

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BERKELEY COUNTY

SC SUPREME COURT

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case Number: 2015-00636

Tommy Weathers, Jr.

Petitioner,

v.

State of South Carolina

Respondent.

APPENDIX

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
3

4 STATE OF SOUTH CAROLINA,)
5 vs.) Case Nos.: 2011-GS-08-0400
6) 2011-GS-08-1676
7) 2011-GS-08-1677
8) 2011-GS-08-1678
9 TOMMIE WEATHERS,)
10 Defendant.)

ORIGINAL

11
12 TRANSCRIPT OF PROCEEDINGS
13 CHANGE OF PLEA HEARING
14 HEARD BEFORE JUDGE KRISTI HARRINGTON
15 ON JANUARY 14, 2013
16

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22 ROLAYNE M. VOLPE, CCR, RPR
23 Court Reporter
24 Post Office Box 342
25 Summerville, South Carolina 29484

Change of Plea Hearing
State vs Tommie Weathers
January 14, 2013

A P P E A R A N C E S

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Reported by:
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DESCRIPTION**I.D.****ADMITTED**

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(No exhibits marked or admitted during
this part of the proceedings.)

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Reported by:
ROLAYNE M. VOLPE, CCR, RPR

Change of Plea Hearing
State vs Tommie Weathers
January 14, 2013

1 The above-styled cause came on for hearing on
2 the 14th day of January, 2013, at 12:06 p.m., before
3 Judge Kristi Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Berkeley, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY CHANGE OF PLEA HEARING

9 (Defendant is present in the courtroom with his
10 counsel.)

11 THE COURT: Are you Tommie Weathers?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Please swear the Defendant.

14 THE COURTROOM DEPUTY CLERK: Please raise your
15 right hand.

16 (The oath is administered by the Courtroom
17 Deputy Clerk, and the Defendant answers as follows:)

18 THE DEFENDANT: Yes, ma'am.

19 THE COURTROOM DEPUTY CLERK: Thank you.

20 THE COURT: All right. Solicitor's going
21 forward on three indictments?

22 MS. CORNWELL: Yes, your Honor.

23 THE COURT: Which three indictments?

24 MS. CORNWELL: The State is going forward on
25 Indictment Number 2011-GS-08-0400, 2011-GS-08-1676 --

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1 I'm sorry. -- -1677 and -1678. So, again, that's
2 2011-GS-08-0400, which is the indictment for armed
3 robbery, pleading to a lesser included strong armed
4 robbery; 2011-GS-08-1677, which is kidnapping; and
5 2011-GS-08-1678, which is assault and battery in the
6 first degree. With this plea, the State has agreed to
7 dismiss Indictment 2011-GS-08-1676, which is a
8 possession of a weapon during a violent offense.

9 THE COURT: Mr. Weathers, you have been sworn;
10 is that correct?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Mr. Weathers, you are represented
13 by Mr. Davis?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You are here to plead guilty on
16 Indictment 2011-GS-08-400, which is a True Billed
17 Indictment for armed robbery. The State is allowing you
18 to plead to the lesser included strong armed robbery. I
19 can sentence you up to 15 years in the Department of
20 Corrections. Do you understand that that's the possible
21 punishment?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You're also here to plead guilty on
24 Indictment 2011-GS-08-1677, which is a True Billed
25 Indictment for kidnapping. You understand that I can

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1 sentence you up to 30 years in the Department of
2 Corrections? Do you understand that?
3 THE DEFENDANT: Yes, ma'am.
4 THE COURT: You understand that's a violent and
5 a most serious offense?
6 THE DEFENDANT: Yes, ma'am.
7 THE COURT: Tell me in your own words what that
8 means.
9 THE DEFENDANT: That I can be punished for what
10 you just said.
11 THE COURT: I'm sorry?
12 THE DEFENDANT: That I can be punished for what
13 you just said.
14 THE COURT: What does the classification of
15 violent mean?
16 THE DEFENDANT: Uh --
17 THE COURT: Did you explain that --
18 THE DEFENDANT: -- yeah.
19 THE COURT: -- to him?
20 (Mr. Davis speaks to his client off the
21 record.)
22 MR. DAVIS: He understands. Ask him again.
23 THE COURT: Tell me what that means, sir.
24 THE DEFENDANT: That it's my only chance.
25 THE COURT: I'm sorry?

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1 THE DEFENDANT: That it's my only chance for
2 the -- one of my strikes.

3 THE COURT: How is it going to impact your
4 sentencing?

5 MR. DAVIS: Tell what benefit you receive
6 -- this is a serious offense. It's one strike; okay?

7 MS. CORNWELL: Two strikes.

8 MR. DAVIS: And it's -- for future
9 consequences, you get two serious strikes, and it could
10 create a situation where you could have life without
11 parole. That's the best I know to explain it.

12 THE COURT: Sir, do you understand what the
13 classification of most serious means?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: What does that mean?

16 THE DEFENDANT: That this is one of my strikes.
17 If I get punished again for another one, I could have
18 life without parole.

19 MR. DAVIS: Potential.

20 THE COURT: Most serious is actually, oddly
21 enough, it's considered to be two strikes. All right?
22 So this is -- if you get a -- after this one, if you get
23 a combination of a serious or a most serious, the State
24 can seek life without parole. Do you understand that,
25 sir?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you understand that the
3 classification of violent and most serious have really
4 nothing to do necessarily with the facts of the crime,
5 it has to do with the charge itself?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. You should assume that
8 whatever sentence that I give you, you will do day for
9 day. Do you understand that, sir?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You understand that punishment for
12 kidnapping is up to 30 years in the Department of
13 Corrections?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You're also here to plead guilty on
16 assault and battery first degree. I can sentence you up
17 to ten years in the Department of Corrections on that
18 offense. Do you understand that, sir?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Knowing that, do you wish to go
21 forward on these pleas here today?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Other than the reduction from armed
24 robbery to strong armed robbery, this is without
25 negotiations and recommendations; do you understand

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1 that, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Knowing that, do you still wish to
4 go forward here today?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: If I were to impose the maximum
7 sentence upon you and run each of these indictments
8 consecutively, I can sentence you to 55 years in the
9 Department of Corrections. Do you understand that
10 that's the possible punishment?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Knowing that, do you wish to go
13 forward here today?

14 THE DEPONENT: Yes, ma'am.

15 THE COURT: Have you had discussions with your
16 attorney in which he told you I would sentence you a
17 certain way here today?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: You have? And what did he indicate
20 to you that I was going to sentence you to?

21 MR. DAVIS: Potential --

22 THE DEFENDANT: Potential YOA.

23 THE COURT: You understand that there is no one
24 in this room that knows how I'm going to sentence you
25 here today?

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1 THE DEFENDANT: Yes, ma'am.
2 THE COURT: Knowing that, do you still wish to
3 go forward here today?
4 THE DEFENDANT: Yes, ma'am.
5 THE COURT: You should assume, sir, you are
6 facing a potential of 55 years. Do you understand that,
7 sir?
8 THE DEFENDANT: Yes, ma'am.
9 THE COURT: Knowing that, do you still wish to
10 go forward here today?
11 THE DEFENDANT: Yes, ma'am.
12 THE COURT: How old are you?
13 THE DEFENDANT: 21.
14 THE COURT: 21?
15 THE DEFENDANT: Yes, ma'am.
16 THE COURT: How far did you go in school?
17 THE DEFENDANT: To the eleventh grade.
18 THE COURT: Did you get your GED?
19 THE DEFENDANT: Yes, ma'am.
20 THE COURT: What type of work do you do?
21 THE DEFENDANT: I'm not.
22 THE COURT: I'm sorry?
23 THE DEFENDANT: I'm not.
24 THE COURT: What type of work did you do?
25 THE DEFENDANT: None.

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1 THE COURT: You have never worked?

2 THE DEFENDANT: I had a job at Family Dollar
3 when I was 18.

4 MR. DAVIS: Family Dollar, your Honor.

5 THE COURT: What did you do at Family Dollar?

6 THE DEFENDANT: Just stocking, really.

7 THE COURT: How long have you been in custody?

8 THE DEFENDANT: For seven months this time.

9 THE COURT: Seven months this time. What does
10 that mean, sir?

11 THE DEFENDANT: I did three months when I first
12 was arrested.

13 MR. DAVIS: He bonded out, Judge, and then they
14 came off -- these charges appeared, and then he was
15 reincarcerated for ten months, but seven months the
16 second time, your Honor.

17 THE COURT: Have you ever been treated for the
18 abuse of drugs or alcohol?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Ever been treated for mental
21 illness?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: You understand that by pleading
24 guilty you're giving up certain rights? You're giving
25 up your right to a jury trial; your right to have a jury

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1 determine your guilt beyond a reasonable doubt based
2 upon the evidence the State presents, as well as any
3 evidence you may introduce; your right against
4 self-incrimination; your right to say nothing at all;
5 your right to confront and be confronted by the
6 witnesses against you; as well as the right to call
7 witness on your behalf. By pleading guilty here today,
8 you give up any defense that you may have to this
9 charge. Do you understand those rights, sir?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And do you waive those rights at
12 this time?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Understanding the charge that you
15 are facing, the possible punishment, as well as the
16 consequences of this plea, how do you plead to strong
17 armed robbery?

18 THE DEFENDANT: Guilty.

19 THE COURT: How do you plead to kidnapping?

20 THE DEFENDANT: Guilty.

21 THE COURT: How do you plead to assault and
22 battery in the first degree?

23 THE DEFENDANT: Guilty.

24 THE COURT: Are you pleading guilty because
25 you, in fact, are guilty of each of those offenses?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Has anybody promised you anything,
3 threatened you, or coerced you to enter this plea here
4 today?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: You understand that we have a jury
7 ready to pick, and we had one ready to pick this
8 morning?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And you are giving up that right?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Have you been satisfied with the
13 services of your attorney?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Any complaints about the way he's
16 handled this case?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Do you think there is anything he
19 could have done or maybe should have done that would
20 have assisted you in your defense?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: You have the right to appeal
23 the plea and sentence that I impose, but you or your
24 attorney must do so within ten days. Do you understand
25 that, sir?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Has the victim been notified?

3 MS. CORNWELL: Yes, your Honor. He is here,
4 and he'd like to address your Honor at the appropriate
5 time.

6 THE COURT: Mr. Weathers, I'm going to listen
7 to the facts from the Solicitor, and then I will have a
8 few more questions for you. Please pay close attention.

9 MS. CORNWELL: Thank you, your Honor. May it
10 please the Court?

11 On January 6th, 2011, officers were dispatched
12 to the Summerville area in Berkeley County in reference
13 to an armed robbery. The officer met with the victim
14 who stated that he was robbed at gunpoint by three
15 suspects. The victim stated that he had met a girl,
16 Jessica Clark, who is a co-defendant in this matter,
17 online the night before. She had promised him sex and
18 marijuana. She picked him up from his house the next
19 day. They went to a -- she drove him down a desolate
20 dirt road. On that dirt road, three men were waiting
21 for the car. They put a gun to the back of the victim's
22 head, pulled him out of the car, and proceeded to beat
23 him up. They striped him naked of all of his clothes,
24 stole \$160, his wallet, his keys, they also pistol-
25 whipped him several times.

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1 Meanwhile, the co-defendant Jessica Clark was
2 sitting in the car with her foot on the brake the whole
3 time. Because her foot was on the brake, the victim was
4 able to make out some facial features of each of the
5 suspects even though they were wearing hoodies and had
6 the hoodies pulled tight so you could only see a small
7 part of their face.

8 He was able to make out some of the facial
9 features. He was also able to identify one of the
10 suspects because he was wearing a GPS ankle monitor at
11 the time. The victim used to live with the co-defendant
12 Ryan Newman, who was wearing the GPS ankle monitor.
13 This Defendant is very good friends with Mr. Newman.

14 THE COURT: Say that one more time.

15 MS. CORNWELL: The co-defendant Ryan Newman was
16 wearing an ankle monitor. The victim lived with the
17 co-defendant Ryan Newman, who was wearing the ankle
18 monitor, prior to this occurring. He had moved out of
19 his house about a month before this incident occurred.
20 He knows this co-defendant based on the fact that he
21 would stay over often with them at the house.

22 Though the victim was able to identify this
23 Defendant through his skin color and also through the --
24 identifying him by his voice. They were speaking to
25 him, calling him names as they were beating him.

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1 The victim made the call to officers. The
2 officers came and took his statement. After officers
3 took his statement, the victim and his mother couldn't
4 sleep. They decided to drive by the co-defendant's
5 house, Ryan Newman. As they did, they saw Jessica
6 Clark's car parked at Ryan Newman's house, and that's
7 when they kind of put it together, that he had been
8 set up.

9 The victim went to the officers -- to the
10 police department the next day and gave a written
11 statement detailing the accounts. He was unable to
12 give a statement that night because he was receiving
13 treatment from EMS for the injuries of being pistol-
14 whipped.

15 The State did try Ryan Newman and Jessica Clark
16 together. They were both found guilty of the strong
17 armed robbery, kidnapping, and assault and battery in
18 the first degree. But the jury did have a problem
19 finding the gun because the gun was never recovered.

20 Prior to trial, the State proffered testimony
21 from Jessica Clark as well as from Shane Newman, who
22 is Ryan Newman's brother. Shane was originally
23 identified as the third suspect in this. Through our
24 investigation, it was discovered that he was not
25 actually the third suspect.

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1 The State was prepared to offer testimony
2 based on those proffered statements from Ms. Clark and
3 Mr. Newman. They were both subpoenaed to testify.
4 Ms. Clark was going to testify that she did pick up
5 Andrew Mendoza; she did drive him down that dirt road.
6 She claimed that she was also a victim in this. But she
7 was able to identify Ryan Newman, Tommie Weathers, and a
8 gentleman named Little C, Clint Clark, who are the three
9 guys that committed this crime against the victim. She
10 knows them all by sight and by sound. They then got --
11 her position is, they then got in her car after they
12 robbed and beat him up. She was in the back seat, she
13 says, and they drove her to Ryan's house, where this
14 Defendant got her a glass of water before threatening
15 her that they are not to -- she was not to say anything
16 to anybody.

17 Shane Newman also proffered a statement; he was
18 prepared -- he was subpoenaed to testify. And, at that,
19 he was going to testify that both Tommie and Ryan told
20 him that they beat the victim up; that they beat him up
21 at gunpoint. He was also going to testify that after
22 Jessica was picked up on charges, she called Ryan and
23 Tommie. They had the victim's clothes at Ryan's
24 mother's house. After Jessica called, she -- he was
25 going to testify that he saw them take the victim's

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1 clothes into the driveway and burn them to destroy the
2 evidence that they had done.

3 The victim identified this gentleman as
4 "Teddy." Teddy is his street name. But he was also
5 identified through a photo lineup as well.

6 That's the evidence that the State would have
7 presented. Again, we are willing to allow him to plea
8 to the charges without the gun because that's what the
9 co-defendants were found. Although, we do believe that
10 we could have proved the gun.

11 The added benefit is that we are not
12 making a recommendation because he's pleading. The
13 co-defendants, we did make a recommendation after the
14 trial of a term of 15 to 20 years. Ryan Newman was
15 sentenced to 14 years. Jessica Clark's sentencing has
16 been deferred for medical reasons. She is scheduled to
17 be sentenced in May.

18 THE COURT: All right. Let me hear from the
19 victim.

20 MR. MENDOZA: Andrew Mendoza, M-e-n-d-o-z-a.

21 THE COURT: Thank you, Mr. Mendoza. I'll be
22 happy to hear from you.

23 MS. CORNWELL: Just tell her what I --

24 MR. MENDOZA: That night, I got picked up
25 at 12 o'clock that night. And she had been texting me

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1 asking me if I wanted to hang out.

2 MS. CORNWELL: Just tell her how you want --
3 what you think the sentence should be.

4 MR. MENDOZA: Well, I feel what he did was
5 wrong. I was scared for my life. He almost took my
6 life. And I just rather him get the same sentence as
7 the rest of the defendants.

8 THE COURT: All right.

9 MR. MENDOZA: Thank you.

10 THE COURT: Thank you. Anything else,
11 Mr. Mendoza?

12 MR. MENDOZA: No, ma'am. That's all.

13 THE COURT: Thank you.

14 Prior convictions? I see two misdemeanor
15 charges and then a juvenile record in '08.

16 MS. CORNWELL: Yes, your Honor.

17 THE COURT: All right. Anything further?

18 MS. CORNWELL: Nothing from the State.

19 THE COURT: And the State takes no position as
20 to sentencing the --

21 MS. CORNWELL: We take no position, your Honor.

22 THE COURT: All right. Thank you.

23 Mr. Weathers, you heard the facts as presented
24 by the State, sir. Is that what you did?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: Was that a yes?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Have you understood all of my
4 questions and everything that we've done here today?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Are you pleading guilty to these
7 charges freely and voluntarily?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Are you pleading because you, in
10 fact, are guilty?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: I find a substantial factual basis
13 for your plea. Your decision to plead guilty has been
14 freely, voluntarily, knowingly, and intelligently made.
15 You've indicated to the Court you had the advice of
16 counsel of a competent attorney with whom you told the
17 Court you are satisfied. I hereby accept your plea of
18 guilt to these three indictments.

19 Mr. Davis, do you have family members here
20 present?

21 MR. DAVIS: It's sad to say, that's probably
22 this young man's dilemma, your Honor.

23 THE COURT: All right.

24 MR. DAVIS: The mom --

25 THE COURT: Okay. It's -- I'm going to defer

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1 sentencing until later in the week. I'm going to let
2 you -- since you have another plea to do before lunch
3 and --

4 Mr. Fashion, can you complete like a
5 presentence investigation for me like with his -- he's
6 not on probation, is he?

7 THE PROBATION OFFICER: No, ma'am.

8 THE COURT: All right. Can you do that for me
9 this week?

10 THE PROBATION OFFICER: Okay. Should be.

11 THE COURT: Okay. Thank you.

12 Once that's completed, then I will go ahead,
13 and I'll let you know. I'm here all week.

14 MR. DAVIS: Thank you.

15 THE COURT: Mr. Weathers, I'm going to impose
16 sentence upon you later in the week. Thank you.

17 MR. DAVIS: Thank you, your Honor.

18 MS. CORNWELL: Thank you, your Honor.

19 (The hearing of this cause concluded at
20 12:24 p.m., on January 14th, 2013.)

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January 14, 2013

R E P O R T E R ' S C E R T I F I C A T E

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR,
and Registered Professional Reporter, RPR, do hereby
certify that the transcript of the foregoing proceedings
accurately reflects the events that occurred before me
to the best of my ability at the time and place set out
on the caption hereto, the witnesses having been duly
cautioned and sworn, or affirmed, to tell the truth, the
whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,
related to, nor employed by any of the parties to the
action in which these proceedings were taken or to any
attorney or counsel employed by the parties hereto, nor
financially interested, directly or indirectly, in the
outcome of this action.

CERTIFIED AND SIGNED on this 13th day of November,
2014.

ORIGINAL

ROLAYNE M. VOLPE, CCR, RPR
Certified Court Reporter and
Registered Professional Reporter
Commission Expires: 11/30/2021

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

State of South Carolina,)
Plaintiff,)

vs.)

Tommie Weathers,)
Defendant.)

Case Nos.: 2011-GS-08-0400,
-1677, and -1678

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SENTENCING HEARING
HEARD BEFORE JUDGE KRISTI HARRINGTON
ON FEBRUARY 11, 2013

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Court Reporter for the State of South Carolina at Large
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Summerville, South Carolina 29484

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Sentencing Hearing, February 11, 2013
State versus Tommie WeathersI N D E X

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(No exhibits were marked during this proceeding.)

Reported By:

Rolayne M. Volpe, CCR, RPR

Official Court Reporter for the State of South Carolina

Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 The above-styled cause came on for hearing on
2 the 11th day of February, 2013, at 4:25 p.m., before the
3 Honorable Kristi Harrington, presiding over the General
4 Sessions Court for the County of Berkeley, when the
5 following proceedings were had and entered of record, to
6 wit:

7 PROCEEDINGS

8 THE COURT: All right. Are you Tommie
9 Weathers?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Please stand. Mr. Weathers, I'm
12 going to place you under oath.

13 THE DEFENDANT: Yes, ma'am.

14 THE DEPUTY CLERK OF COURT: Please raise your
15 right hand.

16 (The oath is administered by the Deputy Clerk
17 of Court, and the Defendant answers as follows:)

18 THE DEFENDANT: Yes, ma'am.

19 THE DEPUTY CLERK OF COURT: Thank you.

20 THE COURT: All right. Have both the State
21 and the Defendant received a copy of Agent Radovan's
22 recommendation?

23 THE SOLICITOR: We have, your Honor.

24 THE COURT: Mr. Davis?

25 MR. DAVIS: Yes, I did, Judge.

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 Official Court Reporter for the State of South Carolina

Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 THE COURT: Have the victims been notified?

2 THE SOLICITOR: Your Honor, the victim was
3 notified. He's trying to get a job right now. And
4 since last time, his statement still stands.

5 THE COURT: All right. Mr. Davis, I'll be
6 happy to hear from anyone regarding sentencing at this
7 time. I have reviewed -- I've reviewed the Sentencing
8 once I received it, and so I will be more than happy to
9 hear from you.

10 Mr. Weathers, this is without recommendations
11 or negotiations. And so I have a potential of 55 years?

12 MR. DAVIS: Yeah. And, Judge, that's him
13 being -- I just want to take you back and -- and rewind.

14 THE COURT: Let me -- before you rewind.

15 I know that there were some issues. Tell me
16 where we are with -- there was some issue with the
17 female co-defendant. Is that right?

18 THE SOLICITOR: Yes, your Honor.

19 THE COURT: Where is she?

20 THE SOLICITOR: She is -- her sentencing is
21 still being deferred. She is scheduled to be sentenced
22 in front of Judge Nicholson on May 20th. At that time,
23 she is supposed to have had the baby and will be
24 sentenced at that time.

25 THE COURT: All right. And remind me what the

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 co-defendant -- the male co-defendant got.

2 THE SOLICITOR: He received 14 years, your
3 Honor.

4 THE COURT: All right. And your position,
5 based upon the facts, was that this Defendant was more
6 or less culpable?

7 THE SOLICITOR: The culpability was equal
8 between the two male co-defendants.

9 THE COURT: This Defendant was the roommate --
10 previous roommate?

11 THE SOLICITOR: Was the previous roommate. The
12 State's case against this Defendant was not quite as
13 strong as against the co-defendant because the
14 co-defendant was actually wearing an electronic monitor
15 when he committed the offense, so we were definitively
16 able to put him there.

17 THE COURT: But was the only individual -- only
18 Defendant involved, was Mr. Weathers the only one with
19 the relationship to the victim?

20 THE SOLICITOR: Yes, your Honor.

21 THE COURT: All right. Thank you. All right.
22 I just wanted to make sure. Because I knew there was
23 some discussion we had had about co-defendant sentencing
24 and deferring sentencing on the other co-defendant. So
25 I just wanted to make sure.

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 MR. DAVIS: Judge, also, as part of that
2 rewind, as you recall, we had commenced to start a trial
3 on this matter; okay? And one of the poignant issues at
4 that time was whether the kidnapping, which is what he
5 pled to -- which is a serious offense, and you read
6 through the litany and shared with him that that's a
7 strike, and that's going to have profound consequences
8 against this young man.

9 Then we went over the aspect of the -- the
10 -- the strong arm robbery aspect, which puts us in a
11 position that he could get a YOA, and he's up until the
12 age of 25. And, basically, that's been our contention
13 this whole matter, your Honor, that Tommie's been dealt
14 a bad hand. His mom, right now, is up in rehabilitation
15 for drugs. Can't be here. Wanted to be here.

16 And I shared this with the judge at the
17 inception, that I was proud of Tommie, because what he
18 did is that he stood up at the plea process, and so
19 despite what the Presentence Report -- if this was a
20 Federal Presentence Report, he would have been granted
21 more credit for remorsefulness and his initiative to
22 come forward and to plead guilty.

23 And so even though the State Presentence Report
24 says at least ten years, I would take the position that
25 if the federal government had a YOA program similar to

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 the state program, they'd probably put this young man in
2 the YOA program. I say that, your Honor, because the
3 kidnapping is something that's going to be profound for
4 him. And when you think about the YOA for strong arm
5 robbery, this kid has to do about 24 months. He's
6 already been in jail about ten months. He gets no
7 credit for that whatsoever. I'm just -- I just believe,
8 your Honor, that the strong arm robbery, the Youthful
9 Offender, was created for a purpose. I think Tommie
10 Weathers should be afforded that opportunity.

11 And I also say that, what makes him different
12 from the other kid, the Ryan kid that got 14 years, is
13 he had a prior record; he had an electronic monitor
14 around his leg at the time, which is similarly different
15 -- I would say tremendously different from Tommie
16 Weathers. And, Judge, I'm just trying to create a
17 situation where Tommie Weathers will have an opportunity
18 -- and I believe that our state legislators, when they
19 created this Youthful Offender, to some extent, when
20 they made a decision that strong arm robbery could be
21 one of those offenses under the age of 25 --

22 You about 20 years old? How old are you, son?

23 THE DEFENDANT: Twenty-one.

24 MR. DAVIS: That's right. He's been in jail
25 for ten months, Judge. I actually believe -- I hope you

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 would consider a YOA sentence for him, which would be
2 tremendously -- some less than what -- the State's
3 position say at least ten years, but strong arm robbery
4 is nothing to sneeze upon. I've had some kids that have
5 been sentenced -- in fact, you and I had a strong arm
6 robbery case, your Honor, when you were the prosecutor.
7 That kid came out, he got a job at the restaurant there
8 at the foot of the bridge, and he's been doing quite
9 well. A kid that did the robbery at the liquor store on
10 17A. I refresh your memory. And he got a strong arm
11 robbery. I stood this kid before Judge Dennis and
12 wanted to plead him to armed robbery, and the kid backed
13 out. It was the 4th of July. But we started the trial
14 and eventually he pled to strong arm robbery. He went
15 for a YOA, and that kid has not engaged himself in any
16 further criminality since.

17 I think Tommie Weathers has the same demeanor,
18 and I say that because he -- the manner in which he has
19 accepted the plea and pled in front of you tells me that
20 Tommie has reached a level that is different in the
21 sense that he's accepted responsibility for his actions.
22 I think he can move forward, your Honor. I think he
23 should be afforded the strong arm robbery sentence under
24 YOA.

25 THE COURT: All right. Mr. Weathers, anything

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 that you wish to tell me?

2 THE DEFENDANT: Yeah. I will take full
3 advantage of the YOA right now. Like I -- I won't make
4 no mistakes.

5 THE COURT: Tell me about the Piedmont
6 Wilderness Institute. Why were you there?

7 THE DEFENDANT: For my juvenile record I had.
8 I don't know if you got it. But it was some breaking
9 and entering in motor vehicles and grand larceny. And
10 I -- I gave me a chance to go to the alternative
11 placement from CEC (phonetic), a juvenile violation, and
12 they let me get a second chance. They gave me --

13 MR. DAVIS: You did good while you were there?

14 THE DEFENDANT: I had no problem. I got my GED
15 while there.

16 THE COURT: And how many second chances do you
17 need to get, Mr. Weathers, if that was your second
18 chance?

19 THE DEFENDANT: I don't know. But if you did
20 give me another chance, I'd -- I'll take full advantage
21 of it.

22 THE COURT: Well, what's going to be different
23 this time, to give you another chance?

24 THE DEFENDANT: The people I surround myself
25 with. I know you can -- I tried to before, but, you

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State versus Tommie Weathers

1 know, one person can mess you up. I know that now. I
2 have a daughter too. I want to make her life better
3 too.

4 MR. DAVIS: And, Judge, I'm going to give him
5 the benefit of the doubt, because he said something
6 that's profound. Association. Those two Ryan brothers
7 got this helped -- helped him help him be where he's at
8 today. I -- I really believe this kid has the potential
9 to be different --

10 THE COURT: No, Mr. Weathers made a choice --

11 MR. DAVIS: He made some decisions, too, your
12 Honor. I understand that.

13 THE COURT: And so -- you know, because I'm
14 sure -- I don't know the other individuals. But I'm
15 sure that their attorney stood up and said, That
16 Weathers boy, that Weathers boy, that's why he got in
17 trouble. It cuts both ways, Mr. Davis.

18 And so I want Mr. Weathers to understand,
19 regardless, if you are growing up and everybody around
20 you is committing crime, does that give you the right to
21 commit a crime?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: No, it doesn't. Because you knew
24 better; didn't you?

25 THE DEFENDANT: Yes, ma'am.

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 THE COURT: And not only did you know better,
2 you were given the tools back in this Piedmont
3 Wilderness Institute to know better, weren't you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And so what makes you special and
6 you get yet another second chance?

7 THE DEFENDANT: I learned -- I really learned
8 from this one.

9 THE COURT: What -- when did you have this
10 learning, Mr. Weathers? Because it wasn't the night of
11 January 5th of 2011 when you kidnapped and assaulted and
12 robbed the victim, was it?

13 THE DEFENDANT: Okay. See, that's something so
14 simple, it's really serious. Like something so easy to
15 do is really serious, and I don't -- I don't want to
16 mess my life up with it.

17 THE COURT: "Something so easy to do."
18 Kidnapping was easy to do? Is that what you're saying?

19 THE DEFENDANT: The whole situation can turn
20 serious real quick. It's something --

21 THE COURT: Because it was pretty easy for you
22 to make those arrangements, wasn't it?

23 THE DEFENDANT: No, ma'am. That's not how I
24 mean.

25 THE COURT: What did you mean, then?

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 THE DEFENDANT: Just something so quick can
2 mess your life up for the rest of your life.
3 THE COURT: All right. Were you working --
4 THE DEFENDANT: No, ma'am.
5 THE COURT: -- that day?
6 THE DEFENDANT: No, ma'am.
7 THE COURT: All right. What were you doing to
8 occupy your time?
9 THE DEFENDANT: I don't remember.
10 THE COURT: You don't remember?
11 THE DEFENDANT: (Moves head from side to side.)
12 MR. DAVIS: Tell her the truth.
13 THE DEFENDANT: I don't remember. But I
14 did -- I did have an interview when I was out on bond
15 before I got locked up this time.
16 THE COURT: All right. Anything further,
17 Mr. Davis?
18 MR. DAVIS: Judge, you know, all powers are in
19 your hands for this young man. Now, he made some
20 decisions that were erroneous, but I believe that a
21 Youthful Offender, 1 to 6, 24 to 25 months of
22 incarceration -- when he comes out, he's still under
23 this 1 to 6 until he's about 27 years of age, is where
24 we stand today. If he's going to change -- I just ask
25 that he be afforded that opportunity, your Honor.

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State versus Tommie Weathers

1 THE COURT: Anything you wish to tell me,
2 Mr. Weathers, before I impose sentence?

3 THE DEFENDANT: No, ma'am. I'll be grateful if
4 you give me another --

5 THE COURT: I'm sorry?

6 THE DEFENDANT: I said, I'll be grateful if
7 give me another chance.

8 THE COURT: Mr. Weathers, chances are up to
9 you, and what you make of any opportunity is up to you.
10 Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: There are people that come from
13 worst situations than you grew up in, and they become
14 President of the United States. All right? There are
15 people that grow up as the child of the President of the
16 United States and throw it all away. So what you decide
17 to make of your life is based upon you.

18 Would you agree, Mr. Davis?

19 MR. DAVIS: I agree wholeheartedly, your Honor.

20 THE COURT: And so, Mr. Weathers, what I find
21 and -- and, you know, credit for coming in and telling
22 me what you did and pleading guilty. That's great.
23 Because that's the first step. That's the first step
24 for you, admitting what you did. But you have been
25 given chance after chance. All right? And you're

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 -- you were suspended in high school, your mom -- and
2 then you were arrested, and you got schooling, your GED
3 certification, and now you want --

4 MR. DAVIS: Judge, he -- this kid never had any
5 home environment. He was -- he was marked for defeat
6 from the inception a long --

7 THE COURT: Because he made the choice.

8 Mr. Weathers, you knew better than what you did
9 that day, didn't you?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And you knew how to get help if you
12 needed help? In this presentence, it says your mom
13 offered to take you to get some psychiatric help, and
14 you refused. So you had at least one opportunity with
15 mom. I can't say, you know -- but, then again --

16 All right.

17 THE DEFENDANT: That was when I was -- I was
18 about 12 or 13 when that happened.

19 THE COURT: I am taking into consideration
20 everything that I have heard, your past history, the
21 nature of the charge, as well as the fact that you
22 came -- you did come in and admit your involvement and
23 the fact that you seem remorseful at this time. It's
24 the Order of the Court on 2011-GS-08-400, -1677, and
25 -1678 that you be committed to the State Department of

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 Corrections for a term of ten years. They're all to run
2 concurrent. Give you credit for your time served. Good
3 luck to you, sir.

4 THE PROBATION OFFICER: Your Honor, can we
5 address the kidnapping charge as far as what --

6 THE COURT: Hold on one second. I need to put
7 something on the record about the kidnapping.

8 Mr. Weathers, I just want to make sure --
9 because I need to get this on the record concerning the
10 kidnapping charge.

11 It had nothing to do -- I did not hear anything
12 of a sexual nature. Is that correct?

13 THE SOLICITOR: Nothing of a sexual nature,
14 your Honor.

15 MR. DAVIS: I agree, your Honor.

16 THE COURT: Mr. Weathers, I just want you to
17 understand, I have to put it on -- I'm not asking that
18 you be placed. But I also need to make sure just for
19 your classification, that you go to the right place.
20 The kidnapping was not of a sexual offense, and I am not
21 requesting that you be placed on the registry. I need
22 to write that on the sentencing sheet. All right.
23 Thank you. Hold on one second.

24 THE PROBATION OFFICER: That's exactly what we
25 were trying to address. Thank you, your Honor.

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Sentencing Hearing, February 11, 2013
State versus Tommie Weathers

1 THE COURT: Mr. Weathers, first of all, I want
2 you to understand, that from this day forward, what you
3 do with the rest of your life is up to you. Do you
4 understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Good luck to you, sir.

7 THE DEFENDANT: Thank you.

8 MR. DAVIS: Thank you, Judge.

9 THE SOLICITOR: Thank you, your Honor.

10 THE COURT: Does that complete all of our
11 matters?

12 THE SOLICITOR: Yes, your Honor.

13 (The hearing of this cause concluded at
14 4:41 p.m., on February 11, 2013.)
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Sentencing Hearing, February 11, 2013
State versus Tommie WeathersREPORTER'S CERTIFICATE

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR,
and Registered Professional Reporter, RPR, do hereby
certify that the transcript of the foregoing proceedings
accurately reflects the events that occurred before me
to the best of my ability at the time and place set out
on the caption hereto, the witnesses having been duly
cautioned and sworn, or affirmed, to tell the truth, the
whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,
related to, nor employed by any of the parties to the
action in which these proceedings were taken or to any
attorney or counsel employed by the parties hereto, nor
financially interested, directly or indirectly, in the
outcome of this action.

CERTIFIED AND SIGNED on this 12th day of December,
2013.

ORIGINAL

ROLAYNE M. VOLPE, CCR, RPR
Certified Court Reporter and
Registered Professional Reporter
Commission Expires: 8/30/2021

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on March 9, 2011 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That on or about January 5, 2011, in Berkeley County, South Carolina, the Defendant, Tommie Doward Weathers Jr., by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of [REDACTED] with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) 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.


ASHLEY B CORNWELL
ASSISTANT SOLICITOR

COR2011-01-00050

WITNESSES

Allen Ashe

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

201101000730

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

January 21, 2011

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 1/21/11

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011-GS-08-1676

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

Vs

TOMMIE DOWARD WEATHERS

DOB: 1991-11-08

B/M

Indictment for

Possession of a Weapon During the
Commission of a Violent Crime

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 2, 2011 the Grand Jurors of Berkeley County present upon their oath:

Possession of a Weapon During the Commission of a Violent Crime

That Tommie Doward Weathers, while acting in concert with others, did in Berkeley County, South Carolina, on or about January 6, 2011, possess a firearm or visibly display what appeared to be a knife or firearm during the commission, or attempted commission, of armed robbery, a violent crime. This is in violation of 16-23-490 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.


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

COR2011-01-00050

WITNESSES

Allen Ashe

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

201101000730

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

January 21, 2011

ACTION OF GRAND JURY

[Handwritten: True Bill]

[Signature]
Foreperson of Grand Jury

Date: 1/12/11

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011-GS-08-1677

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

Vs

TOMMIE DOWARD WEATHERS JR.

DOB: 1991-11-08

B/M

Indictment for

Kidnapping

FILE
2011 NOV -2 PM 12:09
Met
CLERK
BERKELEY CO

[Handwritten: 1/12]

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 2, 2011 the Grand Jurors of Berkeley County
present upon their oath:

Kidnapping

That Tommie Doward Weathers, while acting in concert with others, did in Berkeley County,
South Carolina, on or about January 6, 2011, unlawfully seize, confine, inveigle, decoy, kidnap,
abduct and/or carry away one Andre Mendoza, III without authority of law, in violation of
Section 16-03-910 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.


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

COR2011-01-00050

WITNESSES

Allen Ashe

Berkeley County Sheriff's Office

[Signature]

AGENCY CASE NUMBER

201101000730

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

January 21, 2011

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: 11/21/11

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011-GS-08-1678

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2011

THE STATE

Vs

TOMMIE DOWARD WEATHERS JR.

DOB: 1991-11-08

B/M

Indictment for

Assault and Battery, First Degree

MAINTAINED
CLERK OF COURT
BERKELEY COUNTY, SC

2011 NOV -2 PM 12: 09

FILE

[Signature]

[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 2, 2011 the Grand Jurors of Berkeley County present upon their oath:

Assault and Battery, First Degree

That Tommie Doward Weathers, while acting in concert with others, did in Berkeley County, South Carolina, on or about January 6, 2011, commit or attempt to commit an unlawful act of injury to Andre Mendoza, III and the act is accomplished by means that would have likely produced great bodily injury To wit: striking the victim about the face, the defendant did physically or attempt to physically assault the victim in violation of Section 16-03-0600 S.C. Code of Laws (1976), as amended.

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


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment per Form)

Name: Tommie Doward Weathers

Race: B

Sex: M

Date of Birth: [REDACTED]

Disposition (Check One)

4A ☐ Dismissed

4B ☒ Nolle Prosequi

7 ☐ Remanded

Municipal Court:

Magistrate Court:

8B ☐ No Bill

9 ☐ Failure to Appear

Indictment #: 2011GS0801676

Case Number: 2011-01-00050

SSN: [REDACTED]

Warrant Number: 2011GS0801676

Reason (Optional):

Reason: _____

Reason: POC

Charge: _____

Judge: _____

Date Bench Warrant Issued: _____

Trial/Plea Docket Week: _____ Case Pre-filed with _____ Grand Jury.

Authorized by: Ashley B Cornwell

Date: 2.12.13

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: _____
	DATE: _____

Defense Attorney: White, Keshia V.
Davis, Steve C.

See 8/13/13

cc: 40

Kwm

FILED
13 FEB 12 AM 10:31
JERRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
Kwm

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
 STATE VS.
Tommie Doward Weathers Jr.

AKA:

Race: BLACK Sex: M Age: 21DOB: SS#Address: 102 Tall Spruce Dr.City, State, Zip: Moncks Corner, SC 29461DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Strong Arm Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS080400A/W#: M333028Date of Offense: 1/5/2011S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137
☒ 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: 1587
Cornwell, Ashley B SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 10 days/months/years ☐ 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: 2011-C-S-08-1677, 1678
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:
 § 14-1-206 (Assessments 107.5%) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114(BUI Breath Test Fee) \$50 \$
 § 56-5-2942(f) (Vehicle Assessment) \$40/cv \$
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Robbie K. V. S.

SCCA/217 (03/2011)

Presiding Judge: Kent H. HuntJudge Code: 12/11/13Sentence Date: 12/11/13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Berkeley
STATE VS.
Tommie Doward Weathers Jr.

AKA:

Race: BLACK Sex: M Age: 21DOB: [REDACTED]Address: 102 Tall Spruce Dr.City, State, Zip: Moncks Corner, SC 29461DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: KidnappingINDICTMENT/CASE#: 2011GS0801677A/W#: 2011GS0801677Date of Offense: 1/6/2011S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/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

Cornwell, Ashley B76577
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant158-7
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and/or paymentof \$, plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 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 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

 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 Fund

Other:

No Sexual Registry☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: Sentence Date: 2/11/13

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.Tommie Doward Weathers Jr.

AKA:

Race: BLACK Sex: M Age: 21DOB: [REDACTED]Address: 102 Tall Spruce Dr.City, State, Zip: Moncks Corner, SC 29461DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0801678A/W#: 2011GS0801678Date of Offense: 1/6/2011S.C. Code §: 16-03-0600(C)(1)CDR Code #: 3412

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lowd 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: [Signature] 76577 [Signature] 1597
Cornwell, Ashley B SC Bar# [Signature] SC Bar#
Defendant Attorney for DefendantWHEREFORE, 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: 2011-GS-08-400-41677
☒ 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 ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Clerk of Court-Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

 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.

Presiding Judge

Judge Code:

Sentence Date:

FORM 5

STATE OF SOUTH CAROLINA

County of BerkeleyTommie Weathers Jr. 354256

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-08-2209APPLICATION FOR
POST-CONVICTION RELIEFMARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2013 OCT -1 PM 12:29

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible 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 Turbeville Correctional Institute
2. Name and location of Court which imposed sentence Berkeley County General Sessions, Moncks Corner, SC 29461
3. Name(s) of co-defendant(s) (if any) Ryan Newman, Jessica Clark, Shane Newman
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-65-08-0400
 - (b) 2011-65-08-1678 Assault & Battery 1st Degree

TW

2

- (c) 2011-65-08-1677
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2-11-13 / 10 years violent, most serious
- (b) N/A
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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. N/A.
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A.
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A.
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A.
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My attorney failed to make me aware.
- (b) N/A

- (c) N/A
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) Due Process rights
- (c) Illegal Search
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) 6 Amendment
- (b) 14 Due process
- (c) 4 Search Warrant
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A.
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A.
- ii. N/A
- iii. N/A
- iv. N/A

- (c) the disposition thereof:
- i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (d) the date of each such disposition:
- i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
 - ii. N/A
 - iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
 - ii. N/A
 - iii. N/A

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) N/A
- (b) N/A
- (c) N/A
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? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No
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. Steve C. Davis 431 E main St., PO Box 1168 Moncks Corner, SC 29461
- ii. Keisha White 101 Meeting St, 5th Floor Chas, SC 29401
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. Steve C. Davis, Arraignment and plea
- ii. Steve C. Davis, Sentencing
- iii. N/A

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

I would like my case reversed and remanded.

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

No

2013-CP-08-2209

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

I, Tommy Weathers Jr., 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.

[Signature]

SWORN to and subscribed before me this 26th day of September, 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires: 4-27-2016

FILED
2013 OCT -1 PM 12:29
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2013-CP-08-2209

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

I, Tommie Weathers Jr., 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.

Tommie Weathers Jr.
Applicant

SWORN or affirmed to and subscribed before me this
26th day of September, 2013.

Emile H. H. H.
Notary Public

My Commission Expires: 4-27-2016

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2013 OCT -1 PM 2:29

FILED

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Tommie D. Weathers, Jr., #345256,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-08-2209

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed October 1, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the March and November 2011 terms of the Berkeley County Grand Jury for armed robbery (2011-GS-08-400), assault and battery- first degree (2011-GS-08-1678), kidnapping (2011-GS-08-1677). The Applicant was represented by Steve C. Davis, Esquire.

Upon information and belief, the Applicant pled guilty to assault and battery, kidnapping, and the lesser included offense of strong armed robbery. On February 11, 2013, the Applicant was sentenced by the Honorable Kristi L. Harrington to confinement for a period of ten years on all charges. The Applicant did not appeal his convictions or sentence.

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

Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
2. "Due Process rights."
3. "Illegal search."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its

"reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Respondent construes the Applicant's second claim as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum

prima facie showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

V.

The Respondent interprets the Applicant's third allegation of an "illegal search" as a challenge to the sufficiency of the State's evidence against the Applicant. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. '17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

VI.

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

VII.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Ash R. Wilson
ATTORNEYS FOR RESPONDENT

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

July 14, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

TOMMIE D. WEATHERS, Jr., #345256

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

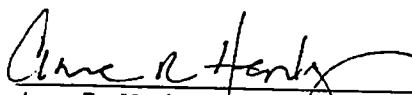
2013-CP-08-2209

AFFIDAVIT OF SERVICE BY MAIL

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:

Lance Boozer
807 Gervais Street, Ste 203
Columbia, SC 29201

DATED this 14th day of July, 2014


Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY 15 FEB 13 AM 10:02

IN THE COURT OF COMMON PLEAS
C/A No: 2013-CP-08-2209

Tommie Weathers, #354256, **MARY P. BROWN**
CLERK OF COURT
BERKELEY COUNTY S.C.

Petitioner,

v.

State of South Carolina,

Respondent.

**PETITIONER'S AMENDED
PCR APPLICATION**

Petitioner respectfully requests and submits through counsel the following amendments to his current Application for Post-Conviction Relief filed on October 1, 2013:

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

(a) Defective Indictment;

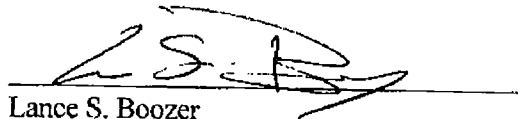
(b) Ineffective Assistance of Counsel/Involuntary Guilty Plea;

- (i) Counsel "said he would get me a 'potential Y.O.A.' consisting of 18-22 months and that I could expunge my record afterwards... I thought a 'potential Y.O.A.' was the name of the program, but what he meant was potentially receive a Y.O.A. I found out after the plea was submitted and accepted. Mr. Davis failed to explain this and I was not aware that a plea had to be negotiated for it to go through as planned, if the Judge agrees."
- (ii) Inaccurate information presented to sentencing judge which counsel failed to correct.
- (iii) "Before the State appointed Mr. Davis to be my attorney, I had family and friends calling his office to see how much he would charge to help me with my bench warrants... That day, coincidentally, he was appointed as my lawyer and would have to work with me for free. I feel this may be some reason that he was ineffective counsel to me."
- (iv) "Mr. Davis knew I wanted to go to trial with my case, but coerced me into signing a guilty plea by scaring me, saying that he wasn't confident and saying it was my best choice to make because if I did not, then the court would give a heavier sentence than my co-defendants."

78B

- (v) Counsel failed to explore alleged victim's inconsistent statements and character.
 - (vi) Counsel failed to properly advise me as to co-defendants' statements.
 - (vii) Counsel failed to investigate alibi witnesses.
- (c) Counsel failed to file an appeal or Motion to Reconsider.

Respectfully submitted on Petitioner's behalf,



Lance S. Boozer
THE BOOZER LAW FIRM, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463
Email: lsb@boozerlawfirm.com

ATTORNEY FOR PETITIONER

Columbia, South Carolina

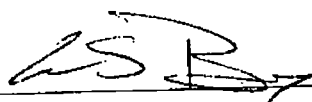
Feb 11, 2015

CERTIFICATE OF SERVICE

I, Lance S. Boozer, Esq., certify that I have served on February 11, 2015, a copy of the **Petitioner's Amended PCR Application** on the individuals listed below by delivering a copy of the same via regular first class mail to:

PERSON SERVED:

Ashleigh R. Wilson, Esq.
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549


Lance S. Boozer
THE BOOZER LAW FIRM, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463
Email: lsb@boozerlawfirm.com

ATTORNEY FOR APPLICANT

MAKAY P. BROOKIN
CLERK OF COURT
PERKINS COUNTY, SC

15 FEB 13 AM 11:02

FILED

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY 2015 FEB 17 PM 2:06 C/A No: 2013-CP-08-2209

Tommie Weathers, #354256,)
MARY P. BROWN)
CLERK OF COURT)
BERKELEY COUNTY, SC)

Petitioner,)

v.)

State of South Carolina,)

Respondent.)

**PETITIONER'S SECOND AMENDED
PCR APPLICATION**

Petitioner respectfully requests and submits through counsel the following amendments to his current Application for Post-Conviction Relief filed on October 1, 2013 and previously amended on February 11, 2015:

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

- (a) Ineffective Assistance of Counsel/Involuntary Guilty Plea;
 - (i) Counsel failed to advise and Petitioner was unaware of the elements of the charged offenses.
 - (ii) Counsel failed to advise and Petitioner was unaware of the minimum sentences of offenses.
 - (iii) Counsel failed to advise and Petitioner was unaware that Kidnapping was a no parole offense.
 - (iv) Counsel failed to object to pre-sentencing investigation report and final sentence.
 - (v) Counsel failed to object to the State's version of facts presented to the Court.
 - (vi) Counsel improperly advised Petitioner his charges were eligible for a YOA sentence. Counsel should have investigated the facts and elements in order to properly advise Petitioner his charges were not eligible for a YOA disposition.
 - (vii) Based on counsel's statements and Petitioner's detrimental reliance on receiving a YOA sentence, Petitioner entered a guilty plea. But for these

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statements and detrimental reliance, Petitioner would not have pled guilty and would have insisted on a trial.

(viii) Counsel failed to file an appeal or Motion to Reconsider following Petitioner's timely request.

Respectfully submitted on Petitioner's behalf,

A handwritten signature in black ink, appearing to read "L.S. Boozer", is written over a horizontal line.

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ATTORNEY FOR PETITIONER

Columbia, South Carolina

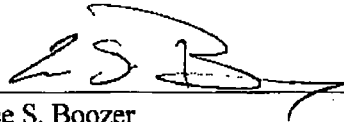
February 17, 2015

CERTIFICATE OF SERVICE

I, Lance S. Boozer, Esq., certify that I have served on February 17, 2015, a copy of the
Petitioner's Amended PCR Application on the individuals listed below by delivering a copy of
the same via regular first class mail and email to:

PERSON SERVED:

Ashleigh R. Wilson, Esq.
SC Attorney General's Office
Post Office Box 11549
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ATTORNEY FOR APPLICANT

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MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
2 COUNTY OF CHARLESTON) Case No. 2013-CP-08-2209
3)
3 TOMMIE WEATHERS, JR.,)
4)
4 Plaintiff,)
5)
5 vs.) Transcript of Record
6)
6 STATE OF SOUTH CAROLINA,)
7)
7 Defendant.)
8)
8 DATE: February 18, 2015

9
10 B E F O R E:

11 The Honorable Eugene C. Griffith, Jr.

12 A P P E A R A N C E:

13 Lance S. Boozer
14 For the Plaintiff

15 Ashleigh R. Wilson
16 For the Defendant

17

18 Karen V. Andersen, RMR, CRR, CSR
19 Circuit Court Reporter

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1 THE COURT: What do we have first?

2 MS. WILSON: Tommie Weathers Jr. vs. The State.

3 THE COURT: All right.

4 MS. WILSON: May it please the Court, Your Honor.

5 This is Ashleigh Wilson for the State of South Carolina.

6 This is Tommie Weathers, Jr. vs. The State, 2013-CP-08-2209.

7 Mr. Weathers was indicted in March 2011 and November
8 2011 for armed robbery, assault and battery first degree,
9 kidnapping and possession of weapon during the commission of
10 a violent crime. He was represented on these charges by
11 Mr. Steve Davis. On January 14th, 2013, he pled guilty
12 before Judge Harrington, and he was sentenced to -- he was
13 sentenced on February 11th, 2013.

14 And he ultimately pled guilty to the lesser-included
15 offense of armed robbery to strong-arm robbery. He received
16 10 years. Assault and battery first degree, he received 10
17 years. And for kidnapping, he received 10 years without sex
18 offender registry. And the State nolle pros'd the possession
19 of a weapon during the commission of a violent crime charge.

20 Like I said, he was represented by Mr. Davis. He
21 filed his application for post-conviction relief on October
22 1st, 2013. He's here today represented by Mr. Lance Boozer.
23 And he's amended his application for post-conviction relief
24 twice since filing his original application. And the State
25 would just ask that the Court advise Mr. Weathers of the

1 remedy for post-conviction relief considering that he pled
2 guilty to the lesser-included offense. And the State nolle
3 pros'd one of his charges in exchange for his guilty plea.

4 And if Mr. Weathers still wants to go forward, the
5 State would ask that his attorney outline the allegations he
6 plans to proceed on today.

7 THE COURT: All right. Mr. Boozer.

8 MR. BOOZER: Thank you, Your Honor. May it please
9 the Court. Judge, I have two amendments. I actually went by
10 the Berkeley County Clerk of Court. I'm a Columbia lawyer.
11 I hand delivered an amendment, but I e-mailed it to counsel
12 for the State. Earlier in the week, we had some problems
13 with the mail, with Monday being a holiday. I don't believe
14 counsel for the State has any problems. She has notice of
15 the amendments. But, Your Honor, I don't believe that the
16 amendments are in Your Honor's file. And if it please the
17 Court, if I may approach the bench and hand them up.

18 THE COURT: Sure.

19 MR. BOOZER: Your Honor, those are two different
20 amendments. There's one that's an amended application. And
21 there's a second amended application. I don't believe even
22 the first one is in the file, according to Berkeley County
23 when I was down there yesterday. I just wanted to hand those
24 up for the Court's attention.

25 And, Your Honor, the way that I heard the State's

1 request of outlining the allegations, my normal course of
2 procedure is calling the petitioner to the stand for us to
3 walk through individually so those will be outlined in
4 testimony as he goes forward, if that is -- if that pleases
5 the Court.

6 THE COURT: That will be fine.

7 MR. BOOZER: Your Honor, as our first witness, I
8 would call Mr. Weathers to the stand.

9 THE COURT: Mr. Weathers, come around and be sworn.

10 TOMMIE WEATHERS,

11 having been duly sworn, testifies as follows:

12 THE CLERK: For the record, if you will please state
13 your name, spelling your last name.

14 THE WITNESS: Tommie Weathers, W-e-a-t-h-e-r-s.

15 DIRECT EXAMINATION

16 BY MR. BOOZER:

17 Q. Mr. Weathers, how are you doing today?

18 A. All right. How are you?

19 Q. I'm doing fine. If you would just keep your voice
20 up for the court reporter. Madam court reporter needs to
21 take down everything you say. So speak slowly and clearly
22 for her.

23 A. All right.

24 Q. Mr. Weathers, you've heard the statements this
25 morning. Do you know why you are here today?

1 A. Yes, sir.

2 Q. Why is that?

3 A. Because I had ineffective assistance of counsel and
4 involuntary guilty plea.

5 Q. And you understand that this is a hearing for a
6 post-conviction relief application?

7 A. Yes, sir.

8 Q. And do you understand that the only thing that this
9 Court can do today is to basically give you a new trial on
10 your original charges?

11 A. Yes, sir.

12 Q. And what were you originally charged with?

13 A. Armed robbery, kidnapping, possession of weapon
14 during a violent crime, and assault and battery first degree.

15 Q. What did you ultimately end up pleading guilty to?

16 A. Strong-arm robbery, kidnapping, and assault and
17 battery first degree.

18 Q. Okay. So you did -- so your armed robbery was
19 reduced to a strong-arm robbery and possession of weapons
20 charge was dropped?

21 A. Yes, sir.

22 Q. So you do understand you could go back and face all
23 of that again?

24 A. Yes, sir.

25 Q. When is your max-out date?

1 A. December of 2020.

2 Q. And knowing that, you still wish to go forward
3 today?

4 A. Yes, sir.

5 Q. All right. Mr. Weathers, now, obviously, you filed
6 a post-conviction relief application. Who were you
7 represented by for your plea?

8 A. Mr. Steve Davis.

9 Q. As you heard me tell to the Court, you actually
10 filed through me an amended PCR application?

11 A. Yes, sir.

12 Q. And you filed a second amended application?

13 A. Correct.

14 Q. Now, what I'm going to do -- if I may have a little
15 leeway, Your Honor -- is walk you through your allegations.
16 And we will go through the ones you currently have and what
17 you still want to go forward on. And then I will have you
18 talk and tell about each allegation. All right?

19 A. All right.

20 Q. On your first amended application, you've got
21 grounds for defective indictment; is that correct?

22 A. Yes, sir.

23 Q. And what is your allegation regarding a defective
24 indictment?

25 A. That it was improperly presented as the theory of

1 the way that it happened. Mr. Davis pointed it out to me and
2 never acted upon it.

3 Q. What do you feel Mr. Davis should have done with
4 that?

5 A. Took the proper procedure to act upon it.

6 Q. Do you feel he should have raised that to the court?

7 A. Yes, sir.

8 Q. And did he do that?

9 A. No, sir.

10 Q. So is that your claim with regard to defective
11 indictment?

12 A. Yes, sir.

13 Q. Now, also in your first amended application, you had
14 a claim that counsel was ineffective for telling you you
15 would get what was called a potential YOA sentence?

16 A. Yes, sir.

17 Q. I believe that in your second amended application,
18 we cleaned that up a little bit; is that correct?

19 A. Correct.

20 Q. So if you would, tell me a little bit about -- let's
21 do this. Let's get to your second one. You've also got
22 inaccurate information presented to the sentencing judge,
23 which I believe you are referencing a presentence
24 investigation report; is that correct?

25 A. Yes, sir.

1 Q. We also got that one included in your second amended
2 application?

3 A. Correct.

4 Q. So we will discuss that when we get to the second
5 amended one. All right?

6 A. Yes.

7 Q. Your third allegation in your first amendment,
8 before the State appointed Mr. Davis to be your lawyer, your
9 family and friends actually inquired into Mr. Davis's
10 services, but you found out later on, rather than hiring him,
11 he was actually appointed to represent you?

12 A. Correct.

13 Q. Is that an allegation you still wish to go forward
14 with today?

15 A. No, sir. That actually found -- actually, have
16 three claims of involuntary guilty plea that I can go into
17 detail with from the amended application and to go through
18 ineffective assistance of counsel.

19 Q. And you are talking about your second amended
20 application?

21 A. Yes, sir.

22 Q. All right. And your fourth one in your first
23 amendment, you've got, Mr. Davis knew you wanted to go to
24 trial but you were coerced into signing a guilty plea by
25 scaring you, saying he wasn't confident, and your best choice

1 was to plead guilty because you may get a heavier sentence
2 than your co-defendants. Is that an allegation you still
3 want to move forward with, or do you want to move forward
4 with ones in your second amendment?

5 A. Go forward with that too.

6 Q. So tell the Court about that one.

7 A. Since Mr. Davis was appointed my counsel, we never
8 talked about taking a plea. And we planned to go to trial
9 the whole time. And then the day to select my jury, he
10 passed me a note asking if I trust him, and I told him yeah.
11 So then he told me, if I sign the guilty plea, he could -- I
12 could get a YOA.

13 But under statute 24-19-10(D) Section 2, my
14 kidnapping offense was a violent offense. It is not eligible
15 for a YOA. So I was never allowed to receive a YOA like he
16 told me. And that's the only incentive I had to plead guilty
17 to an open plea of 0 to 55 years. And without that improper
18 advice, I would have not pled guilty.

19 Q. Okay. So just in summation, and I think you've got
20 amendments in your second amended application that touch on
21 that as well, but you are basically saying that you were
22 pleading guilty to a kidnapping offense. And your position
23 is the kidnapping offense was not eligible for a YOA?

24 A. Correct, under South Carolina law.

25 Q. And was Mr. Davis telling you that he was going to

1 try and get you a YOA sentence?

2 A. Yes, sir. And I stated that to the trial judge.

3 Q. Okay. And did the trial judge ever tell you -- or
4 your plea judge ever tell you that you could not get a YOA
5 sentence?

6 A. No, sir. She stated that I needed to assume that
7 nobody knew how I would be sentenced and that I could face a
8 potential of 55 years. But that left room in my mind for the
9 YOA that she knew that I was under the assumption of, the
10 impression of receiving a YOA.

11 Q. And let's come back to that when we go to your
12 second amended application and talk a little more in detail
13 about that. Okay?

14 A. All right.

15 Q. On your first amendment, you had a fifth allegation.
16 And that was, counsel failed to explore alleged victim's
17 inconsistent statements and character. Do you still wish to
18 move forward with that one as well?

19 A. Yes, sir.

20 Q. Tell the Court the details of that allegation.

21 A. I told counsel that I had two alibi witnesses in my
22 favor. Counsel failed to investigate either one of them.
23 Counsel notified the State of one alibi witness after this
24 witness finally contacted him at his office after multiple
25 attempts and being told that his call would be returned.

1 Counsel took this witness's contact information, but never
2 questioned what he would testify to at trial. This witness
3 was present at court before my jury selection and tried to
4 speak with Mr. Davis, who totally ignored him.

5 According to Rule 5, Section E, Section 1, notifying
6 the State of an alibi witness, counsel failed to state
7 specific place that I was at at the time of the alleged
8 offenses, which I elected to use as evidence that he failed
9 to investigate this witness.

10 The second witness I informed counsel that he would
11 be a more concrete alibi witness as to where I was on the
12 night of the alleged incident. Those witnesses would have
13 testified that we were together the entire time of the
14 alleged incident at Folly Beach house party that he invited
15 me to.

16 This witness had the same communication problems
17 with counsel as the first witness. And counsel never tried
18 to contact, return this witness's call.

19 Q. Let me stop you right there for just one second.
20 You are alleging that you had some alibi witnesses that you
21 feel your lawyer didn't investigate?

22 A. Correct.

23 Q. Okay. Who was the first alibi witness?

24 A. Daniel Gerald (ph.).

25 Q. He was actually -- Mr. Davis filed a notice of alibi

1 for this fellow named Daniel; is that correct?

2 A. That's correct, stating his contact information, but
3 didn't state any other facts besides that.

4 Q. More importantly, you indicate you had a second
5 alibi witness. Who was the second alibi witness?

6 A. Johnnie Thompson.

7 Q. Let's back up for a second. Were you initially
8 going to trial on these charges?

9 A. Correct.

10 Q. Did you end up pleading the day of trial?

11 A. Correct.

12 Q. Had you all picked a jury yet?

13 A. No; we was about to.

14 Q. What made you plead versus picking a jury?

15 A. Mr. Davis told me if I sign the plea, that he would
16 get me a YOA.

17 Q. That's the only reason you ended up pleading that
18 day?

19 A. Yes, that's the only reason, because if I went to
20 trial, I had nothing to lose because I face the exact same
21 consequences.

22 Q. What was the date of these alleged offenses?

23 A. January 6th of 2011.

24 Q. What was your alibi defense?

25 A. That I was in Folly Beach at the time with

1 Mr. Johnnie Thompson and Daniel Gerald.

2 Q. And who -- you've characterized your second alibi as
3 being a stronger alibi witness.

4 A. Correct.

5 Q. Where is Johnnie Thompson today? Why is he not in
6 this courtroom?

7 A. He passed away in June of 2014.

8 Q. How do you know he passed away?

9 A. Because his family contacted me on the phone.

10 Q. What would Mr. Thompson have testified to had he
11 been called as an alibi witness?

12 MS. WILSON: Your Honor, I'm going to object. He
13 can't say what that person was going to testify to.

14 THE COURT: Isn't that part of the alibi defense?

15 MS. WILSON: The person has to be here or some form
16 of affidavit that can be submitted to the Court on behalf of
17 that person.

18 THE COURT: How about this? For the purpose of this
19 hearing, proffer, I agree with you if it was in trial, he
20 can't say what he's going to say. He can't say what he
21 anticipated the testimony would have been at the time of
22 trial. I think a proffer of what the substance of the
23 testimony would be would be appropriate for me to consider
24 it.

25 MR. BOOZER: Sure.

1 THE COURT: In this hearing. It's not appropriate
2 in the trial.

3 MR. BOOZER: Absolutely. And this really is part of
4 his PCR, if it pleases the Court, if he can testify what his
5 understanding of what that testimony would have been.

6 THE COURT: Sort of summary of the substance what
7 the man would say.

8 BY MR. BOOZER:

9 Q. Mr. Woods, give the Court a summary of what
10 Mr. Thompson would have stated at trial, based on your
11 understanding of it?

12 A. He would have testified that we was together the
13 whole time of the alleged incident at a party in Folly Beach.

14 Q. On January 6th, 2011?

15 A. Yes, sir.

16 Q. Okay. What time did the offense occur, allegedly
17 occur?

18 A. I believe it was about the morning of January 6th,
19 about 1 in the morning.

20 Q. Are you telling the Court that Mr. Thompson would
21 have testified that he was with you in Folly Beach at that
22 exact time?

23 A. Yes, sir, before, during and after that time.

24 Q. Did you ask Mr. Davis to investigate Mr. Thompson?

25 A. Yes, sir. And if he would have, he could have

1 received the affidavit so I could have that testimony now
2 also, and I would have had it before trial still too.

3 Q. Did he tell you that he had investigated?

4 A. No, sir.

5 Q. Was Mr. Thompson at your trial?

6 A. No, sir. He wasn't there the day of the jury
7 selection.

8 Q. But Daniel Gerald, the other fellow, was?

9 A. Yes, sir.

10 Q. Is there anything else you would like to say with
11 regard to your -- his failing to call an alibi witness or
12 investigate alibi witnesses?

13 A. No, sir, just to what the State objected to,
14 actually was part of the claim, because if he would have
15 investigated eyewitness, he could have secured affidavit from
16 him saying what he would have testified to.

17 Q. Okay. Now, what you've just stated on your -- for
18 that claim ties into one of your claims that you've already
19 got, which is counsel failed to investigate alibi witnesses.

20 You've also got a claim that counsel failed to
21 advise you of your co-defendant's statement. Is that a claim
22 you still wish to go forward with?

23 A. Yes, sir.

24 Q. What are the details regarding that allegation?

25 A. It was actually statement made from a solicitor

1 during the guilty plea hearing. And she said about the
2 co-defendant being -- having a statement about the burning of
3 clothing that was not disclosed in my grievance hearing.

4 Q. Okay. And how do you feel that relates to your PCR
5 claim? What should he have done?

6 A. He should have objected to it because we knew
7 nothing about it. And I feel like it affected -- it led to
8 aggravating circumstances to my sentence.

9 Q. Now, finally, you also have on your first amendment
10 that counsel failed to file an appeal or request a motion to
11 reconsider?

12 A. Correct.

13 Q. Is that a claim you still wish to go forward with?

14 A. Yes, sir.

15 Q. Tell the Court what your allegation is regarding
16 that.

17 A. After receiving significantly different time of my
18 sentence than counsel stipulated, I instructed counsel to
19 appeal my sentence because he stipulated I'd receive a YOA
20 sentence. Counsel told me he would look into it. And I have
21 not heard anything else about it since then.

22 Q. You wanted your lawyer to appeal from your plea in
23 the sentencing? Now, you had a plea and then you had a
24 separate sentencing date; is that correct?

25 A. Correct.

1 Q. You wanted your lawyer to appeal the sentencing
2 because you thought you were going to potentially get a YOA
3 and you did not?

4 A. Yeah, yeah.

5 MS. WILSON: He's leading the witness.

6 THE COURT: Sustained.

7 THE WITNESS: Yeah, I was under the assumption of a
8 YOA. And when I was sentenced to 10 years in the Department
9 of Corrections, I told him to appeal it because that's a
10 significantly different amount of time.

11 Q. When did you ask him to appeal it?

12 A. Actually at the sentence hearing after I was
13 sentenced, before I left out of the courtroom.

14 Q. You asked him in person?

15 A. Yes, sir.

16 MR. BOOZER: Okay. Now, Your Honor, if I could move
17 on to the second amended allegation and outline those as well
18 as.

19 THE COURT: Sure.

20 BY MR. BOOZER:

21 Q. You filed a second amended application for
22 post-conviction relief; is that correct?

23 A. Correct.

24 Q. Now, if you would -- again, I request a little bit
25 of leeway with Your Honor with going through these -- I will

1 have you go into detail about them. Your first claim is of
2 an ineffective assistance of counsel and involuntary guilty
3 plea. And you allege that counsel failed to advise and you
4 were -- and petitioner was unaware of the elements of the
5 offenses you were charged with.

6 A. Correct.

7 Q. Tell the Court what your specific allegations are
8 with regard to that allegation.

9 A. I was never made aware that crucial elements of any
10 of the offenses that I was charged with. The evidence was
11 insufficient to prove every crucial elements of the offenses.
12 And had my counsel or the Court advised me of the elements
13 that needed to be proven at trial, I would have known.

14 Q. Is there anything else with regard to that
15 allegation?

16 A. No, sir.

17 Q. You got a second allegation that counsel failed to
18 advise you and you were unaware of the minimum sentence of
19 the offenses. Tell the Court about that.

20 A. This is also failing to inform me of the direct
21 consequences. I did not fully understand what "most serious
22 offense" consequences were. I was not aware that direct
23 continuing consequences amend my matter to a sentence of 85
24 percent at the time and community supervision program upon
25 the completion of the sentence. I had the assumption of

1 parole eligibility, but, in effect, had no-parole offense
2 that I was also unaware of.

3 If I knew that I could not make parole and that I
4 could serve up to two years with a monitoring device after
5 the completion of my sentence on a CSP, coupled with
6 revocation sentences, I would definitely not have voluntarily
7 pleaded guilty. Community supervision program has a
8 mandatory consequence of a no-parole offense.

9 In deciding whether or not to give it as a direct
10 consequence at a conviction, it's a novel argument and one of
11 first impression as there's no controlling legal authority in
12 South Carolina holding that CSP is not a direct consequence
13 of a conviction for second offenses.

14 And Jackson vs. State does not preclude this
15 argument and is inapplicable because the claim is actually
16 one of ineffective assistance of counsel, unlike this claim
17 of involuntary guilty plea. Also, the --

18 MS. WILSON: Is he reading case law? I'm going to
19 object, Your Honor. It's not a response to any question that
20 was asked by counsel.

21 THE WITNESS: This ties into --

22 THE COURT: Rephrase your question, because he's
23 answering the questions and he reads rather rapidly.

24 MR. BOOZER: He's does, Your Honor. He's got notes
25 with him. I think he's trying to protect his record. I

1 certainly understanding that.

2 BY MR. BOOZER:

3 Q. But, Mr. Weathers, we don't need to read case law or
4 anything like that. If you would, when I ask a question,
5 just respond to the question.

6 A. Yes, sir.

7 Q. The case law is the case law and the judge certainly
8 has that in front of him.

9 THE WITNESS: I apologize for that, Your Honor.

10 Q. And, remember, just kind of speak up a little bit
11 and slow down. I know you have a tendency to talk a little
12 fast.

13 A. All right.

14 Q. Let's talk about your third one, counsel failed to
15 advise and petitioner was unaware that kidnapping was a
16 no-parole offense. I think that ties into what you were just
17 saying, but tell the Court generally what you mean by that.

18 A. Kidnapping is a no-parole offense. I'm not eligible
19 for a YOA, which is actually the only reason I pled guilty
20 from counsel stating -- stipulating that I could receive a
21 YOA sentence.

22 Q. Okay. Now, you've also got counsel failed to object
23 to a presentencing investigation report and final sentence.
24 Tell the Court about that allegation.

25 A. I informed counsel before the sentencing that recent

1 investigation report was inaccurate regarding my character.
2 And at the sentencing, the judge read -- counsel told me that
3 I would be sentenced by the seriousness by the offenses and
4 that the PSI report would not be considered. But she did
5 have it in and she did consider it because she sentenced me
6 based on that recommendation. And he did not object to the
7 inaccruteness (sic).

8 Q. Okay. Also, you've got an allegation that ties into
9 that one, counsel failed to object to the State's version of
10 the facts basically presented to the Court.

11 A. Correct.

12 Q. Please tell the Court what you mean by that
13 allegation.

14 A. The State gave conflicting statements at the guilty
15 plea and the sentencing hearing as to my relation to the
16 alleged victim and the living arrangements between us. And
17 also, they gave -- the State gave a statement of the victim
18 not giving a statement due to receiving treatment from EMS.
19 In effect, he refused treatment. And also, the statement of
20 the alleged co-defendant stating about the burning the
21 clothing that wasn't disclosed. And counsel failed to object
22 to any of that.

23 Q. All right. Now, your sixth and seventh allegation
24 in your second amended complaint go together?

25 A. True.

1 Q. Now, first, counsel improperly advised petitioner
2 your charges were eligible for a YOA sentence?

3 A. Correct.

4 Q. That's one of your allegations. Counsel should have
5 investigated the facts and elements in order to properly
6 advise petitioner his charges were not eligible for a YOA
7 disposition.

8 A. Correct.

9 Q. Tell the Court just briefly, you've already spoken
10 on it, but just why you have a problem with the YOA -- you
11 being told that you could get a YOA sentence?

12 A. Because had counsel investigated the facts and laws
13 surrounding my case, he would have known I was ineligible for
14 a YOA.

15 Q. Why were you ineligible?

16 A. Because kidnapping is a most serious and
17 nonparolable offense and considered violent under statute
18 24-19-10.

19 Q. And had the State offered to -- were you pleading
20 guilty to kidnapping?

21 A. Yes, sir.

22 Q. Okay. And, again, you have another allegation, this
23 is your next-to-last allegation. Based on counsel's
24 statements and petitioner's reliance on receiving a YOA
25 sentence, you pled guilty?

1 A. Correct.

2 Q. Tell the Court about that, if there's anything to
3 add to that.

4 A. That was my only incentive to plead guilty. And if
5 I knew I wasn't eligible, I would have went to trial because
6 I face the same consequences, but more likely better
7 outcome.

8 MR. BOOZER: If I may approach the witness with a
9 copy of the transcript.

10 THE COURT: Sure.

11 BY MR. BOOZER:

12 Q. Mr. Weathers, I'm going to show you a copy of the
13 plea transcript dated January 14th, 2013. And this is on
14 page 9 of that transcript. Is the Court on this page as
15 well?

16 THE COURT: Tell me what page you are on.

17 MR. BOOZER: Yes, sir, I'm sorry, page 9 of the plea
18 transcript.

19 BY MR. BOOZER:

20 Q. And, Mr. Weathers, if you would look down for me at
21 page -- or, excuse me, at the bottom of that page, starting
22 with line 19.

23 A. Start with the Court?

24 Q. With the Court. If you would just read that. Let
25 me do this, the Court asks you: Have you had discussions

1 with your attorney in which he told you I would sentence you
2 a certain way here today?

3 And what did you respond?

4 A. Yes, ma'am.

5 Q. All right. And the Court says: You have? And what
6 did he indicate to you I was going to sentence you to?

7 A. A potential YOA.

8 Q. Okay. And if you would continue, the Court says:
9 You understand that there's no one in this room that knows
10 how I'm going to sentence you here today.

11 To which you respond?

12 A. Yes, ma'am.

13 Q. Okay. So you had been told and you indicated to the
14 Court that you were looking at potentially getting a YOA
15 sentence?

16 A. Yes, sir.

17 Q. At any time, did the Court clarify and tell you that
18 kidnapping is not eligible for a YOA?

19 A. No, sir.

20 Q. And then finally, in your second amended petition,
21 you've got, counsel failed to file an appeal or request a
22 motion to reconsider?

23 A. Correct.

24 Q. And I think -- have you already been over that?

25 A. Yes, sir.

1 Q. Was Mr. Davis retained, or did you say he was
2 appointed?

3 A. He was state appointed.

4 Q. When did you first meet with Mr. Davis?

5 A. That was probably about August of 2012.

6 Q. How many times do you think you met with him prior
7 to your plea?

8 A. Probably about four or five times.

9 Q. And initially you were going to have a trial in this
10 case?

11 A. Yes, sir, that's the only thing we discussed.

12 Q. Do you think Mr. Davis was ready to go to trial?

13 A. I expected him to be, but I don't think he was,
14 because he said he wasn't confident. But also, we
15 corresponded through the mail and I asked him why he didn't
16 feel confident. And he told me that based off the facts and
17 the evidence, that he was convinced if I went to trial that I
18 would be convicted of an armed robbery. But, in fact, my
19 co-defendant went to trial and due to the lack of the weapon,
20 his armed robbery was dropped to a strong-arm robbery. And
21 the State actually says that in the transcript too, that
22 there was a problem locating the weapon. So the armed
23 robbery conviction was never the problem. And that is the
24 reason he was not confident to take it to trial.

25 Q. And you want a new trial in this case?

1 A. Yes, sir.

2 Q. Is there anything else that we have not discussed or
3 that you've testified to that you would like to add to the
4 record?

5 A. No, sir, that covers everything, but I actually have
6 an argument drawn up. I don't know if I'm allowed to offer
7 that into evidence or not.

8 MR. BOOZER: Your Honor, may I take one minute to
9 approach the witness?

10 THE COURT: Sure.

11 MR. BOOZER: He's instructed me to hand him a
12 manilla envelope that's on the table.

13 THE COURT: Sure.

14 BY MR. BOOZER:

15 Q. Mr. Weathers, just briefly, you've just shown me
16 what you've reported as an argument you wanted to make to the
17 Court. If His Honor will allow you to just testify to
18 what -- I believe this ties into some of your allegations.
19 Testify to what it is you want to state on the record.

20 A. About not being aware of my direct consequences of
21 the community supervision program, I wasn't told -- I was
22 never informed about this. And I wanted to go on the record
23 that I was never informed about this direct consequence. And
24 just the argument that I presented is different than the
25 Jackson. That's it.

1 Q. Mr. Weathers, anything else relating to your
2 application?

3 A. No, sir, that's it.

4 MR. BOOZER: Okay. Your Honor, that's all the
5 questions I have on Mr. Weathers.

6 THE COURT: All right.

7 CROSS-EXAMINATION

8 BY MS. WILSON:

9 Q. Good morning, Mr. Weathers.

10 A. Good morning.

11 Q. So, Mr. Weathers, today it is your testimony that
12 you were coerced to plead guilty by Mr. Davis; is that
13 correct?

14 A. Correct.

15 Q. But you agreed, you told the Court that you weren't
16 coerced to plead guilty at your plead guilty; is that right?

17 A. Correct, following Mr. Davis's instruction.

18 Q. And you also were sworn to tell the truth at your
19 guilty plea?

20 A. Correct. And I filed everything I stated following
21 Mr. Davis's advice.

22 Q. So you were sworn to tell the truth? That's yes or
23 no.

24 A. Yes. And I followed counsel's advice.

25 Q. Thank you. Do you also recall the Court telling you

1 that no one could tell you what sentence you would receive?

2 A. Correct.

3 Q. You also talked about telling Mr. Davis about these
4 two alibi witnesses. Can you repeat their names for me? I
5 didn't get the last name.

6 A. Daniel Gerald and Johnnie Thompson.

7 Q. Can you spell Daniel? What did you say?

8 A. Daniel Gerald.

9 Q. Gerald?

10 A. Yeah.

11 Q. Okay. Thank you. And then Johnnie Thompson; is
12 that correct?

13 A. Yes, ma'am.

14 Q. You also testified that Mr. Davis told you that if
15 you pled guilty, that he would try to get you a YOA. And
16 that -- you also testified if you went to trial, you would
17 face the same. But you agree that you received some benefit
18 by pleading guilty since the State nolle pros'd your
19 possession of weapon charge and allowed you to plead guilty
20 to strong-arm robbery; is that correct?

21 A. Correct, but I would not have been found guilty of
22 this, because my co-defendant went to trial, and the same
23 thing I pled to was what he was found guilty of. So the
24 consequences would have been the same. But the only
25 incentive I had to plead was that fact he said I could get a

1 YOA which I was ineligible for.

2 Q. But aside from your co-defendant, the charges you
3 were going forward on trial, the armed robbery charge is
4 greater than the strong-arm robbery charge that the State
5 ultimately allowed you to plead to? Yes or no?

6 A. There was no evidence to support the elements of an
7 armed robbery.

8 Q. Okay. Now, did you confess to your involvement in
9 this crime?

10 A. Following counsel's advice, yes.

11 Q. So you confessed to armed robbery?

12 A. Following counsel's advice, yes.

13 Q. And the kidnapping and the assault and battery, you
14 confessed to all the crimes; is that correct? Yes?

15 A. Following counsel's advice, yes, ma'am.

16 Q. Okay. You also told the Court you were guilty
17 during the guilty plea; is that correct?

18 A. Following my counsel's advice, yes, ma'am.

19 Q. So today, you are saying that you had an alibi
20 witness and you weren't present at these crimes; is that
21 correct? So today you are saying you are not guilty?

22 A. Correct.

23 Q. So were you being truthful at your guilty plea or
24 are you being truthful today?

25 A. I followed counsel's advice at my guilty plea and my

1 sentencing hearing.

2 Q. Okay. So that didn't answer my question. Are you
3 being truthful today?

4 A. I'm being truthful today.

5 Q. You are being truthful today?

6 A. And I followed counsel's advice at the guilty plea
7 and sentencing hearing because he told me I had to say that
8 to get the guilty plea to process through.

9 Q. Okay. So you were not being truthful at your guilty
10 plea?

11 A. Based off counsel's advice, yes, ma'am.

12 Q. You also testified that you wanted Mr. Davis to make
13 some objections about what testimony or about what the State
14 said the facts were at your guilty plea; is that correct?

15 A. Correct.

16 Q. Do you recall when you were at your guilty plea,
17 after the State went through their recitation of the facts,
18 the court asked you, did you agree to the fact, and you told
19 the court you agreed to the facts; is that correct?

20 A. That's correct, following Mr. Davis's advice, I told
21 him, yes.

22 Q. The court also talked to you about your right to
23 appeal; is that correct?

24 A. Correct. And I informed Mr. Davis that I would like
25 to, because it was a significant difference in the time of 10

1 years and a YOA sentence, and I told him to appeal it.

2 Q. Thank you. You also -- do you also recall the court
3 telling you about some of your convictions being considered
4 serious or most serious, and that about parole eligibility
5 and how you should expect to serve day-to-day? Do you recall
6 the court telling you that?

7 A. Yes, ma'am, but not in full detail as to what it
8 is.

9 Q. Did you talk to Mr. Davis about what potential
10 sentences you could receive for these crimes?

11 A. Correct. He stipulated a YOA sentence, which, like
12 I said, is the only reason I pled guilty.

13 Q. But what I'm asking you is, did Mr. Davis say, you
14 know, for kidnapping, you are facing up to 30 years? Did you
15 know what maximum sentences you could receive on your
16 charges?

17 A. The State informed me that the maximum was 55 years,
18 but nobody ever clarified that with kidnapping and my plea,
19 that I was uneligible (sic) for a YOA as stipulated by
20 Mr. Davis.

21 Q. All right. So you said Mr. Davis told you that you
22 were facing up to 55 years?

23 A. No, the Court told me I was facing up to 55 years.
24 Mr. Davis stipulated I would receive a YOA sentence.

25 Q. So you said Mr. Davis didn't tell you about the full

1 sentences you were facing? He just told you you would get a
2 YOA?

3 A. Correct.

4 Q. Did you also tell the Court that you hadn't been
5 promised anything to plead guilty?

6 A. Correct. And I also informed him that I was under
7 the assumption and impression that I could receive a YOA
8 sentence.

9 Q. And going into your guilty plea, you were aware that
10 you could receive up to 55-year sentence; is that correct?

11 A. Correct. I was informed that I could receive a
12 potential of 55 years which left room for my assumption of
13 the YOA sentence.

14 MS. WILSON: Beg the Court's indulgence. Thank you,
15 Mr. Weathers.

16 THE WITNESS: No problem.

17 MR. BOOZER: No further questions, Your Honor.

18 THE COURT: You may step down.

19 MR. BOOZER: There's no further witnesses on behalf
20 of the applicant, Your Honor.

21 THE COURT: Very well.

22 Ms. Wilson.

23 MS. WILSON: May it please the Court, Your Honor.

24 The State will call Mr. Steve Davis.

25

1 STEVE DAVIS,

2 having been duly sworn, testifies as follows:

3 THE CLERK: For the record, if you will please state
4 your name, spelling your last name.

5 THE WITNESS: Steve Christopher Davis, D-a-v-i-s.

6 DIRECT EXAMINATION

7 BY MS. WILSON:

8 Q. Good morning, Mr. Davis.

9 A. Good morning.

10 Q. Mr. Davis, can you just give us a little bit of your
11 background and tell us how long you have been practicing law
12 and what your background has been in?

13 A. I clerked with -- criminal law school in 1982. I
14 clerked with former Supreme Court Justice Ernest Finney for a
15 year. I was a law clerk. And thereafter, I had the
16 privilege of being appointed by Mr. Charlie Condon as the
17 assistant solicitor in Berkeley County from the ranks of
18 juvenile to eventually being appointed deputy solicitor,
19 probably the first African American deputy solicitor since
20 reconstruction.

21 Thereafter, I stayed with the Solicitor's Office for
22 total of 10 years. I've been in private practice as a trial
23 litigant for the past 19. So I've been a member of the bar
24 for 33 years.

25 Q. So it's safe to say you have extensive experience in

1 criminal matters?

2 A. I tell people there's few things in life I know, but
3 I think I'm pretty apt at what I do as a defense attorney.

4 Q. And now, were you appointed or retained to represent
5 Mr. Weathers?

6 A. I was appointed, apparently, because there was a
7 conflict with the Public Defender's Office.

8 Q. Do you recall about how soon after he was arrested
9 that you were appointed?

10 A. No, I have no recollection of that. I think in
11 August of 2012, I believe, I got involved in the case.

12 Q. Okay. And do you recall how many times you met with
13 Mr. Weathers before he pled guilty?

14 A. Multiple times. Mr. Weathers, when there was
15 visits, I could tell early on that I needed to document every
16 time I go and see him. As a matter of fact, I saw
17 Mr. Weathers beyond my normalcy in reference to involvements.
18 And I do that because of his youth. I do that in reference
19 to what I'm trying to accomplish for him.

20 I have a son quite similar to his age. I've got
21 three sons, 33, 28, and 23. And so a lot of times, I see
22 myself as a mentor and an attorney. And so I saw the
23 predicament that he was in. And it was my effort to try to
24 create the best scenario I could for him. |

25 Q. Did you file regular Rule 5 motions on his behalf?

1 A. I did everything. And I have a habit of my
2 practice, once I get to discovery, is to give it to my
3 client. Sometimes your clients are your best paralegal.
4 Sometimes they are your best co-counsel, and have him to
5 review it and have him to see the things that I'm seeing from
6 a fact basis. And I gave this young man the same situation.

7 Q. And after you gave him a copy to review, did you go
8 over with him what type of things were included in there?

9 A. Everything, his statement, or lack of a statement
10 thereof, his co-defendant's statements. Everything that the
11 State envisioned going forward with trial was involved. They
12 had some photo lineups in there too. Everything that would
13 typically be part of a Rule 5 discovery was included.

14 Q. Now, when you started to represent Mr. Weathers, you
15 found out what type of charges he was facing, did you talk to
16 him about the elements of the charges he was facing and what
17 the State had to prove to convict him?

18 A. Yeah. It's kind of elementary, armed robbery with
19 reference to a gun, co-defendant's statements. I went
20 through every aspect, kidnapping, any restriction of
21 movement, assault and battery, high and aggravated,
22 aggravated nature, the fact that young man was pistol whipped
23 to some extent. Every element was addressed with this young
24 man.

25 Q. And now, did you talk to Mr. Weathers about his

1 version of the facts?

2 A. Yes. And that's the part any criminal lawyer
3 understands, you take with a grain of salt to some extent.
4 Some clients share what they want to share. Sometimes we
5 only have what they present. That's about it.

6 Q. Okay. And after hearing about what his version of
7 the facts were, did you talk to him about what possible
8 defenses he could present at trial?

9 A. Yes. That's how we came with an alibi. I'm kind of
10 astonished to hear of some new guy, Mr. Boozer dropped on me
11 about some Mr. Thompson guy. I did submit an alibi with
12 reference to another individual he gave.

13 The interesting thing about alibi, clients tell you
14 this person will provide an alibi. But once they get an
15 engagement with the State and the State starts to pinpoint as
16 to accuracy and consequences of committing a fraud, it kind
17 of becomes deflated. And so, I don't know this alibi, upon
18 further inquiry into it, was any different from my
19 standpoint, as I recall.

20 Q. Okay. So it's your testimony that you didn't see
21 the alibi defense being pretty viable at trial after you
22 investigated it?

23 A. That's correct.

24 Q. And you said he never told you about the Johnnie
25 Thompson --

1 A. I have no recollection of Johnnie Thompson, none.

2 Q. And could you kind of just briefly for the Court
3 characterize the State's evidence against Mr. Weathers?

4 A. It was a scenario where apparently they used a
5 female, who all of them had some association with. She
6 primarily knew the guy who had some drugs. And so they lured
7 this guy out, Hispanic guy, and then in an ambush scenario,
8 pistol whipped him.

9 Q. Do you recall how Mr. Weather kind of got involved
10 as one of the suspects?

11 A. Because he's mentioned. The victim, as I recall one
12 of the statements, uses the name Tommie. And then the
13 co-defendant puts him at the scene.

14 Q. Okay. And other than this -- other than the one
15 alibi witness that you investigated, did he give you any
16 potential witnesses or leads to investigate in this case?

17 A. No, ma'am.

18 Q. Do you recall what your investigation entailed?

19 A. Let's be practical here about investigation, where
20 rubber meets the road. When you say investigation, your
21 investigation primarily starts with the discovery, your
22 review of that information, and then with a lengthy, thorough
23 discussion with your client. Now, beyond that aspect, you
24 look and see if there's any forensic evidence that actually
25 ties your client to the crime. Those can come in different

1 forms and fashion. But, primarily, in this instance, when
2 you have co-defendants who place you at the scene, who say
3 that you were with me when this took place, that's a lot of
4 self-investigation in and of itself.

5 Now, beyond that was the alibi. And I will be
6 honest with you, in my discussion with alibi witness, it's
7 kind of fuzzy, but it was not concrete.

8 Q. Okay. And do you recall when you started entering
9 into plea negotiations on Mr. Weathers's behalf? It appears
10 that he pled guilty right when y'all were about to start
11 trial. Had you all kind of tried to negotiate with the State
12 before trial was about to start?

13 A. You know, I listened to the direct. Most pleas take
14 place the day of trial. I have tried countless cases. And
15 I've actually selected juries and entered a plea, so that's
16 not uncommon.

17 The prosecutor in this case, Ms. Ashleigh Cornwell,
18 she's very zealous. She's pretty good at her job and she's
19 real tough. As a matter of fact, when I leave here, that's
20 where I'm headed, to Orangeburg to see Ms. Ashleigh Cornwell
21 on another criminal case. But we had back and forth
22 discussion. I wanted to put Tommie in a favorable position,
23 which I thought I did in reference to a possibility for the
24 YOA with the eradication, the removal of the armed robbery.

25 Now, I've heard all of this discussion this morning

1 by other lawyers with reference to the incompatibility with a
2 YOA with kidnapping. But it is possible and it's feasible in
3 instance that -- I reviewed my notes. And the strategy is
4 that you get time served for the kidnapping and then the
5 person is entering into a YOA for the strong-arm robbery. So
6 it's like a split sentence. The judge will say, I will give
7 you time served for kidnapping, now, move over and you are
8 sentenced to a YOA. Happens.

9 And quite interestingly, in the colloquy with the
10 judge, the judge did not share with this young man, said,
11 son, Mr. Davis is giving you faulty advice, you cannot be
12 eligible for a YOA. Instead, she told him, said, son,
13 sentencing is reserved for me.

14 Now, kidnapping could have been time served, because
15 Tom had been in jail for some period of time and we could
16 have rolled over in reference to the strong-arm robbery and
17 he would have been eligible for PT -- I mean, a YOA.

18 Q. Now, in your experience, have you heard or seen of
19 others getting a YOA sentence in that context or even in a
20 different context that might be contrary --

21 A. I've seen a lot. It's feasible, yes. I think that
22 is another step why the judge -- I've been doing this for
23 some period of time. It's very rare. We do presentence
24 reports all the time in federal criminal court. And in
25 federal criminal court, for defendant, before they sentence,

1 we -- for their sentence, in this instance, the judge went
2 and ordered the presentence report, which I would have hoped
3 would have been much more favorable and further convince the
4 judge to put him into a YOA. Because -- don't get mistaken
5 here. The day that he pled, he was not sentenced. That was
6 some time much later when the judge imposed the sentence on
7 him.

8 So I would take the position the judge still had
9 that discretion to say time served for kidnapping and still
10 could have been a YOA.

11 Q. Now, did you communicate this to Mr. -- with
12 Mr. Weathers in your talks about what sentence he could
13 receive?

14 A. Mr. Weathers, one aspect of his sincerity, he is
15 doing a new flip on the word potential YOA, because I told
16 him that there was no guarantee he would get a YOA. And so
17 the alternative of not potential is a regular sentence.

18 Q. Did you also talk to him about what the full
19 sentences he could receive on the charges he was facing?

20 A. Seemed like he said the State told him more than I
21 told him on that sentence. I was shocked to hear that, but
22 my notes reflect that I went through every one of those
23 particular charges and told him what potential sentence would
24 have been. Would have been part of the course, protocol.

25 Q. And based on your discussions, did you think that

1 Mr. Weathers understood that you were going to ask for a YOA
2 but it was possible he could get actual --

3 A. Oh, definitely, definitely. I reviewed every aspect
4 of my representation in this case. And with Tommie it was
5 always a push toward a YOA. Now, I was disappointed as much
6 as Tommie that it didn't happen. I really was, because I
7 wanted that to be an opportunity for him. Because he had
8 made some strides in reference to when I first met him over
9 at the jail. And his intellect is somewhat high. I mean, I
10 have a lot of respect for him.

11 Q. So, at some point when you were about to start
12 trial, ultimately, the State made a plea offer. What offer
13 did they make? Was this the dismissal of the possession of
14 weapon charge and then the lesser-included for the armed
15 robbery? Was that offered?

16 A. That's correct, yeah. And I have a habit that I do
17 in my office. If I've got a trial on Monday, I will go to
18 the jail and spend at least two hours. And so Tom and I had
19 these discussions of all the possibilities that Sunday
20 afternoon before trial, that this is something that I do like
21 clockwork as part of who I am.

22 And I lay out -- I like clients to know expectation.
23 I'm not a "got you" type of defense lawyer. I make sure the
24 truth, the bad, the bitter, is all displayed to my clients,
25 so there's no surprises. You know? Sometimes run into

1 clients who are overbearing, only wanting to see what they
2 want to see, only want to effectuate the result that they
3 want. Tommie has a lot of those characteristics, but I am
4 confident that he knew fully that the alternative was not a
5 YOA. If we could not do this, the judge would do so.

6 Q. And I'm assuming during these same talks about
7 pleading guilty, you've talked to him about the fact that he
8 would be waiving certain constitutional rights, the same way
9 the Court did?

10 A. Definitely.

11 Q. Did he ever indicate to you he didn't understand
12 something?

13 A. I think Tom is very smart.

14 Q. Did you tell him how to answer his questions to the
15 court?

16 A. Please.

17 Q. Do you think ultimately it was Mr. Weathers's
18 decision to plead guilty?

19 A. It was. You know, I share this about -- Tom had a
20 tremendous amount of faith in my abilities. This aspect
21 about one of the, I guess, charges against me was that his
22 family was trying to secure me. I get 90 percent of all my
23 clients through referral from people who are in jail. And
24 there's a reason for that, I think. I think Mr. Weathers
25 never wavered in reference to my capacity to care for the

1 predicament that he was in. I think he never wavered in the
2 fact that in all circumstances, I was about to try to put the
3 best situation for him. And I think he was confident of
4 that. And I think -- I'm going to give him kudos because he
5 said Mr. Davis said to trust him, because I did tell him
6 that.

7 Q. Mr. Davis, let's kind of go through some of these
8 allegations that Mr. Weathers raised today in his two amended
9 applications. Did you review his indictments and did you see
10 any need to raise any challenges with regard to those?

11 A. I did not.

12 Q. And we already talked about the fact that you
13 investigated his alibi witness, Mr. Daniel Gerald, and you
14 investigated that and that wasn't a viable defense.

15 A. Well, I still submitted it. You've got
16 responsibility, if your client tell you something, you submit
17 it. And then when the State start to delve into having
18 notice and inquire that person, that's when it kind of
19 dissipate.

20 Now, I'm not about to create fraud in the judicial
21 system or make up an alibi. I've never been a lawyer of that
22 caliber. I never will be. I will not succumb to that level.

23 Q. And you would agree with me that you didn't coerce
24 Mr. Weathers to plead guilty?

25 A. No, I did not.

1 Q. You kind of talked a little bit about this already,
2 but you reviewed the co-defendant's statements with
3 Mr. Weathers. And, I mean, were you able to highlight any
4 differences?

5 A. Well, there was two things, and I think he can
6 recall this. I have this habit, I tell folks, the only
7 person really can cover your own butt is yourself. Are you
8 prepared to go to trial and say that Mr. Ryan Stewart or this
9 other female is not going to state to what they already said
10 in their statement, and the fact that the victim referenced
11 the name Tommie? I mean, as a defense attorney, we are stuck
12 with the facts that we have. I have a statement I tell them
13 that the only individual I ever knew could change the facts
14 was Superman. I'm stuck with the facts now. They may want a
15 different version of the facts that would accommodate the
16 kind of relief he seeks, but I cannot change the facts.

17 And I'm in touch with his presentence report. You
18 know, I will share this and concede this point, that in
19 federal presentence report, they allow you to object an
20 aspect of it if you differ with certain aspects. But as far
21 as I'm concerned, the overall material informative aspect
22 about that presentence report was what it was in the totality
23 of how Mr. Weathers found himself in the criminal justice
24 system at that particular point, at that hour about to be
25 sentenced.

1 Q. Okay. Now, did you also -- the Court also discusses
2 with Mr. Weathers, but did you talk to him about the fact
3 that some of his charges could be considered serious or most
4 serious, violent or nonviolent, and that would affect any
5 sentence he could receive for any future convictions, or did
6 you talk to him about the fact that he had to serve day for
7 day?

8 A. You know, we as defense lawyers have been put in
9 this position that we must look, talk to the probation
10 officer, ascertain whether this is a 25 percent or 65
11 percent, 85 percent, whether it's serious, most serious. I
12 mean, you get enough of these post-conviction relief, after
13 awhile, we get a script to go by. So we try to follow the
14 script. Eventually, it will change. There will be some
15 other things we have to add. But I think this case is no
16 different than me going through that whole colloquy of
17 sentencing and potential.

18 You know, another interesting thing why I wanted
19 the -- the YOA was important because he would be followed for
20 some period of time. But it just didn't happen.

21 MS. WILSON: Thank you, Mr. Davis.

22 THE WITNESS: Thank you.

23 MR. BOOZER: Thank you, Your Honor. May it please
24 the Court.

25 CROSS-EXAMINATION

1 BY MR. BOOZER:

2 Q. Mr. Davis, there's been some discussion about how
3 Mr. Weathers originally was going to trial on these charges;
4 is that right?

5 A. I'm a trial lawyer, sir.

6 Q. What was his defense that day that y'all were going
7 to put forth?

8 A. Well, we were hoping -- well, you know, when it hit
9 the fan, said I'm innocent, that's a defense. Okay? I'm
10 innocent, okay, and the burden of proof is on the State of
11 South Carolina to prove me guilty beyond a reasonable doubt.
12 You know, the only defenses you have to file in South
13 Carolina is self-defense, alibi defense. So when you say
14 defense, I'm taken aback. We deal primarily -- I deal more
15 from strategic standpoint that changes primarily sometimes on
16 the flow of the case from the State's standpoint. Now, the
17 only defense in this case was of nonexistent alibi.

18 Q. All right. So the plan going forward with, if y'all
19 were to go to trial that day, was obviously to cross-examine
20 all the officers and the State witnesses. Would there have
21 been any folks presented on behalf of Mr. Weathers?

22 A. Those things are dependent upon how the flow of the
23 case. The client is not required to put up any testimony.
24 So you are asking things that would actually be dependent
25 sometimes on the flow of what the State was able to put forth

1 during the course of their trial.

2 Q. And you had Mr. Gerald or Gerard there. I guess
3 I've gotten the indication that he was not going to be a
4 legitimate alibi defense, I guess. Is that what your
5 testimony is?

6 A. My testimony is that his alibi, like most alibi
7 defense, sometimes it's inconsistent with sometimes with the
8 State's version of the case, you know. Johnnie is saying he
9 was with Mary when the armed robbery took place. When you
10 have forensic evidence that puts Johnnie at the armed
11 robbery, that kind of conflicts with the alibi, you know. So
12 from that standpoint, even if a client gives you an alibi
13 defense, that does not necessarily mean that you would put it
14 up.

15 Q. Do you know the specifics of what Mr. Gerald or
16 Gerard would have testified to?

17 A. I do not recall the specifics, but with any alibi,
18 the simple one-two phrase would be, I was not there, I was
19 with him.

20 Q. Do you recall having any discussion with
21 Mr. Weathers about him being at a party out on Folly Beach
22 that evening?

23 A. I had multiple discussion. I can't specifically
24 tell you, you know.

25 Q. You also testified earlier that you don't recall or

1 were never told of a Johnnie Thompson.

2 A. I have no recollection of that, no. But maybe you
3 can give me something to refresh my memory.

4 Q. Sure. And you've heard Mr. Weathers's allegations?

5 A. I've heard a lot from Mr. Weathers.

6 Q. Okay. And you referred that what he's alleging is
7 that Mr. Thompson, fellow named Johnnie Thompson, would have
8 testified he was with him at Folly Beach during the time of
9 the incident. Do you recall any of that?

10 A. I think I shared with you I have no recollection of
11 that.

12 Q. Would that have been an important witness to
13 interview?

14 A. Everybody in the case is important. Okay?
15 Everybody is important, especially when a person is on life
16 of 55 years. Everything is important. I take that very
17 seriously.

18 Q. Now, you've heard a lot of talk. You already
19 testified quite a bit about the YOA sentence or the hope to
20 get him a YOA sentence.

21 A. Well, I'm just following through what Mr. Weathers
22 has me here today for YOA, that's been a discussion.

23 Q. Okay. Was it your hope that he was going to walk
24 out of there with a YOA sentence?

25 A. Son, that's what I get up in the morning and hope

1 and pray. That's what motivated me for the last 33 years.
2 Sometimes I'm able to do what they call the impossible.

3 Q. I appreciate that, but was that specifically, that
4 day, was that your expectation walking into, was to walk out
5 with a YOA?

6 A. Son, my expectation is always to obtain the greatest
7 result I can for my client. Sometimes I fall short. But you
8 know, the good thing about that is, my client understood the
9 full ramification of not having the guarantee or the
10 certainty of it happening. And I take issue with the fact
11 that he says potential, because there's a lot of truth in
12 that word potential. That was my hope and aspiration, yes.

13 Q. Let me ask you this, Mr. Davis. I've heard that
14 what you testified to, your strategy and hope was that the
15 kidnapping, he would get time served and then y'all would be
16 able to then deal with the strong-arm robbery and the assault
17 on a separate -- get time served, so the kidnapping is now
18 out of the way?

19 A. Yep.

20 Q. Now you get the YOA on the other one?

21 A. That's correct, yep. One is treated as an adult
22 sentence and the other one is a YOA. I've seen it done.

23 Q. Did you explain that strategy to Mr. Weathers prior
24 to the plea and sentencing?

25 A. I explained everything to Mr. -- that's why the

1 judge was saying, in essence -- and you know another thing,
2 Tommie, if you recall, I went back and had some discussion
3 with the judge before the jury selection. And so all of
4 these were discussed. Okay?

5 Q. Now, there was quite a bit of talk -- obviously,
6 there was a plea and then there was a sentencing. In the
7 transcripts, and certainly the transcripts reflect this, and
8 they are already part of the record, but there's quite a bit
9 mention where you are pushing for the YOA. Do you recall
10 that?

11 A. Mr. Boozer, yes, I am.

12 Q. Okay.

13 A. If it was up to me, you would have a YOA today, if I
14 had a robe on.

15 Q. Was there any discussion on the record about, well,
16 Judge, let's do the kidnapping time served and then we will
17 get the YOA on the strong-arm robbery?

18 A. I just shared with you, you know, some discussions I
19 had, you know, with the judge. The judge shared with this
20 young man, if anybody had given you an indication of what
21 type of sentence you are going to receive, it's misplaced
22 because sentencing resides in my sole discretion. The judge
23 did not tell Mr. Weathers, Mr. Weathers, Mr. Davis is
24 mistaken, you cannot get a YOA based on these charges that
25 you are pleading to.

1 Q. And that's right, the judge never told him,
2 Mr. Weathers, if you are coming here under the assumption you
3 are going to walk out with a YOA with a kidnapping, that's
4 not possible?

5 A. That's right.

6 Q. She never indicated that to Mr. Weathers?

7 A. The record speaks for itself.

8 Q. Okay. Let's go to following his sentencing. Do you
9 recall him ever asking you to file any sort of appeal or
10 motion to reconsider?

11 A. I don't recall, I don't. Very rarely would I file
12 an appeal from a guilty plea.

13 I got a letter from a young man, I think, about a
14 month or so after he was sentenced telling me that -- he
15 thanked me for the time and effort, and that he was going to
16 use his time to try to get his life together. And then, I
17 guess, he started talking to some folks, jailhouse lawyers,
18 who know more than I know, but don't have no degree, and then
19 I was bombarded with a lot of stuff.

20 Q. And you may have already testified to this and I
21 just want to follow-up on it. Did you ever have any
22 discussions with Mr. Weathers in particular about him being
23 subject to any sort of community supervision following his
24 conviction?

25 A. I don't recall telling the young man that,

1 seriously. What I did remember is, I removed any aspect of a
2 monitoring system for him with the kidnapping. There would
3 be no sexual aspect, that he wouldn't spend his whole life
4 having to tell folks where he's living in that capacity by
5 being on some central register. I do recall that.

6 Q. As I was just asking that question, I received a
7 note from my client who would like to ask you, were there
8 ever any evidence of a weapon found that you are aware of?

9 A. Not uncommon. The victim said he was pistol whipped
10 with a gun, yeah. But not uncommon in criminal law for them
11 not to have a weapon. Not uncommon to prosecute people for
12 murder not even having a body. So that doesn't shock me at
13 all.

14 Q. And is it -- you do agree that kidnapping is not
15 eligible under the YOA program?

16 A. You made that point to me, Mr. Boozer, this morning.

17 Q. That's a yes? You know that?

18 A. Sometimes I feel with a black robe, you can do a lot
19 of things.

20 MR. BOOZER: Court's indulgence, Your Honor.

21 THE COURT: Sure.

22 MR. BOOZER: Mr. Davis, thank you very much.

23 THE WITNESS: Thank you, Mr. Boozer.

24 MS. WILSON: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. WILSON:

2 Q. Mr. Davis, you briefly talked about your, from
3 strategic standpoint, what you were planning to do when you
4 were preparing for Mr. Weathers's trial. And you would agree
5 that you were prepared to try his case?

6 A. I take that as an insult.

7 Q. And he also talked to you about Mr. Weathers asking
8 for appeal. It's your testimony that he did not ask you for
9 appeal; is that correct?

10 A. I don't have no recollection, to be honest with you.

11 Q. If a client --

12 A. If he had asked for an appeal, I got a process in my
13 office, I put the appeal in place and let the State take over
14 from that aspect. It don't take much to drive a piece of
15 paper and say, now I hereby request an appeal from the
16 sentence such -- yes, we do.

17 Q. So it's your general practice?

18 A. Yes.

19 MS. WILSON: Thank you.

20 THE COURT: Anything else?

21 MR. BOOZER: No, Your Honor.

22 THE WITNESS: Judge, can I go to Orangeburg please?

23 THE COURT: You may. I'm not making you go, but you
24 can go.

25 THE WITNESS: I've got to go. The same prosecutor

1 that is on this case, same prosecutor.

2 THE COURT: All right.

3 MS. WILSON: Nothing further from the State.

4 THE COURT: I've got to read everything. Anything
5 else you want me to consider, Mr. Boozer?

6 MR. BOOZER: Your Honor, I don't know think there's
7 anything else to consider. If I may just have one minute to
8 put one issue on. I know Your Honor has heard a lot of
9 testimony about it on the YOA issue. And I do think it's an
10 interesting issue. And, unfortunately, I don't have any case
11 law that's on point with regard to what the judge has to tell
12 him, you can't be sentenced under this, it would be an
13 illegal sentence, we can't do the kidnapping. So I do think
14 he has quite an interesting issue if there is a duty of
15 counsel or of the court to advise him when he's going in.

16 And as the transcript certainly reflects, and it's
17 before Your Honor, there's numerous mention, that's all
18 that's mentioned is over the YOA, YOA. And there's never a
19 chance where they say, son, you cannot have a YOA sentence
20 under this, it would be illegal. So I do think it's an
21 interesting issue, along with other issues that Mr. Weathers
22 raised, but that one in particular, Judge.

23 THE COURT: All right. Let me read everything, but
24 that seems to be the best issue you've got, is that
25 particular point. All right. Let me consider everything and

1 I will let y'all know.

2 MS. WILSON: Thank you, Your Honor.

3 MR. BOOZER: Thank you.

4 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter
certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

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

Witness my hand, I have hereunto affixed my official
seal this 12th day of August, 2015, at Charleston, Charleston
County, South Carolina.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Tommie D. Weathers, Jr., #354256,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-08-2209

ORDER OF DISMISSAL

HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2015 JUN 11 PM 3:47

FILED
W

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Plea Counsel:

Date of Hearing:

Court Reporter:

The Honorable Eugene C. Griffith

Lance Boozer, Esquire

Ashleigh R. Wilson, Esquire

Steve C. Davis, Esquire

February 18, 2015

Karen V. Anderson

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 1, 2013. The Respondent made its Return on July 14, 2014. An evidentiary hearing into the matter was convened on February 18, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Lance Boozer, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Steve C. Davis, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Berkeley County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

REB 1/16

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the March 2011 and November 2011 terms of the Berkeley County Grand Jury for armed robbery (2011-GS-08-0400), assault and battery- first degree (2011-GS-08-1678), and kidnapping (2011-GS-08-1677). Steve C. Davis, Esquire, represented the Applicant. On January 14, 2013, the Applicant pled guilty to the lesser included offense of strong arm robbery, assault and battery- first degree, and kidnapping. On February 11, 2013, the Honorable Kristi L. Harrington sentenced the Applicant to confinement for ten years concurrent on all charges. The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "Due Process Rights"
3. "Illegal Search"

At the hearing, the Applicant proceeded on the following grounds:

1. Ineffective assistance of counsel.
 - a. Advising the Applicant he would receive a YOA sentence if he pled guilty.
 - b. Failure to challenge the indictment.
 - c. Failure to discuss the nature of the charges and the consequences of pleading guilty.
 - d. Failure to investigate alibi witnesses.
 - e. Failure to object to the recitation of the facts by the State during the guilty plea.
 - f. Failure to file an appeal.
2. Involuntary guilty plea.
 - a. Applicant was coerced to plead guilty.

This Court finds all claims other than those raised at the hearing and addressed in this order are hereby deemed denied. This Court finds the Applicant failed to present any evidence, testimony, or argument regarding such issues at the evidentiary hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Summary of the Testimony

The Applicant was present and testified at the evidentiary hearing. He testified his indictment was defective and improperly presented. The Applicant testified counsel failed to raise the issue of his defective indictment to the Court. He testified counsel was only appointed after his family had contact with plea counsel. He testified he did not want to go forward on the indictments because of this.

The Applicant testified he met with counsel four or five times prior to his guilty plea. He testified he also corresponded with counsel via mail. The Applicant testified counsel never told him the elements of the charges he was facing or potential defenses. He testified they never discussed his charges as being most serious, 85%, or requiring community supervision.

The Applicant testified he had two alibi witnesses and counsel failed to investigate either alibi witness. He testified Daniel Gerald and Johnny Thompson were his two alibi witnesses. The Applicant testified that at the time of the crime he was at Folly Beach with Thompson and

Gerald. He testified he recently learned that Johnny Thompson has passed away. The Applicant also recalled confessing his involvement in the crime and telling the plea court he was indeed guilty. The Applicant testified he was not being truthful at his guilty plea.

The Applicant testified counsel also failed to advise him of his co-defendant's statement. He testified the solicitor at the guilty plea said his co-defendant mentioned something about him burning his clothing. The Applicant testified trial counsel should have objected to this statement by the solicitor because he never knew anything about the statement. The Applicant testified trial counsel also should have objected to the solicitor's comments regarding his relationship with the victim and their living arrangements. The Applicant also recalled telling the Court that he agreed with the facts presented by the State during his guilty plea.

The Applicant testified trial counsel told him he could get a potential Youthful Offender Act (YOA) sentence. He testified trial counsel told him that if he signed the guilty plea he could get a YOA sentence. He testified his kidnapping charge is not eligible for a YOA sentence. The Applicant testified without trial counsel's advice regarding him receiving a YOA sentence, he would not have pled guilty. The Applicant recalls the plea court telling him not to assume anything about his sentence and that no one knew what the sentence of the Court would be. He testified he also recalls telling the Court that he was made no promises to plead guilty.

The Applicant testified he was coerced by plea counsel to sign the guilty plea because counsel was not confident about their outcome if he went to trial. The Applicant testified he initially wanted to go to trial, but he did not think counsel was ready for trial. He testified trial counsel should have objected to the pre-sentencing report presented to the Court because information in the report was inaccurate.

The Applicant testified after he received a sentence greater than his co-defendants he told

counsel he wanted to appeal his guilty plea. He testified he was under the impression he would get a YOA sentence and instead received ten years. He testified he told counsel to appeal his sentence in person during his sentencing hearing. The Applicant recalls the trial court advising him of his right to appeal during his guilty plea.

Also present and testifying was Steve C. Davis, Esquire. Counsel testified he has been practicing law since 1982. He testified he has extensive experience in criminal matters. He testified he was appointed to represent the Applicant in August 2012 due to a conflict in the public defenders' office. Counsel testified he met with the Applicant multiple times. He testified he could tell from the start he needed to document everything when dealing with the Applicant. He testified that he met with the Applicant more than normal.

Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he reviewed the discovery material he received with the Applicant and gave a copy of the materials to the Applicant to review. Counsel testified the materials included the Applicant's statement to police along with his co-defendants' statements. Counsel testified they discussed the elementary elements of the charges the Applicant was facing and what the State was required to prove to convict the Applicant. Counsel testified he reviewed the Applicant's indictment and did not see any deficiencies to raise to the Court.

Counsel testified the Applicant told him his version of the facts and they discussed possible defenses. He testified he was surprised to hear about the Applicant's alleged alibi witness "Johnny Thompson". Counsel testified he has never heard of "Johnny Thompson". He testified he did initially submit an alibi notice for Daniel Gerald, however, after further investigation he determined alibi was not a viable defense for the Applicant. Counsel testified he refused to present a fraudulent alibi to the Court.

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Counsel testified the Applicant and his co-defendant's used a female to lure the victim out so they could ambush the victim. He testified the victim and the Applicant's co-defendants put him at the scene of the robbery and kidnapping. Counsel testified the Applicant did not give him any other leads or witnesses to investigate. Counsel testified his investigation of the Applicant's case included reviewing the discovery and looking for forensic evidence which tied the Applicant to the crime. Counsel testified there is not much to investigate since the Applicant's co-defendants put him at the scene and the alibi witness the Applicant provided was not concrete.

Counsel testified he had several discussions with the solicitor about a plea offer. He testified his goal was to put the Applicant in a favorable position after the removal of the armed robbery. Counsel testified ultimately the State offered the Applicant a plea to the lesser included offense of strong armed robbery and the State would *nolle prosequere* the possession of a weapon during the commission of a violent crime charge. He testified he communicated the plea offer to the Applicant and informed him of the constitutional rights he would waive if by pleading guilty.

Counsel testified his strategy for the Applicant's sentencing was to try to get a time served sentence for the kidnapping so that the Applicant would be eligible for a Youthful Offender Act on the remaining two charges. He testified he felt this sentencing option was feasible and hoped the pre-sentencing report requested by the Court would have been more favorable. Counsel testified he discussed sentencing options with the court prior to the Applicant's plea.

Counsel testified he told the Applicant that there was no guarantee that he would receive a YOA sentence and his notes reflect he also advised the Applicant of the potential sentences he was facing on the charges. Counsel testified the Applicant knew that he would ask for a YOA,

but that it was possible he would get active time on all the charges. Counsel testified he was confident the Applicant was fully aware that he would not get time served on the kidnapping charge and a Youthful Offender Act sentence on the remaining charges unless they were first able to convince the plea judge it was appropriate.

Counsel testified he did not coerce the Applicant to plead guilty. He testified that prior to the guilty plea he reviewed everything with the Applicant including the Court's plea colloquy. Counsel testified he reviewed the pre-sentencing report requested by the Court and overall the report was accurate. Counsel testified the solicitor's overall statement of the facts was accurate and not objectionable. Lastly, counsel testified he did not recall the Applicant asking for an appeal at the end of his guilty plea. He testified had the Applicant requested an appeal it was his general practice to file a notice of appeal on the Applicant's behalf.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this

presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). 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 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that counsel is a criminal practitioner who has extensive experience in

the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds the Applicant's claim that he was coerced to plead guilty is wholly without merit.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

As an initial matter this Court finds plea counsel's testimony at the evidentiary hearing to be credible. In light of the Applicant's own self-serving testimony that he lied to the Court during his guilty plea, this Court finds the Applicant's testimony at the evidentiary hearing was not credible.

The Applicant alleges counsel was ineffective for advising the Applicant that he would receive a Youthful Offender Act sentence if he pled guilty. This Court finds the Applicant has

failed to carry his burden of proving counsel's advice to Applicant regarding the possibility of receiving a Youthful Offender Act sentence resulted in ineffective assistance of counsel. This Court finds counsel's advice to the Applicant regarding sentencing was not deficient. The Applicant claims counsel told him that if he pled guilty he could possibly receive a YOA sentence. Counsel provide credible testimony that he did not promise the Applicant a YOA sentence, but that his strategy for sentencing was to try to obtain a time served sentence for the kidnapping charge so that the Applicant would be eligible for a YOA sentence on the remaining two charges. Counsel also recalled discussing sentencing options with the Court prior to the Applicant's plea

This Court finds counsel's advice to the Applicant was not improper. While the Applicant's kidnapping offense was not eligible for a Youthful Offender Act sentence, the Applicant's remaining two offenses were eligible for YOA sentences.¹ This Court finds the sentencing strategy outlined by trial counsel was a feasible sentencing scheme and nothing precluded the Court from exercising its discretion and sentencing the Applicant to time served for the kidnapping offense and a YOA sentence on the remaining two offenses. See Creel v. State, 262 S.C. 558, 206 S.E.2d 825 (1974) (The trial judge has complete discretion to determine which subsection of the Youthful Offender Act is applicable to a youthful offender.).

This Court also finds the Applicant has failed to show prejudice resulted and that but for counsel's advice he would have proceeded to trial. This Court finds the Applicant was advised by both counsel and the Court of the potential sentencing range for each of the offenses he pled

¹ A "Youthful Offender" under S.C. Code Ann. § 24-19-10 is defined as a person who is "seventeen but less than twenty-five years of age at the time of conviction for an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less". Kidnapping is defined as a violent crime in S.C. Code Ann. § 16-1-60 making it ineligible for a Youthful Offender Act Sentence. Assault and battery- first degree and strong arm robbery are not classified as violent crimes.

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guilty to. (Plea Tran. 5, 8). The record also reflects the Court explained to the Applicant that no one knew what the sentence of the Court would be and that he should assume he was facing the maximum sentence on all the charges. (Plea Tran. 9-10). This Court finds counsel made no promises or guarantees to the Applicant about receiving a YOA sentence. This Court finds further the Applicant was fully aware of the potential sentences he faced before pleading guilty. This claim is merely a reflection of the Applicant's wishful thinking regarding what sentence he hoped to receive after pleading guilty. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997) ("Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made."). This Court finds this claim is without merit and the Applicant has failed to show counsel was ineffective in this regard.

The Applicant claims counsel was ineffective for failing to challenge his indictment. This Court finds this allegation is wholly without merit. This Court finds the Applicant has failed to specify the basis for any objection by counsel to his indictments. This Court finds counsel provided credible testimony that he reviewed the Applicant's indictments and found no deficiencies to raise to the Court. This Court finds the Applicant's indictments effectively put the Applicant on notice of the offenses he was being charged with and contained no challengeable deficiencies. This Court finds the Applicant has failed to carry his burden of proving counsel provided ineffective assistance of counsel by failing to challenge his indictments.

The Applicant claims counsel failed to discuss with him the nature of the charges and the consequences of pleading guilty. This Court finds this claim is wholly without merit. The record reflects counsel provided credible testimony that he advised the Applicant of the elements of the

charges he was facing and what the State was required to prove in order to convict the Applicant. Counsel testified that prior to the Applicant's guilty plea he also reviewed with the Applicant the contents of the Court's plea colloquy. This Court finds counsel was not deficient in his advice to the Applicant regarding the nature of the charges he was facing and the consequences of pleading guilty.

This Court also finds any alleged deficiency by counsel with regard to his advice to the Applicant prior to his guilty plea was cured by the Court's plea colloquy with the Applicant. The record reflects the Court thoroughly advised the Applicant of his constitutional rights (Plea Tr. 11), the potential sentences he was facing (Plea Tr. 5, 8), his parole eligibility (Plea Tr. 7-8), and that his guilty plea was without negotiation or recommendation other than the reduction of his armed robbery charge to strong arm robbery (Plea Tr. 8). The record also reflects that in response to the Court's questions, the Applicant told the Court that he had not been promised anything, coerced, or threatened to get him to plead guilty. (Plea Tr. 13). This Court finds the Applicant was well aware of the nature of the charges he was facing and the consequences of pleading guilty. The Applicant's guilty plea was entered freely and voluntarily. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to discuss with him the nature of the charges and the consequences of pleading guilty.

The Applicant claims counsel failed to investigate his alibi witnesses. This Court finds this claim is wholly without merit. The Applicant claims he wanted counsel to call as alibi witnesses both Daniel Gerald and Johnny Thompson. This Court finds counsel was not ineffective for failing to investigate the Applicant's alleged alibi witnesses. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime.

Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

This Court finds counsel provided credible testimony that he had never heard of Johnny Thompson as an alibi witness for the Applicant. Counsel testified further that he spoke with Daniel Gerald, filed an alibi notice for Gerald, and ultimately decided after investigating Gerald that the Applicant did not have a viable alibi defense. This Court finds counsel adequately investigated the Applicant's alleged alibi witness and made a strategic decision not to pursue an alibi defense based on his assessment of the viability of the claim. This Court find counsel's performance was not deficient in this regard.

This Court finds further the Applicant has failed to carry his burden of proving the alleged alibi witnesses' testimony would have qualified as an alibi. The Applicant failed to produce the witnesses at the PCR hearing or otherwise introduce their testimony to the Court in a manner consistent with the rules of evidence. This Court declines to accept the Applicant's rendition of what the witnesses' testimony might have been. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to investigate his alibi witnesses.

The Applicant claims counsel was ineffective for failing to object to the recitation of the facts by the State during the guilty plea. This Court finds this claim is wholly without merit. This

Court finds the Applicant has failed to identify any portion of the State's summation of the facts during his guilty plea that was objectionable. (Plea Tran. 14-19). This Court also finds telling the fact that the Applicant told the Court he agreed with the recitation of the facts by the State during his guilty plea. (Plea Tran. 19-20). This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to object to the recitation of facts by the State during the guilty plea.

Lastly, the Applicant claims counsel failed to file an appeal of his guilty plea. This Court finds this claim is wholly without merit. Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id. 528 U.S. at 480, 120 S. Ct. at 1036. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Id. 528 U.S. at 484, 120 S. Ct. at 1038.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme

Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

The record reflects the Applicant was fully advised by the Court during his guilty plea of his right to appeal. The Court told the Applicant "[y]ou have the right to appeal the plea and sentence that I impose, but you or your attorney must do so within ten days". (Plea Tran. 13). This Court finds credible counsel's testimony that the Applicant never indicated to him a desire to appeal his guilty plea. This Court finds the Applicant has failed to show that he actually demonstrated an interest in appealing to plea counsel. This Court finds the Applicant has failed to carry his burden of proving he is entitled to appeal of his guilty plea pursuant to White v. State.

Accordingly, this Court finds the Applicant has failed to prove the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court finds the Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence, testimony, or argument regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are dismissed.

CONCLUSION

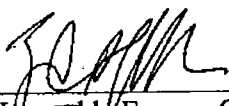
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR 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 written notice of entry of this Order 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 served and 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 3rd day of June, 2015



The Honorable Eugene C. Griffith
Presiding Judge
9th Judicial Circuit

Newberry, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	C/A No: 2013-CP-08-2209
Tommie Weathers, Jr., #354256	)	
Applicant,	)	
v.	)	NOTICE OF MOTION AND MOTION TO
State of South Carolina,	)	ALTER OR AMEND JUDGMENT
Respondent.	)	PURSUANT TO RULE 59(c)

The Applicant, through appointed counsel below, respectfully moves for the Court to alter or amend its Order of Dismissal signed June 3, 2015, filed June 11, 2015, and received by counsel for the Applicant on June 19, 2015. Specifically, Applicant alleges the Court failed to make findings regarding the Applicant's following allegations raised at the PCR Hearing on February 18, 2015:

1. Ineffective assistance of counsel/Involuntary guilty plea;

- (i) "Counsel said he would get me a 'potential Y.O.A.' consisting of 18-22 months and that I could expunge my record afterwards... I thought a 'potential Y.O.A.' was the name of the program, but what he meant was potentially receive a Y.O.A. I found out after the plea was submitted and accepted. Mr. Davis failed to explain this and I was not aware that a plea had to be negotiated for it to go through as planned, if the Judge agrees."
- (ii) Inaccurate information presented to sentencing judge which counsel failed to correct.
- (iii) "Before the State appointed Mr. Davis to be my attorney, I had family and friends calling his office to see how much he would charge to help me with my bench warrants... that day, coincidentally, he was appointed as my lawyer and would have to work with me for free. I feel this may be some reason that he was ineffective counsel to me."
- (iv) "Mr. Davis knew I wanted to go to trial with my case, but coerced me into signing a guilty plea by scaring me, saying that he wasn't confident and saying it

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CLERK OF COURT
BERKELEY COUNTY, SC

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was my best choice to make because if I did not, then the court would give a heavier sentence than my co-defendants.”

(v) Counsel failed to explore alleged victim's inconsistent statements and character.

(vi) Counsel failed to properly advise me as to co-defendants' statements.

3. Counsel failed to file an appeal or Motion to Reconsider.

1. Ineffective assistance of counsel/Involuntary guilty plea;

(iii) Counsel failed to advise and Petitioner was unaware that Kidnapping was a no parole offense.

(iv) Counsel failed to object to pre-sentencing report and final sentence.

(vi) Counsel improperly advised Petitioner his charges were eligible for a YOA sentence. Counsel should have investigated the facts and elements in order to properly advise Petitioner his charges were not eligible for a YOA disposition.

(vii) Based on counsel's statements and Petitioner's detrimental reliance on receiving a YOA sentence, Petitioner entered a guilty plea. But for these statements and detrimental reliance, Petitioner would not have pled guilty and would have insisted on a trial.

(viii) Counsel failed to file an appeal or Motion to Reconsider following Petitioner's timely request.

Respectfully submitted on behalf of Applicant,



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Fax: (803) 926-3463

Columbia, South Carolina
June 22, 2015

Respondent.

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND**

IT IS SO ORDERED.


Eugene C. Griffith, Jr.
Circuit Court Judge

July 10th, 2015

FILED
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MAY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case Number: 2015-00636

Tommy Weathers, Jr.

Petitioner,

v.

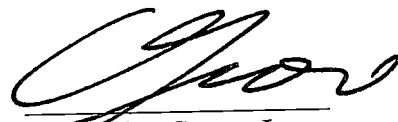
State of South Carolina

Respondent.

Certificate of Service

I certify that I serve a copy of the Appendix on the State of South Carolina and prior appointed counsel by placing a copy in the US Mail, postage prepaid, on the date reflected below.

Rutledge Johnson, Esquire
Office of the Attorney General
P.O. Box 11549
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April 11, 2016
Greenwood, South Carolina