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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Barnwell County

Tanya A. Gee, Circuit Court Judge

MATTHEW ATKINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001731

A P P E N D I X

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

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

DANIEL GOURLEY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
PLEA TRANSCRIPT DATED APRIL 3, 2012	1
MOTION TO RECONSIDER SENTENCE	28
ORDER DENYING MOTION TO RECONSIDER SENTENCE	29
APPLICATION FOR POST-CONVICTION RELIEF	30
RETURN	34
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 20, 2015	39
ORDER SEALING APPLICANT'S EXHIBITS #1-4	125
ORDER OF DISMISSAL	127
MOTION TO RECONSIDER ORDER OF DISMISSAL	141
APPLICANT'S MOTION FOR RECONSIDERATION DENIED	143
INDICTMENTS AND SENTENCING SHEETS	144

THE FOLLOWING EXHIBITS WERE SEALED BY THE PCR COURT AND ARE ON FILE IN THE SUPREME COURT: APPLICANT'S EXHIBIT #1 (MEDICAL RECORDS), APPLICANT'S EXHIBIT #2 (BLACK AND WHITE PHOTO), APPLICANT'S EXHIBIT #3 (RAP SHEET) AND APPLICANT'S EXHIBIT #4 (PUBLIC DEFENDER DOCUMENT)

1 STATE OF SOUTH CAROLINA

2 COUNTY OF BARNWELL

CIRCUIT COURT
2012-GS-06-00106, 00107

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 MATTHEW STEPHEN ATKINSON,
7 Defendant.

8
9 Heard on April 3, 2012

10 Barnwell, South Carolina

11
12 BEFORE:

13 THE HONORABLE DOYET A. EARLY, III

14
15
16 APPEARANCES:

17 Counsel on Behalf of the State:
18 Jeffrey Alan Slocum, Jr., Esq.

19 Counsel on Behalf of the Defendant:
20 Laura McCann, Esq.

21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
25 Aiken, SC 29804-5232

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON APRIL 3, 2012 AT 12:26 P.M.:

2 MR. SLOCUM: Matthew Atkinson.

3 (Defendant placed under oath.)

4 THE COURT: This is Matthew Stephen Atkinson.

5 Indictment 12-GS-6-107, indictment for resisting arrest
6 under the B section which carries up to 10 years and/or a
7 fine of between a thousand and 10,000.

8 Indictment 12-GS-6-106, an indictment for assault
9 and battery of a high and aggravated nature. It is up to
10 20 years. It's classified as violent, serious, 85
11 percent, has not been sent to the grand jury.

12 MR. SLOCUM: That's correct, Your Honor.

13 THE COURT: What is the recommendation to start off
14 with?

15 MR. SLOCUM: Twelve years concurrent, Your Honor.

16 THE COURT: And what is his record?

17 MR. SLOCUM: He has a 1989 public drunkenness; 1990,
18 assault and battery; '91, providing alcohol to minors;
19 '95, fraudulent check; '98, petty larceny; 2000, assault
20 and battery; 2006, DUS, two DUSs out of Georgia. That's
21 all the convictions, Your Honor.

22 THE COURT: And I heard something on a bond
23 reduction yesterday. This is the assault and battery of a
24 girlfriend?

25 MR. SLOCUM: Yes, sir. She's present in the

1 courtroom with us today.

2 THE COURT: All right. Ms. McCann, you represent
3 Mr. Atkinson. I assume you've advised him of the charges;
4 the potential sentences I've just expressed, 20 years on
5 one charge and up to 10 on the other; of his right to
6 trial by jury; of his right to have the Indictment 106
7 presented to the grand Jury. Is that correct?

8 MS. McCANN: That's correct, Your Honor,

9 THE COURT: Have you further advised him that
10 Indictment 106 is classified as violent? It may have some
11 affect on where and how he's housed.

12 MS. McCANN: I have discussed that, Your Honor.

13 THE COURT: Have you further advised him it's
14 classified as serious and that constitutes a strike under
15 our enhancement laws and what that means?

16 MS. McCANN: Mr. Grant has discussed that with him,
17 Your Honor.

18 THE COURT: Mr. Who?

19 MS. McCANN: Mr. Gibbons.

20 THE COURT: Have you also advised him that the 106
21 Indictment is a no-parole, 85-percent sentence?

22 MS. McCANN: Yes, sir.

23 THE COURT: Do you believe he understands all of
24 that?

25 MS. McCANN: I do, Your Honor.

1 THE COURT: How does he indicate to you he wishes to
2 plead?

3 MS. McCANN: He wishes to plead guilty.

4 THE COURT: And also waive presentment on 106?

5 MS. McCANN: Yes.

6 THE COURT: Did you agree with his decision?

7 MS. McCANN: I do.

8 THE COURT: Mr. Atkinson, good morning or good
9 afternoon now.

10 You're before me on two serious charges. Assault
11 and battery of a high and aggravated nature, that carries
12 up to 20 years in the State Department of Corrections.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: That what is we call a no-parole
16 sentence which means you'll do 85 percent of whatever
17 sentence I impose.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Answer me.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand it's classified as
23 violent which means it would have some affect and how and
24 where you're housed in the Department of Corrections?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that by being
2 classified as serious you now have one strike under our
3 enhancement laws which means that once you are released
4 from incarceration if you become involved in criminal
5 activity classified as serious or most serious two more
6 times, you would be subjecting yourself to the possibility
7 life in jail without parole?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that once you are
10 released from incarceration you'll be released to a
11 community supervision program?

12 THE DEFENDANT: What's that?

13 THE COURT: It's a program almost like probation and
14 parole, but it's -- has more restrictions on you. Called
15 community supervision program.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand you have a right to
18 have Indictment 106 presented to the grand jury?

19 THE DEFENDANT: I don't know what that means.

20 THE COURT: It means that you have a right to have
21 these indictments sent to the grand jury before we come in
22 here. You give that right up. Do you want to do that?

23 MS. McCANN: (Conferring with client.)

24 THE COURT: Ms. McCann, do you need to spend the
25 lunch hour with him a little bit and come back after

1 lunch?

2 DEFENSE COUNSEL: No, sir. He understands it.

3 UNIDENTIFIED WOMAN: No, he doesn't. He doesn't
4 understand it. They've arrested him and pleading guilty.
5 I'm going. They're going to hang my son.

6 THE COURT: Hold on. Hold on. Hold on.

7 UNIDENTIFIED WOMAN: God is going to judge this
8 group. You just can't --

9 THE COURT: Ma'am, I suggest you hush.

10 UNIDENTIFIED WOMAN: Okay.

11 THE COURT: Thank you. I suggest you leave.

12 UNIDENTIFIED WOMAN: Thank you.

13 THE COURT: All right. We're going to recess until
14 1:45.

15 Ms. McCann, please answer any and all questions this
16 man has.

17 MS. McCANN: I will, Your Honor.

18 THE COURT: And I want to make sure he understands
19 everything concerning all of his rights when we come back
20 from lunch. I assume that was his mother outside?

21 MS. McCANN: Yes, sir. That is.

22 THE COURT: She has proved that she cannot behave
23 herself in the courtroom so she will not be allowed back
24 in; however, if you need to talk to her during the lunch
25 break, Mr. Atkinson, I assume you can reach her by phone.

1 I'll make a phone available to you to talk to your mama.

2 Fair enough?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And I want you to go over with
5 Ms. McCann over the lunch hour all of your rights. I want
6 you to go over with her the fact that the State is
7 recommending a 12-year sentence.

8 If I go along with that, that's what you'll get. If
9 I can't go along with that, I'll tell you that and I'll
10 let you make whatever decisions you want to make. Okay?

11 THE DEFENDANT: All right.

12 THE COURT: So, I don't want to have any questions
13 about understanding or misunderstanding and your mother's
14 outburst and all of that. So we're going to take a short
15 recess, come back after lunch at 1:45 and we'll finish
16 this up.

17 MS. McCANN: Thank you, Your Honor.

18 MR. SLOCUM: Thank you, Your Honor.

19 (Lunch break taken at 12:35 p.m., until 1:45 p.m.,
20 and the plea continued:)

21 THE COURT: Matthew Atkinson.

22 MS. McCANN: He's coming.

23 (Defendant enters courtroom.)

24 THE COURT: Did you have a chance to talk to him?

25 MS. McCANN: I spent quite a bit of time talking to

1 him. He asked to reserve his phone call to his mother
2 until after sentencing. He thought it was best just to go
3 forward.

4 THE COURT: We're back on the record now with
5 Matthew Stephen Atkinson.

6 We before lunch had gone through with Mr. Atkinson
7 all of the information concerning what he's charged with,
8 et cetera. And then his mother was in the courtroom and
9 had some comments to make. So I decided we best just
10 break for lunch and give Ms. McCann an opportunity to talk
11 with Mr. Atkinson.

12 Did you have an opportunity to do that, ma'am?

13 MS. McCANN: I did, Your Honor.

14 THE COURT: Do you believe that you were able to
15 answer all of his questions?

16 MS. McCANN: All the questions he has today, I was
17 able to answer them.

18 THE COURT: Now, Mr. Atkinson, let's make sure we're
19 all on the same page.

20 You know why you're here. You're charged with the
21 assault and beating of, hitting of one Crystal Jackson.
22 And also resisting the arrest of the police officers when
23 they came out to arrest you on that same date, December
24 30, 2011.

25 Out of that set of facts two charges have been filed

1 against you. One charge is Indictment 106 which is
2 assault and battery of -- do you want to pay attention to
3 me?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I'm trying to help you out, trying to
6 answer your questions. If you don't want me to ask you
7 the questions, I won't.

8 One set of charges are assault and battery of a high
9 and aggravated nature. That carries up to 20 years in the
10 Department of Corrections.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: That is classified as violent so it will
14 have some affect on where you're housed, how you're
15 housed. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I can't answer where you'll be and how
18 you'll be, but it has some affect. That's all I know.

19 It's classified as serious. Therefore, you now have
20 one strike as I explained to you earlier.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You got two more to go before you face
23 the possibility of life in prison without parole. This is
24 a strike. This is what we call a no-parole sentence. In
25 other words, you'll do 85 percent of whatever time I give

1 you.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: This indictment has not been sent to the
5 grand jury. We have a grand jury that looks at
6 indictments before they come up here. You can waive or
7 give up that right.

8 You told me that's what you want to do here. Is
9 that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So do you have any questions about that
12 assault and battery of a high and aggravated nature and
13 all of what I've explained?

14 THE DEFENDANT: No, sir.

15 THE COURT: And then the other charge is the
16 resisting arrest. And that carries up to 10 years in the
17 Department of Corrections. And that has been sent to the
18 grand jury.

19 Do you understand all of that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: There is a recommendation by the State
22 that I give you a 12-year sentence or -- I cap it at 12
23 years or a 12-year sentence?

24 MR. SLOCUM: Twelve years concurrent, Your Honor.

25 THE COURT: Concurrent. Do you know what concurrent

1 means?

2 THE DEFENDANT: Together.

3 THE COURT: That means they run together. In other
4 words, you do one -- you do both of them at the same time
5 as opposed to consecutive where you do one and then you do
6 another. You do them together.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: As I told you before lunch that if -- if
9 I can't go along with that, I'll let you step down.

10 Fair enough?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, do you have any questions about any
13 of that?

14 THE DEFENDANT: (Shakes head.)

15 THE COURT: Understanding all of that, you have two
16 ways to have this thing disposed of. One is by pleading
17 guilty; the other is by pleading not guilty and having a
18 jury.

19 Which way do you plead, not guilty or guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: All right. Listen to me carefully.
22 When you plead guilty you'll give up your constitutional
23 right to remain silent. You'll have to admit to me your
24 involvement on this date.

25 Fair enough?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You'll give up your right to have that
3 indictment that has not been to the grand jury presented
4 to the grand jury, they'll proceed right here today.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Fair enough.

8 And you'll give up your right to a jury trial.
9 That's when we bring a jury in of 12 people. And if you
10 had a jury trial you would have the right to cross-examine
11 and confront everyone who testified against you including
12 the victim and whoever else, through your lawyers to do
13 the cross-examination.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You would have the right to present your
16 side of the story, present your defense. You can call
17 witnesses. You can introduce relevant exhibits. You can
18 get up on the witness stand and testify in your own
19 defense.

20 If you exercise your constitutional right to remain
21 silent, then I would tell the jury they couldn't hold the
22 fact that you didn't testify against you in any manner
23 whatsoever, and I would instruct them that they could not
24 even consider the fact that you didn't testify when they
25 deliberated your guilt or innocence.

1 Under the Constitution you would be presumed
2 innocent throughout the trial unless the State of South
3 Carolina was able to prove your guilt to a jury of 12
4 people beyond a reasonable doubt. And in order for that
5 jury to find you guilty, all 12 would have to unanimously
6 agree that you were in fact guilty.

7 And even if you were found guilty, you would still
8 have the right to an appeal.

9 Now, do you understand your rights to trial by jury?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Any questions?

12 THE DEFENDANT: No, sir.

13 THE COURT: Now understanding your rights to trial
14 by jury, do you still want to plead guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Other than the recommendation which
17 we've talked about, has anyone promised you anything, held
18 out any hope of reward, or threatened you in any manner in
19 order to make you plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Ms. McCann and Mr. Gibbons have been
22 your lawyers. Are you satisfied with their legal
23 representation?

24 THE DEFENDANT: Yes.

25 THE COURT: In your opinion have they had enough

1 time to get ready for this case by spending time with you
2 and researching the law and investigating the facts?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is there anything else you want them to
5 do for you today before we move forward other than speak
6 up on your behalf?

7 THE DEFENDANT: No, sir.

8 THE COURT: And I ask you again: Are you totally
9 and completely satisfied with their representation?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Sir, are you today under the influence
12 of any alcoholic beverages?

13 THE DEFENDANT: No.

14 THE COURT: Drugs?

15 THE DEFENDANT: No, sir.

16 THE COURT: Prescription medications?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What are you on?

19 THE DEFENDANT: Anti-depressant, and some kind of
20 sleep medicine.

21 THE COURT: You take those by way of prescription
22 from your doctor or from physicians; right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And the fact that you've taken those
25 prescribed medications, does that in any way or has that

1 in any way kept you from understanding my questions?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has it kept you from understanding these
4 proceedings?

5 THE DEFENDANT: No, no.

6 THE COURT: Are you today aware of any mental,
7 nervous or emotional condition which would keep you from
8 understanding what's going on?

9 THE DEFENDANT: No.

10 THE COURT: Do you have any questions you want to
11 ask me?

12 THE DEFENDANT: No.

13 THE COURT: Have you understood all my questions?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you pleading guilty to these two
16 offenses, resisting arrest and assault and battery on
17 Ms. Crystal Jackson? Are you pleading guilty to these two
18 offenses of your own free will? No one's twisting your
19 arm or making you do it; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did you here in Aiken -- in Barnwell
22 County, sir, on December 30 of last year, 2011, cause
23 serious bodily harm by hitting with your hands and fists
24 Crystal Jackson?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And did you on that same day when the
2 police came to arrest you, Mr. Brian Johnson, did you
3 resist his attempts to lawfully arrest you?

4 THE DEFENDANT: I guess so; yes, sir.

5 THE COURT: You did or you didn't.

6 THE DEFENDANT: Yes.

7 THE COURT: You did?

8 THE DEFENDANT: Yes.

9 THE COURT: You're pleading guilty because you are
10 guilty, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. I find your decision to
13 plead guilty to the resisting arrest and the assault and
14 battery of a high and aggravated nature to be freely,
15 voluntarily and intelligently made.

16 You've had the representation of excellent lawyers
17 in Mr. Gibbons and Ms. McCann with whom you say you're
18 satisfied. I gave you an extra hour and a half over lunch
19 to discuss the case with your wife -- strike that -- with
20 your lawyer. And I gave you an opportunity to call your
21 mom who was in the courtroom earlier. And I find your
22 decision to plead guilty to be free and voluntary and I
23 will accept the same.

24 If you disagree with these proceedings or the
25 sentence, you have 10 days from today's date to file a

1 notice of intent to appeal.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Solicitor?

5 MR. SLOCUM: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. SLOCUM: December 30th, 2011, deputies from the
8 Barnwell County Sheriff's Office were dispatched to
9 , Williston, South Carolina, here in Barnwell
10 County, in regards to a domestic dispute.

11 A caller called 9-1-1, identified himself as Bob,
12 gave this address and said that Mr. Atkinson was in the
13 process of beating his girlfriend, Crystal Jackson.

14 Deputies arrived on the scene. It was Deputy
15 Johnson, Deputy Boots, I believe Investigators Croft and
16 Peterson became involved as well as Chief Deputy Dearing
17 at some point, Your Honor.

18 When they arrived at the residence they noticed
19 extensive damage to a car parked outside the residence.
20 It was titled in the victim Ms. Jackson's name. The
21 windows had been busted out as well as the windshield and
22 also all four tires had been slashed, Your Honor.

23 They saw what appeared to be drag marks from the car
24 to the front door -- or the back door of the house, Your
25 Honor. They also found a woman's shoe and a sock.

1 They went to knock on the door, got no response,
2 kept knocking and announcing. Got no response. Went to
3 enlist the help of the Defendant's father, I believe,
4 Mr. Johnny Atkinson, who refused to help the officers.

5 With no response and no name to allow them to commit
6 a warrantless entry, Your Honor, from the 9-1-1 call, no
7 full name, they had to clear the scene. However a few
8 moments later -- a short time later the 9-1-1 caller
9 called again and identified himself as one Merit Huff. He
10 said that he was in the house along with the victim,
11 Ms. Jackson, and the Defendant, Your Honor.

12 And that the altercations and beating were still
13 going on of Ms. Jackson. In fact, he had threatened with
14 a knife, threatened her with a knife.

15 Officers responded back to the scene, knocked and
16 announced. At this point this is when the Defendant came
17 to the door, said no one was home. Opened it, shut it,
18 locked it. Same thing again.

19 Deputy Johnson at this point tried to block the door
20 open. This is where the resisting arrest came from, Your
21 Honor. He actually kicked Deputy Johnson back away from
22 the door down the steps.

23 A short time later the SERT, emergency response team
24 from the sheriff's office. A negotiator was brought.

25 Mr. Huff at some point got back in contact, either

1 via 9-1-1 or via the negotiation team, said that the
2 individual had finally passed out, I believe.

3 They were able to get Mr. Huff and Ms. Jackson out
4 of the residence. Went in to finally arrest the
5 Defendant, Your Honor.

6 The victim was transported to MCG where she
7 sustained multiple injuries to her face, neck, and other
8 parts of her body. And, as yesterday, we addressed in the
9 bond hearing, we have photos and we'd be happy to pass
10 them up again, Your Honor.

11 (Photographs handed to the Judge.)

12 MR. SLOCUM: The Defendant was transported to
13 Barnwell County Hospital, I believe, Your Honor, and was
14 released. I say released, was treated without injury or
15 refused treatment. Investigator Croft may have more
16 information on the goings on at that point.

17 However he was subsequently charged with two counts
18 of kidnapping from holding Mr. Huff and Ms. Jackson in the
19 house, resisting arrest B in the kicking of Deputy Johnson
20 as well as attempted murder as there were threats
21 throughout this that he would take the life of the victim,
22 Ms. Jackson, as well as he had a shotgun and a .45 in his
23 possession and would use it if need be.

24 THE COURT: You've given me his prior record; is
25 that correct?

1 MR. SLOCUM: That's correct. I can read it --

2 THE COURT: No, I've got it; '89 all the way through
3 '06.

4 MR. SLOCUM: That's correct, Your Honor.

5 THE COURT: Ma'am?

6 MS. McCANN: Matthew is 42 years of age.

7 As you can imagine, there's a story that goes along
8 with this. Matthew has had multiple accidents which
9 originally put him on pain medication. He became addicted
10 to the pain medication.

11 When the doctors realized that he was addicted to
12 the pain medication, they discontinued it so he then went
13 to the street to get it and entered into the drug world.
14 He's even had teeth pulled intentionally just so he can
15 get pain medication.

16 He met Crystal Jackson. They've been
17 boyfriend/girlfriend-relationship or whatever for several
18 years. They have a very conflictual (verbatim)
19 relationship. This is not the first time, although
20 unusual in this situation. Not that it's right.

21 Crystal is originally from Tennessee. Crystal also
22 is a drug addict. Crystal has children her husband has
23 custody of. She's with Matthew for a while and together
24 with Matthew and then they get into a situation, she goes
25 back to Tennessee.

1 THE COURT: Ma'am, just look at me.

2 MS. McCANN: Okay. She goes back to Tennessee and
3 then she's in Tennessee for a while and then comes back to
4 South Carolina. Frequently in both places. Unfortunately
5 Crystal is being victimized in both environments, okay,
6 not that that is right.

7 Matthew and I have had the discussion that, what if
8 this was your sister, your mother, your daughter. He
9 admits it's wrong. He grew up in a household where that's
10 how they handled things. His parents would beat the hell
11 out of each other all of the time.

12 You've seen the outburst with his mother in the
13 courtroom. It was a difficult home to grow up in. Mom
14 stayed home with them and raised them and they've been
15 very supportive of him and they care about him and he
16 loves his family, but he grew up with physical
17 altercations. He's learned that that's what you do and he
18 has continued it into his adult life.

19 One of the difficulties in bringing this case to the
20 Court has been that his mother has put such pressure on
21 him. We would spend several meetings talking about all of
22 the evidence and everything going on and Matthew would
23 understand it, then his mother would start and we'd have
24 to start all over again.

25 I could see the turmoil going on with him because he

1 does care. That's his family. Okay. He also cares for
2 Crystal and Crystal does care for him.

3 The Solicitor and I have talked about the fact that
4 she has informed them that she -- he needs treatment, but
5 she doesn't want to see his life flushed away. And
6 certainly I would hope you would question her on that
7 while she's here in court.

8 Knowing that, the other thing that's happened with
9 him is that he's been in jail now for 95 days. I could
10 can see the difference as he came off of drugs and started
11 cleaning up a little bit. He has said to me, "You know,
12 I'm clean now and I feel good like this, I want to stay
13 like this."

14 There's a program called the Overcomers Program in
15 Greenville which is an 18-month drug and alcohol
16 rehabilitation program that he is eligible for. We've not
17 got confirmed admission to it yet. And I would hope that
18 any sentence you would pass, that we would be able to
19 approach you for reconsideration if in fact he was
20 admitted to one of those programs.

21 He has finally come to a point where he understands
22 the difference between living in the drug world and taking
23 the drugs all the time and how he feels now. He wants an
24 opportunity to make a difference and change that.

25 He tells me that on this night Merit Huff, who's

1 been before you several times and I've been represented
2 him before. Merit Huff was the one who was calling law
3 enforcement. Merit Huff would actually go outside and
4 call law enforcement and then go back in. It's not like
5 he was kidnapped. He would go in and out and call law
6 enforcement.

7 They were all doing drugs and drinking. They were
8 all out of their senses in substances. He tells me that
9 Crystal wanted to leave but he didn't want her leaving,
10 and he didn't want her driving in the altered state. So
11 he cut the tires on her car figuring he paid for them, he
12 bought them, he's entitled to cut them. We've discussed
13 that issue too.

14 He did pull her out of the car. He did take her
15 back into the house. They fight. The two of them fight
16 and have a long history of fighting. I think his quote to
17 me was, "She can fight like a man." That doesn't justify
18 what happened, and I'm not trying to justify what
19 happened.

20 This has just been an ongoing situation where
21 there's no intervention going on. That's how this whole
22 thing started and went wild.

23 Law enforcement did come to the door. He was not
24 cooperative with law enforcement. He did kick at the
25 officer. He will accept that. In his altered state

1 there's some of this that he doesn't remember very
2 clearly.

3 He only went through the eighth grade. He finished
4 the eighth grade and then he left school and he went to
5 work.

6 He wasn't trying to be difficult earlier. I have
7 spent many, many meetings with him. It takes him a little
8 longer to grasp things. It's not that he's stupid but
9 it's almost like he's ADD. His attention span isn't quite
10 there all the time and you have to reiterate it.

11 He has an 18-year-old daughter. You know, when you
12 sit down and talk to Matthew and you finally sit down and
13 get through all of his mother stuff and dad stuff and we
14 just talk, he's not a bad fellow. He's just been addicted
15 to drugs and he's just assumed the same lifestyle that he
16 grew up in. He knows it's wrong. He knows he's going to
17 prison. He knows also that he needs to get help if he's
18 ever going to change this pattern that's established.

19 We're only asking you to -- let's reserve the right
20 to do a motion for reconsideration if we can get him into
21 a long-term treatment program, Your Honor.

22 THE COURT: Ms. Atkinson, anything you want to tell
23 me?

24 THE DEFENDANT: I'm sorry for what happened.

25 THE COURT: Anything the victim wants to say?

1 MS. JACKSON: Yes, sir.

2 THE COURT: Stand right there.

3 MS. JACKSON: First of all, I have always loved
4 Matthew with all my heart. And even through all of this I
5 always will love him and care for him. I want the best
6 for him, the very best in the world. He is not a bad
7 person. He's got a terrific heart.

8 What happened happened. And I wished it didn't more
9 than anything in this world. We were happy together. My
10 little girl called him Daddy. He is a good person. He is
11 a great person. I just wish him the best. And I pray for
12 him.

13 Thank you.

14 THE COURT: AS TO INDICTMENT 106, THE SENTENCE OF
15 THE COURT, MR. ATKINSON, IS THAT YOU BE COMMITTED TO THE
16 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 12 YEARS.

17 AS TO INDICTMENT 107, THE SENTENCE OF THE COURT IS
18 YOU BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
19 FOR A PERIOD OF 10 YEARS.

20 THESE TWO SENTENCES WILL RUN CONCURRENT. YOU'LL BE
21 GIVEN CREDIT FOR YOUR TIME SERVED.

22 Good luck to you.

23 MR. SLOCUM: Thank you, Your Honor.

24 MS. McCANN: Your Honor, can we reserve the right to
25 --

1 THE COURT: You can file whatever motion you'd like.

2 MS. McCANN: Thank you, Your Honor.

3 END OF CASE: 2:15 P.M.

4 CERTIFICATE OF REPORTER

5 STATE OF SOUTH CAROLINA)

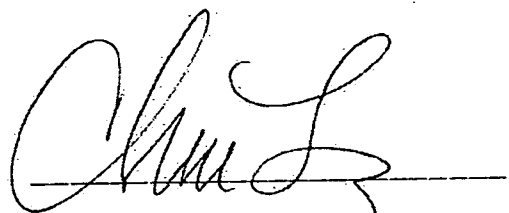
6 COUNTY OF AIKEN)

7 I, Cheri L. Young, Registered Professional Reporter

8 and Official Court Reporter for the State of South
9 Carolina, Second Circuit-At Large, do hereby certify that
10 the foregoing proceedings were written stenographically by
11 me using computer-aided translation; further, that the
12 foregoing is a true, accurate and complete record, to the
13 best of my skill and ability, of all the proceedings had
14 and evidence introduced in the hearing of the captioned
15 case, relative to appeal, in the Court of General Sessions
16 Pleas for Barnwell County, on the 3rd day of April, 2012.

17 I do further certify that I am neither of kin,
18 counsel, nor interest to any party hereto. I have
19 hereunder set my hand this 1st day of September, 2014.

20
21
22
23
24
25



Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

State of South Carolina,)

v.)

Matthew Atkinson)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE SECOND JUDICIAL CIRCUIT

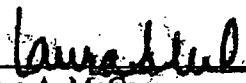
Indictment Nos.: ^{M555533 + 534}
~~2012:GS:06:106~~, 107

**MOTION TO RECONSIDER
SENTENCE**

The Defendant in the above-captioned matter respectfully moves the Court to reconsider and reduce the sentence it imposed on the Defendant on April 03, 2012.

As grounds for the reconsideration and reduction, the Defendant urges that the interests of justice will be served by the granting of this request. Specifically that upon securing residential drug and alcohol treatment, the defense would move for a reconsideration hearing, both in open court and *in camera* at such date and time as the Court deems appropriate to set such a hearing.

Respectfully submitted,


Laura A. McCann
Attorney for Defendant

Barnwell, South Carolina
April 04, 2012

FILED FOR RECORD
2012 APR -4 AM 11:32
RHONDA D. McELYEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

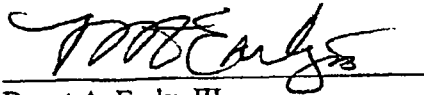
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2013 JUL 24 AM 10:40

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BARNWELL)
RHONDA B. McELVEEN) SECOND JUDICIAL CIRCUIT
CLERK OF COURT)
BARNWELL COUNTY, S.C.)

STATE OF SOUTH CAROLINA) Indictment Nos.: 2012-GS-06-00106
) 2012-GS-06-00107
vs.)
)
MATTHEW ATKINSON,)
) ORDER DENYING MOTION
) TO RECONSIDER SENTENCE
DEFENDANT.)
)
)
)
)

This matter came before the Court on motion by the Defendant to reconsider a sentence. The Defendant pled guilty to Assault and Battery of a High and Aggravated Nature (ABHAN) and Resisting Arrest on the above referenced indictments and was sentenced by this court on April 3, 2012. The Defendant was sentenced to 12 years confinement in the Department of Corrections on the ABHAN conviction and 10 years confinement for the Resisting Arrest conviction. Those sentences were ordered to run concurrently. The Defendant filed a timely motion to reconsider the sentence and a hearing was held on June 4, 2013. Present at this hearing were the Defendant and his attorney, Laura McCann, and Assistant Solicitor Jeffrey Slocum. After a review of the court file, including the Defendant's prior record, and considering the overall circumstances of the current offense, this Court finds that the Defendant's motion should be, and hereby is DENIED.

It is so ordered this 25 day of June, 2013 at Bamberg, South Carolina.


Doyet A. Early, III
Resident Circuit Court Judge
Second Judicial Circuit

11/30

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

MATTHEW ATKINSON, # 350329,)
Applicant,)

-vs-)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

APPLICATION FOR
POST-CONVICTION RELIEF

2014-CP-06-

RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

2014 JUN -9 PM 1:42

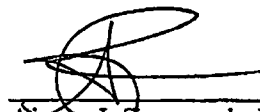
FILED FOR RECORD

1. Place of detention: Allendale Correctional Institution
2. Name and location of Court which imposed sentence: Barnwell County General Sessions
3. Name(s) of co-defendant(s)(if any): None
4. The indictment number of numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012GS0600106-Assault and Battery of a High and Aggravated Nature
 - (b) 2012GS0600107-Resisting Arrest/Assaulting a Police Officer
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 3, 2012-12 years
 - (b) April 3, 2012-10 years concurrent to 106
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty X
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes-motion to reconsider the sentence
8. If you answered yes to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. motion for reconsideration
 - (b) the result in each such Court to which you appealed:
 - i. denied
 - (c) the date of each such result:
 - i. was heard on June 4, 2013

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. none known
9. If you answered no to (7), state your reasons for not so appealing:
- (a) not advised by counsel
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Violation of the Sixth Amendment right to effective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): See attached allegations Attached Exhibit A
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 a State of Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United State 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:
- (b) the name and location of the Court in which each was filed:
- (c) the disposition thereof:
- (d) the date of each such disposition:
- i. if known, citations of any written opinions or orders entered pursuant to each such disposition:
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:
- (b) the proceedings in which each ground was raised:

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) Not ripe
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? yes
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. Laura A. McCann Assistant Public Defender, 95 Allen Street, Barnwell, SC 29812
- (b) the proceedings at which each such attorney represented you:
- i. plea and sentencing
- ii. motion to reconsider
19. State clearly the relief you seek in filing this application:
- vacate plea and sentencing and remand to general sessions court for trial
20. Are you now under sentence from any other court that you have not challenged?
- No

Respectfully Submitted,
A.J.Z. Law Firm, LLC



Aimee J. Zmroczek, Esq. #77193
2003 Lincoln Street
P.O. Box 11961
Columbia, South Carolina 29211
(803) 400-1918 (telephone)
(803) 403-8005 (fax)
ajzlawfirm@gmail.com
Attorney for Applicant

EXHIBIT A

- a. No request was made for a preliminary hearing.
- b. Counsel's advice was not within the range of competence demanded of attorneys as case was pled 94 days after client was arrested when client was under belief that he was appearing in court for a bond reduction.
- c. Plea was not entered with full understanding of the consequences, charges had not been explained to Applicant and Applicant did not understand the charges pending against him.
- d. Defendant's guilty plea was not knowingly and voluntarily made.
- e. Counsel's failure to investigate viable defenses and veracity of victim and witnesses deprived defendant of insisting on his right to a jury trial. Counsel failed to pursue claims by applicant that victim received injuries prior to this alleged assault.
- f. Counsel's failure to establish competency of defendant to enter a plea or to stand trial.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Matthew Atkinson, # 350329,	)	2014-CP-06-224
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 9, 2014, 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 Barnwell County Clerk of Court. The Applicant was true bill indicted at the April 2012 term of the Barnwell County Grand Jury for resisting arrest (2012-GS-06-00107). Additionally, the Applicant was waived presentment to the July 2012 term of the Barnwell County Grand Jury for assault and battery of a high and aggravated nature (2012-GS-06-00106). Larua McCann, Esquire represented Applicant. On April 3, 2012, Applicant pled guilty before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant pursuant to a recommendation by the State to twelve years imprisonment for assault and battery of a high and aggravated nature and ten year term of imprisonment for resisting arrest; with all sentences running concurrently. The Applicant did not appeal his guilty plea or sentence.

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

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

II.

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. No request was made for a preliminary hearing
 - b. Counsel advice was not within the range of competence demanded of attorneys as case was pled 94 days after client was arrested when client was under belief that he was appearing in court for a bond reduction.
 - c. Plea was not entered with full understanding of consequences, charges had not been explained to Applicant and Applicant did not understand the charges pending against him.
 - d. Defendant's guilty plea was not knowingly and voluntarily made.
 - e. Counsel's failure to investigate viable defenses and veracity of victim and witnesses deprived defendant of insisting on his right to a jury trial. Counsel failed to pursue claims by applicant that victim received injuries prior to this alleged assault.
 - f. Counsel's failure to establish competency to enter a plea or stand trial.

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

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

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

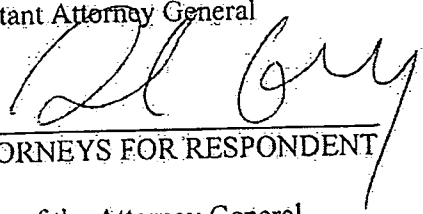
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

September 26th, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF BARNWELL.)

IN THE COURT OF COMMON PLEAS)

2014-CP-06-224)

MATTHEW ATKINSON, #350329,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL)

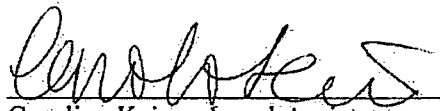
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Aimee Zmroczek, Esquire
 A.J.Z. Law Firm, LLC.
 PO Box 11961
 Columbia, SC 29211

DATED this 25th day of September, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF BARNWELL

CIRCUIT COURT
2014-CP-06-00224

3
4 MATTHEW ATKINSON,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6 STATE OF SOUTH CAROLINA,
7 Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Wednesday, May 20, 2015

11 Aiken, South Carolina

12
13
14 BEFORE:

15 THE HONORABLE TANYA A. GEE

16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Aimee Zmroczek, Esq.

19 Counsel on Behalf of the Respondent, State of SC:
20 Daniel F. Gourley, II, Esq.

21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29803-5232
25

EXAMINATION INDEX

MATTHEW ATKINSON

DIRECT BY MS. ZMROCZEK	6
CROSS BY MR. GOURLEY	16
REDIRECT BY MS. ZMROCZEK	22
RECROSS BY MR. GOURLEY	26

CAROL ATKINSON

CROSS BY MR. GOURLEY	36
REDIRECT BY MS. ZMROCZEK	40

LAURA A. McCANN

DIRECT BY MS. ZMROCZEK	41
CROSS BY MR. GOURLEY	68
REDIRECT BY MS. ZMROCZEK	73
RECROSS BY MR. GOURLEY	76

EXHIBIT INDEX

			MAR	ADM
Applicant's				
1	Medical records		25	77
2	Black and white photo		58	58
3	Rap sheet		58	58
4	Public defender's documents		77	77

1 ON WEDNESDAY, MAY 20, 2015 AT 11:02 A.M.:

2 THE COURT: Call your next case, please.

3 MR. GOURLEY: Your Honor, this is Matthew
4 Atkinson versus the State of South Carolina,
5 Docket Number 2014-CP-06-224.

6 He's presently confined in the South
7 Carolina Department of Corrections pursuant to
8 orders of commitment of the Barnwell County Clerk
9 of Court.

10 He was true-bill indicted at the April 2012
11 term of the Barnwell County Grand Jury for
12 resisting arrest. Additionally he waived
13 presentment to the July 2012 term of the Barnwell
14 County Grand Jury for assault and battery of a
15 high and aggravated nature. Ms. McCann
16 represented him.

17 On April 3rd, 2012, he pled guilty before
18 the Honorable Doyet A. Early the Third. Judge
19 Early sentenced the Applicant pursuant to a
20 recommendation by the State to 12 years
21 imprisonment for assault and battery of a high and
22 aggravated nature, and a 10-year term of
23 imprisonment for resisting arrest. Those
24 sentences were run concurrently.

25 He did not appeal his guilty plea or

1 sentence. He filed a timely application for PCR
2 on June 9th, 2014, alleging a claim of ineffective
3 assistance of counsel for failing to request a
4 preliminary hearing, for failing to advise of
5 the -- for failing to fully understand the -- for
6 failing to advise of the consequences of the plea,
7 guilty plea was not knowingly and voluntarily
8 made, failure to investigate viable defenses, and
9 the veracity of the victim, and a failure to
10 establish his competency prior to his plea.

11 The State filed its return September 25,
12 2014, and he's represented in this matter by
13 Ms. Zmroczek.

14 THE COURT: All right. Ms. Zmroczek.

15 MS. ZMROCZEK: Thank you, Your Honor.

16 Your Honor, this is a little bit different
17 than some of the cases I've done just because I
18 was retained on this case specifically when the
19 new Locklear-Pride progeny came down regarding
20 plea negotiations and kind of that standard under
21 Strickland.

22 And so, Your Honor, I intend to call
23 Mr. Atkinson, the defense attorney and the mom.
24 And so I just kind of wanted to lay out how we
25 were going to go --

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

1 THE COURT: Okay.

2 MS. ZMROCZEK: At this time I would call
3 Matthew Atkinson to the stand.

4 THE CLERK: Please have a seat on the
5 witness box. State your full name for the Court.

6 MATTHEW ATKINSON, having been duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. ZMROCZEK:

10 Q. Mr. Atkinson, will you tell the Court how old you
11 are?

12 A. Forty-five now, I think.

13 Q. Okay. Make sure you speak up so everybody can hear
14 you. Where are you presently confined?

15 A. Allendale.

16 Q. Where?

17 A. Allendale Correctional Institute.

18 Q. And do you know why you're there?

19 A. (Nods head.)

20 Q. Tell the Court why you're there.

21 THE COURT: Can you please speak up? I'm
22 sorry. It's sometimes hard to hear so if you can
23 talk as loudly, well, not as loudly as possible.
24 You don't need to scream, but speak up.

25 THE APPLICANT: They sent me there.

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

1 BY MS. ZMROCZEK:

2 Q. Okay. Why did they -- were you arrested in 2011?

3 A. Yep.

4 Q. Why were you arrested?

5 A. Attempted murder --

6 Q. Okay.

7 A. -- was it?

8 Q. Let me ask this, Mr. Atkinson. Since you've been in
9 SCDC, do you receive any sort of mental health counseling?

10 A. I used to.

11 Q. And what kind of -- tell the Court about what kind
12 of medication that you're on today.

13 A. I quit taking them.

14 Q. You quit taking them?

15 A. Uh-huh.

16 Q. Were you advised to quit taking them so that you
17 could coherently --

18 A. Leave.

19 Q. -- testify today?

20 A. No. They said I couldn't go nowhere till I quit
21 taking them.

22 Q. Make sure you speak up.

23 A. They said I couldn't leave the yard until I quit
24 taking the medicine.

25 Q. What kind of medicines did they have you on?

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

1 A. I took Remeron and Buspar, something else can't
2 remember.

3 Q. How long have you been -- and I'm not trying to
4 embarrass you. It's just that the Court needs to
5 understand your testimony and how we got to your guilty
6 plea and all of that. Okay. So I'm not trying to
7 embarrass you but if you'll just let the Court know how
8 long you've been taking any kind of mental health
9 medications.

10 A. Ever since I've been arrested.

11 Q. I'm sorry?

12 A. The whole time I've been arrested.

13 Q. Okay. Were you receiving mental health counseling
14 and medication before that?

15 A. Yeah.

16 Q. Before you got arrested?

17 A. Yes, ma'am.

18 Q. Okay. And have you been treated at Barnwell Mental
19 Health as well as several other mental health --

20 A. Yes, ma'am.

21 Q. -- facilities?

22 A. (Nods head.) Yes.

23 Q. I'm going to show you a group of records from
24 Barnwell County Hospital as well as several different
25 mental health records and ask if you -- did you sign these

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

1 releases and do you recognize these records? Did you sign
2 those releases?

3 A. (Nods head.)

4 Q. You got to say yes or no.

5 A. Yes. Yes, ma'am.

6 Q. Okay. And if you'll flip through them. Do you
7 recognize those as being some of your mental health
8 records? I know it's a little difficult but --

9 A. Seen those.

10 Q. And those are records that reflect some of the
11 treatment that you've received?

12 A. Uh-huh.

13 Q. Make sure you say yes or no.

14 A. Yes, yes.

15 MS. ZMROCZEK: Your Honor, at this time we
16 would move Applicant's Exhibit One into evidence.

17 THE COURT: Okay. Any objection?

18 MR. GOURLEY: Yes, Your Honor, although
19 it's the Applicant's medical records I feel that
20 the doctor or whoever of the medical records took
21 those needed to be here for cross-examination.
22 Also I don't feel proper foundation has been
23 laid. Ms. Zmroczek showed me those this morning
24 but I haven't really had time to go through them
25 adequately.

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

1 THE COURT: Would you like to look through
2 it?

3 MR. GOURLEY: If Your Honor wouldn't mind.

4 THE COURT: Yes. I'll give you an
5 opportunity to look through it, but I do believe
6 that Mr. Atkinson can identify his own medical
7 records.

8 MR. GOURLEY: Okay.

9 BY MS. ZMROCZEK:

10 Q. Mr. Atkinson, when you were arrested were you
11 appointed an attorney?

12 A. Yes, ma'am.

13 Q. Who was that?

14 A. Ms. McCann.

15 Q. Make sure you -- I'm standing back here. I'm
16 speaking loudly. I want to make sure that I can hear you.

17 Where did you meet Ms. McCann?

18 A. She came to the jailhouse.

19 Q. Okay. How many times did you meet with her?

20 A. Couple of times.

21 Q. A couple of times. What kind of things did you
22 discuss with her?

23 A. The first time she come up there she said that I
24 would end up getting three years. And then the second
25 time she said that they were going to give me 20 years.

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

1 And then the third time she told me that -- when I went
2 for my bond reduction she told me if I didn't take that
3 plea that I was going to get the maximum on all my
4 sentences.

5 Q. So when you went to court the first time, what was
6 your understanding that you were going to the court for?

7 A. So I could get out of jail.

8 Q. For a bond reduction?

9 A. Yeah.

10 Q. And what happened when you got to court?

11 A. They wouldn't give it to me.

12 Q. I'm sorry?

13 A. They wouldn't give me one.

14 Q. Okay. Did you plead?

15 A. Yeah.

16 Q. Tell the Court why you pled that day.

17 A. Because she said if I didn't I'd be the first one on
18 the docket and I'd get the maximum.

19 Q. Were you taking medication while you were in
20 Barnwell County Detention Center?

21 A. Yes, ma'am.

22 Q. Did you understand what was happening during the
23 plea?

24 A. I didn't know what she was talking about but I
25 signed the papers anyway.

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

- 1 Q. Why did you sign the papers?
- 2 A. Because she said I'd get the maximum on everything
- 3 if I didn't.
- 4 Q. So what did you understand the maximum to be?
- 5 A. Eighty years.
- 6 Q. Eighty years?
- 7 A. (Nods head.)
- 8 Q. And, did you feel like -- what did that make you
- 9 feel like when she told you you were getting 80 years?
- 10 A. (Makes sounds.)
- 11 Q. Let me ask you this way. Did you feel like you were
- 12 entering into this plea willingly?
- 13 A. No. They made me do it.
- 14 Q. I'm sorry?
- 15 A. She made me sign it really.
- 16 Q. Did you ever discuss -- this case dealt with your
- 17 live-in girlfriend, correct? She was the victim?
- 18 A. Uh-huh.
- 19 Q. You have to say yes or no, just for the record.
- 20 A. Yes, yes.
- 21 Q. When you met with your attorney, did you talk about
- 22 any problems or did you tell her about any possible
- 23 defenses that you had to your case?
- 24 A. (Shakes head.)
- 25 Q. Did she ask you about any of them?

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

- 1 A. (Shakes head.)
- 2 Q. Did you all discuss the case at all?
- 3 A. Not really.
- 4 Q. Did you look at any of the evidence that they had?
- 5 A. They didn't show me nothing. Oh, she did show me a
- 6 paper, black and white picture.
- 7 Q. All she did was what?
- 8 A. Show me some black and white pictures.
- 9 Q. Some black and white pictures?
- 10 A. Yeah, right before she made me take the plea.
- 11 Q. Did she ever show you any videos?
- 12 A. No.
- 13 Q. Any interviews?
- 14 A. What kind of interview?
- 15 Q. No interviews?
- 16 A. What kind?
- 17 Q. Did she ever ask you if you wanted to go to trial on
- 18 this case?
- 19 A. (Shakes head.)
- 20 Q. You have to say yes or no.
- 21 A. No.
- 22 Q. I'm sorry. Did you want to go to trial on this
- 23 case?
- 24 A. Yeah.
- 25 Q. Did you have some defenses in this case?

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

1 A. Yeah.

2 Q. What -- specifically regarding the injuries to the
3 victim, what were the defenses that you knew about that
4 you had to this case? Did you give her those black eyes?

5 A. I slapped her but she already had the black eye.

6 Q. She already had the black eye. And did you tell
7 your attorney that?

8 A. I told her her son and her aunt jumped on her in
9 Tennessee.

10 THE COURT: I can't hear. I'm sorry. Can
11 you try to speak up? You just said?

12 THE APPLICANT: Her aunt and her son jumped
13 on her in Tennessee. We went up there to see her
14 daughter.

15 THE COURT: Her aunt and her son jumped on
16 her in Tennessee when she went up there to see her
17 daughter. Okay.

18 BY MS. ZMROCZEK:

19 Q. Prior -- before you got arrested?

20 A. Yeah. Pulled her hair out and blacked her eye. She
21 told me not to do nothing about it. And I didn't do
22 nothing about it. She told me sitting in the car and so I
23 did. And then that happened and we left and we come back
24 down here.

25 Q. Okay. How many -- did you ask her, your attorney

MATTHEW ATKINSON - DIRECT BY ZMROCZEK

1 any questions the three times that she came to visit you?

2 A. Like what? I was listening to her.

3 Q. How much medication were you -- did you begin your
4 medication right when you entered the Barnwell County
5 Detention Center?

6 A. I got back on meds, yeah.

7 Q. And do you recall what those medications were?

8 A. Some kind of nerve or sleep medicine, something.

9 Q. I'm sorry?

10 A. Some kind of sleep medicine or something.

11 Q. Did you feel like you could think clearly and answer
12 her questions and discuss with her during your
13 conversations?

14 A. Yeah. I couldn't sleep or nothing. I couldn't do
15 nothing. Couldn't sleep, didn't want to eat nothing.

16 Q. Do you feel like you entered into the plea on that
17 day freely and voluntarily?

18 A. No. She told me I had to sign it or I got to go to
19 court and then get 80 years. She said, "You can take this
20 or go to court and get 80 years."

21 Q. So you don't feel like it was freely and voluntarily
22 entered into?

23 A. I feel the first time they brought me the plea was
24 20 years and she said, "Well, if you don't take this one
25 you're going to be the first one on the docket to go to

MATTHEW ATKINSON - CROSS BY GOURLEY

1 court and they're going to give you maximum on all your
2 charges," she said. "So take this and we'll see you in a
3 couple weeks."

4 MS. ZMROCZEK: Your Honor, I have no
5 further questions of this witness.

6 THE COURT: Okay. Thank you.

7 Mr. Gourley?

8 MR. GOURLEY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GOURLEY:

11 Q. Mr. Atkinson, I'm sorry, I had a little trouble
12 hearing you. How many times did you meet with your
13 attorney?

14 A. Two or three times.

15 Q. Two or three times. And during those meetings did
16 you get to go over any kind of evidence or anything like
17 that?

18 A. Not until I went to the courthouse to talk to me
19 when I went for the bond reduction.

20 Q. Okay. So once you got to the courthouse Ms. McCann
21 gave you a little bit of stuff to look over?

22 A. Some pictures.

23 Q. Pictures. Okay.

24 Did you all go over any kind of defenses or anything
25 to the charges?

MATTHEW ATKINSON - CROSS BY GOURLEY

1 A. Not really.

2 Q. Okay. Let's talk about what the State accused you
3 of doing was basically beating your girlfriend up, right?

4 A. Yes.

5 Q. Okay. And there was a witness in the house that had
6 called 9-1-1, right?

7 A. Yeah, we were in the yard.

8 Q. You were in the yard. And I think a friend had
9 called 9-1-1 that was staying with y'all that night or
10 something?

11 A. Yeah, I took the keys from her.

12 Q. Okay. Now, did you ever give your attorney any kind
13 of leads or witnesses to look into on your behalf?

14 A. No.

15 Q. Sir?

16 A. Don't remember.

17 Q. Don't remember. Okay. Now, during your plea do you
18 remember the judge going over your constitutional rights,
19 your right to a jury trial, present witnesses, so on and
20 so forth?

21 A. No. Talking all kinds of stuff.

22 Q. Okay. Do you recall answering yes that you
23 understood your rights?

24 A. Yes. I said, "Yes, sir." Whenever he asked me
25 something I said, "Yes, sir."

MATTHEW ATKINSON - CROSS BY GOURLEY

1 Q. You got to speak up just a little bit for the Judge,
2 okay?

3 A. When he asked me any kind of question I said, "Yes,
4 sir."

5 Q. So you answered the judge yes to anything he asked
6 you?

7 A. Yeah.

8 Q. Why did you do that?

9 A. Because he was looking at me like he was mean.

10 Q. He was looking at you like he was mean?

11 A. Yeah.

12 Q. Do you recall telling the judge that you were
13 satisfied with Ms. McCann's services?

14 A. I don't remember.

15 Q. Okay. If the transcript reflects that you did, do
16 you dispute that?

17 A. I don't remember.

18 MR. GOURLEY: Your Honor, that's page 14
19 line 21 through page 15 line 10.

20 THE COURT: Okay.

21 BY MR. GOURLEY:

22 Q. Do you recall telling the judge that no one was
23 promising you or threatening you to get you to plead
24 guilty?

25 A. I remember saying that.

MATTHEW ATKINSON - CROSS BY GOURLEY

1 Q. Okay. You do remember that. Do you remember
2 telling the judge that you wanted to plead guilty?

3 A. (Nods head.)

4 Q. And you remember telling the judge that you were
5 indeed guilty?

6 A. Yeah.

7 Q. And that you were pleading guilty freely and
8 voluntarily?

9 A. Yeah.

10 Q. Now today you're saying that you're not -- you
11 didn't plead guilty freely and voluntarily, right?

12 A. No, I didn't know what they say. They asked me a
13 question I said yes.

14 Q. So they asked you a question, you just said yes.
15 Okay. And you also were saying that you pled guilty to
16 avoid a potential 80-year sentence?

17 A. Uh-huh.

18 Q. What were all your charges you were facing?

19 A. (Makes noise.) Bunch of them, attempted murder,
20 assault and battery on the police and kidnapping and
21 (makes noise). I don't remember.

22 Q. I think that was it. Attempted murder, kidnapping,
23 and assault and battery of a high and aggravated nature
24 which was attempted murder pled down, and then a resisting
25 an officer. Does that sound about right?

MATTHEW ATKINSON - CROSS BY GOURLEY

1 A. Something like that.

2 Q. Okay. Do you want to go to trial on these charges?

3 A. Yeah.

4 Q. Okay.

5 Beg the Court's indulgence.

6 THE COURT: Okay.

7 (Pause.)

8 BY MR. GOURLEY:

9 Q. Mr. Atkinson, where did you go -- after you pled
10 guilty where did you go? What county jail or what jail
11 did you go to?

12 A. I was in Barnwell.

13 Q. You went to Barnwell County?

14 A. I was in Barnwell.

15 Q. Okay.

16 A. Never got out.

17 Q. You never left Barnwell?

18 A. (Shakes head.)

19 Q. You're still in Barnwell today?

20 A. Never got out.

21 Q. You never visited Gilliam or anything like that?

22 A. Not that I recall.

23 Q. Okay. And when you went into jail did you go out in
24 the general population?

25 A. After a couple days, I think it was.

MATTHEW ATKINSON - CROSS BY GOURLEY

- 1 Q. Did you meet with any of the doctors or anything
2 before going to Barnwell?
- 3 A. Before?
- 4 Q. Yes, sir.
- 5 A. (Shakes head.)
- 6 Q. Did you meet with any doctors while in Barnwell?
- 7 A. The one that prescribed me medicine.
- 8 Q. And what did they prescribe you?
- 9 A. Some kind of, I don't know what the name of it was.
- 10 Q. What was it for?
- 11 A. It was for nerves and sleeping. I couldn't sleep.
- 12 Q. Okay. Couldn't sleep in jail?
- 13 A. Nerves messed up.
- 14 Q. Nerves were messed up?
- 15 A. (Nods head.)
- 16 Q. Do you recall telling the judge that you were of
17 clear mind and sound mind when you were pleading guilty?
- 18 A. (Shakes head.)
- 19 Q. If the transcript reflects that, do you dispute
20 that?
- 21 A. I don't remember saying that.
- 22 Q. Okay.
- 23 Your Honor, that's 15 line 11 through page 16 line
24 14.
- 25 I beg the Court's indulgence, Your Honor.

MATTHEW ATKINSON - REDIRECT BY ZMROCZEK

1 (Pause.)

2 Q. Did you ever request your attorney to file a
3 preliminary hearing motion or anything like that?

4 A. I don't remember.

5 Q. Okay. And do you recall how many, how many days
6 Ms. McCann represented you?

7 A. (Shakes head.) I don't know.

8 MR. GOURLEY: Your Honor, I don't have any
9 other questions. Thank you, Mr. Atkinson.

10 MS. ZMROCZEK: I'm sorry.

11 THE COURT: I forgot that you had moved
12 over there. Suddenly thought, oh my goodness.

13 MS. ZMROCZEK: It was a great look. Sorry.

14 REDIRECT EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. Just two follow up or one follow-up question.
17 Mr. Atkinson -- actually two -- when you went for your
18 bond hearing and it turned into a plea, did you have --
19 did you speak with Ms. McCann, your attorney, right before
20 that happened?

21 A. That's when she showed me the pictures.

22 Q. That's when she showed you the pictures was when you
23 went for the bond hearing?

24 A. (Nods head.)

25 Q. You have to say yes or no. Sorry.

MATTHEW ATKINSON - REDIRECT BY ZMROCZEK

1 A. Yes.

2 Q. And did she tell you one way or the other that the
3 judge was going to ask you questions?

4 A. I don't remember.

5 Q. You don't remember. You don't remember if she told
6 you to answer yes or no when he asked you questions?

7 A. I think she did.

8 Q. She did tell you? What did she tell you to say?

9 A. She say, yeah.

10 Q. I'm sorry?

11 A. Say yes.

12 Q. Say yes when the judge asked you questions?

13 A. (Nods head.)

14 Q. Did you understand what you were doing that day?

15 A. I didn't know what I was doing.

16 Q. And when you said that you were, you told the
17 judge -- Mr. Gourley asked you if you recall telling the
18 judge that nobody was threatening or promising you
19 anything and you said you did recall that. Did you feel
20 threatened?

21 A. Yeah.

22 Q. By whom?

23 A. By Ms. McCann.

24 Q. By your attorney?

25 A. Uh-huh.

MATTHEW ATKINSON - REDIRECT BY ZMROCZEK

1 Q. And why did you feel threatened?

2 A. Because she said I beat my girlfriend up like that
3 right there. And she said, "When the judge sees that he's
4 going to give you the maximum for everything that you
5 did."

6 MS. ZMROCZEK: Beg the Court's indulgence.

7 (Pause.)

8 BY MS. ZMROCZEK:

9 Q. Mr. Atkinson, I'm going to show you what's been
10 marked for identification as Applicant's Exhibit Two and
11 ask if you recognize what those are.

12 A. Yeah. That's what she give me.

13 Q. Speak up loud.

14 A. Yes, ma'am. That's what she give me.

15 Q. That's what she showed you. She who?

16 A. Ms. McCann.

17 Q. And did she show you anything else with regards to
18 your case?

19 A. It was about that thick (indicating).

20 Q. Were there a couple of sheets of that -- those kinds
21 of quality of pictures?

22 A. Yeah, all of them.

23 MS. ZMROCZEK: Okay. Thank you. Your Honor, that's
24 all I have.

25 THE COURT: All right.

MATTHEW ATKINSON - REDIRECT BY ZMROCZEK

1 MS. ZMROCZEK: I just marked it for
2 identification and then I'll move it in through
3 Ms. McCann. Applicant's.

4 THE COURT: Medical records. We still have
5 that open. Do you have any additional objection
6 after having reviewed it?

7 MR. GOURLEY: Your Honor, just that they
8 were medical records from his span of history. I
9 think Ms. Zmroczek would agree with that, but
10 there was -- I don't see how they're related to
11 this incident. They're several years prior to his
12 guilty plea. I think there was one set in there
13 related to maybe a car accident, broken bones and
14 things like that. Just for the record, Your
15 Honor.

16 THE COURT: I understand that. I
17 understand your objection and I respectfully
18 overrule it and we'll enter that, the medical
19 records in as Applicant's Exhibit One.

20 (Applicant's Exhibit No. 1, medical
21 records, received into evidence.)

22 MS. ZMROCZEK: Thank you. And then, Your
23 Honor --

24 THE COURT: And you marked it for
25 identification for now.

1 MS. ZMROCZEK: Yes.

2 THE COURT: On the same page.

3 MS. ZMROCZEK: And those are all the
4 questions I have. I don't know if he has any
5 redirect {sic}.

6 THE COURT: Any redirect?

7 MR. GOURLEY: Yes, Your Honor. Just very
8 briefly.

9 THE COURT: Sure.

10 RE CROSS-EXAMINATION

11 BY MR. GOURLEY:

12 Q. Mr. Atkinson, you said that you felt threatened by
13 Ms. McCann during your guilty plea and you told the judge
14 you weren't threatened, right?

15 A. (Nods head.)

16 Q. You got to say yes or no.

17 A. Yes.

18 Q. So you lied to the judge when you told him you
19 weren't being threatened?

20 A. Yes.

21 Q. Is that a yes?

22 A. Yes.

23 MR. GOURLEY: Thank you. No further
24 questions, Your Honor.

25 THE COURT: All right. Mr. Atkinson, you

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 can step down. Thank you very much.

2 MS. ZMROCZEK: Your Honor, we would call
3 Carol Atkinson.

4 CAROL ATKINSON, having been duly sworn, was
5 examined and testified as follows:

6 THE CLERK: Please have a seat in the
7 witness box. State your full name for the Court.

8 MS. ZMROCZEK: Make sure you spell your
9 name for the record.

10 THE WITNESS: Carol Atkinson, C-A-R-O-L
11 A-T-K-I-N-S-O-N.

12 DIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q. Ms. Atkinson, are you related to the Applicant,
15 Matthew Atkinson?

16 A. I'm his mother.

17 Q. And, have -- how long have -- did Matthew live with
18 you prior to living on his own?

19 A. Well, off and on most of his life.

20 Q. Make sure you speak up. I know it's nervous sitting
21 up there but we got to make sure everybody can hear you.

22 A. He's been back and forth. He's been on his own and
23 then come back from my house to his father's house and,
24 wherever he was comfortable.

25 Q. Tell the Court why he spent a lot of time going back

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 and forth between your house and his house. Was he able
2 to function and live on his own?

3 A. Not really.

4 Q. Tell the Court why he was not.

5 A. He couldn't maintain bills. He ran out of
6 groceries.

7 Q. Was it just because he was irresponsible or were
8 there any medical reasons behind it?

9 A. He couldn't seem to comprehend paying bills and
10 buying groceries before you spend your money.

11 Q. How long -- did you ever -- as a child, did you ever
12 take him for any treatment, counseling or mental health?

13 A. Yes.

14 Q. Where did you take him?

15 A. My pediatrician at one time and then he went to the
16 mental health center for children, John-something treated
17 him at Barnwell.

18 Q. In Barnwell Mental Health?

19 A. (Nods head.)

20 Q. How long, if you recall, has he been on some sort of
21 medication to help assist him functioning?

22 A. Not since he was a teenager. He wouldn't take it.

23 Q. But he was prescribed it since he was --

24 A. (Nods head.)

25 Q. -- a teenager?

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 A. Yes.

2 Q. And, were you aware -- when did you become aware
3 that he was arrested?

4 A. His father called me at six a.m. and said there was
5 a, police officers at my son's house, and they had come
6 down and asked him to come get my son out of the house but
7 it was freezing cold and his father has a little boy and
8 he was sick.

9 Q. Was this New Year's Eve?

10 A. Yes.

11 Q. Were you familiar with the victim, your son's
12 girlfriend in this case?

13 A. Yes.

14 Q. How were you familiar with her?

15 A. She had been staying with my son off and on for a
16 couple of years.

17 Q. When was the last time you saw her prior to your son
18 being arrested?

19 A. Christmas Day.

20 Q. And this -- he was arrested, I believe, New Year's
21 Eve, New Year's Day time period?

22 A. Yes.

23 Q. And you said that you saw her on Christmas Day?

24 A. Yes.

25 Q. What if anything did you notice about her appearance

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 on Christmas Day?

2 A. She had huge black eyes and tons of makeup on.

3 Q. And, do you know how she received those black eyes?

4 A. I asked her. She said when she went to Tennessee to
5 get her little girl for Christmas that her aunt and her
6 son and a couple of her cousins jumped on her to prevent
7 her from taking the little girl, that her son punched her
8 and gave her those black eyes.

9 Q. And, were you contacted or did you contact his
10 attorney after he was arrested?

11 A. I went by the office several times.

12 Q. Were you able to speak with her?

13 A. Occasionally, yes.

14 Q. What were the things that you relayed to her?

15 A. Well, I mostly asked about getting him bonded out
16 because he was so depressed and I was worried about him.

17 Q. And what were you told about a bond hearing?

18 A. She told me not to bail him out because he was going
19 for a bond hearing that next Monday.

20 Q. And did you attend that bond hearing?

21 A. I got there just a few minutes late and they had
22 already locked the door.

23 Q. But were you able to eventually get into the
24 courtroom?

25 A. The next day.

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 Q. And the next day -- and, Your Honor, I'm referring,
2 beginning at page five of the plea transcript. What was
3 your understanding of what happened the next day in court?

4 A. Well, I sat through many different trials and
5 Ms. McCann asked me to come to the back of the courtroom
6 to a room and asked my son to plead guilty. And I said,
7 "No, he's not pleading guilty."

8 Q. So who was in the meeting with you?

9 A. Just Ms. McCann and my son and myself.

10 Q. The three of you?

11 A. (Nods head.)

12 Q. And it was your understanding that she asked you to
13 do what?

14 A. Convince him to plead guilty.

15 Q. And did he want to plead guilty to your knowledge?

16 A. No.

17 Q. Did you have any discussions with her about your
18 knowledge of the prior injuries of the victim?

19 A. She never asked.

20 Q. When you said that he didn't -- when y'all discussed
21 that he didn't want to plead guilty, what did you -- what,
22 if anything, did you do at that point in the conversation?

23 A. I begged him not to plead guilty. I said, "We'll
24 get a lawyer, we'll fight this. You didn't do these
25 things."

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 Q. What was his mental state during this conversation,
2 during this conversation?

3 A. He was sort of in a zone of his own, not really
4 comprehending what to do, not knowing -- like a little
5 child.

6 Q. And as long as you've known him is that, is that an
7 affect that you have seen often?

8 A. Many times.

9 Q. And when is it that you've seen him behave that way?

10 A. During drinking or using drugs or fighting with a
11 girlfriend, or --

12 Q. When he's in -- is he in an altered mental state
13 when he is acting that way?

14 A. Yes, he gets depressed and suicidal.

15 Q. And certainly he was on a -- and he was in jail for
16 94 days, correct?

17 A. Right.

18 Q. He did not have, to your knowledge, access to any
19 drugs or alcohol or any girlfriends during those 94 days?

20 A. No.

21 Q. Okay. What would you attribute his behavior to the
22 day that the plea went forward?

23 A. He was defeated and afraid.

24 Q. Afraid?

25 A. (Nods head.)

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 Q. Were you ever allowed to speak with him outside the
2 presence of his attorney?

3 A. No.

4 Q. And, tell the Court what happened. Were you allowed
5 to stay for the plea, or were you removed from the court?

6 A. He was the last one that went up and when I saw him
7 drop his head, I knew he was going to plead guilty. So I
8 was in a panic, and the judge asked him if he wanted to
9 plead guilty and he said yes. And he said, "You
10 understand it," and he said "Yes," and I screamed, "No,
11 he doesn't."

12 And then I was ejected from the courtroom.

13 MS. ZMROCZEK: And, Your Honor --

14 THE COURT: I've read it in transcript.

15 MS. ZMROCZEK: -- that begins on page six.

16 Q. After he was sentenced, did you have any further
17 conversations with Ms. McCann?

18 A. No, I don't think so.

19 Q. Was it your -- what was your understanding about
20 whether or not he wanted to go forward with a trial?

21 A. Well, up until that day I didn't realize that he was
22 going to trial that next week. I didn't know it until
23 that happened.

24 Q. Did you have any conversations with Ms. McCann
25 regarding your concerns about his understanding of what

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 was going on?

2 A. I don't really recall, but it was hard to talk to
3 her anyway. She was hard to catch.

4 Q. And what, if any, threats did you hear being made to
5 him prior to him pleading guilty by Ms. McCann?

6 A. I didn't hear any threats.

7 Q. Did you -- were you aware of the time that he was
8 facing?

9 A. No, I didn't understand everything either.

10 Q. Okay. What is your knowledge about the veracity of
11 the victim and the witnesses involved in this case?

12 A. Exactly what does that mean?

13 Q. What do you know about the truthfulness of the
14 witnesses and the victim involved in this case,
15 personally?

16 A. Initially I thought she was an abused wife, run away
17 from an abused husband. Poor little girl. But then I
18 found out that she was drinking and drugging, and very
19 demanding and abusive to my son.

20 Q. Your son's prior record, were there any serious
21 violent offenses on his record or were they mostly
22 drinking and driving related?

23 A. Mostly just irresponsibility, drinking.

24 Q. Is it your opinion -- obviously you've been his
25 mother for 40-some odd years. Is it your opinion that he

CAROL ATKINSON - DIRECT BY ZMROCZEK

1 entered the plea freely and voluntarily?

2 A. No.

3 Q. And tell the Court the reasons why you think that.

4 A. Because he was terrified by his attorney and by
5 other people around him including the district attorney or
6 whatever they are, prosecutors. He was told that if he
7 did not plead guilty he would get at least 30 years.

8 Q. And what are you -- and then do you feel like his
9 mental state had anything to do with his going forward
10 that day?

11 A. I think he was easily manipulated with fear and
12 misunderstanding.

13 Q. Were you aware he was receiving medication when he
14 entered the Barnwell County Detention Center?

15 A. I'm not sure.

16 Q. Did you try to contact him about his mental state?

17 A. No.

18 Q. But if he testified -- well, and you've since seen
19 his records. You know that he was receiving medication
20 while he was in Barnwell?

21 A. Seems like I remember him saying that.

22 MS. ZMROCZEK: Those are all the questions
23 I have for this witness, Your Honor.

24 THE COURT: Thank you. Mr. Gourley?

25 MR. GOURLEY: Yes, Your Honor.

CAROL ATKINSON - CROSS BY GOURLEY

CROSS-EXAMINATION

BY MR. GOURLEY:

Q. Ms. Atkinson, Ms. Zmroczek asked you about your son's prior record. And you stated that he didn't have anything violent on it; is that correct?

A. As far as I know.

Q. Are you aware that he was charged and convicted in 1990 of assault and battery?

A. (No response.)

Q. Ma'am?

A. With whom?

Q. I don't know who, but his prior conviction included a 1990 assault and battery, right?

A. 1990. I don't remember.

Q. What about in 2000, he was also convicted of assault and battery?

A. He was?

Q. Yes, ma'am.

A. Can you tell me about it?

Q. I can't tell you about it, but it was read off in the plea during the colloquy. In addition to his 1989 public drunkenness, his 1990 assault and battery, '91 providing alcohol to minors, '95 fraudulent check, '98 petty larceny, 2000 assault and battery, 2006 driving under suspension out of Georgia. Those are his

CAROL ATKINSON - CROSS BY GOURLEY

1 convictions.

2 A. Uh-huh.

3 Q. Okay. So you would agree with me assault and
4 battery is a fairly violent crime, correct?

5 A. Yes, sir.

6 Q. Okay. You made mention that you were aware of the
7 victim's history in Tennessee?

8 A. Yes.

9 Q. Okay. And you didn't tell Ms. McCann that?

10 A. She never asked.

11 Q. I think we can both agree that that's fairly
12 important information, right?

13 A. I only saw her a couple of times for a few minutes.

14 Q. You saw her with two black eyes five or six days
15 before --

16 A. I'm talking about McCann. You're talking about
17 Crystal?

18 Q. Yes.

19 A. Now what do you want to ask?

20 Q. You saw Crystal with two black eyes five or six
21 days --

22 A. Christmas Day.

23 Q. -- before your son allegedly hit her?

24 A. Christmas Day.

25 Q. Yes, ma'am. And you didn't feel that information

CAROL ATKINSON - CROSS BY GOURLEY

1 was important enough to tell your son's attorney about?

2 A. I thought she knew it.

3 Q. Okay. You assumed that she knew it?

4 A. Yes.

5 Q. Okay. But it wasn't important enough to make sure
6 that in your mind that she knew it?

7 A. My mental state was pretty bad.

8 Q. Okay.

9 A. I just assumed they knew the truth.

10 Q. Okay.

11 Beg the Court's indulgence, Your Honor.

12 THE COURT: Uh-huh.

13 (Pause.)

14 BY MR. GOURLEY:

15 Q. Were you present with -- in every meeting that
16 Ms. McCann had with your son?

17 A. None of them.

18 Q. You weren't present with any of them?

19 A. No.

20 Q. Okay. So you don't know what her discussions were?

21 A. No.

22 Q. Okay. You were only present for one meeting at the
23 courthouse when Ms. McCann had talked to you about trying
24 to convince your son to plead guilty?

25 A. Yes.

CAROL ATKINSON - CROSS BY GOURLEY

1 Q. Okay. And your son, you had entered him into a
2 mental health center in Barnwell when he was younger?

3 A. Several times, yes.

4 Q. Several times? Okay.

5 A. Well, routinely he saw them.

6 Q. Routinely?

7 A. (Nods head.)

8 Q. Did you ever tell Ms. McCann about his mental health
9 issues in the past?

10 A. No, she never asked.

11 Q. Never asked. But you didn't feel it was important
12 to tell her?

13 A. Well, it was public record. He went to a school for
14 mentally-handicapped children.

15 Q. Okay. And what did he suffer from?

16 A. Attention deficit, hyperactivity, nobody really ever
17 put a finger on it.

18 Q. Yeah.

19 A. Just he can't concentrate.

20 Q. I gotcha. Thank you, Ms. Atkinson.

21 That's all I have, Judge.

22 THE COURT: All right. Ms. Zmroczek?

23 MS. ZMROCZEK: Thank you. I just have one
24 follow-up question.

25

REDIRECT EXAMINATION

BY MS. ZMROCZEK:

Q. Ms. Atkinson, when you went to court that day did you think that he was going to plead or go to trial or have a bond hearing?

A. The first day I thought he was having a bond hearing but, like I said, they locked the door before I got in there. And then he called me later and said they had denied his bond and that he was going to be tried the next day.

Q. And, when you learned that, at that point you said that you wanted to -- I believe that you testified you wanted to retain an attorney?

A. Yes.

Q. Did you have the opportunity to do so?

A. No.

Q. Had you retained an attorney or had you had an opportunity to speak with Ms. McCann, would you have told her the information about the victim and your concerns about his mental health, had you had the opportunity?

A. Had I had the opportunity, yes.

Q. And are those issues that you would have also raised had you been allowed to -- had he elected to go to trial?

A. Yes.

Q. Okay.

LAURA McCANN - DIRECT BY ZMROCZEK

1 MS. ZMROCZEK: Thank you.

2 MR. GOURLEY: I don't have any other
3 questions, Judge.

4 THE COURT: Ms. Atkinson, you can step
5 down. Thank you very much.

6 THE WITNESS: Thank you.

7 MS. ZMROCZEK: Your Honor, at this time we
8 would call Laura McCann.

9 LAURA A. McCANN, having been duly sworn,
10 was examined and testified as follows:

11 THE CLERK: Please have a seat in the
12 witness box and state your full name for the
13 Court.

14 DIRECT EXAMINATION

15 BY MS. ZMROCZEK:

16 Q. Good morning. How are you?

17 A. Good morning. I'm good. How are you?

18 Q. I'm well. Thank you for being here today. Can you
19 tell the Court where you're employed?

20 A. I am employed with the Second Judicial Circuit
21 Public Defender's Office, but I do Barnwell and Bamberg
22 exclusively.

23 Q. Barnwell and Bamberg?

24 A. Uh-huh.

25 Q. Is that -- your office, is it in Bamberg?

LAURA McCANN - DIRECT BY ZMROCZEK

1 A. Well, we have one in both counties, uh-huh.

2 Q. How long have you been at the public defender's
3 office?

4 A. About six years now.

5 Q. When you were appointed to represent Mr. Atkinson,
6 how long had you been practicing?

7 A. Been practicing since 1989.

8 Q. How long had you been practicing in the public
9 defender's office when you were appointed to represent
10 Mr. Atkinson, approximately?

11 A. Well, it's been about six years now so that was,
12 what, two years ago. So about four years then.

13 Q. Okay. Were you familiar with Mr. Atkinson?

14 A. Yes. I had represented him twice before.

15 Q. Okay. Were you familiar with his mental background?

16 A. Mental background was never brought up, ever, except
17 for the exclusion of two overdoses that he received
18 treatment for. On drug overdoses. No one ever brought up
19 any mental background.

20 I even went so far as to meet with him after his
21 conviction to pursue drug and alcohol placement with him
22 and completed an application where he had to talk
23 exclusively about mental illness which is a preclusion to
24 placement. He never said anything about it. I talked to
25 his mother several times and she never said anything about

LAURA McCANN - DIRECT BY ZMROCZEK

1 it.

2 Q. You stated that you were aware that he had two
3 overdoses?

4 A. Right.

5 Q. Meaning he had attempted to commit suicide two
6 times?

7 A. No. He never said he attempted to commit suicide.
8 He has used drugs excessively for -- let me refer to the,
9 to what he -- for over 10 years he had used drugs
10 excessively and drank excessively for about 25 years. He
11 had overdoses that led him to the placement at the Aurora
12 Pavilion for treatment.

13 Q. So you were aware that there was at least some
14 history with --

15 A. With substance abuse, absolutely.

16 Q. Did you have him -- I'm not sure from what you're
17 reading. Did you have him evaluated?

18 A. No. There was an application for long-term drug and
19 alcohol. We had a motion for reconsideration after we got
20 him into that. This was his application that we went over
21 painstakingly, what drugs he used, how long, what the
22 results were, whether there was any mental illness.

23 Q. Okay.

24 Your Honor, may I have an opportunity to look at
25 that? I wasn't -- you did not send that to me when I

LAURA McCANN - DIRECT BY ZMROCZEK

1 requested your file, did you?

2 A. I have no idea. My paralegal copied the file for
3 you. It's the overcomer's application.

4 MS. ZMROCZEK: Your Honor, may I have
5 permission?

6 THE COURT: Yes, you may.

7 MS. ZMROCZEK: Your Honor, if I may if we
8 can get a copy of this made up at some point. I
9 would like to enter this into the record as well.

10 THE COURT: Okay.

11 MR. GOURLEY: That's fine.

12 THE COURT: Are you able to make a copy?

13 THE CLERK: Sure. If you don't mind me
14 walking out of the courtroom.

15 THE WITNESS: That was created after his
16 plea.

17 MS. ZMROCZEK: Yes, ma'am.

18 THE COURT: Do we know the date on that
19 just for the record?

20 THE WITNESS: There should be a letter to
21 the placement facility that would give you an idea
22 of the approximate date.

23 MS. ZMROCZEK: April 25th, 2013.

24 THE COURT: Okay.

25 MS. ZMROCZEK: We can still talk while

LAURA McCANN - DIRECT BY ZMROCZEK

1 she's making copies.

2 THE COURT: Yes, that's fine.

3 BY MS. ZMROCZEK:

4 Q. Okay. In that, what will be entered as Applicant's
5 Exhibit No. 4, it indicates that he was receiving, he
6 being Mr. Atkinson, was receiving treatment at Lieber
7 Psyche Services is what you had written down or somebody
8 had written down.

9 Is that something you did --

10 A. Uh-huh.

11 Q. -- or did somebody complete that evaluation for you?

12 A. The application?

13 Q. I mean, the application.

14 A. I went to Lieber and completed it with Mr. Atkinson
15 at the time in order to secure --

16 Q. That was your handwriting?

17 A. Yes, ma'am.

18 Q. Okay. Did you request any of the records from
19 Lieber Psyche program or inquire why he was in Lieber
20 being evaluated by Lieber Psychological?

21 A. He told me -- this was post plea.

22 Q. Right, right.

23 A. He told me that he was just getting medication from
24 Lieber because he was depressed because he was in prison.

25 Q. Okay. But, and that didn't raise any concerns --

LAURA McCANN - DIRECT BY ZMROCZEK

- 1 A. No, ma'am.
- 2 Q. -- to you?
- 3 A. I'd be depressed if I'd be in prison, too.
- 4 Q. When -- you saw Mr. Atkinson testify today?
- 5 A. Uh-huh.
- 6 Q. Was his affect the same or different during your
- 7 conversations prior to his plea?
- 8 A. He is much different today than he was whenever I've
- 9 dealt with him.
- 10 Q. And tell me the differences.
- 11 A. He was much more verbal. He could carry on a
- 12 conversation with me. We didn't have a problem with the
- 13 volume of his voice, understanding what he was saying.
- 14 He's explained to me the home he grew up in that led up to
- 15 this lifestyle that led up to the problems, followed by
- 16 the behavior, what he wanted to do to change it.
- 17 I mean, we've gone through the discovery ad
- 18 nauseam. We didn't have any of this, the way he's acting
- 19 today.
- 20 Q. And when you say you went through the discovery ad
- 21 nauseam --
- 22 A. Uh-huh.
- 23 Q. -- when I asked for a copy of the discovery I was
- 24 provided a disk. Were you provided them on disk or were
- 25 you provided the discovery in a hard copy?

LAURA McCANN - DIRECT BY ZMROCZEK

1 A. I know I have disks so I know I have hard copies.
2 Sometimes they come down in disks and my paralegal makes
3 copies of them before I get the file. So I can't tell you
4 if we got only disks for it came -- how it came to us.
5 All I know is I got it.

6 Q. Okay. And it's your testimony that you went through
7 everything that was in the discovery with him?

8 A. Absolutely.

9 Q. Do you have the days that you visited him? First of
10 all, how many days did you represent him? If the record
11 reflects 94 days, would that be accurate or would you
12 disagree with that?

13 A. We were appointed on, looks like, January 10th of
14 2012. My first appointment with him was on January 25th
15 of 2012.

16 Q. And when did he plead? Would you agree that if the
17 record reflected it was April 3rd, 2012, that that would
18 be correct?

19 A. If that's what the record says.

20 I have April 3rd, 2012. Yes, we have this new
21 system. I had to find it.

22 Q. That's okay.

23 And without doing the math if -- and I'm, I'm
24 terrible at math which is why I went to law school, but I
25 believe that I calculated that to be approximately 94

LAURA McCANN - DIRECT BY ZMROCZEK

1 days. Would --
2 A. I have no idea but I don't disagree.
3 Q. But January to April is --
4 A. April, right.
5 Q. -- certainly less than four months, correct?
6 A. Yes.
7 Q. Okay. And, is it common for you to have cases of
8 this serious nature be called for trial in less than four
9 months?
10 A. Well, no, because we only have court every, once
11 every -- four times a year's all we have court.
12 Q. Okay.
13 A. So it would not be common.
14 Q. It would not be common?
15 A. Right.
16 Q. And would you have liked an opportunity to
17 investigate this case a little bit more?
18 A. No. We went through all the discovery. He never
19 denied what happened. He never denied what we had
20 discussed. He knew that he was looking at serious
21 charges, true. He never brought up anything about mental
22 illness with the exception of his drug and alcohol. I had
23 represented him on two prior criminal domestic violence
24 with the same victim, Crystal. I was aware of their
25 story.

LAURA MCCANN - DIRECT BY ZMROCZEK

1 Q. Were you also aware that she's been arrested several
2 times?

3 A. Yes.

4 Q. And that her credibility may have some problems?

5 A. We've discussed that as well as the witness who was
6 in the house, Merit Huff, had also had a record. And we
7 discussed that also.

8 Q. And so you knew there were problems with the person
9 who allegedly called 9-1-1?

10 A. Yes.

11 Q. Who -- and then the person who claims she was beat
12 up?

13 A. Yes.

14 Q. Okay. And additionally you watched the videos.
15 They were -- you were provided some, some in-car videos --

16 A. Uh-huh.

17 Q. -- from the officers' vehicles, correct?

18 A. Correct.

19 Q. And you would agree with me that that, that -- that
20 on those videos even though he was charged with assaulting
21 an officer that, that that video would reflect maybe
22 something different than is in the incident report?

23 A. I don't know what you're trying to say.

24 Q. Okay.

25 A. I will tell you that he admits that he kicked an

LAURA McCANN - DIRECT BY ZMROCZEK

1 officer during the whole thing. And he kicked him hard
2 enough that the officer went down the steps. And he told
3 me that himself.

4 Q. Okay. Did -- and if he had told you that he kicked
5 the door when the officers were trying -- the officers
6 broke in or kicked down the door to his house, correct, or
7 were trying to get in his house? He was barricaded in his
8 house.

9 A. Right. And he would open the door and say nobody
10 was home and then he'd slam the door and then he'd open
11 the door. And the officer tried to, when it was open to
12 gain entry and --

13 Q. And that's when the alleged --

14 A. -- that's when the assault happened, yes.

15 Q. Okay. Okay. So it wasn't like he opened the door
16 and attacked the officer?

17 A. No.

18 Q. Okay.

19 A. Huh-uh.

20 Q. Okay. And, you would agree that they are familiar
21 with Mr. Atkinson due to his failure to stay off the roads
22 when he's drinking and driving, correct?

23 A. I'm sorry? I'm sorry?

24 Q. You were aware that the officers knew who he was?

25 A. Oh, yes. It's a small town. Everybody knows

LAURA McCANN - DIRECT BY ZMROCZEK

1 everybody.

2 Q. Everybody knows everybody?

3 A. Yeah.

4 Q. And would you agree with me that the discovery that
5 you provided, specifically the DVDs of the in-car camera,
6 would indicate that the officers were laughing about
7 arresting him?

8 A. I don't, I don't recall that. But I don't deny that
9 it's probably on there, but I just don't recall it.

10 MS. ZMROCZEK: Your Honor, I can go ahead
11 and put the audio in, if the Court would like time
12 to review it later.

13 THE COURT: This is the audio of the?

14 MS. ZMROCZEK: Of the in-car, of the body
15 cams or the little officer mics.

16 THE COURT: And this was part of discovery.

17 MS. ZMROCZEK: That was provided to
18 Ms. McCann that she then provided to me.

19 THE COURT: Mr. Gourley?

20 BY MS. ZMROCZEK:

21 Q. Are these the -- let me just show you these disks
22 and ask you if this is what was provided in discovery, to
23 your knowledge? Oh. You have copies.

24 A. Oh, yeah. I have copies.

25 Q. Were you provided an audio backup from the officers?

LAURA McCANN - DIRECT BY ZMROCZEK

1 A. There is one that's blank. There's photos. An
2 audio backup, yes, from Investigator Peterson. Is that
3 the one you're talking about? 12-31-11, Investigator
4 Peterson.

5 Yours is marked different than mine but that's
6 probably it, yes.

7 Q. But would this be the disk that your paralegal
8 provided?

9 A. Not my paralegal. I don't know what she gave you to
10 tell you the truth, but she should have, yes. She should
11 have made a copy of all of these for you.

12 Q. All right.

13 MS. ZMROCZEK: And, Your Honor, maybe we
14 can take a break to compare the audio and -- I
15 just think it's relevant to the charges that he
16 pled to.

17 THE COURT: You think it's -- why is it
18 relevant?

19 MS. ZMROCZEK: I just think that the
20 relevancy has to do with -- the testimony that he
21 felt that he was being threatened and pressured by
22 the mean judge and by the officer. I think
23 that -- or by his attorney.

24 It shows that everyone in Barnwell was
25 familiar with him and that although it's

LAURA McCANN - DIRECT BY ZMROCZEK

1 continuously testified that these were serious
2 charges, that the audio would indicate that
3 although the charges themselves were serious that
4 the officers were not afraid or considering these
5 serious charges. They would reflect something
6 different.

7 THE COURT: I think that it's a very, very
8 far stretch to understand why --

9 MS. ZMROCZEK: And I can move on. And
10 they're not relevant necessarily.

11 THE COURT: To the PCR.

12 MS. ZMROCZEK: -- to the PCR. So I can
13 come back to it.

14 Q. But were those videos -- would you have played those
15 for Mr. Atkinson?

16 A. I would have offered to play them for him. If he
17 wanted to hear them he would have heard them entirely. If
18 he didn't, which frequently they don't want to hear them,
19 then I would have stopped them.

20 Q. What kind of investigation did you do into, in
21 preparing for this guilty plea?

22 A. I talked to Matthew several times about it. I
23 reviewed all of the discovery. He never denied the
24 discovery. I met with the solicitor's office several
25 times. His mother came to the office several times. I

LAURA McCANN - DIRECT BY ZMROCZEK

1 discussed with her several times.

2 As she explained she was in a different frame of
3 mind and was very agitated most of those visits. We
4 pursued alternatives to incarceration, knowing that he
5 probably was looking at some jail time because of his
6 record and the seriousness of these offenses. We spent a
7 lot of time looking at alternatives to incarceration for
8 him also.

9 Q. Why did you do that?

10 A. He requested it.

11 Q. Would that -- you were aware that he was, at least
12 while he was incarcerated in the Barnwell County Detention
13 Center, prescribed medication, correct?

14 A. He told me he was on some medicine there just
15 because he was having problems sleeping because he was
16 incarcerated.

17 Q. Okay. And in fact the Court discussed it beginning
18 on page 15.

19 Your Honor, referring to page 15 of the guilty
20 plea.

21 THE COURT: Okay.

22 BY MS. ZMROCZEK:

23 Q. The Court specifically inquired about any
24 medication, prescription medications and specifically on
25 page 19 the Defendant says: "Anti-depressant and some

LAURA McCANN - DIRECT BY ZMROCZEK

1 kind of sleep medicine."

2 A. Okay.

3 Q. You would agree that that reflects that?

4 A. I agree that's what it reflects. Yes, ma'am.

5 Q. Okay. And so it wasn't just for sleep; is that
6 correct? Is that your understanding?

7 A. Okay.

8 Q. Or did you inquire into that?

9 A. He may have told me it was depression and sleep. I
10 don't deny that.

11 Q. Okay. Is there a reason that you did not pursue any
12 sort of Blair hearing?

13 A. He never appeared like he didn't understand things.
14 It was a lot of pressure on him from his mother not to
15 pled guilty, not to do anything. He felt torn between his
16 mom. And when we would sit down and talk, we did have
17 long discussions about the fact that it was his decision,
18 not his mothers's decision. He clearly understood what
19 was going on.

20 We have -- I have a lot of clients, quite frankly,
21 that once they're incarcerated they're depressed and have
22 problems sleeping. That doesn't mean they don't
23 understand what's going on. He never indicated or showed
24 to me any signs that he was not fully aware of what was
25 going on and made decisions.

LAURA McCANN - DIRECT BY ZMROCZEK

1 He was torn with his mother, though.

2 Q. Okay. I'm going to show you what's marked for
3 identification as Applicant's Exhibit Two. Do you
4 recognize those?

5 A. Yeah, but we have them in color.

6 Q. Okay. Did you show the pictures --

7 A. In color.

8 Q. -- in color to him or in black and white?

9 A. I don't have them in black and white. I only have
10 them in color.

11 I guess I do have them in black and white.

12 He would have seen them all. He would have seen
13 color and black and white.

14 Q. But would you agree they weren't provided to me?

15 A. Those are all his pictures.

16 Q. Correct. If they were provided to me -- they should
17 have been provided in color, but if they weren't -- I
18 understand that that wasn't -- I did request your file,
19 right?

20 A. Yes, you did request our file.

21 MS. ZMROCZEK: Your Honor, at this time
22 we'd like to move Applicant's Exhibit Two into the
23 record.

24 THE COURT: Any objection?

25 MR. GOURLEY: Your Honor, not to be

LAURA McCANN - DIRECT BY ZMROCZEK

1 difficult but I think the color photos would be
2 more appropriate so the injuries, I think the
3 black and white kind of blur it out.

4 MS. ZMROCZEK: Your Honor, the only reason
5 was that it was his testimony that he saw black
6 and white the morning of --

7 THE COURT: We'll go ahead and enter into
8 evidence the black-and-white. He did testify that
9 that's what he saw, and --

10 THE WITNESS: Ours are like this
11 (displaying).

12 MS. ZMROCZEK: Okay.

13 THE COURT: -- will be entered.

14 THE WITNESS: The pictures would have also
15 been provided to you on the disk.

16 MS. ZMROCZEK: Right.

17 THE COURT: For the purposes of what the
18 testimony has been, I'm happy to enter that into
19 evidence. We also have the testimony that he was
20 able to see color photos from his attorney.

21 I can make a credibility determination
22 there.

23 And with regard to Ms. Zmroczek's concerns,
24 she's not raising an objection but noting that she
25 has a black-and-white copy, she did also receive a

LAURA McCANN - DIRECT BY ZMROCZEK

1 disk.

2 THE WITNESS: Do you need these then?

3 THE COURT: Mark it and have it entered.

4 MS. ZMROCZEK: It's been marked, I think.

5 THE COURT: Entered. It is entered as

6 Applicant's Two.

7 MS. ZMROCZEK: Two. Correct, Your Honor.

8 (Applicant's Exhibit No. 2, black-and-white
9 photo, received into evidence.)

10 BY MS. ZMROCZEK:

11 Q. And I'm showing you what's been marked for
12 identification as Applicant's Three. When you receive
13 discovery do you typically receive a rap sheet --

14 A. Yes.

15 Q. -- regarding the defendant?

16 A. Yes.

17 Q. And I'll let you check your file to make sure it
18 reflects that that's what was provided in Applicant's
19 Three.

20 A. Yes. It's got the same numbers on it.

21 MS. ZMROCZEK: Your Honor, at this time we
22 would move Applicant's Three which is the
23 Defendant's rap sheet into the record.

24 THE COURT: Any objection?

25 MR. GOURLEY: No, Your Honor.

LAURA McCANN - DIRECT BY ZMROCZEK

1 MS. ZMROCZEK: Okay.

2 THE COURT: All right. It is so entered.

3 (Applicant's Exhibit No. 3, rap sheet,
4 received into evidence.)

5 BY MS. ZMROCZEK:

6 Q. Did you review the rap sheet of -- prior to -- was
7 it Solicitor Miller that did the plea?

8 A. It was Solicitor Slocum.

9 Q. Solicitor Slocum. Would you have any reason to
10 doubt that what's in the Defendant's rap sheet is
11 incorrect or --

12 A. Well, I go over the rap sheet with them and we ask
13 about -- I asked him about it, if it's not true to let me
14 know.

15 Q. And --

16 A. So you should have, like, little marks, like, like,
17 a paren in there sort of.

18 Q. I'm showing you what's page two.

19 A. Yeah, that's -- when I discuss it with them I make
20 those marks.

21 Q. Okay. And so it would reflect that he had on page
22 -- what's been marked or identified as page two that he
23 had some driving, some driving offenses, correct?

24 A. I have more than one page two, so let me see here.
25 DUS in 2006. Is that what you have?

LAURA McCANN - DIRECT BY ZMROCZEK

1 Q. Yes, ma'am.

2 A. You have a different state. That's out of state.

3 Q. DUS in 2006 would be in South Carolina, right?

4 A. This one?

5 Q. Correct.

6 A. And a littering.

7 Q. And where?

8 A. A littering. A DUS and littering.

9 Q. Littering. Sorry.

10 A. 2006 South Carolina, yes.

11 Q. And that he had in 1990 an assault and battery

12 offense. It appears to be a misdemeanor offense; is that

13 correct?

14 A. Yeah. They're just in different order. Sorry.

15 Q. That's okay.

16 A. There's assault and battery from Barnwell PD.

17 Q. Yes, in 1990.

18 A. 1990, yes.

19 Q. Okay. And then also some petty larceny charges in

20 1998, correct?

21 A. 1998 from Barnwell County Sheriff's, 2-27-98, yes.

22 There's two.

23 Q. Okay. And, I see you have an additional page that I

24 don't have. Maybe a couple additional pages. Do they

25 reflect -- what are the other additional charges that are

LAURA McCANN - DIRECT BY ZMROCZEK

1 reflected?

2 A. Okay. Convictions: He has a speeding conviction in
3 2006; a DUS in 2006; and a littering in, a littering in
4 2006; a driving on the wrong side of the road in 2006.

5 THE COURT: And, Ms. Zmroczek, I don't mean
6 to interrupt, but what does -- which allegation is
7 this relevant to? Why are we going down --

8 MS. ZMROCZEK: The failure to investigate,
9 Your Honor.

10 I believe that the guilty plea transcript
11 reflects some charges that were nolle prossed or
12 that are not in his rap sheet.

13 THE COURT: Okay.

14 MS. ZMROCZEK: And that's why we're going
15 through them.

16 THE COURT: Okay. And that's one of your
17 allegations.

18 MS. ZMROCZEK: The failure to investigate
19 viable offenses, veracity of the victim and the
20 witnesses. And in this case the witnesses, Your
21 Honor, being some of the officers.

22 THE COURT: I'm just -- it seems to me like
23 you are, perhaps are arguing that there's some
24 information from, I guess, the solicitor that was
25 given and --

LAURA McCANN - DIRECT BY ZMROCZEK

1 MS. ZMROCZEK: Right. And, Your Honor, I
2 guess to kind of -- yes, one of the things that he
3 testified to is that he was -- felt like he was
4 threatened or coerced.

5 And, Your Honor, this happened so fast,
6 like, 94 days and he was getting ready to get
7 called for trial. And they were proceeding maybe
8 on information that either was incorrect or not
9 thoroughly investigated.

10 THE COURT: Point me to the page in the
11 transcript where they go over his prior record.

12 MR. GOURLEY: Page three, Your Honor, line
13 17 through 21.

14 THE COURT: Page three?

15 MR. GOURLEY: Yes, Your Honor.

16 THE COURT: Okay. Right away. All right.

17 MS. ZMROCZEK: I believe, Your Honor, there
18 were just some additional assault charges that
19 were entered into the record that I did not see on
20 the rap sheet. That was the inquiry.

21 THE COURT: So from line -- from line 17
22 through 21 where Mr. Slocum says, "He has a 1989
23 public drunkenness; 1990 assault and battery; 1991
24 providing alcohol to minors; '95 fraudulent check;
25 '98 petty larceny; 2000 assault and battery; 2006

LAURA McCANN - DIRECT BY ZMROCZEK

1 DUS; two DUSs out of Georgia," are you saying any
2 of those were incorrect?

3 MS. ZMROCZEK: No. I believe that those
4 were correct, Your Honor.

5 THE COURT: So you're just -- are you
6 talking about when Mr. Gourley had questioned?

7 MS. ZMROCZEK: Yes, yes.

8 THE COURT: And as I recall --

9 MS. ZMROCZEK: He had an extra assault
10 charge from 2011.

11 THE COURT: My notes only show a 2000
12 assault charge.

13 MS. ZMROCZEK: Okay. And I may have
14 written it down incorrectly.

15 THE COURT: I don't think he said anything
16 from 2011. If everything that was said during the
17 guilty plea was correct, let's just --

18 MS. ZMROCZEK: And we can move on from
19 that.

20 THE COURT: Yes.

21 MS. ZMROCZEK: Thank you.

22 THE COURT: Yes.

23 BY MS. ZMROCZEK:

24 Q. You testified that he, Mr. Atkinson, had described a
25 lot of familial history, familial problems?

LAURA McCANN - DIRECT BY ZMROCZEK

1 A. Uh-huh.

2 Q. Did you provide any mitigation to the Court
3 regarding that?

4 A. You obviously have a transcript of what I --

5 Q. Let me --

6 A. -- said in court.

7 Q. Let me ask it this way. Why didn't you provide any
8 mitigation?

9 A. A lot of that came out when we did the post-plea
10 application for treatment.

11 Q. And I guess the question is: Is there a reason
12 that you didn't do any investigation into that prior to
13 the plea?

14 A. I don't think that whether his dad drank and beat
15 his mother severely had anything to do with whether he
16 actually beat up Crystal that day or kicked a police
17 officer.

18 Q. Okay. So it's your testimony that his family
19 background although it was important for the
20 reconsideration, you didn't feel like --

21 A. It was important because it was part of the
22 application for the admission to treatment. That's the
23 only reason we went into it. It had to do with a specific
24 question with how he grew up in his household and what was
25 in his household.

LAURA McCANN - DIRECT BY ZMROCZEK

1 I don't have the application anymore but you're
2 talking --

3 THE COURT: And, Ms. Zmroczek, I'm reading
4 page 22. It does appear Ms. McCann, her own words
5 were, "His parents would beat the hell out of each
6 other all the time." So this was brought up --

7 MS. ZMROCZEK: Okay. Thank you.

8 THE COURT: -- in the guilty plea.

9 BY MS. ZMROCZEK:

10 Q. Would you agree that you listened to all of the
11 videos that were provided to you?

12 A. Oh, yes. I did.

13 Q. And if he admitted to everything that that would not
14 be reflective as to what happened, the videos would
15 reflect or the audio would reflect that there was some
16 confusion about what went on that night. But you're
17 saying that when you asked about it he just admitted to
18 everything?

19 A. I'm not sure I understand your question. I'm sorry.

20 Q. Okay. In the video specifically when the officers
21 are laughing and saying, "This is a hell of a mess, some
22 girl from Tennessee that he Shacked up with a year or so
23 ago," that it maybe wasn't clear to the officers about
24 what happened but you're saying that he just admitted to
25 everything and so you didn't feel the need to do any

LAURA McCANN - DIRECT BY ZMROCZEK

1 investigation?

2 A. Oh, he told me exactly what happened. It wasn't a
3 matter of that he didn't know what happened. He told me.

4 Q. Okay.

5 A. He told me how he, you know, tore up the car, broke
6 up the car, dragged her in the house, beat her up. He was
7 very clear about that.

8 Q. Okay. And did you -- why did you have his mom or
9 did you have his mom meet with you the day of the guilty
10 plea?

11 A. He requested that his mom meet with us. We took his
12 mom back there and him. She had been disruptive and
13 agitated throughout our dealings. This is her son. I
14 understand she was upset about it.

15 He -- she was telling him one thing. I was showing
16 him stuff and talking to him about another thing. He felt
17 torn. Every time he would talk he would say, "I'm going
18 to plead," but he'd say, "I have to talk with my mom."
19 Then he'd talk to his mom and then he didn't want to
20 plead. I said, "Why don't we meet together."

21 We sat down and he was given his options. Whatever
22 he wanted to pick he was given his options. He had the
23 bond hearing the day before. The solicitors agreed to
24 keep the offer open for one more day. And that's when we
25 met with mom.

LAURA McCANN - DIRECT BY ZMROCZEK

1 Q. And then after that day, what was your understanding
2 of what would happen?

3 A. Mom walked out of that meeting upset and angry. She
4 did not stay but a very short period of time. Matthew and
5 I talked for quite a while after that. He said he was
6 going to plead. Eventually he talked to the solicitors,
7 told him he was going to plead. And he in fact did enter
8 a guilty plea.

9 Q. But you said the plea would stay open for one more
10 day. If he did not accept the guilty plea that day --

11 A. He was going to trial.

12 Q. And when was he going to trial?

13 A. He would be first up on the trial list the next
14 term.

15 Q. The next term?

16 A. Uh-huh.

17 Q. And were you prepared to try the case?

18 A. That day? No.

19 Q. Okay. Are you familiar with -- how many guilty
20 pleas have you done in Barnwell or in Bamberg?

21 A. Hundreds.

22 Q. Okay. And are you familiar with the kinds of things
23 that, that, that you want to present to try to get your
24 client the best outcome?

25 A. I think I am.

LAURA McCANN - CROSS BY GOURLEY

1 Q. Okay. And do you feel like that you provided him
2 your best mitigation that day?

3 A. Not only do I feel like I did an excellent job for
4 Matthew, but I went above and beyond. I met with him
5 several times at Lieber post conviction to pursue
6 placement for him, treatment for him, following up with
7 his motion to be re-considered for acceptance to
8 treatment. I think I've gone above and beyond and done an
9 excellent defending him.

10 Q. And do you think that any of the things that were
11 done post conviction could have or would have made a
12 difference prior to him entering the guilty plea?

13 A. No, I do not.

14 MS. ZMROCZEK: Thank you.

15 Those are all the questions I have, Your
16 Honor.

17 THE COURT: All right. Mr. Gourley?

18 MR. GOURLEY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. GOURLEY:

21 Q. Ms. McCann, let's kind of pick up where Ms. Zmroczek
22 left off.

23 The things that you did for Mr. Atkinson post
24 conviction you had already looked into prior to him
25 pleading guilty, correct?

LAURA McCANN - CROSS BY GOURLEY

1 A. Absolutely.

2 Q. And during your mitigation evidence you spoke to
3 Judge Early, I believe, about the opportunities that
4 Mr. Atkinson may have in regards to those?

5 A. And why we felt that was the best decision in order
6 to stop the cycle.

7 Q. Okay. And you had mentioned that you weren't
8 prepared for trial that day and it was first up on the
9 trial list the next term. When was the next term?

10 A. We usually have one week of court quarterly. So it
11 would have been at least three months down the line.

12 Q. So he wasn't coming up for trial the next day if he
13 didn't plead guilty?

14 A. No.

15 Q. And do you feel like you would have been prepared
16 for trial given another three months?

17 A. Absolutely.

18 Q. Mr. Atkinson's alleged a failure to request a
19 preliminary hearing. Did y'all have any discussions about
20 that?

21 A. We filed a request for a preliminary hearing.

22 Q. Okay.

23 A. And it is attached to our motion for discovery
24 and -- it should be. It was filed on January 12th of
25 2012.

LAURA McCANN - CROSS BY GOURLEY

1 Q. Did y'all ever have the prelim?

2 A. We did not. When it comes up on the preliminary
3 hearing list we talk to our clients about it. And he was
4 not interested in a preliminary hearing, and we waived
5 it.

6 Q. Okay. Do you feel that 94 days was an adequate
7 amount of time to meet with Mr. Atkinson, advise him of
8 his constitutional rights, whether or not to plead guilty,
9 research the case, so on and so forth?

10 A. I had no problems obviously going forward.

11 MS. ZMROCZEK: I'm sorry. I couldn't hear.

12 THE WITNESS: I said, obviously I had no
13 problems going forward.

14 BY MR. GOURLEY:

15 Q. Did you have the opportunity to discuss
16 Mr. Atkinson's constitutional rights prior to his plea?

17 A. In depth.

18 Q. Okay. And what about, like, the elements of the
19 charges, things like that?

20 A. We discussed all of those. We discussed not only
21 the elements of the charges but the possible penalties.
22 We talked about options and the facts of the case.

23 Q. Did he ever tell you he didn't understand something
24 or seemed not to comprehend those things?

25 A. If he had a question -- now, he would ask

LAURA McCANN - CROSS BY GOURLEY

1 questions. If he had a question we went over it until he
2 understood it.

3 Q. So he was very engaging in your conversations?

4 A. I did not have a problem with making sure he
5 understood everything. And the judge allowed us plenty of
6 opportunity over lunch. He was nervous when we first went
7 in to court but then he allowed us over a lunch period to
8 make sure that he understood everything clearly.

9 Q. Okay. What was your kind of investigation in this
10 case? Did you feel that there was any viable defenses to
11 these charges or anything like that?

12 A. When he admitted to them and when we went through
13 all the discovery and we discussed it and he admitted to
14 it, I'm not sure there was much after that.

15 Q. You were kind of hand tied there.

16 A. Yeah.

17 Q. Regarding the veracity of the victim, and I was
18 reading your mitigation, you did make note that
19 Ms. Jackson, I believe is her name?

20 A. Right.

21 Q. Had some family history herself and was up in
22 Tennessee and back home, so on and so forth?

23 A. That's the story I got from him.

24 Q. Okay.

25 A. Right.

LAURA McCANN - CROSS BY GOURLEY

1 Q. So you were aware through Mr. Atkinson her life
2 history?

3 A. Her conflictual relationship with her husband and
4 her family in Tennessee.

5 Q. Right.

6 A. Coupled with the co-dependency issue between the two
7 of them.

8 Q. And you certainly brought that to the Court's
9 attention as well?

10 A. I did.

11 Q. Okay. Were you aware of the allegation that
12 Ms. Jackson had received two black eyes around Christmas?

13 A. No one has ever mentioned that. Today is the first
14 I heard of that.

15 Q. Had you received that information, would you have
16 looked into it?

17 A. Certainly. That certainly would have been
18 mitigation.

19 Q. And certainly you don't have any way of knowing what
20 Ms. Jackson's present appearance was on Christmas Eve?

21 A. I have no idea. I did not spend Christmas Eve with
22 them.

23 MR. GOURLEY: Thank you, Ms. McCann.

24 I have no other questions.

25 MS. ZMROCZEK: I just have a few

LAURA McCANN - REDIRECT BY ZMROCZEK

1 follow-up. And I'm referring, Your Honor, to page
2 25 of the record.

3 REDIRECT EXAMINATION

4 BY MS. ZMROCZEK:

5 Q. You indicated to the Court that, that -- well, when
6 you first started -- referring to page 25 -- did you have
7 -- you had not -- this case had not been indicted by the
8 grand jury, correct?

9 A. Correct.

10 Q. And did you have to take a break to explain that to
11 him?

12 A. Well, there was some question in the courtroom. We
13 just discussed it right there where I would remind him,
14 remember, this is what we discussed about grand jury and
15 he'd say yes, yes.

16 Q. And I guess that's where I was going. Page 25. You
17 indicated that you had to remind him --

18 A. Uh-huh.

19 Q. -- but before you had testified that he had no
20 problems understanding --

21 A. That's right.

22 Q. -- but then on page 25 you said that "Sometimes it's
23 not that he's stupid --

24 A. Right.

25 Q. -- but it's almost like he's ADD. It takes him a

LAURA McCANN - REDIRECT BY ZMROCZEK

1 little longer to grasp things"?

2 A. The ADD is the attention thing. It's not that he's
3 stupid. It's not that he doesn't understand it.

4 Q. But you would agree it takes him a little longer to
5 grasp things?

6 A. Because, like that pause thing with him. It's not
7 something he doesn't comprehend right but he does have
8 that, that pause thing. And I don't know whether it's
9 he's pausing because he's thinking if he's going to ask
10 you another question or whether it's ADD. I'm not a
11 psychologist. I don't know.

12 Q. And that's my point. And that's my point which is
13 what I was trying to get to.

14 Is that something that, in hindsight maybe, you
15 would like a psychologist to look at?

16 A. No.

17 Q. So that's not important to you whether there --

18 A. He never indicated he didn't understand anything,
19 ma'am.

20 Q. Okay. And you said -- and I believe you said he's
21 just been addicted to drugs and that's what you attributed
22 and -- his ADD is what you attributed his, what you said,
23 taking longer to grasp things?

24 A. He's told me he was addicted to drugs all that
25 time. But he never indicated that he didn't understand

LAURA McCANN - REDIRECT BY ZMROCZEK

1 something.

2 You know, I have several clients that go before a
3 judge that ask that question about waiving grand jury.
4 It's always that question that they always look with panic
5 in their face. And it's not uncommon for us to say,
6 remember we discussed this boom boom boom and they're,
7 like, okay.

8 That's no indication to me that he's incompetent or
9 that I should immediately go get a mental evaluation. And
10 he said, oh yeah. He remembered. We go on.

11 Q. And the fact that you were told he was on
12 antidepressants also, you didn't feel like you needed to
13 get a mental evaluation either?

14 A. No. He told me he was on those after he was
15 incarcerated because of his incarceration.

16 Q. Okay. But the guilty plea he indicated to the judge
17 that he was on antidepressants?

18 A. Because he was in the county jail. It wasn't
19 pre-county jail.

20 Q. Okay. And you did not acquire any -- have you ever
21 seen any of the records that --

22 A. Didn't know any existed.

23 Q. Okay. You did not know any existed?

24 A. Huh-uh.

25 MS. ZMROCZEK: That's all I have, Your

LAURA McCANN - RECROSS BY GOURLEY

1 Honor.

2 THE COURT: All right. Mr. Gourley?

3 RECROSS-EXAMINATION

4 BY MR. GOURLEY:

5 Q. Ms. McCann, did you reasonably rely on your own
6 perceptions in determining whether or not to get
7 Mr. Atkinson evaluated?

8 A. Absolutely.

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

11 THE COURT: Thank you very much. You can
12 step down.

13 THE WITNESS: Thank you.

14 MR. GOURLEY: Your Honor, I ask if
15 Ms. McCann can be excused.

16 THE COURT: She may be.

17 MS. ZMROCZEK: And, Your Honor, I believe
18 the clerk made copies. If we could have that
19 entered as Exhibit Four. We gave her her original
20 back. And that's -- I think that's the one that
21 needs to be redacted.

22 THE CLERK: Medical records, Number One, is
23 going to have to be redacted.

24 MS. ZMROCZEK: Okay. There probably are
25 some and/or Your Honor, we can file them, I can

1 redact them and/or we can file them under seal.

2 THE CLERK: If you direct us to seal the
3 exhibits because of the --

4 THE COURT: Let's go ahead and file them
5 under seal. I think that would be a better idea.

6 MS. ZMROCZEK: Because otherwise I'm going
7 to be blacking out a whole bunch of information.

8 THE COURT: That is Exhibit Number Four.
9 It's entered as well. All right. Any further
10 witnesses?

11 (Applicant's Exhibit No. 4, Public
12 Defender's documents, received into evidence under
13 seal. Applicant's Exhibit No. 1, medical records,
14 placed under seal.)

15 MS. ZMROCZEK: I have no further witnesses,
16 Your Honor. And I'd just like to make a brief
17 argument if the State has no witnesses.

18 THE COURT: Sure.

19 MR. GOURLEY: No witnesses, Your Honor.
20 Thank you.

21 THE COURT: Okay. Ms. Zmroczek, I'll hear
22 from you in closing.

23 MS. ZMROCZEK: Thank you. Your Honor, with
24 regard to guilty pleas, and I know that this Court
25 is aware that Strickland versus Washington has

1 been the standard for a long, long time. But
2 there's been a string of cases including Padilla
3 versus Kentucky, Lochlear versus Pride most
4 recently that have come down regarding the sixth
5 amendment rights to guilty pleas.

6 Over 90 percent of cases are resolved by
7 guilty pleas. And the standard that was set in
8 Strickland, the Supreme Court -- the majority
9 opinion of the Supreme Court in all of these cases
10 that addressed guilty pleas understood that there
11 was a difficult application of the Strickland
12 standard which they really used for trials when
13 applying to guilty pleas.

14 And I think that's why that these string of
15 cases have come down regarding guilty pleas.
16 Specifically they addressed the sixth amendment
17 right to effective counsel during plea bargaining.
18 The Court specifically addressed that these
19 deficiencies can result in accepting or rejecting
20 a plea, deciding whether or not to go to trial.

21 And specifically the majority opinion
22 acknowledges the difficulty in determining the
23 proof for, the standard for defense counsel when
24 evaluating these claims.

25 Your Honor, my concern and the reason that

1 this PCR was filed was with -- and with no
2 disrespect to Ms. McCann at all. I understand how
3 difficult it is when you're in a very small county
4 and you only have court a certain number of times
5 a year.

6 But she also indicated that this was a
7 small town and everybody knew each other. And the
8 records that are put into the -- that will be
9 entered under seal, specifically in Applicant's
10 One and Applicant's Four, Your Honor, indicate
11 that clearly there's some concern about his
12 understanding, his mental history, her inability
13 to communicate with his mother, and his
14 conflicting appearances or hesitations when he was
15 meeting with her, and wanting to speak with his
16 mother, maybe what he was understanding or what
17 his influences were.

18 Your Honor, 94 days from arrest or
19 appointment to a guilty plea on some very serious
20 charges I would assert is certainly not long
21 enough to, to make sure that his sixth amendment
22 rights to effective counsel have been perfected.

23 And I would agree wholeheartedly that she
24 went above and beyond post conviction. And even
25 Applicant's Number Four which I just saw for the

1 first time today indicates that there were some
2 serious issues.

3 And I do believe that those, had those been
4 presented or preserved or had at least time to be
5 investigated that that would have either affected
6 whether or not he did plead guilty or go to trial
7 and/or could have affected his sentence at the
8 time.

9 Your Honor, and for those reasons that's
10 why we would ask that this PCR be granted.

11 THE COURT: Okay. Thank you very much.

12 Mr. Gourley?

13 MR. GOURLEY: Yes, Your Honor. In regards
14 to allegations made here today. The no request
15 for the preliminary hearing, I think Ms. McCann
16 hit on that quite well. She filed one. We heard
17 based off her discussions with the Applicant they
18 elected to withdraw it.

19 With the whole 94 days situation time span,
20 I think that's sufficient enough time to meet with
21 her client. Per Ms. McCann, it was enough time to
22 meet with her client, discuss what's going on,
23 investigate the case, look into the victim's
24 background, obviously meet with his mom, the
25 Applicant many times. And she stated that she

1 felt comfortable allowing Mr. Atkinson to plead
2 guilty. There wasn't an impending trial as
3 Ms. McCann stated. She had an additional three
4 months if need be if the case was going to go to
5 trial if Mr. Atkinson did not choose to plead
6 guilty.

7 With the full understanding of the
8 consequences of the guilty plea. It speaks for
9 itself. It was a knowingly and intelligently-made
10 guilty plea.

11 I think Mr. Atkinson's credibility is in
12 question here today regarding his contradictions
13 to what he said under oath the day of his guilty
14 plea.

15 With the failure to investigate viable
16 defenses and veracity of the victim, I think the
17 mitigation speaks for itself. She certainly knew
18 the victim's past history in regards to going up
19 to Tennessee. And she obviously was well aware of
20 the prior criminal domestic violence issues that
21 she had represented Mr. Atkinson on. I believe
22 that was regarding Crystal as well.

23 And then with the mental health issue, Your
24 Honor, as I'm sure your familiar with, Jeter V
25 State being able to reasonably rely on counsel's

1 own perceptions, Ms. McCann stated that no one
2 ever brought it to her attention that Mr. Atkinson
3 lacked any kind of mental capacity. Mr. Atkinson
4 had a full understanding of what was going on, was
5 able to engage with her in conversation, answer
6 any questions, ask any questions, nor did any
7 family members bring up the fact that he suffered
8 from some kind of mental incompetency.

9 Additionally, Your Honor, I would submit to
10 the Court that there needed to be a mental
11 evaluation to show that he actually suffered from
12 some kind of mental incapacity. If we were to go
13 that far down the road which obviously there's
14 been no evidence outside of some medical documents
15 presented here today showing what kind of drugs he
16 was on. Of course ADD, ADHD certainly don't rise
17 to the level of lack of capacity to knowingly and
18 intelligently plead guilty.

19 For those reasons I would respectfully ask
20 that you deny this application for post-conviction
21 relief.

22 THE COURT: All right.

23 MR. GOURLEY: Thank you.

24 THE COURT: Thank you both.

25 I have carefully listened to all the

1 testimony before me. I have read all -- I've read
2 the transcript and the PCR application as well as
3 the return.

4 And it is the order of the Court that this
5 PCR application is to be denied.

6 I ask that Mr. Gourley prepare an order
7 within 30 days and I will make findings of fact as
8 to each of the allegations underlying this PCR.

9 With regard to the allegation that
10 Ms. McCann was ineffective for not having --
11 requesting a preliminary hearing. I note that
12 there's no constitutional right to a preliminary
13 hearing. There is no evidence as to why not
14 requesting a preliminary hearing was prejudicial
15 to him. Ms. McCann did indeed request a hearing
16 and then it was withdrawn for strategic reasons.

17 With regard to the claim of ineffective
18 assistance of counsel that the plea was -- that
19 the Applicant was not told of the consequences of
20 the plea, that the plea was not knowing or
21 intelligently made. The guilty plea transcript
22 belies this allegation. Mr. Atkinson testified
23 under oath to the contrary; that he understood the
24 consequences of the plea; that he knew what he was
25 doing.

1 Ms. McCann also testified that her client
2 knew what he was doing at the time. And in fact
3 his testimony today reflected, you know, that he
4 was fearful that he -- of the sentence he was
5 facing if he was found guilty after a trial. That
6 indicates that, you know, he did know what was
7 going on.

8 Again the transcript reflects that Judge
9 Early went over the constitutional rights that he
10 was waiving. He stated, Mr. Atkinson stated under
11 oath that he understood those rights and was
12 choosing to waive those rights.

13 With regard to the claims of ineffective
14 assistance of counsel for failing to investigate
15 viable defenses, for not talking to the victim,
16 and the plea occurring just 94 days after the
17 attorney was appointed to him. I find as a fact
18 that the defense counsel's investigation was
19 appropriate. Counsel was fully prepared and she
20 discussed the discovery with the Defendant. The
21 Defendant admitted the charges against him. And
22 there's no evidence that further investigation
23 would have changed the result in this case.

24 With regard to his allegations that a Blair
25 hearing should have been requested or there should

1 have been some additional investigation into this
2 competency. The transcript, again, reflects that
3 Mr. Atkinson understood the charges against him
4 and the possible punishment. The transcript
5 reflects that he understood the questions that
6 were being asked and he responded in an
7 appropriate manner.

8 Although he claimed that his attorney told
9 him just to say "Yes, sir, yes, sir," the record
10 actually reflects that he answered appropriately.
11 Some questions he answered "Yes, sir," some
12 questions he answered "No, sir." When he was
13 asked about any prescription medicine he was able
14 to answer that question.

15 So it is not a case where he answered yes
16 to every question. He was able to understand the
17 particular questions that were asked and he
18 answered appropriately.

19 I believe that resolves all the issues.
20 Ms. Zmroczek, are there any that I failed to rule
21 on?

22 MS. ZMROCZEK: I believe that covered all
23 the ones that were raised. Thank you.

24 THE COURT: Thank you very much.

25 MR. GOURLEY: Thank you, Judge.

1 END OF PROCEEDINGS: 12:37 p.m.

2 ***

3 CERTIFICATE OF REPORTER

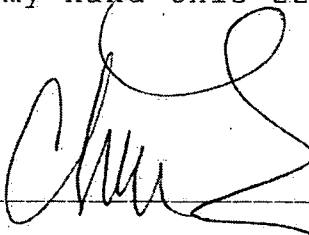
4 STATE OF SOUTH CAROLINA)

5 COUNTY OF AIKEN)

6 I, Cheri L. Young, Registered Professional Reporter
7 and Official Court Reporter for the State of South
8 Carolina, Second Circuit-At Large, do hereby certify that
9 the foregoing proceedings were written stenographically
10 by me using computer-aided translation; further, that the
11 foregoing is a true, accurate and complete record, to the
12 best of my skill and ability, of all the proceedings had
13 and evidence introduced in the hearing of the captioned
14 case, relative to appeal, in the Court of Common Pleas
15 for Aiken County, on the 20th day of May, 2015.

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

18 I have hereunder set my hand this 22nd day of
19 November, 2015.

20
21 
22 Cheri L. Young, RPR
23 Official Court Reporter
24
25

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Barnwell
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-06-00224
State of SC

Matthew Stephen Atkinson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Applicants exhibits 1-4 are to be sealed by the clerk of court due to the sensitive + personal information contained in the documents

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Jaemya L. G.
Circuit Court Judge

2756
Judge Code

5/20/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 22nd day of May, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 27th day of May, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee J. Gnroczyk
AJZ Law Firm, LLC
P.O. Box 11961, Columbia, SC
 ATTORNEY(S) FOR THE PLAINTIFF(S) 29211

Daniel F. Gourley, II
P.O. Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)
Constance B. Mansfield
 CLERK OF COURT
Deputy

Court Reporter: _____

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

Matthew Atkinson, # 350329,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2014-CP-06-224

ORDER OF DISMISSAL

FILED FOR RECORD
2015 JUL -2 PM 2:23
HONORABLE D. McNEEL
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 9, 2014. Respondent made its return on September 25, 2014. An evidentiary hearing into the matter was convened on May 20, 2015, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. The Applicant was true bill indicted at the April 2012 term of the Barnwell County Grand Jury for resisting arrest (2012-GS-06-00107). Additionally, the Applicant has waived presentment of his indictment for assault and battery of a high and aggravated nature (2012-GS-06-00106). Laura McCann, Esquire represented Applicant. On April 3, 2012, Applicant pled guilty before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant pursuant to a recommendation by the State to twelve years imprisonment for assault and battery

FILED

File Stamp

RECEIVED

CLERK OF COURT

Deputy Clerk

of a high and aggravated nature and a ten-year term of imprisonment for resisting arrest; all sentences were to run concurrently. The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. No request was made for a preliminary hearing
 - b. Counsel advice was not within the range of competence demanded of attorneys as case was pled 94 days after client was arrested when client was under belief that he was appearing in court for a bond reduction.
 - c. Plea was not entered with full understanding of consequences, charges had not been explained to Applicant and Applicant did not understand the charges pending against him.
 - d. Defendant's guilty plea was not knowingly and voluntarily made.
 - e. Counsel's failure to investigate viable defenses and veracity of victim and witnesses deprived defendant of insisting on his right to a jury trial. Counsel failed to pursue claims by applicant that victim received injuries prior to this alleged assault.
 - f. Counsel's failure to establish competency to enter a plea or stand trial.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Additionally, Applicant presented testimony from Carol Atkinson (hereinafter "Mother") and Laura McCann, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of the plea transcript, the Barnwell County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he met with Plea Counsel approximately two to three times prior to his guilty plea. Applicant recalled reviewing some photographs with Plea Counsel prior to his plea. Applicant did not recall giving Plea Counsel

any leads or witnesses to investigate on his behalf. Applicant recalled waiving his constitutional rights during his plea. Applicant recalled telling the plea judge that no one was promising or threatening him in order to get him to plead guilty. Applicant recalled telling the plea court that he wanted to plead guilty and he was doing so freely and voluntarily. However, Applicant claimed that Plea Counsel made him sign the plea sheet. Applicant admitted that he lied to the plea judge when he stated that he did not feel threatened. Applicant further claimed that he responded "yes" to all questions. Applicant claimed that he wanted to proceed to trial, but Plea Counsel never advised him of his right to proceed to trial. Applicant stated that he never asked Plea Counsel any questions. Applicant could not recall whether he asked Plea Counsel for a preliminary hearing.

Applicant stated he met with doctors in Barnwell County Jail and was prescribed medications for sleeping and nerves. Applicant stated that he had to quit taking his medications in order for the South Carolina Department of Corrections to transport him. Applicant stated he only began taking medication once he was arrested.

Applicant admitted to slapping victim, but claimed victim already had two black eyes. Applicant explained that victim was beat up by family members located in Tennessee. Applicant stated victim's aunt jumped on victim when victim tried to retrieve her son from aunt's residence in Tennessee. However, Applicant recalled that a witness to the assault called 911.

Applicant stated Plea Counsel initially told him he would only receive three years, but at following meeting, Plea Counsel told him he would receive twenty years. At the final meeting, Plea Counsel told him he was going to receive the maximum sentence. Applicant stated that he was under the impression that he was going to court for a bond reduction, but ended up pleading guilty. Applicant stated he pled guilty because he was going to be the first person up on the trial

docket for the following week. According to the Applicant, he was fearful of the maximum sentence and pled guilty to avoid a harsher punishment.

Following Applicant's testimony, Mother was called to testify. Mother stated that Applicant was her son. Mother stated that Applicant lived with her most his life. Mother explained that Applicant was not able to live on his own. Mother stated Applicant has been taking medication for A.D.D. and A.D.H.D since he was a teenager. However, Applicant would not take his medication.

Mother stated she never told Plea Counsel about Applicant's mental conditions. Mother stated Plea Counsel never asked and she assumed that Plea Counsel would know about Applicant's mental condition. Mother stated that her mental state during this process was "pretty bad."

Mother stated she saw victim on Christmas day. Mother stated victim had two black. Mother stated victim drinks, does drugs, and is abusive to Applicant. Mother stated she did not tell Plea Counsel about victim's violent history because she assumed Counsel knew about it. Mother stated that she was not aware of Applicant's violent history. Specifically, Mother stated that she did not know Applicant had two prior assault and battery charges in 1990 and 2000. Mother agreed that assault and battery is a violent offense.

Mother stated she was not present for every meeting between Plea Counsel and Applicant. Mother stated she was only present during their last meeting moments before Applicant pled guilty. Mother stated she did not want Applicant to plead guilty and begged him not to do so. Mother admitted that during the guilty plea, she yelled out in the courtroom that Applicant did not understand what he was doing.

Following Mother's testimony, Plea Counsel was called to testify. Plea Counsel stated she was appointed to represent Applicant on January 10, 2012. Plea Counsel stated she filed for and reviewed all Brady and Rule 5 material with Applicant. Plea Counsel stated she reviewed the elements of the charges with Applicant prior to his plea. Plea Counsel stated she had multiple discussions with Applicant, reviewed discovery, and Applicant never denied any of the discovery material. Plea Counsel stated that she reviewed Applicant's constitutional rights with him. Plea Counsel stated she met with Solicitor's office to try to work out plea deals. Plea Counsel stated Mother was in a different frame of mind and did not want Applicant to plead guilty.

Plea Counsel acknowledged that Applicant pled guilty ninety-four days after she was appointed to represent him. Plea Counsel stated that she did not need additional time. Plea Counsel stated that Applicant never denied anything that was found in discovery nor did he dispute the charges. Plea Counsel stated she had previously represented Applicant on two other, unrelated domestic violent charges. Plea Counsel stated she would have been prepared to try the case had Applicant wanted a jury trial.

Plea Counsel stated assault and battery charges typically revolve around credibility of the either victim or defendant. Plea Counsel stated she knew she could attack the credibility of the victim, but there was an additional witness. Furthermore, Applicant had an additional charge of assaulting a police officer, which Applicant did not dispute. Plea Counsel stated this was a small town and everyone knew everyone. Plea Counsel stated the officers would have been aware of Applicant's prior history. Plea Counsel stated that she offered to play the officer's chest cam video, but Applicant did not want to see it.

Plea Counsel stated that she had no concerns about Applicant's mental health. Plea Counsel stated Applicant only suffered from alcohol and drug abuse. Plea Counsel stated that she had many talks with Mother and none of Applicant's prior mental history was ever brought up. Plea Counsel stated Applicant used drugs excessively for ten years. Plea Counsel stated during her representation, Applicant had no problem communicating and keeping his voice up. Plea Counsel stated that when Applicant pled guilty he went to Lieber Correctional institution because he was struggling with his anger and suffering from depression. Plea Counsel stated she was not surprised by this chain of events as Applicant was now incarcerated.

Plea Counsel stated Applicant grew up in a troubled home. Specifically, Plea Counsel stated Applicant's parents would drink and fight. Plea Counsel stated Applicant's father would beat Applicant's mother whenever he drank alcohol.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds Counsel's testimony credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

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 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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 (1985).

Ineffective Assistance of Plea Counsel for failing to request a preliminary hearing.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for Plea Counsel's failure to request a preliminary hearing to be meritless. This Court notes there is no constitutional right to a preliminary hearing. State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982). Furthermore, this Court finds Petitioner has failed to present any credible evidence that he was entitled to a preliminary hearing under state law, that he requested such a hearing, or that

he was prejudiced because he did not receive such a hearing. Additionally, this Court would note that Petitioner's statements at his guilty plea proceedings are inconsistent with the continued assertion of his right to a preliminary hearing. See Bonnette v. State, 277 S.C. 17, 18– 19, 282 S.E.2d 597, 598 (1981) ("We find appellant's plea negotiations and silence before the trial court concerning his desire for a preliminary hearing constitute evidence of waiver.")

This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant knowingly and intelligently pled guilty to assault and battery of a high and aggravated nature and resisting arrest. Accordingly, this Court finds Applicant's allegation is denied and dismissed with prejudice.

Ineffective assistance of counsel for allowing Applicant to plead guilty having only represented him for ninety-four days.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Plea Counsel allowing Applicant to plead guilty after having represented him for ninety four days to be meritless. The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation. Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008). This Court notes Plea Counsel acknowledged that Applicant pled guilty ninety four days after her appointment. Plea Counsel stated that she did not need additional time. Plea Counsel stated that Applicant never denied anything that was found in discovery nor did he dispute the charges. Plea Counsel stated she had previously represented Applicant on two other unrelated domestic violence charges. Plea Counsel stated she would have been prepared to try the case

had Applicant wanted a jury trial. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Additionally, this Court notes Applicant did not offer any evidence of how additional preparation or communication would have resulted in a different outcome. See Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998) (where PCR applicant failed to present any evidence of what counsel could have discovered or what other defenses he would have requested counsel pursue had counsel more fully prepared for the trial, applicant failed to show his counsel's lack of preparation prejudiced him); Skeen v. State, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial). This Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant knowingly and intelligently pled guilty to assault and battery of a high and aggravated nature and resisting arrest. Accordingly, this Court finds Applicant's allegation is denied and dismissed with prejudice.

Ineffective assistance of counsel for failing to review the consequences of his plea.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for Plea Counsel's failure to review the consequences of his plea to be meritless. Entering a guilty plea results in a waiver of several constitutional rights; therefore, the Due Process Clause requires that guilty pleas be entered into voluntarily, knowingly, and intelligently by defendants. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). In order for a guilty

plea to be knowing and voluntary, a defendant must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived. Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). When determining issues relating to guilty pleas, the court can consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

In the instant case, the guilty plea record alone reveals that Applicant was well aware of the charges he faced, the crucial elements of the offenses, the maximum and mandatory minimum penalty and, the nature of his constitutional rights being waived. The record also reflects a factual basis for the plea. This Court notes Plea Counsel credibly testified that she reviewed the elements of the charges, the Applicant's constitutional rights, and discovery material with Applicant prior to his plea.

This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant knowingly and intelligently pled guilty to assault and battery of a high and aggravated nature and resisting arrest. Accordingly, this Court finds Applicant's allegation is denied and dismissed with prejudice.

Ineffective assistance of counsel for failing to investigate defenses.

This Court finds meritless Applicant's allegation that he received ineffective assistance of counsel due to Plea Counsel's failure to investigate defenses. This Court finds Plea Counsel

credibly testified that she was fully prepared to try the case had Applicant wanted to proceed to trial. Plea Counsel met with Applicant prior to his plea and reviewed the discovery material. At no point in time did Applicant dispute the discovery material nor did he deny committing the crimes. This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, this Court notes Applicant's bare assertion that Plea Counsel failed to investigate possible defenses - without more - is insufficient to meet his burden of proof. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). In the instant case, Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant knowingly and intelligently pled guilty to assault and battery of a high and aggravated nature and resisting arrest. Based off of the foregoing, this Court finds Applicant's allegation is denied and dismissed with prejudice.

Ineffective assistance of counsel for failing to request a Blair hearing regarding Applicant's competency to plead guilty.

This Court finds Applicant's allegation that he received ineffective assistance of counsel due to Plea Counsel's failure to request a Blair hearing prior to his plea to be meritless. In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of his trial or plea. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id. This Court

finds Plea Counsel credibly testified that Applicant was able to communicate and participate in his defense. Plea Counsel stated Applicant was vocal and alert during their meetings. Plea Counsel stated she was aware of Applicant's history of both drug and alcohol abuse, but she did not have any concerns about Applicant's mental competency. Notably, Applicant himself stated that he suffered from no competency issues during his plea. (Pl. tr. p. 15 line 11—p. 16 line 14). This Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance under prevailing professional norms.

Furthermore, this Court finds Applicant has failed to present any credible testimony or evidence in support of his allegation that he was mentally incompetent at the time of his plea. During the PCR hearing Applicant himself stated he only suffered from lack of sleep and depression. Additionally, Mother stated that Applicant suffered from A.D.D. and A.D.H.D as a child. Notably, Mother testified that she did not express any of her concerns about Applicant's competency to Plea Counsel during their meetings or prior to his plea. This Court notes Applicant's exhibit # 1 does not reveal any kind of findings that Applicant suffered from mental illness. To the contrary, Applicant's exhibit #1 is merely a compilation of medical records from Applicant's health history from 1991 to 2011. The list of injuries noted in the medical records involving various ailments including wrist sprains and a sprained shoulder. This Court finds Applicant has failed to present specific and compelling evidence that Plea Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Plea Counsel's performance. This Court notes Applicant knowingly and intelligently pled guilty to assault and battery of a high and aggravated nature and resisting arrest. Accordingly, this Court finds Applicant's allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

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

CONCLUSION

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

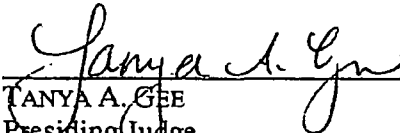
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 25th day of June, 2015.

Columbia, South Carolina


 TANYA A. GEE
 Presiding Judge
 Second Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL DISTRICT
2014CP0600224

Matthew Atkinson, #350329)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

MOTION TO RECONSIDER

NOW COMES, Applicant, Matthew Atkinson, by and through his undersigned counsel, and moves pursuant to Rule 59(e) SCRPC for an order altering or amending the court's prior order filed on July 2, 2015 and received in this office on July 9, 2015, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000).

Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Failure to request a preliminary hearing;
2. Counsel advice was not within the range of competence demanded of attorneys as case was pled 94 days after client was arrested when client was under belief that he was appearing in court for a bond reduction;
3. Failure to explain charges and consequences to Applicant;
4. Applicant's guilty plea was not knowingly and voluntarily made;
5. Failure to investigate viable defenses and veracity of victim and witnesses deprived Applicant of insisting on his right to a jury trial;
6. Failure to establish competency to enter a plea or stand trial.

THEREFORE, counsel requests that Order be reconsidered for the above listed specific reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



Aimee J. Zmroczek, Esq. #77936

A. J. Z. Law Firm, LLC

P.O. Box 11961

Columbia, SC 29211

(803) 400-1918 phone

(803) 403-8005 fax

ajzlawfirm@gmail.com

Counsel for Applicant

Columbia, South Carolina

Dated: July 15, 2015

FORM 4

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS
Matthew Atkinson, #350329

CASE NUMBER: 2014-CP-06-00224
State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried for hearing and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Other Dismissed without prejudice ☐ Rule 43(k), SCRPC (Settled);
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Applicant's Motion for Reconsideration is Denied.

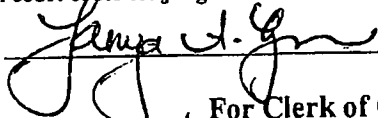
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



Judge Code 2756

Date 7/21/2015

For Clerk of Court Office Use Only

This judgment was entered on the 27th day of July, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 28th day of July, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Aimee J. Zmroczek

PO Box 11961, Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

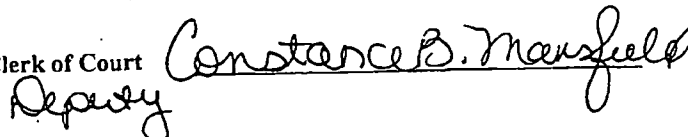
Daniel F. Gourley, II

PO Box 11549, Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court




WITNESSES

Barnwell Sheriffs Office

Brian Johnson

Law Enforcement Case #: C11-12-10214

JAS

ARREST WARRANT NUMBER

M555533

DOCKET NO. 2012GS0600106

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

JULY TERM 2012

**THE STATE
vs.**

MATTHEW STEPHEN ATKINSON

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: June 28, 2012

VERDICT

CDR #: 3411

Indictment for

**ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE**

§ 16-03-0600(B)(1)

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

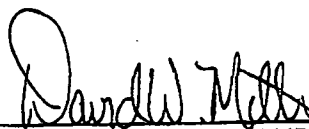
INDICTMENT FOR
ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE

§ 16-03-0600(B)(1)

At a Court of General Sessions, convened on July 9, 2012, the Grand Jurors of
Barnwell County present upon their oath:

That **MATTHEW STEPHEN ATKINSON** did in Barnwell County, South
Carolina on or about December 30, 2011, commit an assault and battery upon Crystal
Jackson resulting in great bodily injury, to wit: repeatedly striking the victim in the face
and head with his fists and other objects while threatening to kill the victim with a knife.
All in violation of §16-3-600(B)(1) 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.



J. STROM THURMOND, SOLICITOR

146

STATE OF SOUTH CAROLINA
COUNTY OF Barnwell
STATE

VS.

Matthew Stephen Atkinson

AKA:

Race: 1 Sex: M Age: 42DOB: 1969 SS#: [REDACTED]

Address:

City, State, Zip: Williston, SC 29853DL# [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 and Battery of a High and Aggravated NatureIn violation of 16-03-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
Solicitor19553
SC Bar #[Signature]
Defendant[Signature]
Attorney for Defendant15069
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient:

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

TOTAL two fee (12) ONE \$ 133.90Clerk of Court/Deputy Clerk Sharon H. RitchieCourt Reporter: Cheri Young

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0600106A/W#: M555533Date of Offense: 12/30/2011S.C. Code §: 16-03-600(B)(1)CDR Code #: 3411

SENTENCE SHEET

0-20☐ CONVICTED OF or ☒ PLEADS(CSC w/minor 1st or Lowd Act)

Defendant Waives Presentment to Grand Jury.

Negotiated Sentence, ☒ Recommendation by the State.

1454 (def.'s initials)

15069

SC Bar #

State Department of Corrections

County Detention Center,

under the Youthful Offender Act not to exceed _____ years

provided that upon the service of _____ days/months/years and or payment

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

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

incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

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

\$14-1-213 (Drug Court Surcharge)

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

\$56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

mnts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]Judge Code: 0136Sentence Date April 3, 2012

7
WITNESSES

Barnwell Sheriffs Office

Brian Johnson

Law Enforcement Case #: C11-12-10214

JAS

ARREST WARRANT NUMBER

M555534

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: March 29, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0600107

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

APRIL TERM 2012

THE STATE

VS.

MATTHEW STEPHEN ATKINSON

CDR #: 0256

Indictment for

RESISTING ARREST

§ 16-09-0320(B)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)

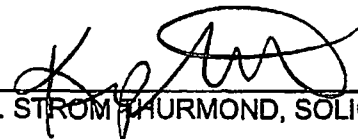
INDICTMENT FOR
RESISTING ARREST

§ 16-09-0320(B)

At a Court of General Sessions, convened on April 2, 2012, the Grand Jurors of Barnwell County present upon their oath:

That **MATTHEW STEPHEN ATKINSON** did in Barnwell County on or about December 30, 2011, knowingly and wilfully assault, beat or wound Brian Johnson, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when said defendant knew or reasonably should have known that Brian Johnson is a law enforcement officer. All in violation of §16-9-320(B) of the 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.



J. STROM THURMOND, SOLICITOR For

STATE OF SOUTH CAROLINA
COUNTY OF Barnwell
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0600107

VS.
Matthew Stephen Atkinson

A/W#: M555534

AKA:
Race: 1 Sex: M Age: 42

Date of Offense: 12/30/2011DOB: 1969 SS#: [REDACTED]S.C. Code §: 16-09-0320(B)Address: [REDACTED]CDR Code #: 0256City, State, Zip: Williston, SC 29853DL# [REDACTED] SID# [REDACTED]

SENTENCE SHEET

≤ 10 years and/or \$1,000 - \$10,000*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒☐ CONVICTED OF or ☒ PLEADS

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

TO: Resisting / Assault, beat, or wound police officer serving process or while resisting arrestIn violation of § 16-09-0320(B) of the S.C. Code of Laws, bearing CDR Code # 0256☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. (def.'s initials)ATTEST: [Signature]

[Signature] Solicitor 19553 SC Bar # [Signature] Defendant [Signature] Attorney for Defendant 15069 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 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: 12-65-06-706☐ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$14-1-206 (Assessments 107.5%) \$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \$56-5-2995 (DUI Assessment) \$12 \$ \$56-1-288 (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(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/Deputy Clerk Sharon H. RitchieCourt Reporter: Cheri Young

SCCA/217 (03/2011)

Obtain GED ☐Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Presiding Judge [Signature]Judge Code: 0136Sentence Date April 3, 2012