10 Your Honor.

11 THE COURT: All right. Mr.
12 Robinson, thank you. You may step down.

13 APPLICANT: Thank you, Judge.

14 (WITNESS STEPS DOWN)

15 THE COURT: Anything else from the
16 petitioner?

17 MR. ARIAIL: No, Your Honor, that's
18 our case.

19 MS. RATIGAN: The State would call
20 Mr. Fretwell.

21 (WITNESS TAKES STAND)

22 ALLEN FRETWELL, having been duly
23 sworn to tell the truth, and nothing but the
24 truth, testified as follows:

25 DIRECT EXAMINATION

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1 BY MS. RATIGAN:

2 Q. Mr. Fretwell, were you present for
3 both Mr. Mayberry's and Mr. Robinson's
4 testimony this morning?

5 A. I was.

6 Q. I'm just going to cut right to it
7 and ask a couple of questions about the plea
8 negotiations in this case. Did you ever make
9 any kind of offer of years in this case, any
10 kind of sentence recommendation?

11 A. I did.

12 Q. And what was that offer?

13 A. You'll have to give me just a minute
14 to find it.

15 Q. Okay.

16 A. Just chronologically, I sent an
17 email to Mr. Robinson on February 22nd, 2013.
18 This is in response to an email he had sent
19 me earlier that morning indicating that he
20 had met with his client and wanted to see
21 "which way", quote, I wanted to go. In
22 response, I told him "as a matter of
23 clarification are you asking what kind of
24 plea offer might be extended in exchange for
25 a guilty plea? If so, I can tell you that

1 I'm considering the following:

2 One, no reduction in charges.

3 Two, some initial period of active
4 incarceration, not less than the mandatory
5 minimum of ten years and no more than the
6 maximum sentence of thirty years on the armed
7 robbery charge.

8 Three, followed by a period of
9 probation, likely for the full five years,
10 during which a consecutive sentence of
11 somewhere between twenty and thirty would be
12 suspended.

13 I went on to talk about the fact
14 that I had not decided or hammered out the
15 specific ranges at that point. Mr.
16 Robinson's response was that that was exactly
17 what he was interested in. He wanted to
18 speak with his client with a copy of the
19 email I had sent him and was going to get
20 back to me.

21 He sent that email to me on February
22 26th. I then responded by saying that I would
23 look to hear from him basically. And I
24 wanted to consult with the victims and see if
25 I could finalize something more specific.

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1 I did send him an email on February
2 27th that starts off by saying "after speaking
3 with the victims, I am prepared to make the
4 following offer . . ." --- You want to hear
5 this?

6 Q. Please?

7 A. Okay. I said, (reading): "In
8 exchange for early acceptance of
9 responsibility in the form of guilty pleas to
10 all charges during the court terms during the
11 month of March 2013, the State would
12 recommend a sentencing range of fourteen to
13 sixteen years for the armed robbery and
14 attempted murder charges. Further, the State
15 will recommend a twenty year sentence on the
16 attempted armed robbery and carjacking
17 charges, suspended on five-year's probation
18 and consecutive active sentences on the armed
19 robbery and attempted murder charge. All
20 other sentences on the remaining charges will
21 run concurrently. This offer will be
22 available to both defendants, but the first
23 to plead guilty will have his sentence
24 deferred, if he so desires until the other
25 has pled guilty or until such time as the

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1 State sees fit."

2 It goes on to say that the offer
3 would "be available during the court terms in
4 April to a modified degree, as the degree of
5 early acceptance of responsibility will be
6 somewhat diminished, instead of the initial
7 sentencing range of fourteen to sixteen
8 years, the range would be a range of fifteen
9 to eighteen years. And the twenty year
10 suspended sentence will become twenty-five.
11 All other conditions will remain unchanged.
12 Please let me know as soon as possible if
13 you'd like sentencing sheets to take back to
14 your client. I will need those sheets back
15 at least three-days prior to a plea."

16 He responded March 5th, that being
17 Mr. Robinson, and said Allen, (reading):
18 "I spoke with Mickey today. He's on board to
19 plea or to plead. I would like a
20 recommendation of ten since has a minimal
21 record and there are a number of years over
22 his head."

23 I responded immediately, (reading):
24 "Can't do it Scott. What I'm offering is as
25 good as it gets. In fact it gets quote "less

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1 good" in April. I'm not requiring a
2 negotiated plea. So if you want to argue for
3 less, be my guest. The recommendation is
4 what I'm making. If he wants to go forward,
5 I need to get those sentencing sheets as soon
6 as possible."

7 That is basically -- and then from
8 my recollection, there was a push on my part
9 to see that happen in the timeframes that I
10 had outlined.

11 The plea did not happen.

12 I never received sentencing sheets.
13 Or I don't recall getting sentencing sheets

14 We certainly did not have a plea
15 during that time period. My understanding it
16 was somewhat as Mr. Robinson has testified,
17 that this defendant was waiting to see or was
18 somehow influenced by what his brother was
19 doing. His brother did not plead guilty
20 until either the day of, is my recollection,
21 or certainly that week prior to the plea that
22 Mr. Mayberry, this defendant, entered.

23 Q. Did you ever make a plea of just a
24 ten to thirty year recommendation?

25 A. No, I didn't. But often our

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1 sentencing sheets -- we're actually required
2 in the top right-hand corner, to write the
3 sentencing range on the sentencing sheet. We
4 don't always do that, but that's what our
5 directive has been so that judges understand
6 what the State's position is on sentencing.
7 And sometimes -- hopefully, that's right.
8 But that's probably where the ten to thirty
9 written on the sheet would come from, in my
10 guess.

11 Q. I think I already know the answer to
12 the question, but did you ever make a ten-
13 year offer in this case?

14 A. I did not. In fact, I mean, I think
15 that's pretty clear from that email that I
16 wrote. I told Mr. Robinson. Mr. Robinson
17 and I have a fairly good working relationship
18 as far as communication is concerned. And I
19 told him this was a case that I determined
20 was very serious. It was a random act of
21 violence, one of the worst types of cases
22 that we deal with, and that absolutely no
23 reductions would be made in this case.

24 Q. That was going to be my next
25 question. Did Mr. Robinson ever ask you to

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1 reduce some of these charges to get them
2 under the YOA umbrella?

3 A. I don't know if he ever did that. I
4 was very clear in that email that I just read
5 into the record, that there would be no
6 reduction in charges.

7 Q. Okay.

8 MS. RATIGAN: That's all I have,
9 Your Honor.

10 THE COURT: Mr. Ariail, cross-
11 examination?

12 MR. ARIAIL: Yes, Your Honor, just
13 a few questions.

14 CROSS-EXAMINATION

15 BY MR. ARIAIL:

16 Q. Mr. Fretwell, just to kind of make
17 sure I've got it. What was the second offer?
18 I know there's an email on February 22nd,
19 2013. And then you said there was a second
20 offer where you kind of went from the
21 fourteen to sixteen year range. I didn't get
22 the date?

23 A. Are you talking about the email
24 where I referenced that the offer would be a
25 certain range in one month and if it were not

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1 ---

2 Q. Yes.

3 A. --- accepted during that month it
4 would be a different range for the following
5 month?

6 Q. Correct.

7 A. The date of that email is February
8 27th, 2013.

9 Q. Okay. So apparently y'all had email
10 correspondence on February 22nd. And I guess
11 Mr. Robinson -- I'm just trying to get the
12 chronology of it?

13 A. Uh-huh.

14 Q. Mr. Robinson went and talked to Mr.
15 Mayberry, I guess, between February 22nd and
16 27th; is that right?

17 A. Well, the 22nd February 22nd, 2013,
18 Mr. Robinson sent me an email, which kind of
19 kicked off this conversation indicating that
20 he had, quote, "met with Mickey yesterday."

21 Q. Okay.

22 A. So I guess that would be the 21st of
23 February?

24 Q. Right?

25 A. That's what prompted this

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1 conversation about what I would be willing to
2 do in this particular case. I do note that
3 on February 26th, in response to my email on
4 the 22nd, that Mr. Robinson indicated that
5 that was exactly what he was interested in.

6 Q. Okay.

7 A. That he wanted an opportunity to
8 speak with his client and get back to me.
9 And then on March 5th he said, "I spoke with
10 Mickey today. He is on board to plea."

11 Q. So on February 26th he said 'I'm
12 going to talk to my client.'

13 February 27th you sent him the email
14 with the, I guess, the fourteen to sixteen
15 range, do it in a certain month; is that
16 correct? I want to make sure I've got my
17 dates right on that.

18 A. You'll have to break that up for me
19 a little bit.

20 Q. I'm sorry. There was an email you
21 said where you sent to him responding saying,
22 'Here's the two different ways we could do
23 it. Whoever kind of pleads first, you know,
24 fourteen to sixteen.'

25 A. The date on that you mean?

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1 Q. Yeah?

2 A. February 27th.

3 Q. February 27th. Okay. So he gets
4 back in touch with you on March 5th, says he's
5 on board with that plea that ---

6 A. He's "on board to plea."

7 Q. On board to plea. Okay. Now,
8 apparently you don't remember getting any
9 signed sentencing sheets or anything of that
10 nature?

11 A. What I do recall about this case, --
12 I remember the victims in this case wanted
13 this matter to be resolved. This was
14 something where small children were involved
15 and they wanted the matter to be resolved in
16 as expeditious way as possible. So I was
17 pushing for an earlier plea than would be
18 likely obviously if it went to trial.

19 Q. Right.

20 A. And that was why we had the
21 significant, in my opinion, deviation from
22 what I thought an appropriate sentence of the
23 case, for early acceptance of responsibility.
24 And I remember the call pushing pretty hard,
25 making a lot of contacts or contact with Mr.

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1 Robinson to see if we couldn't get them up
2 here and get Mr. -- this defendant up and
3 plead.

4 Q. Okay. And that was my next -- kind
5 of where I was going with that. There was
6 apparently -- it went into this black hole
7 where we're not having any conversations. Do
8 you remember anything with Mr. Robinson as
9 saying, 'Hey, I can't get him to sign or this
10 is the reason why' ---

11 A. Tell me what you mean by the black
12 hole?

13 Q. Well, what I'm saying is he says he
14 wants to plead on March 5th apparently in an
15 email. Then we don't have anything that
16 happens. He doesn't plead until August.

17 A. Well, I've got other emails. I
18 mean, we can ---

19 Q. Well, I'm just trying to figure
20 where -- if Mr. Robinson told you what was
21 going on, why his client wasn't pleading at
22 that point?

23 A. So, on March 6th he sent me another
24 email that said, "Allen, I visited Mr.
25 Mayberry with the sentencing sheets and he

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1 wished more time to think about it."

2 Q. Okay.

3 A. I respond basically saying 'well,
4 you know, you understand my plea offer and
5 how this plea agreement is structured.'

6 Q. That was on March 6th. Is there any
7 other?

8 A. Yes.

9 Q. Did he ever respond to that saying,
10 'well, I need this amount of time to be able
11 to' ---

12 A. We corresponded on March the 6th
13 with, I think, the one email at some point
14 saying, "Allen, sorry, but I would remove him
15 from the transport list for now" because I
16 had placed him on the transport list.

17 Q. Okay.

18 A. I told him that I could place him on
19 the transport list again, but he would need
20 to be signed up to guarantee that he would
21 make the list. They take the people that are
22 signed up first.

23 On March 14th he indicates that he
24 would take my email down to him, which
25 basically said "please be aware that the

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1 initial aspect of the plea offer on this case
2 is now expired. The offer for the month of
3 April is as follows:" And I reiterated the
4 part or portion of the email that talked
5 about the graduated sentencing
6 recommendation. And his response to that was
7 that he would take my email down to him.

8 Q. Okay.

9 A. I don't have any more -- I have an
10 email that I sent to him on August 14th. That
11 would be the day of the afternoon, I believe
12 before the plea. Right. This says,
13 (reading): "Scott, we must have a
14 conversation" -- Mr. Robinson has a lot of
15 electronic gadgets so sometimes I might
16 better correspond with him via text or
17 something like that, that I don't have a copy
18 of.

19 Q. Okay.

20 A But this email indicates, (reading):
21 "Scott, I must have the sentencing paperwork
22 before 5:00. Please get them up here as soon
23 as possible." So we must have discussed him
24 pleading guilty. As I recall, it was because
25 his brother had signed up to plead guilty.

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1 And I called, I think, and told Mr. Robinson
2 that because of the prior conversations we
3 had had about how his client was going to
4 basically wait to see what his brother did.
5 And since his brother had signed up to plead
6 guilty, I called Mr. Robinson. Mr. Robinson
7 went down, got him to sign up. We got him on
8 the transport list. And I think the pleas
9 happened the same day.

10 Now, Mr. James Mayberry, his
11 brother, was sentenced first and received
12 thirty years.

13 Then he came and pled and received
14 his sentence.

15 Q. Okay. There was, I guess, in August
16 the plea offer at that time, what I under-
17 stand it was no sentence recommendation
18 whatsoever. It was a dismissal of two
19 weapons charges; is that correct?

20 A. That's what I did. I don't know
21 that I made that a part of a plea agreement,
22 but I know that I nolle prossed two weapons
23 charges in connection with his guilty plea.
24 I don't know that it's accurate that I did
25 not have a sentencing recommendation, because

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1 -- and, again, I haven't seen the transcript
2 -- I don't recall from my own recollection.
3 I just have on my guilty plea summary that
4 the agreement -- we did not have a specific
5 agreement, but the State was recommending
6 significant prison time.

7 Q. Okay. But there was no fourteen to
8 sixteen or fifteen to eighteen?

9 A. All of that would have expired back
10 in April of 2013. And I think it was the
11 fifteen to eighteen followed by a twenty-five
12 year sentence with five-year's probation.
13 But that would have expired long before this.

14 Q. Right. Yeah. Okay.

15 MR. ARIAIL: No further questions,
16 Your Honor.

17 MS. RATIGAN: I have nothing further
18 from Mr. Fretwell, and the State would rest,
19 Your Honor.

20 (WITNESS STEPS DOWN)

21 THE COURT: All right anything
22 further from Petitioner?

23 MR. ARIAIL: No, Your Honor.

24 THE COURT: All right. Anything
25 further?

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1 MS. RATIGAN: No, Your Honor.

2 MR. ARIAIL: No, Your Honor.

3 THE COURT: All right. It seems
4 like the main crux of this is the under-
5 standing of what the offer was if pleading
6 guilty. And I've had a chance to review the
7 sentencing sheet and also the transcript.

8 Judge Gibbons very thoroughly goes
9 through his colloquy with the defendant. And
10 he even says, "You understand you're going to
11 be a fairly old man by the time you get out
12 and you understand that?" And the Defendant
13 says, "I understand."

14 So, I think at the time of which he
15 pleaded guilty, it was clear -- he understood
16 that he was going to be a fairly old man by
17 the time he got out. And there's been no
18 objection raised at that time. I think that
19 everything was properly covered by Judge
20 Gibbons. So, therefore, I deny the petition.

21 MS. RATIGAN: Thank you, Your Honor.

22 (COURT IN RECESS)

23

24

25

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Mickey Lane Mayberry,
S.C.D.C. No. 356630,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2014-CP-23-1082

ORDER OF DISMISSALFILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 JUL 20 PM 4 38

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 27, 2014. The Respondent made its return on May 8, 2014. An evidentiary hearing was held on June 18, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire.¹ Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were assistant solicitor Allen O. Fretwell, Esquire and the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the return.

¹ At the beginning of the hearing, PCR counsel noted he also represented the Applicant's co-defendant (who is also the Applicant's brother) on his PCR action. PCR counsel noted he had discussed the possibility of a conflict of interest with the Applicant, who waived any potential issues. This Court questioned the Applicant about a potential conflict of interest and is satisfied the Applicant made a knowing waiver of any potential conflict.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the November 2012 term of the Greenville County Grand Jury for attempted murder (2012-GS-23-9351, count 1), two counts of attempted armed robbery (2012-GS-23-9351, counts 2 and 4), three counts of carjacking (2012-GS-23-9351, counts 3, 5, and 7), armed robbery (2012-GS-23-9351, count 6), possession of a weapon during commission of a violent crime (2012-GS-23-9351, count 8), and pointing or presenting a firearm (2012-GS-23-9351, count 9). He was represented by Scott D. Robinson, Esquire.

On August 15, 2013, the Applicant pled guilty to attempted murder, two counts of attempted armed robbery, three counts of carjacking, and armed robbery.² The Honorable Brian M. Gibbons sentenced the Applicant to concurrent terms of 20 years for attempted murder, 10 years for each count of attempted armed robbery, 10 years for two counts of carjacking, and 30 years suspended upon service of 25 years for armed robbery. Judge Gibbons levied a consecutive sentence of 10 years for the third count of carjacking. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
2. "Unkept plea advice."
3. "Inadequate mitigation as for first offence."

² The indictments for possession of a weapon during commission of a violent crime (2012-GS-23-9351, count 8) and pointing or presenting a firearm (2012-GS-23-9351, count 9) were not prossed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he had 3-4 meetings with plea counsel. The Applicant stated they reviewed the Sheriff's report and his version of events. The Applicant stated they reviewed the maximum sentences he was facing on these charges. The Applicant stated plea counsel did not investigate his case. ~~The Applicant stated he Applicant plea counsel to investigate whether there~~

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was enough evidence for the case to go to trial. The Applicant stated plea counsel told him the State was not offering a Youthful Offender Act sentence in his case. The Applicant stated plea counsel gave him a copy of a plea agreement with a sentence range of 10-30 years. The Applicant stated he was hesitant but that plea counsel said he could get the Applicant a 10-year sentence if he signed the sentencing sheets. The Applicant stated he did not challenge the State's comment during the plea hearing that there was no specific recommendation because he "was blind to the law."

Plea counsel testified he met with the Applicant at least 3-4 times. Plea counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they reviewed the elements of the charges and the sentence ranges. Plea counsel testified there would have been very little likelihood of success at trial and he explained this to the Applicant. Plea counsel testified they reviewed the Applicant's statements to law enforcement and his identification by several victims. Plea counsel testified the Applicant never said he was not guilty. Plea counsel testified the Applicant pled guilty after his brother/co-defendant decided to do so. Plea counsel testified sentencing under the Youthful Offender Act would not have been possible with these charges. Plea counsel testified there was never a plea offer from the State that the Applicant would accept. Plea counsel testified the "offer" referred to by the Applicant was a list of charges and their sentence ranges but did not have a sentence recommendation. Plea counsel testified there was never a discussion of the Applicant receiving 10 years and he never promised such to the Applicant.

Assistant solicitor Allen Fretwell testified he sent plea counsel an email on February 22, 2013, which stated: (1) he was not considering reducing the charges, (2) offering an initial incarceration period of 10-30 years, and (3) a period of probation would follow with a

suspended consecutive sentence. Fretwell testified he did not make a sentence recommendation and plea counsel said he would get back in touch. Fretwell testified he sent an email to plea counsel on February 27, 2013 (after he spoke to the victims) and would make the following offer for the March 2013 term of court: (1) 14-16 years for armed robbery and attempted murder, (2) 20 years for attempted armed robbery and carjacking with a suspended 5-year probation sentence, and (3) all other charges to be concurrent. Fretwell testified he also noted this offer would be available in the April 2013 term of court to a modified degree – the range for armed robbery and attempted murder would be 15-18 years and the recommendation for attempted armed robbery and carjacking would be 25 years with a suspended 5-year probation sentence. Fretwell testified he received an email from plea counsel on March 5, 2013 that the Applicant wanted to plead guilty – but wanted a 10-year recommendation. Fretwell testified he responded that he would not make this recommendation but that plea counsel could argue for a lesser sentence. Fretwell testified a guilty plea did not happen in March or April 2013 and that the Applicant was waiting to see what his co-defendant would do. Fretwell testified he never made a plea offer for 10-30 years (though he writes the sentence ranges for the charges on the sentencing sheets) and that he never made an offer for a 10-year sentence.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly investigate his case. The Applicant stated he did not see any investigation by plea counsel and that he wanted to know if there was enough evidence for the case to go to trial. The Applicant, however, did not specify what more plea counsel should have done to prepare his case. The Applicant also failed to present any evidence or witnesses to demonstrate what plea counsel could have discovered with a different investigation. This Court finds the Applicant failed to meet his burden of proof on this issue. See Jackson v. State, 329 S.C. 345, 495 S.E.2d

768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about a plea offer in this case. This Court finds the State's plea offers for the March and April terms of court in 2013 were conveyed to the Applicant, who chose not to accept them. This Court finds plea counsel fulfilled his obligation in that regard. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court finds the Applicant was aware he was pleading guilty without a sentence recommendation. This Court does not find credible the Applicant's testimony that he was promised a 10-year sentence if he pled guilty. Plea counsel testified he made no such promise and this Court finds his testimony is credible. Furthermore, the plea transcript refutes the Applicant's contention that he believed he was pleading guilty pursuant to a 10-30 year recommendation (with a promise of a 10-year sentence from plea counsel). See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). The plea judge conducted a thorough colloquy and any misapprehension the Applicant could have had about the sentence he was facing was cured by that colloquy. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011). The Applicant stated he had not been made any promises in exchange for his guilty pleas. (Plea transcript, p.7). The Applicant did not object when the State said they were not making "a specific recommendation." (Plea transcript, p.14). This Court also notes the Applicant's contention that plea counsel promised him a 10-year sentence does not

make sense when the plea judge noted he would be "a fairly old man" when he was released and the Applicant agreed. (Plea transcript, pp.16-17). This Court finds the Applicant was aware he was pleading guilty that day without a sentence recommendation. This Court finds the Applicant failed to meet his burden of proving he was in any way misadvised about the sentence he would receive when he pled guilty.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and

dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12th day of July, 2015.


Perry H. Gravely
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.