

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

---

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S.C. Supreme Court

JUAN CARLOS SANCHEZ,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

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Appellate Defender

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

ATTORNEY FOR PETITIONER

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ATTORNEYS FOR RESPONDENT

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State of South Carolina

County of Anderson

In the Court of General Sessions

State of South Carolina, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 Juan Carlos Garcia Sanchez, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

2009-GS-04-2174

April 20, 2010

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

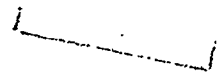
APPEARANCES:

Catherine T. Huey, Esquire  
Assistant Solicitor  
Attorney for the State

Andrew Potter, Esquire  
Attorney for the Defendant

Gilberto Gonzales, Interpreter

Renee H. Tollison  
Circuit Court Reporter



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EXHIBITS

No	DESCRIPTION	ID	EV
	No Exhibits Were Presented During the Hearing		

*State v. Juan Carlos Garcia Sanchez 2009-GS-04-2174*  
*Guilty Plea Hearing April 20, 2010*

3

1 (WHEREUPON, court convened with all parties present  
2 and the following proceedings were had commencing at  
3 approximately 11:09 a.m. An interpreter, Gilbert  
4 Gonzales, is used throughout this hearing and is  
5 interpreted all proceedings for the Defendant.)

6 MS. HUEY: Your Honor, may it please the Court.  
7 This is Juan Sanchez. He's pleading to ABWIK, 2009-GS-  
8 04-2174. And he does need an interpreter.

9 (WHEREUPON, Gilbert Gonzales, the interpreter, was  
10 duly sworn.)

11 THE COURT: All right. Yes, ma'am?

12 MS. HUEY: Your Honor, the recommendation in  
13 this case is twenty years suspended to ten years and five  
14 probation, no contact with the victim, substance abuse  
15 counseling, random drug and alcohol testing, and domestic  
16 violence counseling.

17 THE COURT: All right. Mr. Sanchez, if you  
18 would, raise your right hand.

19 **JUAN CARLOS GARCIA SANCHEZ,**

20 **BEING FIRST DULY SWORN,**

21 **TESTIFIED THROUGH AN INTERPRETER AS FOLLOWS:**

22 **EXAMINATION**

23 **BY THE COURT:**

24 Q. How old are you?

25 A. (By interpreter) Twenty-five years old.

1 Q. And where are you from originally?

2 A. (By interpreter) From Comayagua, Honduras.

3 Q. Where is that in the country? North, south or  
4 central?

5 A. (By interpreter) Central, about central from the  
6 north.

7 Q. Is it near Yoro Poli? Do you know where Yoro Poli  
8 is?

9 A. (By interpreter) No.

10 Q. Okay. I just spent a wonderful couple of weeks  
11 sleeping in the jungle near Yoro Poli.

12 Have you had any drugs or alcohol in the last  
13 twenty-four hours?

14 A. (By Defendant) Uh-uh (negative).

15 Q. Has anyone threatened you in any way or promised you  
16 anything to get you to plead guilty here today?

17 A. (By interpreter) No.

18 Q. Okay. Do you understand there's a recommendation  
19 here of twenty years suspended to the service of ten and  
20 then probation?

21 A. (No response)

22 Q. Do you understand I don't have to go along with  
23 that? I could sentence you up to the full twenty-year  
24 charge. Do you understand?

25 A. (By interpreter) Yes.

1 Q. All right. You have several constitutional rights  
2 that you have to waive. Do you understand that?

3 A. (By interpreter) Yes.

4 Q. Are you waiving your right to remain silent?

5 A. (By interpreter) Yes.

6 Q. Are you waiving your right to put up a defense?

7 A. (By interpreter) Yes.

8 Q. Are you waiving your right to confront the witnesses  
9 that the State would bring in to testify against you?

10 A. (By interpreter) Yes.

11 Q. Have you had plenty of time to speak with your  
12 lawyer?

13 A. (By interpreter) I've spoken two or three times.

14 Q. Do you feel like he's explained everything to you?

15 A. (By interpreter) Yes.

16 Q. Do you need to ask him any questions now?

17 A. (By interpreter) No, I don't think so.

18 Q. Are you satisfied with the services that he's given  
19 you?

20 A. (By interpreter) Yes, I'm satisfied. He's helped  
21 me a lot.

22 Q. Okay. And are you waiving your right to a jury  
23 trial here today?

24 A. (By interpreter) Yes, I think so.

25 Q. All right. Do you want to plead guilty to these

1 charges, and are you guilty?

2 A. (By interpreter) Yes.

3 Q. Do you have any record in this country, any criminal  
4 record?

5 A. (By interpreter) No.

6 Q. What about in Honduras?

7 A. (By Defendant) Uh-uh (negative).

8 Q. Nothing?

9 A. (By interpreter) No. This is the first time I've  
10 ever been in any kind of trouble anywhere. My record is  
11 totally clean in Honduras as well as in the U.S.

12 Q. When did you come to this country?

13 A. (By interpreter) 2005.

14 Q. Okay. All right.

15 THE COURT: Yes, ma'am

16 MS. HUEY: Your Honor, may it please the Court.

17 This offense occurred on June 22nd of 2009 at [REDACTED]

18 [REDACTED] in Pendleton, which is in Anderson County.

19 The victim in this case, Your Honor, Angie Major, awoke  
20 to her exboyfriend, Juan Sanchez, sitting on top of her  
21 while she was asleep in her bed. He had a knife in his  
22 hand, and he said if no one -- if he couldn't have her,  
23 no one could. He then proceeded to stab her in the neck.  
24 They struggled, and he actually stabbed her a second  
25 time.

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*GUILTY PLEA HEARING April 20, 2010*

7

1           Eventually, she was able to get away from him. He  
2           turned the knife on himself and cut himself a couple of  
3           times. She was able to get away and call 911.

4           She did have to go to the hospital for treatment and  
5           was in the hospital for several days, Your Honor. The  
6           Defendant eventually came back to the scene of the crime  
7           about an hour and a half after the incident took place.  
8           And that's where he was taken into custody, Your Honor.

9           THE COURT: All right.

10          MS. HUEY: Your Honor, in the unlikely event  
11          that ICE does not pick him up, that's why we wanted him  
12          to be on probation when he got out. But he does have a  
13          hold on him.

14          THE COURT: All right. Do you agree with those  
15          facts?

16          THE DEFENDANT: (By interpreter) Yes.

17          THE COURT: All right. Yes, sir.

18          MR. POTTER: Thank you, Your Honor. If it  
19          pleases the Court. I've advised Juan about the  
20          immigration manifications (phonic) of entering a plea  
21          today. I've explained to him that by entering a guilty  
22          plea to this charge, it is likely that he will be seized  
23          by Immigration and deported as a result of having this  
24          charge and this guilty plea. He understands that.

25          Your Honor, it's a situation, I think, where he was

1 highly intoxicated. And what happened was he did end up  
2 stabbing himself as well in the neck. He ended up  
3 serving -- he was in the hospital for a fair amount of  
4 days. He had to have surgery. He was in ICU for a  
5 couple of days because of the injury he gave to himself.  
6 He was so upset and distraught about what was going on.

7       Respectfully, Judge, I'd ask you to consider  
8 following this recommendation. Honestly, I think it's,  
9 you know, the best resolution to this particular matter.

10       MS. HUEY: And Your Honor, if I may add, the  
11 victim is here, but she doesn't wish to address the  
12 Court. I have explained everything to her, and she's in  
13 agreement with the recommendation.

14       THE COURT: Okay. Mr. Sanchez, why did you do  
15 this? What was going on in your head?

16       THE DEFENDANT: (By interpreter) I know. I  
17 more likely lost control of myself. It never did cross  
18 my mind to do something like that. I think it could  
19 possibly have been an accident that happened to me that I  
20 -- it never crossed my mind. With respect to the act,  
21 she's stating I acted -- truly I don't even recall doing  
22 such a thing. After I saw my girlfriend bleeding, I was  
23 very scared. I've never done such a thing. When I saw  
24 her bleeding, then I thought, I'll just stab myself,  
25 because I was very scared. I was in shock.

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*Guilty Plea Hearing April 20, 2010*

9

1 THE COURT: Had you had too much to drink that  
2 night?

3 THE DEFENDANT: (By interpreter) Too much?  
4 Too much? I don't know. Something was going on in my  
5 head, and I just couldn't control myself. But really and  
6 truly I never tried to hurt nobody before, and I cannot  
7 comprehend how it happened at that moment.

8 THE COURT: Do you have family in this country?

9 THE DEFENDANT: (By interpreter) I have two  
10 brothers.

11 THE COURT: And they know what this sentence  
12 is? They know where you're going to be?

13 THE DEFENDANT: (By interpreter) I'm not sure.  
14 Only one of them basically once, and I have not seen him  
15 since. Maybe -- I think they might be upset because of  
16 what I did, but I have prayed to God that he help me  
17 change my life, as well as I pray to God that he changes  
18 my girlfriend's life also.

19 THE COURT: All right. I'm going to accept  
20 your plea and find it freely and voluntarily made and  
21 based upon the advice of Counsel. And I'll go along with  
22 the recommendation. The sentence is twenty years  
23 suspended to the service of ten, probation for five,  
24 domestic violence counseling, random drug and alcohol  
25 testing, substance abuse counseling and credit for time

1 served. How long you been in jail?

2 MR. POTTER: Three hundred and two days is my  
3 calculation, Judge.

4 THE DEFENDANT: (By interpreter) Ten months.

5 MR. POTTER: Three hundred and two days.

6 THE COURT: All right. I'm going to give you  
7 credit for three hundred and two days which will help  
8 you.

9 MS. HUEY: And also, Judge, no contact, if you  
10 don't mind.

11 THE COURT: Yeah. No contact.

12 MS. HUEY: Thank you, Judge.

13 THE COURT: Thank you.

14 (WHEREUPON, the hearing ended at approximately 11:22  
15 a.m.)

16 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

*State v. Juan Carlos Garcia Sanchez 2009-GS-04-2174*  
*Guilty Plea Hearing April 20, 2010*

11

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court  
3 Reporter for the Tenth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all  
6 the proceedings had and evidence introduced in the  
7 trial/hearing of the captioned case, relative to appeal,  
8 in the Circuit Court for Anderson County, South Carolina,  
9 on the 20<sup>th</sup> day of April 2010.

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

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

14 January 6, 2011

15

16

17



Circuit Court Reporter

STATE OF SOUTH CAROLINA )

County of Anderson )

Juan Carlos Sanchez #340422 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

A TRUE COPY  
SEP 27 2010  
Martha A. Newton  
CLERK OF COURTS

CONFIDENTIAL  
GENERAL SESSIONS AND

2010 SEP 27 P 4:15

FILED-CLERK'S OFFICE  
ANDERSON SC

APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-04-03453

**INSTRUCTIONS B READ CAREFULLY**

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

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

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

1. Place of detention Kirkland Correctional Institution,  
4344 Broad River Rd, SC 29210
2. Name and location of Court which imposed sentence Anderson County  
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2009GS0402174; Assault/Assault and battery  
with intent to kill (ABWIK)

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

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

(a) April 20, 2010; 20 years Suspended to 10 years.

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

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

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

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

No

8. If you answered Ayes@ to (7), list:

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

N/A

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

N/A

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

N/A

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

N/A

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) The Applicant was not informed or did not understand his right to appeal.

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

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

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

(a) See Attachment

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

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

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

(a) See Attachment

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

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

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

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

i. N/A

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

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

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

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

i. N/A

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

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

## 10 + 11 Grounds For Relief with Supporting Facts

10(a): Applicant was denied effective assistance of Counsel in violation of the Sixth and Fourteenth amendments to the United States Constitution and South Carolina law.

11(a): Applicant's Counsel was ineffective for the following reasons:

(a1): Attorney did not adequately consult with the applicant before entering plea.

(a2): Attorney failed to make an independent investigation of the facts and circumstances of the case.

(a3): Attorney failed to explain the matter to the extent reasonably necessary to permit the applicant to make an informed decision on whether or not, to plea or go to trial.

(a4): Attorney failed to inform the applicant of his right to appeal.

(a5): Attorney failed to ensure that there was not a break-down in communication because of the language barrier (the applicant only speaks Spanish).

Counsel's representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for Counsel's errors, the applicant would not have pled guilty, but would have insisted on going to trial.

Applicant does not have post-Conviction Counsel at this time. Further, I do not yet have a copy of Counsel's file, access to discovery, access to funds for expert and investigative services, or any ability to conduct an investigation. Given these limitations, I cannot provide further information regarding additional claims available to me.

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

(c) the disposition thereof: N/A

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

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

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

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

(d) the date of each such disposition: N/A

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

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

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

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

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

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

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

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

(a) which grounds have been presented: N/A

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Robert A. Gamble, 301 Camson Rd., Anderson SC, 29625 (10<sup>th</sup> Circuit Public Defender's office).
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Arraignment and plea.
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Applicant Seek's relief from his Conviction and Sentences

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Anderson )

VERIFICATION

I, Juan Carlos Sanchez, 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.

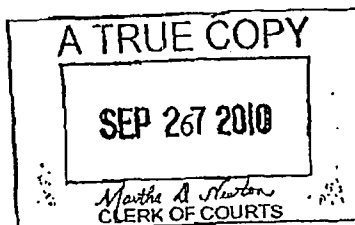
Juan Carlos Sanchez

SWORN to and subscribed before me this 20th day of September, 2010.

Doyle Wesley (L.S.)  
Notary Public

My Commission Expires: 10/18/2014

FILED-CLERK'S OFFICE  
ANDERSON SC  
2010 SEP 27 P 4: 15  
COURT SEAS AND  
GENERAL SESSIONS



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

I, Juan Carlos Sanchez, 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.

X Juan Carlos Sanchez  
Applicant

SWORN or affirmed to and subscribed before me this  
20th day of September, 2014.

[Signature]  
Notary Public

My Commission Expires: 10/8/2017

FILED-CLERK'S OFFICE  
ANDERSON SC  
2010 SEP 27 P 4: 15  
COMMON PLEAS AND  
GENERAL SESSIONS

A TRUE COPY  
SEP 27 2010  
Maitha A. Newton  
CLERK OF COURTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	2010-CP-04-3453
	)	
Juan Carlos Sanchez, #340422,	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	

---

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 27, 2010, 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 Anderson County Clerk of Court. The Applicant was indicted at the August 25, 2009 term of the Anderson County Grand Jury for Assault and Battery with Intent to Kill (2009-GS-04-2174). He was represented by Robert Gamble, Esquire. On April 20, 2010, the Applicant pled guilty. He was sentenced to confinement for a period of twenty (20) years, suspended to ten (10) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

- I. Ineffective assistance of counsel;
  - a. "Attorney did not adequately consult with the Applicant before entering plea."
  - b. "Attorney failed to make an independent investigation of the facts and circumstances of the case."
  - c. "Attorney failed to explain the matter to the extent reasonable necessary to permit the Applicant to make an informed decision on whether or not to plea or go to trial."
  - d. "Attorney failed to inform the Applicant of his right to appeal."
  - e. "Attorney failed to ensure that there was not a break-down in communication because of the language barrier (the Applicant only speaks Spanish)."

### III.

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).

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

#### IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a

direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known. Id. 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.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VI.

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

Respectfully submitted,

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December 10, 2010

STATE OF SOUTH CAROLINA )	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON )	THE COURT OF COMMON PLEAS
)	2010-CP-04-03453
JUAN CARLOS SANCHEZ, )	
)	
PLAINTIFF, )	
)	
VERSUS )	
)	
STATE OF SOUTH CAROLINA, )	
)	DATE: MARCH 5, 2012
DEFENDANT. )	ANDERSON, SOUTH CAROLINA

POST-CONVICTION RELIEF HEARING

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

KAELOE E. MAY, ATTORNEY AT LAW  
ATTORNEY FOR THE STATE

HUGH W. WELBORN, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

ANDREW POTTER, ESQUIRE  
WITNESS

GILBERTO DE LUNA GONZALEZ  
TRANSLATOR

PROVIDED FOR: SCCID

FOR COPIES CONTACT: JO RICE  
JRICE@SCCOURTS.ORG  
OFFICIAL COURT REPORTER  
SOUTH CAROLINA JUDICIAL DEPARTMENT

1 THE COURT: All right. This is the matter of Juan  
2 Sanchez versus the State of South Carolina. Thank you for  
3 being here today.

4 MR. POTTER: You're welcome, Your Honor.

5 THE COURT: I appreciate your coming here at the last  
6 minute.

7 MR. POTTER: You are welcome, sir.

8 THE COURT: Have you had sufficient time to speak with  
9 your client?

10 MR. WELBORN I have, Your Honor.

11 THE COURT: Are you ready to proceed?

12 MR. WELBORN Yes, sir.

13 THE COURT: Let's do this: Let's go ahead and swear  
14 in the interpreter, first.

15 (The interpreter's oath is administered by the Clerk  
16 of Court to Mr. Gonzalez)

17 THE COURT: All right. You may call your first  
18 witness, Mr. Welborn. If it please the Court, we call Juan  
19 Carlos Sanchez.

20 MR. SANCHEZ: (Speaking without the interpreter) I have  
21 a question. I need to ask a question. I want to know what  
22 we are going to do here, because I don't know. I tried to  
23 speak with my lawyer, but he don't hear my interpreter, so  
24 I don't know what we are doing here today. I don't know,  
25 because Mr. Welborn, he wanted to see me one day and he

1 never did.

2 THE COURT: First of all, raise your right hand.

3 (After being duly sworn by the Clerk of Court,  
4 Juan Carlos Sanchez testified as follows:)

5 THE COURT: All right, Mr. Sanchez, do you have any  
6 difficulty understanding the translation to you from your  
7 interpreter?

8 MR. SANCHEZ: Yes.

9 THE COURT: You do?

10 MR. SANCHEZ: Could I have time to speak with my ---

11 THE COURT: No, you are going to answer my question.  
12 First of all, Mr. Sanchez, it's been reported to me that  
13 you probably speak very good English and it appears to me  
14 that you do. Out of an abundance of caution, I have asked  
15 the interpreter to be here today to make sure there's not a  
16 problem with the translation. And as I sit here now, it  
17 appears that you were conversing with the interpreter and  
18 that you understand what he is telling you. Is that  
19 correct?

20 MR. SANCHEZ: I'm kind of confused right now.

21 THE COURT: Take the stand, please, sir. Mr. Sanchez,  
22 come around and take the stand, please.

23 (Mr. Sanchez complies)

24 THE COURT: Now, I want you to speak loud enough so I  
25 can hear you. Okay, sir?

JUAN CARLOS SANCHEZ VERSUS THE STATE OF SOUTH CAROLINA

1 MR. SANCHEZ: (Via interpreter) Okay. I'm supposed to  
2 be here at this time, because I needed to speak with my  
3 attorney. I wrote to my attorney that I needed -- I wrote  
4 him a letter stating that I needed an interpreter to  
5 explain to him what my case is about, but I have no idea,  
6 what am I doing here, because I haven't had a chance to  
7 talk to him. He wrote me a letter stating he would come  
8 see me, but he couldn't for some reason. I think that  
9 based on what I have heard from him and what I have  
10 gathered, the information that I have gotten here lately, I  
11 don't think he is working on my case, because I'm confused  
12 about what we are doing here today. I have come to realize  
13 that I have not gotten the accurate help that I needed from  
14 him and I would like to ask that my case be canceled at  
15 this time, because we are getting nowhere with him.

16 THE COURT: All right. I'm going to treat that as a  
17 request for a continuance. This case has been pending  
18 since September of 2010, and that request is denied. We  
19 will proceed. Your objection is noted.

20 MR. SANCHEZ: I am now going to request that I get a  
21 new attorney, because I am not satisfied with his services.

22 THE COURT: That is denied.

23 MR. SANCHEZ: Whenever I requested to have time to  
24 speak with him and I tried to explain to him the  
25 circumstances, he got upset with me and told me that he

1 felt like I was playing, and I'm not playing. I'm very  
2 serious. I just needed to talk to him. I don't want to  
3 play with the system.

4 THE COURT: I understand. We are going to proceed  
5 with the hearing. (Begins to speak) Listen. We are going  
6 to proceed with a hearing on your application for post-  
7 conviction relief.

8 MR. SANCHEZ: That's what we talked about today, but  
9 he would not listen to me. He just told me what he wanted  
10 to ---

11 THE COURT: Stop. No more. Okay? I've ruled that  
12 the case is going to proceed and it shall proceed now. Mr.  
13 Welborn.

14 MR. WELBORN May it please the Court.

15 DIRECT EXAMINATION OF JUAN SANCHEZ BY MR. WELBORN

16 Q You are Juan Sanchez?

17 A Yes, sir.

18 Q You were before this Court in August of 2000, excuse  
19 me, April of 2010 and you pled guilty to assault and  
20 battery with intent to kill. Is that correct?

21 A I think there was a mistake, a confusion, because when  
22 I came to this case I was currently sick and during  
23 that period of time, I was taking lots of medications  
24 which made me sleep a lot and based on that fact, I  
25 couldn't really understand the whole procedure.

1 Q Did you tell the Court that, on that particular day  
2 when you pled guilty, sir?

3 A I remember the judge asked me if I was satisfied with  
4 the services of my attorney and I did not answer that  
5 question, once again, because I didn't feel like my  
6 mind was in the right place.

7 Q Now, you've alleged in your application that you had  
8 ineffective assistance of counsel and you said that  
9 your lawyer, who is present today, did not speak with  
10 you, accurately, before pleading guilty. Is that  
11 correct?

12 A That's correct.

13 Q How many times did you speak with your lawyer before  
14 you entered this plea?

15 A Well, I didn't have a chance to speak with him before,  
16 when I was in jail. The only time I saw him was when  
17 I was ready for sentencing at the courtroom.

18 Q How many times did you meet with him?

19 A Twice.

20 Q What would you want your attorney to have done for you  
21 that he did not do?

22 A Because I think that in my case, I was sentenced to a  
23 very long time, based on what happened. I think  
24 somebody was confused and I have gotten too much time  
25 for it.

1 Q You allege that you lawyer failed to make an  
2 independent investigation of the facts and  
3 circumstances of this case.

4 A I don't think so, because on any case, he should have  
5 seen the evidence and showed me the evidence that they  
6 had against me, but he never showed me anything.

7 Q So, is it your testimony, then, that he did not do an  
8 independent evaluation of what happened? Is that what  
9 you are saying?

10 A Yes. That is what I think, because in my case I think  
11 that, in my case when he was supposed to have spoken  
12 to me with regards to my case of any offerings in the  
13 case, he never did spoke with me about it.

14 Q Tell me what the evidence would have showed if you had  
15 gone to trial.

16 A I do not know. All I was told is a certain person was  
17 accusing me and I think that based on what she tells  
18 me and based on what he says, somebody is not doing  
19 the right thing.

20 Q Well, you pled guilty to assault and battery with  
21 intent to kill. Are you now telling the Court that  
22 you didn't do that?

23 A I did it, because he stated it on a piece of paper,  
24 but I cannot lie before God, because I turned my heart  
25 to God a long time ago. I did it, because I was

1           confused, therefore, my attorney offered me 20 years  
2           and I was told that if we went to trial and I would  
3           lose the trial, more than likely I would be facing  
4           anywhere from 20 to 30 years, and I was not ready for  
5           something like that.

6           Q    I might not have understood your answer. My question  
7           was, you pled guilty, did you not do this that you  
8           pled guilty to?

9           A    I admitted, under the pressure, that I was told if I  
10          didn't sign and agree to that, I could possibly get  
11          several more years in prison.

12          Q    Is it your testimony then, you were pressured to plead  
13          guilty?

14          A    Yes. That's why I did it.

15          Q    You also allege that you weren't told of your right to  
16          an appeal. Is that correct?

17          A    I think I need more information with regards to the  
18          appeal. I don't understand that word.

19          Q    What else are you complaining about regarding your  
20          attorney, Mr. Potter? What did he not do that you  
21          wanted him to do?

22          A    Well, I think that, that he, I felt like I was  
23          threatened by him so I would take, go ahead and plead  
24          guilty.

25          Q    Is there any reason why you didn't tell the Court

1           that?

2           A     Because that day of the hearing when I was here, like  
3           I've stated before, the judge informed me if I was  
4           satisfied with the work of the attorney. I did not  
5           agree, yay or nay. I just nodded my head, because I  
6           was not certain what to say.

7           Q     Thank you. Answer anything the Court may have.

8           THE COURT: Ms. May.

9           MS. MAY: Thank you, Your Honor. May it please the  
10          Court.

11          CROSS EXAMINATION OF JUAN SANCHEZ BY MS. MAY

12          Q     Mr. Sanchez, do you understand that you have been  
13          sworn to tell the truth today?

14          A     Yes, ma'am.

15          Q     And you understand that at your guilty plea, you were  
16          sworn to tell the truth?

17          A     I swore to tell the truth, but I signed those  
18          documents, being afraid that I could have gotten more  
19          time than what I have already received and that's why  
20          I signed them.

21          Q     At your guilty plea hearing, an interpreter was  
22          provided for you. Correct? At your guilty plea  
23          hearing, was an interpreter provided?

24          A     My interpreter, he was the same person. He was my  
25          interpreter.

1 Q Okay. And at your guilty plea hearing, do you recall  
2 the solicitor reciting the facts of your case?

3 A Yes. He read some document where he stated that the  
4 person that was accusing me, he read the charges about  
5 it.

6 Q And you agreed with those facts. Correct?

7 A No, because those are not the facts.

8 Q Okay. In the transcript of your guilty plea, it  
9 reflects that you did agree with those facts. I'm  
10 referring to the transcript.

11 A For the same reasons that I already said, for the same  
12 reason that I was not in the right mind, but I agreed  
13 to sign the document accepting that I was guilty, but  
14 I was not, because I was afraid of getting more time.  
15 I believe that I made a mistake by signing this, but I  
16 did it because of all the pressure that I had, they  
17 already completed a lot of fear in me due to me  
18 getting more time.

19 Q Okay. So, that wasn't the truth, what the solicitor  
20 said at your guilty plea?

21 A No.

22 Q Do you recall at your guilty plea, the judge asking  
23 you if you were guilty of assault and battery with  
24 intent to kill?

25 A I didn't say that, because for the same thing and I

1 had already signed those documents and my sentencing  
2 was already agreed upon, but at no time, I'm guilty.

3 Q I was just asking, do you remember the judge asking  
4 you if you were guilty.

5 A I did it, because all of the documents were signed and  
6 I had no way out of it. I couldn't speak English, I  
7 couldn't say anything to him. I had an interpreter,  
8 but I think he also made some mistakes, because I told  
9 him about my case, but he did not relay that to my  
10 attorney. I was just given time, then I couldn't go  
11 ahead, because he was my interpreter. If I said  
12 anything about anybody, he wouldn't tell my  
13 interpreter why, because he was the same.

14 Q Okay. This is just a yes or no question. Do you  
15 remember the judge asking you if you were guilty? Yes  
16 or no.

17 A Yes. I did.

18 Q And do you admit today that you are guilty of assault  
19 and battery with the intent to kill?

20 A No.

21 Q Okay. And do you recall telling the judge that you  
22 had enough time to speak with your attorney?

23 A Yes. He stated that.

24 Q Do you recall telling the judge, yourself, that you  
25 had enough time to speak with your attorney?

1           A     I didn't do it. I was asked. He asked me if I was  
2                    satisfied with the work he provided. Once again, I'm  
3                    going to say it, I stated yes for the same reasons, I  
4                    could say nothing else. I didn't know what else to  
5                    say.

6           Q     So, was that true, then?

7           A     That's what I said.

8           Q     But was that the truth? Were you satisfied with Mr.  
9                    Potter?

10          A     No. No. Like I said, I was confused about the whole  
11                   situation, because of all of the time that I was  
12                   offered and I was pressuring to taken it.

13          Q     Okay. Did you mention to the judge that you felt  
14                   pressured at your guilty plea?

15          A     I didn't do it, because the person that was  
16                   interpreting for me, I spoke with him with regards to  
17                   my case and he never commented that to my attorney.

18          Q     But at your guilty plea, you didn't tell the judge  
19                   that you felt threatened?

20          A     I didn't do it, because the interpreter, at the moment  
21                   that I spoke with him so he could explain that to my  
22                   attorney, and he didn't do it.

23          Q     So, it's your testimony that you told the interpreter  
24                   that you felt threatened?

25          A     Because the same things that he was saying to me, if I

1           agreed to sign for 12 or 20 years, that's what I was  
2           told by the interpreter and the attorney.

3           Q    Do you remember telling the judge at your guilty plea  
4           that no one had threatened you to plead guilty?

5           A    Can you repeat one more time, please? (Sans  
6           interpreter)

7           Q    At your guilty plea, do you remember telling the judge  
8           that no one had threatened you to plead guilty?

9           A    I never did it for the same reason as before. I was  
10          somewhat upset, because I spoke to my interpreter so  
11          he would explain to my attorney how my case was, but  
12          he didn't do it.

13          Q    So, you told the judge that, no, you were not  
14          threatened or pressured?

15          A    I did not say anything. I never spoke a word, and  
16          that's why the case, that's why we are trying to come  
17          back and try to have a PCR hearing, because there was  
18          a lot of mistakes and confusions in the whole, how  
19          everything was handled, was not handled appropriately.

20          Q    If the guilty plea transcript reflects that you told  
21          the judge that you were not threatened, do you agree  
22          with that?

23          A    I did not do it, because like I just stated, my  
24          interpreter, I told him about my case so he would talk  
25          to my attorney and he didn't do it. Based on that,

1 and I didn't speak very good English. I speak very  
2 little. I could not ask the judge or any question to  
3 anyone. I couldn't do it, because everybody was  
4 pressuring me to go ahead and accept the guilty plea  
5 so I take the time.

6 Q But you chose to plead guilty. Correct?

7 A I did it for the same reason.

8 Q Okay.

9 MS. MAY: I have no further questions.

10 THE COURT: Redirect?

11 MR. WELBORN No, sir.

12 THE COURT: You may step down.

13 MR. WELBORN That's our case, Your Honor.

14 THE COURT: That's your case? All right. Ms. May,  
15 you may call your first witness.

16 MS. MAY: May it please the Court, Your Honor. The  
17 State would like to call Mr. Potter.

18 (After being duly sworn by the Clerk of Court, Andrew  
19 Potter testified as follows:)

20 CLERK OF COURT: If you would take the stand and state  
21 your name for the record, please.

22 MR. POTTER: Andrew Potter.

23 DIRECT EXAMINATION OF ANDREW POTTER BY MS. MAY

24 Q Mr. Potter, where are you currently employed?

25 A I'm an attorney with the Tenth Judicial Circuit Public

1 Defender's Office.

2 Q And how much of your practice has been in criminal  
3 law?

4 A One hundred per cent.

5 Q Do you recall if you were appointed or retained?

6 A Appointed.

7 Q Do you recall how many times you were able to meet  
8 with Mr. Sanchez?

9 A Offhand, I know of one time at the Detention Center  
10 with Gilberto. We met and it was an extended meeting  
11 talking about the facts of the case and the  
12 circumstances surrounding it and then there were other  
13 times in the courtroom when they would bring them over  
14 during plea weeks.

15 Q And when you met with Mr. Sanchez, there was always an  
16 interpreter ---

17 A Yes.

18 Q --- present?

19 A Yes.

20 Q Did you discuss the elements of the charges the State  
21 had to prove?

22 A We discussed the nature of the case, what his defenses  
23 may or may not be and, you know, what we were going to  
24 do with the case, whether there was going to be a  
25 trial or a plea. There were some negotiations going

1 back and forth. The Solicitor initially offered 15.  
2 I relayed that offer to my client. He came back and  
3 said he would consider doing 5. So, there was going  
4 back and forth with regards to negotiations on this  
5 case. So, we discussed the nature of the charges and  
6 all that.

7 Q Okay. Did you discuss his version of the facts?

8 A Yes.

9 Q And during your discussions, did Mr. Sanchez ever  
10 indicate to you that he was having difficulty  
11 understanding the discussions?

12 A Not that I was aware of.

13 Q And did you file a Brady or Rule 5 motions?

14 A Yes.

15 Q And do you recall what the discovery consisted of?

16 A Incident Reports, warrants, indictments, medical  
17 records from the prosecuting witness. We also had him  
18 sign a HIPPA release from our office so that we could  
19 get his medical records immediately after this  
20 incident occurred. He had a self-inflicted wound to  
21 his neck that he had to go to the hospital for, as  
22 well, and so we wanted to get those records, as well.

23 Q Did you review all of the discovery materials with Mr.  
24 Sanchez?

25 A Yes.

1 Q And prior to the plea, did you have the opportunity to  
2 discuss the impact, if any, that a guilty plea would  
3 have on his immigration status?

4 A Yes. And we set that up when we did the plea, that  
5 there would be immigration ramifications if he entered  
6 the plea. I think at the time, there was a hold from  
7 ICE, so we did discuss the nature of, I guess, Padilla  
8 versus Kentucky issues.

9 Q Do you recall Mr. Sanchez giving any statements or  
10 confessions to the police?

11 A I don't recall any confessions.

12 Q Did Mr. Sanchez provide you with any potential  
13 witnesses or leads for an investigation?

14 A No.

15 Q Do you feel you had sufficient time to review and  
16 prepare Mr. Sanchez' case?

17 A Yes.

18 Q And you said that you engaged in plea negotiations in  
19 this case and that the first offer was 15 years.

20 A Yes.

21 Q Were there any other offers?

22 A Fifteen, they came down to 12. We were at 5 for  
23 awhile and then, eventually, it was agreed upon, 10.

24 Q And you discussed all the plea negotiations and offers  
25 with Mr. Sanchez?

1           A     Either in person or I sent letters indicating what was  
2                   going on. I got a letter back from him, I think.  
3                   That's when he did authorize me to do the 5-year  
4                   offer.

5           Q     And did you discuss options with Mr. Sanchez in terms  
6                   of the advantages and drawbacks of going to trial  
7                   versus pleading guilty?

8           A     It was explained to him. I don't recall specifically  
9                   sitting down and saying, "This, this and this," but  
10                  what I do, I tell my clients that you can enter a plea  
11                  and accept the recommendation by the State or you can  
12                  do a stand up, straight-up plea in front of a judge  
13                  where you let the judge make the determination with  
14                  regards to any potential sentence, however, if you do  
15                  not take a plea and you do not take the offer, and you  
16                  take the case to trial, you do run the risk of,  
17                  possibly, getting the maximum sentence if you lose at  
18                  trial.

19          Q     And based on your review of the discovery and your  
20                  discussions with Mr. Sanchez, did you feel you had a  
21                  successful case to take to trial?

22          A     No.

23          Q     And whose decision was it to plead guilty, ultimately?

24          A     It's always the client's decision. I can advise them  
25                  what their options are, but ultimately, they are the

1           ones that have to make the decision and it was his  
2           decision.

3           Q     Did Mr. Sanchez ever ask you to file an appeal?

4           A     No.

5           Q     If he had asked you to file an appeal, what would you  
6           have done?

7           A     We would have filed an appeal.

8           Q     And just in reviewing the guilty plea, do you think  
9           there is an actual legal basis for an appeal?

10          A     No.

11          Q     I have no further questions. Thank you.

12          THE COURT: Cross examination?

13          CROSS EXAMINATION OF ANDREW POTTER BY MR. WELBORN

14          Q     When you met with Mr. Sanchez, what independent  
15          evidence of his guilt, if any, did you have, besides  
16          what he told you?

17          A     I don't know if I had discovery at the time I met him  
18          the first time, but there was, we had the incident  
19          report from the Sheriff's Deputies, the investigating  
20          deputies. We also had the medical reports from the  
21          prosecuting witness, as well as his medical reports  
22          from AnMed, as well.

23          Q     Did he admit to you that he stabbed this person?

24          A     He told me that he blacked out and couldn't remember  
25          anything about it. All he remembered is -- before I

1 answer that question, I need to understand if there is  
2 a waiver of attorney/client privilege.

3 THE COURT: If he files a PCR, I believe that is a  
4 waiver in and of itself.

5 MR. POTTER: I just need to make sure, because there  
6 has been some talk among defense lawyers about whether or  
7 not this constitutes attorney/client waiver.

8 THE COURT: Well, let me just say this: the fact that  
9 Mr. Sanchez has filed an application alleging ineffective  
10 assistance of counsel and specifying the reasons why, you  
11 have a right to explain that and I will find that he waived  
12 any attorney/client privilege and I'm directing you to  
13 answer the question.

14 MR. POTTER: Thank you, Judge.

15 A You need to ask the question again. I'm sorry. I  
16 mean, I need you to ask the question again.

17 Q I asked, I think, did he admit to stabbing this person  
18 and you said he blacked out.

19 A He said he blacked out. Right.

20 Q And then you wanted to know if you could waive the  
21 attorney/client privilege to expand further, I  
22 believe.

23 A If I recall correctly, is, he blacked out and all he  
24 remembered was seeing his girlfriend with lots of  
25 blood and then turning a knife on himself and then he

1           went to the hospital.

2           Q    Did you do an investigation to see if there was anyone  
3           else who could have done this?

4           A    Well, there were no indications, regarding my  
5           interviews with him or any discussions with him or in  
6           the discovery, that anyone else was in that room at  
7           the time this occurred.

8           MR. WELBORN   That's all I have.

9           THE COURT:   May this witness step down and be excused?

10          MS. MAY:    That's all from the State, Your Honor.

11          THE COURT:   Thank you, sir.

12          MR. POTTER:   Thank you, Judge.

13          THE COURT:   Ms. May, do you have any other witnesses?

14          MS. MAY:    No, Your Honor.

15          THE COURT:   Okay. Anything in response to Ms. May's  
16          case?

17          MR. WELBORN   No, sir.

18          THE COURT:   I'll be glad to hear you on closing  
19          arguments, Mr. Welborn.

20          MR. WELBORN   Your Honor, I think my client has  
21          explained the best way that he can, that he felt  
22          intimidated into pleading guilty and that but for that, he  
23          would have insisted upon going to trial and, therefore, we  
24          request a new trial.

25          THE COURT:   Ms. May?

1 MS. MAY: Your Honor, we would just heavily rely on  
2 the guilty plea transcript. Judge Maddox did an accurate  
3 job of going through his rights, whether he understood,  
4 knew the maximum, and the charges he was pleading guilty  
5 to. I submit that Mr. Sanchez has failed to prove that Mr.  
6 Potter was deficient or there was any prejudice.

7 THE COURT: Let me just say, I read the transcript,  
8 I've read the return, I've read the petition and the entire  
9 case file in this matter.

10 First, I'm going to find that the Plaintiff has not  
11 met his burden of proof in establishing an attorney  
12 deficiency, nor any prejudice resulting from alleged  
13 deficiency. He has not established that he would have  
14 otherwise gone to trial had he known of the true facts of  
15 this case through some type of discovery. In fact, his own  
16 testimony is that he was trying to avoid going to trial,  
17 because of the fact that he would potentially get a 20-year  
18 sentence, therefore, the Plaintiff has not met his burden  
19 of proof. A review of the transcript demonstrates that  
20 Judge Maddox asked, on the record, enough questions of the  
21 defendant to know that he made a knowing, intelligent and  
22 voluntary plea. In fact, by his own testimony, the  
23 Plaintiff, Mr. Sanchez, made the strategic decision to plea  
24 rather than taking the chance of getting more time if he  
25 were to go to trial. He has presented no evidence,

1       whatsoever, of his claims, except his mere allegations,  
2       which are insufficient.

3               Also, from a review of the transcript, he was asked at  
4       page 4 by Judge Maddox whether or not he had had any  
5       alcohol or drugs within the last 24-hours and he  
6       specifically answered negative, contrary to his present  
7       in-court testimony.

8               Also, at page 5, Judge Maddox asked Mr. Sanchez if he  
9       had plenty of time to speak with his attorney and he said,  
10       "I've spoken with him two or three times. He said that he  
11       felt like his attorney had explained everything to him. He  
12       asked if he needed to ask him any questions now and he  
13       said, "No". And when asked if he was satisfied with his  
14       attorney's services, he, specifically, said, "Yes, I'm  
15       satisfied. He helped me lot." Therefore, his current  
16       allegations are not credible and, as such, I'm finding his  
17       entire testimony is not credible.

18               Further, after having the facts placed on the record  
19       by the Solicitor's office, Judge Maddox questioned,  
20       specifically, the Plaintiff in this matter, Mr. Sanchez, at  
21       page 8 and he asked him, "Why did you do this? What was  
22       going on in your head?" Therefore, for two to three pages,  
23       the defendant gave detailed answers as to his conduct  
24       surrounding this event which indicates that he, in fact,  
25       knew what he was doing and was, in fact, guilty and that

1 was why he was pleading guilty.

2 Now, he raised an issue as to Mr. Gonzalez acting as  
3 his interpreter. Isn't that right, Mr. Gonzalez? Let me  
4 say this for the record: In a meeting with counsel prior  
5 to coming in here, there was some question as to whether or  
6 not the Plaintiff even needed an interpreter based on a  
7 feeling that he spoke excellent English. However, out of  
8 an abundance of caution, I asked the Clerk to contact Mr.  
9 Gonzalez, who agreed at the last minute to participate in  
10 this hearing. Although he was the Defendant's interpreter  
11 at the prior hearing, it is clear, I've watched Mr.  
12 Gonzalez and Mr. Sanchez interact with one another  
13 throughout this hearing and it is clear to me that Mr.  
14 Sanchez is fully capable of communicating with his  
15 interpreter and that his interpreter is fully capable of  
16 communicating with him and that they have interacted with  
17 one another and communicated throughout this hearing and so  
18 I don't see that there is any issue, whatsoever, as to the  
19 ability of Mr. Gonzalez to faithfully and properly  
20 interpret the record in this matter. Obviously, it would  
21 have been preferable that we have another interpreter, but  
22 Mr. Sanchez has presented no evidence, whatsoever, to  
23 indicate that there was any problem with the translation,  
24 other than what he has said.

25 He made a motion for a continuance at the outset of

1 this hearing, which I find was untimely and properly  
2 denied. Also, he made a motion to dismiss his present  
3 counsel, which I denied, based on what appeared to be just  
4 an attempt to continue this matter instead of having the  
5 issue disposed of. Even so, Mr. Welborn does a lot of PCR  
6 cases and knows how to prepare these matter and he, in  
7 fact, was prepared in this matter. With that being said,  
8 if you will prepare me an order. Thank you.

9 Also, the motion for a belated appeal is denied.  
10 There has not been any grounds presented, whatsoever, by  
11 Mr. Sanchez that would warrant a belated appeal.

12 MR. SANCHEZ: Can I ask you something?

13 THE COURT: Yes, sir.

14 MR. SANCHEZ: What's the next step of this case?  
15 What's going to happen now?

16 THE COURT: Mr. Welborn will tell you about your  
17 appeal rights.

18 (Mr. Welborn speaks with Mr. Sanchez)

19 MR. SANCHEZ: So, my motion is continued?

20 THE COURT: No, sir. Your motion for a continuance  
21 has been denied. There will be an order drafted denying  
22 your petition, then Mr. Welborn will affect an appeal of my  
23 order.

24 MR. SANCHEZ: I'm thinking we came here from prison  
25 and I have not been able to take a shower for at least four

1 or five days.

2 THE COURT: I'm not going to hear any more from him.





20, 2010, the Applicant pled guilty. He was sentenced to confinement for a period of twenty (20) years, suspended to ten (10) years. The Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective assistance of counsel;
  - a. "Attorney did not adequately consult with the Applicant before entering plea."
  - b. "Attorney failed to make an independent investigation of the facts and circumstances of the case."
  - c. "Attorney failed to explain the matter to the extent reasonable necessary to permit the Applicant to make an informed decision on whether or not to plea or go to trial."
  - d. "Attorney failed to inform the Applicant of his right to appeal."
  - e. "Attorney failed to ensure that there was not a break-down in communication because of the language barrier (the Applicant only speaks Spanish)."

## II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

### EVIDENTIARY HEARING

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#### Applicant's Testimony

At the PCR hearing Applicant testified that on the day he pled guilty he was mistaken or confused about the case because he was sick, and during that time was taking medication that made Applicant sleep a lot. Applicant testified that he did not understand the procedure at his guilty plea, and that Applicant remembered the judge asking Applicant if he was satisfied with plea counsel, Mr. Potter, but that Applicant did not answer because Applicant did not understand. Applicant testified that he only spoke with plea counsel on the day of his guilty plea and never met with counsel at the

jail. Applicant testified that he met with counsel two times, that counsel did not review the evidence with Applicant, and that counsel did not independently evaluate the case.

Applicant testified that counsel did not speak with Applicant about the case, that Applicant did not know what the evidence entailed, and that all Applicant knew was that someone was accusing him of assault and battery with intent to kill. Applicant testified that counsel informed Applicant that if they went to trial Applicant would lose and that Applicant would be facing twenty to thirty years. Applicant testified that he was under pressure because if he did not agree to plead guilty then Applicant would receive a longer sentence at trial. Applicant testified that he did not tell the plea judge that he felt threatened and that Applicant did not tell the plea judge he was satisfied with counsel as Applicant only nodded. Applicant testified that he did not speak English well so Applicant was provided an interpreter at his guilty plea hearing, and that the interpreter did not tell the court what Applicant was telling him to.

**Mr. Potter's Testimony**

At the PCR hearing, counsel testified that he was appointed to represent the Applicant, that counsel met with Applicant at least one time at the detention center, and that counsel always used the assistance of an interpreter when he met with Applicant. Counsel testified that he and Applicant discussed the elements of the charge against Applicant, what the state was required to prove, the possible sentences for the offense, and the Applicant's version of the facts. Counsel testified that he filed Rule 5 and Brady motions, that counsel received the discovery materials and reviewed the discovery materials with Applicant. Counsel testified that the discovery materials included police reports and medical records. Counsel testified that Applicant signed a HIPPA release form and that counsel was able to obtain Applicant's medical records.

Counsel testified that prior to the guilty plea hearing he and Applicant discussed the impact that a guilty plea would have on Applicant's immigration status. Counsel testified that Applicant never indicated to counsel that Applicant was having difficulties understanding their discussions. Counsel testified that he discussed possible defenses with Applicant, that Applicant did not provide counsel with any witnesses. Counsel testified that he engaged in plea negotiations on the Applicant's behalf, that the state made an initial offer of fifteen years and then lowered the offer to twelve years. Counsel testified that both parties finally agreed on a sentence of ten years. Counsel testified that he discussed all plea negotiations with Applicant, that counsel explained to Applicant that Applicant could either plead guilty and accept the recommendation of ten years, do a straight-up plea, or if Applicant lost at trial Applicant could receive the maximum penalty.

Counsel testified that Applicant informed counsel that Applicant blacked-out and only remembered seeing his girlfriend and a lot of blood, and that Applicant turned the knife on himself. Counsel testified that there was no evidence of a third-party or anyone else at the scene of the crime. Counsel testified that Applicant made the decision to plead guilty. Counsel testified that Applicant did not ask counsel to file an appeal and that counsel did not think there was any factual or legal basis to appeal.

### III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the

application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

### **Ineffective Assistance of Counsel**

The Applicant asserts that counsel was ineffective for failing to adequately consult with Applicant prior to the guilty plea, including failing to explain the case to the extent necessary so Applicant could make an informed decision whether to plead guilty or go to trial. Additionally, Applicant asserts that counsel was ineffective for failing to ensure that there was not a break-down in communication due to the language barrier. This Court finds that Applicant has failed to meet his burden of proof. A review of the guilty plea transcript demonstrates that the plea judge asked the requisite questions of Applicant and plea counsel. Applicant made the strategic decision to enter a guilty plea to avoid a greater sentence at trial. At the guilty plea hearing the judge asked Applicant whether Applicant was taking any drugs or medications and Applicant indicated that was not, which ~~is contrary to Applicant's testimony at the PCR hearing. At the guilty plea, Applicant indicated to the~~ plea judge that he had had enough time to speak with plea counsel and specifically stated that plea counsel 'helped me a lot.' This Court finds that the Applicant's testimony is not credible. This Court does find Mr. Potter to be credible. A further review of the guilty plea transcript reveals that after the solicitor placed the facts of the case on the record the plea judge asked Applicant why he did this, and then Applicant gave the plea judge a detailed answer indicating that Applicant knew what he had done.

With regard to Applicant's allegations concerning the interpreter, counsel testified that he

always used the assistance of an interpreter when he met with Applicant and this Court recognizes that an interpreter was provided for Applicant at the guilty plea hearing. At the PCR hearing, this Court obtained an interpreter out of an abundance of caution. Mr. Gilberto Gonzalez was the interpreter utilized at the Applicant's guilty plea hearing as well as at the PCR hearing. This Court observed Applicant's interaction with the interpreter during the PCR hearing and finds that Applicant was clearly capable of communicating with the interpreter and that the interpreter had no problem communicating with Applicant. This Court finds no issue with the interpreter's ability to properly interpret.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. This Court finds the Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different,

had that evidence been developed. Therefore, this Court finds that these allegations are denied and dismissed.

As to Applicant's allegation that counsel was ineffective for failing to inform Applicant of his right to appeal, this Court finds that Applicant has failed to meet his burden of proof. When the question is whether counsel was ineffective in failing to file a direct appeal from the conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a 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 (2000). Counsel testified that Applicant never asked counsel to file an appeal and that counsel did not believe there was any legal or factual basis to appeal. Under these circumstances, counsel's failure to file an appeal was not unreasonable. This Court finds that the Applicant did not present any evidence or testimony that would entitle Applicant to a belated appeal. Therefore, this Court finds that this allegation is denied and dismissed.

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#### ~~All Other Claims~~

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these

issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

V. CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCF; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 17 day of April, 2012.

Anders, South Carolina

R. Lawton McIntosh  
Presiding Judge

FILED-CLERK'S OFFICE  
LAWRENSON SC  
APR 18 A 11:30  
GENERAL SESSIONS

DOCKET NO. 2009GS04 02174

WITNESSES

Tommy Johnson, Anderson County Sheriff's Dept.

The State of South Carolina  
County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009  
Term

ARREST WARRANT NUMBER

J878515

THE STATE

vs.

Juan Carlos Garcia Sanchez

COMMITMENT

4/20/10-RH

A TRUE COPY

SEP 27 2010

Martha A. Nelson  
CLERK OF COURTS

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*  
Foreperson of Grand Jury  
Date: Foreperson

CTH

Indictment for

Assault / Assault and battery with Intent to Kill  
(ABWIK)

SC Code: 16-03-0620  
CDR Code: 0014

VERDICT

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Anderson )

INDICTMENT

At a Court of General Sessions, convened on AUG 25 2009, the Grand Jurors of Anderson County present upon their oath:

**Assault / Assault and battery with Intent to Kill (ABWIK)**

That **Juan Carlos Garcia Sanchez** did in **Anderson County** on or about **June 22, 2009**, with malice aforethought, commit an assault and battery upon one **Angie Black Major**, by **cutting the victim with some type of cutting instrument**. All in violation of Section 16-3-620, *Code of Laws of South Carolina*, (1976), as amended.

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

A TRUE COPY  
SEP 27 2010  
Marilyn R. Hinton  
CLERK OF COURTS

*Catherine J. Huey*  
ASSISTANT SOLICITOR