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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
Maite Murphy, Circuit Court Judge

MICHAEL ALLEN CARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002510

APPENDIX

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

STATE OF SOUTH CAROLINA,)
State,)
vs.) Case No.: 2013-GS-18-0246
MICHAEL ALLEN CARTER,)
Defendant.)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
CHANGE OF PLEA HEARING
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON AUGUST 5, 2013

ROLAYNE M. VOLPE, CCR, RPR
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A P P E A R A N C E S

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Dorchester County, General Sessions
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Plea Hearing, State vs Michael Allen Carter

I N D E X

DESCRIPTION

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REPORTER'S CERTIFICATE

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E X H I B I T S

DESCRIPTION

I.D.

ADMITTED

(No exhibits were tendered.)

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Dorchester County, General Sessions
August 5, 2013
Plea Hearing, State vs Michael Allen Carter

1 The above-styled cause came on for hearing on
2 the 5th day of August, 2013, at 12:02 p.m., before Judge
3 Kristi Lea Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Dorchester, when the following
6 proceedings were had and entered of record, to wit:

7 CHANGE OF PLEA HEARING

8 MR. WARD: State calls Michael Carter.

9 THE COURT: Are you Michael Carter?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Please swear the Defendant.

12 THE DEPUTY CLERK OF COURT: Please raise your
13 right hand. State your full name.

14 THE DEFENDANT: Michael Allen Carter.

15 (The oath is administered by the Deputy Clerk
16 of Court.)

17 MICHAEL ALLEN CARTER,

18 having been first duly sworn by the Deputy Clerk of
19 Court to tell the truth, the whole truth, and nothing
20 but the truth, was examined and testified upon his oath
21 as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q Mr. Carter, how old are you?

25 A Fifty.

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1 Q How far did you go in school?
2 A High school, graduated. Two years of college.
3 Q What type of work do you do?
4 A Handle hazardous materials as a truck driver.
5 Q I'm sorry?
6 A Handle hazardous materials as a truck driver.
7 Q Are you married?
8 A No, ma'am.
9 Q Do you have children?
10 A Yes, ma'am.
11 Q How many?
12 A One.
13 Q How old?
14 A Twenty-five.
15 Q Have you ever been treated for the abuse of
16 drugs or alcohol?
17 A No, ma'am.
18 Q Ever been treated for mental illness?
19 A No, ma'am.
20 Q You're here to plead guilty on Indictment
21 2013-GS-18-246, which is a True Billed Indictment for
22 criminal domestic violence of a high and aggravated
23 nature. I can sentence you up to one year -- excuse me.
24 I must sentence you one year, up to ten years in the
25 Department of Corrections. Do you understand that's the

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1 possible punishment?

2 A Yes, ma'am.

3 THE COURT: Mr. Chisholm, did you also explain
4 to your client the collateral consequences of a plea to
5 a criminal domestic violence charge?

6 MR. CHISHOLM: I did, your Honor.

7 THE COURT: You did?

8 MR. CHISHOLM: Yes, ma'am.

9 Q (By the Court) Mr. Carter, you understand all
10 of those consequences?

11 A Yes, ma'am.

12 Q And knowing that, do you still wish to plead
13 guilty here today?

14 A Yes, ma'am.

15 Q This is without recommendations or
16 negotiations; do you understand that?

17 A Yes, ma'am.

18 Q Knowing that, do you still wish to go forward
19 here today?

20 A Yes, ma'am.

21 Q You do not have to plead guilty. You have a
22 jury coming in. By pleading guilty, you have -- you are
23 giving up your right to a jury trial; do you understand
24 that?

25 A Yes, ma'am.

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1 Q You're giving up your right to have a jury
2 determine your guilt beyond a reasonable doubt; do you
3 understand that?

4 A Yes, ma'am.

5 Q You're also giving up your right against
6 self-incrimination; your right to say nothing at all.
7 Do you understand those rights?

8 A Yes, ma'am.

9 Q You're also giving up your right to confront
10 and be confronted by the witnesses against you, as well
11 as the right to call witnesses on your behalf. By
12 pleading guilty here today, you give up any defense you
13 have to this charge. Do you understand those rights?

14 A Yes, ma'am.

15 Q And you waive those rights at this time?

16 A Yes, ma'am.

17 Q Understanding the charge that you are facing,
18 the possible punishment, as well as the consequences of
19 this plea, how do you plead to criminal domestic
20 violence high and aggravated?

21 A Guilty.

22 Q Are you pleading guilty because you, in fact,
23 are guilty?

24 A Yes, ma'am.

25 Q Has anybody promised you anything, threatened

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1 you, forced you to plead guilty here today?

2 A No, ma'am.

3 Q Whose decision was it for you to plead guilty?

4 A Mine.

5 Q Have you been satisfied with the services of
6 your attorney?

7 A Yes, ma'am.

8 Q Any complaints about the way he's handled your
9 case?

10 A No, ma'am.

11 Q You have the right to appeal this plea and the
12 sentence that I do impose, but you or your attorney must
13 do so within ten days. Do you understand?

14 A Yes, ma'am.

15 THE COURT: Please listen to that facts.

16 Mr. Ward?

17 MR. WARD: Thank you, your Honor. May it
18 please the Court?

19 The Defendant and the victim, Ms. Peralta, were
20 living together at , which is in the
21 County of Dorchester. And on November 28th, the
22 Defendant and Ms. Peralta went out to Applebee's and to
23 Dog and Duck and had a few drinks. The Defendant and
24 Ms. Peralta began arguing, and she walked out of the Dog
25 and Duck and started walking down Old Trolley Road. The

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1 Defendant then got into a car and picked her up, and
2 they returned home.

3 The victim was then getting ready for bed and
4 the possible argument continued. The Defendant then
5 appeared to swallow an entire bottle of antidepressant
6 medication. Ms. Peralta then went over to him and told
7 him: We need to go to the hospital to check on you.
8 The Defendant then said: If I'm going to die, so are
9 you. He then began spitting on her, and he placed his
10 hand over her mouth and nose. He jammed his thumbs into
11 her eyes, and he then lets go, and she gets up and looks
12 at the front door to try and get out. The Defendant
13 sees this and then grabs her by the back of the hair and
14 slams her to the floor. He then drags her near the
15 bedroom and slams her head against the chair and the
16 floor, and then grabs a plastic bag and starts to
17 smother her, when he puts it over his face. He then
18 grabbed a pair of jeans, wrapping them around her neck,
19 and saying: Die you F'ing, bitch. And began to
20 strangle her, causing the capillaries in her eyes to
21 burst, and she almost passed out from lack of oxygen.

22 And then five days later, a welfare check is
23 done at the house, where Officer Morris arrives and can
24 see the extent of the injuries to Ms. Peralta. She then
25 goes to the sheriff's office with Officer Morris, is

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1 photographed and gives a statement.

2 And those would be the facts that the State
3 would allege.

4 Q (By the Court) Is that what you did,
5 Mr. Carter?

6 A I had an altercation with her.

7 Q All right. An altercation does not necessarily
8 mean that you should be found guilty of criminal
9 domestic violence of a high and aggravated nature. Tell
10 me what it is that you're pleading guilty to. What did
11 you do?

12 A Pleading guilty to having physical contact with
13 her.

14 Q All right. And, once again, physical contact
15 with another human does not necessarily indicate that
16 you are guilty of criminal domestic violence of a high
17 and aggravated nature.

18 If Mr. Chisholm hugs you, that's physical
19 contact, but it is certainly not criminal domestic
20 violence of a high and aggravated nature. Tell me what
21 it is that you did that makes you guilty of this
22 offense?

23 A Uh --

24 Q Sir, I have a jury coming in in an hour. I
25 will be more than happy to submit this case to a jury

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1 trial. Tell me what it is that you did.

2 A Everything they said.

3 Q All right. And what is that, sir?

4 A I put my thumbs in her eyes and made her fear
5 for her life, I guess.

6 Q All right. Tell me about the plastic bag and
7 the jeans. What did you do with the plastic bag?

8 A Put it over her mouth.

9 Q And what were you trying to do with that?

10 A Make her shut up.

11 Q What did you do with the jeans?

12 MR. CHISHOLM: Your Honor, maybe I should
13 clarify some of this --

14 THE COURT: No. I want to hear from
15 Mr. Carter. Unless you were there, Mr. Chisholm.

16 MR. CHISHOLM: Yes, your Honor.

17 Q (By the Court) You think this is funny,
18 Mr. Carter?

19 A Oh, no, ma'am. I don't think this is funny at
20 all. I just -- I told you. I answered the charge.

21 Q All right. Mr. Carter, first of all, I need to
22 make sure that you're entering into this plea freely,
23 voluntarily --

24 A Yes, ma'am.

25 Q -- knowingly, and intelligently.

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1 A Yes, ma'am.

2 Q By merely telling me that you're guilty -- and
3 then you said: I'm just here to plead. -- I'm not going
4 to accept your plea.

5 A I told you, ma'am, I'm guilty of everything
6 that they said.

7 Q I'm also -- because this is without
8 recommendations or negotiations, I must make the
9 determination of how much of the ten-year sentence
10 you're going to serve.

11 A Yes, ma'am.

12 Q So I need to know what it is that you did
13 factually and why you did it.

14 A Ma'am, I can't tell you what happened. I
15 was -- we had some drinks, and I can't tell you what
16 happened. I can -- I can't tell you why it happened.
17 I'm extremely remorseful that it happened. I'm very,
18 very sorry. More sorry than this Court will ever know.
19 And I'm guilty, is what I do have to say.

20 THE COURT: All right. I find a substantial
21 factual basis for your plea, your decision to plead
22 guilty has been freely, voluntarily, knowingly, and
23 intelligently made, you've indicated to the Court you've
24 had the advice and counsel of a competent attorney with
25 whom you've told the Court that you were satisfied.

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1 I am ordering a presentence investigation. We
2 will do the same hearing at -- the same time as the
3 previous one, November 13th, 2013, at 9:30.

4 You will be held in the Dorchester County
5 Detention Center until Mr. Carter.

6 THE DEFENDANT: Thank you, ma'am.

7 MR. CHISHOLM: Thank you, your Honor.

8 (The hearing of this cause concluded
9 at 12:23 p.m., on August 5, 2013.)

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Plea Hearing, State vs Michael Allen Carter

REPORTER'S CERTIFICATE

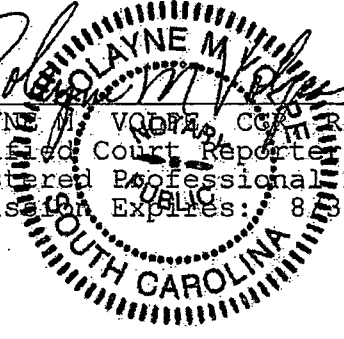
STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

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

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

CERTIFIED AND SIGNED on this 4th day of May, 2015.

ORIGINAL


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


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Rolayne M. Volpe, CCR, RPR

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

)

) COURT OF GENERAL SESSIONS

) IND. NO.: 2013-GS-18-00246

STATE OF SOUTH CAROLINA,

vs.

MICHAEL ALLEN CARTER,

DEFENDANT.

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TRANSCRIPT OF RECORD

November 13, 2013

St. George, South Carolina

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE.

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

KYLE L. WARD, ESQ.

Attorney for the State of South Carolina

ASHLEY D. CHISOLM, ESQ.

Attorney for the Defendant

RONDA T. CUMMINGS, CVR-M
Official Court Reporter
P.O. Box 2082
Walterboro, SC 29488

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EXHIBITS

None.

1 **THE COURT:** All right, Mr. Chisolm, we're going to do
2 Mr. Carter's sentencing.

3 Please swear Mr. Carter.

4 **CLERK:** Please raise your right hand. State your
5 full name for the record.

6 **DEFENDANT, MR. CARTER:** Michael Allen Carter.

7 MICHAEL A. CARTER, after being duly sworn,
8 testified as follows:

9 **CLERK:** Thank you.

10 **THE COURT:** Mr. Chisolm, have you had an opportunity
11 to review the Presentence Investigation?

12 **MR. CHISOLM:** I spoke briefly. I've not had a chance
13 to see the actual report.

14 May I have one moment, Your Honor?

15 **THE COURT:** You may.

16 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
17 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

18 **THE COURT:** Do you need any additional time, Mr.
19 Chisolm?

20 **MR. CHISOLM:** I don't believe so, Your Honor.

21 **THE COURT:** All right.

22 I'll be -- has the victim been notified?

23 **ASSISTANT SOLICITOR WARD:** The victim is present,
24 Your Honor.

25 **THE COURT:** All right. Does she wish to address the

1 Court?

2 ASSISTANT SOLICITOR WARD: I believe.

3 Would you like to say anything?

4 MS. PERALTA: Yes, Your Honor, I do. Your Honor, on
5 November 28th, ---

6 THE COURT: I need you to state your full name, ---

7 MS. PERALTA: Okay.

8 THE COURT: --- and spell your last name for the
9 record.

10 MS. PERALTA: Helena Anne Peralta. Peralta, P as in
11 paper, E-R-A-L-T-A.

12 On November 28th when the event took place, this man
13 had all intentions on killing me that night. He dragged
14 me at least fifty feet by my hair of my head, banging my
15 head against the concrete floor.

16 He tried to suffocate me, dragging me into a bedroom,
17 and tried suffocating me with a plastic garbage bag. He
18 then took a pair of jeans, wrapped it around my neck with
19 my arms pinned underneath my body and proceeded in trying
20 to strangle me that night with my back arched.

21 I went through five months of hell, starting in June,
22 trying to proceed with protection orders to keep him away
23 from me. It fell through the legal system between Judge
24 Wylie and Margie Paige. Judge Wylie at the first time for
25 the protection order would not allow me to speak.

1 And this was my house I bought. The house was in my
2 name. He sent me back up to Lexington where I was staying
3 with my brother and allowed this man to go into my house
4 to stay until a further court date was set.

5 He destroyed the inside of my house by kicking holes
6 in the wall and cutting out the kitchen wall, urinating on
7 my bed, pouring Pepsi all over my dry cleaning clothes.

8 **THE COURT:** Ms. Peralta, I understand that this has
9 been an ongoing -- or was an ongoing situation. I'm
10 concerned -- this sentence will only involve the incident
11 that happened on November 28th.

12 **MS. PERALTA:** November 28th, yes, ma'am. But he had
13 all intentions when he was strangling me with his jeans.

14 His daughter or his son-in-law had called on his
15 cellphone, and he told them repeatedly, like he was
16 repeatedly telling me: You're going to die tonight you
17 F'ing bitch.

18 He strangled me to the point where I could not get
19 any air in at all. He hung the phone up and proceeded in
20 strangling me with the pair of jeans, and his son or his
21 daughter -- or son-in-law or daughter called and asked if
22 I was dead. They didn't bother to call for help.

23 He proceeded, when I tried to get up from the floor,
24 he proceeded to take his foot and shove my face down into
25 the carpet, telling me: Get down, bitch, because you're

1 going to die tonight.

2 I beg you, I beg you, to sentence him to the fullest
3 extent allowed by law into a penitentiary. He called me
4 from Dorchester -- St. George jail on October 24th, which
5 I did not accept the call. I am extending the protection
6 order as of December 4th. I want him and his family to
7 leave me alone.

8 I suffer from PTSD now. I was admitted into --
9 self-admitted into Palmetto Behavioral Hospital because I
10 was thinking about committing suicide.

11 I speak to a therapist now once a week. I'm on
12 medication for this.

13 You've got to keep these people away from me. I've
14 lost everything.

15 **THE COURT:** Thank you.

16 Anything further from the State?

17 **ASSISTANT SOLICITOR WARD:** Nothing from the State,
18 Your Honor.

19 **THE COURT:** Mr. Chisolm, I'll be happy to hear from
20 anyone concerning sentencing.

21 **DEFENDANT, MR. CARTER:** Ma'am ---

22 **MR. CHISOLM:** Thank you, Your Honor. May it please
23 the Court?

24 I believe I've given you Mr. Carter's background.
25 He's fifty-one years old. He has some college education.

1 He went two years to Ball State, Business Management.

2 He's certified HVAC. He's owned a body shop in
3 Indiana for eleven years.

4 He owned Carter Transport in Texas for eighteen
5 years. He specializes in transporting hazardous
6 materials. He also does supplemental work as a
7 subcontractor and handyman-type work.

8 He has a TWIC card. He's been certified through TSA
9 and Homeland Security. He's also been bonded through the
10 U.S. Government.

11 He had four years apprenticeship in electronics
12 repair. He's got skills in welding, blueprint writing.

13 My point in saying all of this, Your Honor, is just
14 to give you an idea of his background, but also to show
15 that he's worked. He's been a responsible citizen.

16 DEFENDANT, MR. CARTER: I've also done volunteer
17 work.

18 MR. CHISOLM: Let me speak.

19 He's done a lot of volunteer work. He's volunteered
20 at food banks, Crisis Ministries downtown and other places
21 like that.

22 He's been in since December 11th, and the best way to
23 determine what Mr. Carter would do if he were to be
24 released I think is to look at what he's done in the past.
25 Outside of the incident that is here before you today, you

1 can look at his criminal record, which goes back -- his
2 last most recent offense would be seven or eight years
3 ago, I believe. It was a misdemeanor criminal mischief
4 charge out-of-state regarding a property crime.

5 Prior to that, you have to go back to the 80's to
6 find a criminal record. So, you're not dealing with
7 someone that, you know, in the past thirty years has
8 attempted murders or aggravated assaults or even simple
9 assaults or CDVs or anything along those lines. We're
10 talking about someone that within the past, basically,
11 thirty years has one misdemeanor charge on their record.

12 We understand that this incident was horrible.
13 Obviously he regrets it. He's regretted it since he's
14 been in jail, obviously.

15 He told probation the same thing. If he could take
16 it back, he would.

17 DEFENDANT, MR. CARTER: Your Honor, can I speak to
18 you?

19 MR. CHISOLM: Let me finish.

20 THE COURT: I'll give you time to address the Court.

21 DEFENDANT, MR. CARTER: Thank you.

22 MR. CHISOLM: And basically what we have, Your Honor,
23 is a one-time incident. This is an incident that went
24 horribly, obviously, and we're thankful that the injuries
25 weren't more severe. My understanding is from the

1 incident the results -- there weren't broken bones or cuts
2 or things of that nature, but it was extensive bruising,
3 and you know, ---

4 THE COURT: Do you remember when I took the plea, Mr.
5 Chisolm, what your client said?

6 MR. CHISOLM: Yes, ma'am.

7 THE COURT: Do you remember what he said to the
8 Court?

9 MR. CHISOLM: Yes, ma'am.

10 DEFENDANT, MR. CARTER: I'll explain why I said it,
11 ma'am.

12 MR. CHISOLM: Let me address the Court, please.

13 THE COURT: I wasn't addressing you, Mr. Carter.

14 MR. CHISOLM: And as I said, obviously, this is ---

15 THE COURT: I've been doing this a long time, Mr.
16 Chisolm. I've never had a defendant who blatantly told me
17 what your client told me about placing the bag over her
18 face.

19 DEFENDANT, MR. CARTER: I didn't place ---

20 MR. CHISOLM: Yes, Your Honor. And I understand that
21 is a concern for the Court, but again, I would look back
22 to he has no prior record of this type of offense, really,
23 no record in the past thirty years, with the exception of
24 that one misdemeanor.

25 The facts, as you've heard, obviously we would agree

1 with enough to support the charge, but he doesn't agree
2 with every single allegation that you've heard here today,
3 but he is here to plead guilty, because he admits that
4 what he did supports the charge.

5 THE COURT: He's already pled, and I've accepted his
6 plea.

7 MR. CHISOLM: Yes, ma'am.

8 THE COURT: We're here for sentencing.

9 MR. CHISOLM: Yes, ma'am.

10 THE COURT: All right. Mr. Carter, what do you want
11 to tell me?

12 DEFENDANT, MR. CARTER: Ma'am, I realize, number one,
13 that any contact with anybody is wrong. I've got
14 fifty-one years of being a respectable person that doesn't
15 -- that isn't violent.

16 If you would -- if it would please the Court, this is
17 my only chance to speak to you. I wasn't -- I'm not going
18 to besmirch his being my lawyer, but I wasn't exactly
19 counseled properly on what was going to happen when I come
20 up here that day.

21 You assumed, for one thing, that I laughed that day.
22 You asked me: Mr. Carter, do you find anything funny
23 here?

24 And, ma'am, oh, it wasn't funny at all. What I --
25 what I -- what I reacted to was the fact that the truth in

1 this case has been non-existent.

2 What I would like to show to you, what him and Ms.
3 Suggs told me downstairs was this: We're going to go up
4 here. All the evidence that you have -- please pull out
5 the contracts for the house. This house, for instance,
6 that she makes such a big deal about, isn't her house.
7 It's our house.

8 THE COURT: Mr. Carter, I don't care about the house.

9 DEFENDANT, MR. CARTER: I would like to show you one
10 thing.

11 THE COURT: Mr. Carter.

12 DEFENDANT, MR. CARTER: I would like to show you ---

13 THE COURT: Mr. Carter.

14 DEFENDANT, MR. CARTER: --- referring to the
15 incident.

16 THE COURT: Mr. Carter.

17 DEFENDANT, MR. CARTER: Yes, ma'am?

18 THE COURT: I don't care whose house it was. When I
19 asked you in August what you did that made you guilty,
20 because I am very aware that you have a perception of what
21 happened, Ms. Peralta has a perception of what happened,
22 and somewhere in the middle the truth lies. I am very
23 aware of that. So I asked you to tell me what you did
24 that made you guilty, and you told me.

25 You have had more than competent representation. Mr.

1 Chisolm has been a zealous advocate on your behalf, and I
2 understand you don't see all the things that Mr. Chisolm
3 does, but he has thoroughly represented you.

4 What else do you want to tell me, Mr. Carter?

5 **DEFENDANT, MR. CARTER:** He represented me fine, Your
6 Honor. What I was told was that if I come up here and
7 said anything, other than the facts that I agreed with
8 what the prosecution said, that you wouldn't accept my
9 plea of guilty. It would be waived over to trial, and at
10 trial, I would lose because of the pictures and that I
11 would get a ten year sentence.

12 Now with me, that was a problem, because if you would
13 just let me show you something by the pictures, number
14 one, there never was any strangulation. There's no marks
15 on her neck at all.

16 **THE COURT:** Mr. Carter.

17 **DEFENDANT, MR. CARTER:** But what I wanted to show you

18 ---

19 **THE COURT:** Mr. Carter, we are here for sentencing.

20 **DEFENDANT, MR. CARTER:** Yes, ma'am.

21 **THE COURT:** I went through the plea colloquy. I
22 asked you several times ---

23 **DEFENDANT, MR. CARTER:** And -- and ---

24 **THE COURT:** --- whether or not you were pleading
25 guilty because you are guilty, and you indicated to me you

1 held a bag over her -- her face.

2 DEFENDANT, MR. CARTER: You asked me why I covered
3 her mouth, ma'am, and that's what I would like to show you
4 today. I did cover her mouth. I -- I -- I want to show
5 you by the pictures. My hand proves I covered her mouth.
6 I didn't strangle her. There never was any strangulation.

7 THE COURT: And you covered her mouth with a plastic
8 bag.

9 DEFENDANT, MR. CARTER: Yes, ma'am. You asked me.
10 Because she was screaming at me.

11 She'd scream at me: Hit me M F. Hit me M F'er. You
12 know you want to hit me.

13 This was on -- my son-in-law and daughter, they're
14 here. They were on the phone. They heard it all. They
15 wanted to testify for me.

16 The reason I didn't try this is because I was told by
17 my counsel the pictures made me guilty. No matter what
18 the evidence is that you have, it's not going to be
19 relevant, because she has a black eye and you're guilty of
20 whatever she says you did. If you go up here and say that
21 you didn't strangle her, this judge is going to waive you
22 over for trial, and you're going to get ten years when we
23 lose.

24 I did not strangle her, Your Honor. I had contact
25 with her.

1 My fingers show in that picture. Those are my finger
2 marks in her eyes.

3 I was wrong. I am so wrong. I should have ran.
4 When she came at me and attacked me, I should have ran,
5 and I didn't. I didn't, and I'm guilty of that.

6 I'm not guilty of threatening her life. I swear as
7 God is my witness, I've never, ever.

8 I told her: I F'ing hate you, because she stole from
9 me.

10 She stole over twenty thousand dollars worth of
11 receipts of proof of the work that I've done on our house.
12 She had threatened suicide. I have the emails to prove
13 it.

14 I went back with her that day, because she told me to
15 meet me at the cemetery at my parents' -- the cemetery at
16 my parents' gravesites and come back, we'll talk.

17 We talked in the cemetery for five hours that day. I
18 said: Baby, I would love to be back with you.

19 We were supposed to get married in December. I said:
20 I still want to marry you, but explain to me, why did you
21 and Brittany take all my receipts? Why did you take the
22 contract on the house? Why did you destroy everything?
23 Why did you make it so I had to go through another
24 attorney's office, two separate attorneys, to sue you for
25 my interest in this house? I love you. Why would you

1 steal from me?

2 That's in her own statements, by her own volition.

3 This is what it's about. It's about money.

4 And then I find out she's doing meth. I was locked
5 up in the bed right next to the guy who was cooking meth
6 for her, Your Honor, and I could bring him to court in my
7 defense. He was going to testify. He cooked dope for
8 her. I don't know about meth.

9 I know nothing about any of this, but I swear as God
10 is my witness, I didn't strangle her, and I never said I
11 wanted her to die. The last thing I'd want is somebody to
12 die, somebody I love that I'm going to marry in December.

13 I pushed her away from me. I can't stand what I did.
14 I cried for five days.

15 I saw the look on your face when you said: She
16 didn't report this for five days?

17 I worked ten and twelve hour days. I had my -- my --
18 I've got the records of my work on Wednesday, Thursday,
19 Friday, and that following Monday. I worked ten hour
20 days.

21 She was at home with three vehicles and a phone.
22 Never made a call to the police.

23 That Monday, Sunday, Saturday afternoon, she picked
24 up my son-in-law right over there. We went to West
25 Ashley, loaded up both of my pickup trucks, moved all my

1 stuff back into our house. She helped me move in.

2 Monday morning I get up and go to work. When I come
3 home from work, she is in front of the house with an
4 officer. All my stuff was back in the house that she
5 helped me move in.

6 Saturday she tells my son and my daughter-in-law:
7 We're getting married in December. We're going to be
8 married by December 21st.

9 If I didn't get setup and railroaded into this
10 charge, Your Honor, strike me down, I'll do ten. But I'm
11 telling you, there's more to the story.

12 And if you would let me put my hand on the picture,
13 I'll prove it to you. My hand -- if a picture is worth a
14 thousand words, Your Honor, my hand proves it.

15 And I don't deny I put my hand on this woman. I did
16 not punch her. I did not slap her. I did not strangle
17 her, and I will show you, if you'll let me put my hand on
18 that picture, it will prove my case. Please, before you
19 sentence me away, look at the facts.

20 And I'm sorry; when you offered me to tell my side, I
21 should have told him -- I should have told you my side of
22 it, but I believed what my attorneys told me, was that you
23 would waive this over to trial and find me guilty and give
24 me ten years. Ten years for a black eye on a first
25 offense? No, that's not justice.

1 **MR. CHISOLM:** Are you done?

2 **DEFENDANT, MR. CARTER:** I will be finished if this
3 lady would -- if Your Honor would let me show you what I
4 did.

5 **THE COURT:** All right. Anything further, Mr. Carter?

6 **DEFENDANT, MR. CARTER:** I'm terribly sorry about what
7 happened, Your Honor. I've done a year in jail. If you
8 want to sentence me to something, I'm going to need some
9 -- I need counseling, and I've been putting in for it to
10 try to get.

11 I've took drug classes and alcohol classes since I've
12 been in jail, Your Honor. I've did everything that they
13 offered here.

14 I have a problem with even putting my life back
15 together with a felony on it now. Because I've owned
16 businesses, I know how it goes when someone tries to get a
17 job that's got a felony.

18 With the work that I've done for years, I'm
19 destroyed. My hazardous material certifications are gone.
20 There's no way I can ever do -- twenty-five years of my
21 career that I've built up is ruined.

22 You think I don't -- I -- I regret what happened. I
23 wish I had never met her. I wish I didn't love her.

24 **MR. CHISOLM:** Judge, as he mentioned, his daughter
25 and son-in-law are here. I believe the son-in-law would

1 like to address the Court, and if I could have a few words
2 after that?

3 THE COURT: All right. I want to keep it to the
4 point of sentencing.

5 MR. MOORE: Yes, ma'am.

6 DEFENDANT, MR. CARTER: Your Honor, I'm sorry for
7 what happened. Thank you for listening.

8 THE COURT: Thank you.

9 MR. MOORE: Yes, ma'am. My name is Brad Moore.

10 THE COURT: One more time, sir?

11 MR. MOORE: I'm Brad Moore.

12 THE COURT: Please spell your last name.

13 MR. MOORE: M-O-O-R-E.

14 THE COURT: All right.

15 MR. MOORE: I've known my ---

16 THE COURT: Ma'am, you need to stay back behind the
17 bar. Please have a seat.

18 MR. MOORE: I've known my father-in-law for eight
19 years, and I've never known him to be a violent man. He's
20 always helped everybody out.

21 And that Saturday after the altercation happened,
22 they did come pick me up to help him move back, everything
23 back in her house. And she did say that they were going
24 to get married and everything.

25 And I've never known him to be a violent man at all.

1 And the reason why he pleaded to this charge is because
2 the lawyers told him that if he went to trial, he would
3 lose.

4 THE COURT: Mr. Moore, thank you.

5 MR. CHISOLM: Thank you, Mr. Moore.

6 THE COURT: Mr. Chisolm?

7 MR. CHISOLM: The only thing I would add, I spoke to
8 probation, as I said, last week about their investigation.
9 When I spoke to them last week, they were saying that the
10 recommendation was going to be a minimal sentence, with
11 probation to follow.

12 And I asked -- obviously, that's changed from what I
13 saw on the report here today. And basically they said it
14 was due to the contact from the jail and the Facebook
15 notification from Mr. Carter's daughter.

16 Mr. Carter's daughter, my understanding is they've
17 got history between her and the victim in the case, to
18 begin with. I believe a lot of her possessions were left
19 in the house when Mr. Carter went to jail. Those
20 possessions were destroyed, moved, gone, somehow. So
21 there's -- they've got their own thing kind of going on
22 there.

23 I haven't seen anything to show that Mr. Carter made
24 any calls from the jail, that he did any -- made any kind
25 of contact. If that was the basis for increasing the

1 recommendation, I would like to point that out.

2 Of course, we would ask for a minimal sentence, Your
3 Honor. Obviously, probation, no contact order, mental
4 health counseling, drug/alcohol counseling, anything along
5 those line.

6 You know, comfort the victim in letting her know that
7 he's got time hanging over his head, that if he is a
8 perceived threat, if he makes any kind of contact with her
9 that he'll be going to prison. Also, it would give him a
10 chance to show that this is a one-time incident, that he
11 can put it behind him and get back to work.

12 What he wants is to get out, get back to work and get
13 out of this state. He understands that there's no future
14 with him and Ms. Peralta, and he wants to get away from
15 the entire situation.

16 **DEFENDANT, MR. CARTER:** Back to Texas, if I could,
17 Your Honor.

18 **MR. CHISOLM:** Let me talk.

19 And that's all I have, Your Honor.

20 **THE COURT:** All right. Mr. Chisolm, just to allay
21 your fears, I believe the presentence investigation was a
22 benefit, based upon the demeanor of your client at
23 sentencing and here today, the facts as I understand them
24 to be. And as I indicated, I am very aware that the truth
25 lies probably somewhere in the middle, because Mr. Carter

1 has one perception of what happened and Ms. Peralta has a
2 perception, but based upon the statements that Mr. Carter
3 made, I went over and made sure that he was entering into
4 the plea freely, voluntarily, knowingly, and
5 intelligently.

6 I had conversations with Mr. Chisolm concerning Mr.
7 Carter's plea. Mr. Carter entered into this plea freely,
8 voluntarily, knowingly, and intelligently, and found that
9 Mr. Chisolm was more than competent in his representation
10 of Mr. Carter.

11 So the order of the Court on 2013-GS-18-246 is that
12 you be committed to the State Department of Corrections
13 for a term of ten years, provided upon the service of
14 eight years, the balance is suspended, with probation for
15 three years. I'll give you credit for the time that you
16 have already served. I will order ATU while you are in
17 custody.

18 While out on probation, the terms and conditions are
19 substance abuse counseling, random drug and alcohol
20 testing, anger management counseling. You must attend and
21 complete batterer's treatment. There is to be no contact
22 with the victim, either directly or indirectly, and the
23 first six months of your probation will be intensive. You
24 are required to pay five hundred dollars to the clerk
25 during your probationary sentence. Good luck to you, Mr.

1 Carter.

2 DEFENDANT, MR. CARTER: I have eight -- eight years?

3 THE COURT: Yes, sir.

4 DEFENDANT, MR. CARTER: Eight years in prison?

5 THE COURT: Yes, sir.

6 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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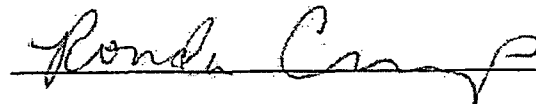
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

I, Ronda T. Cummings, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Dorchester County, South Carolina, on the 13th day of
November, 2013.

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

December 2, 2013



Ronda T. Cummings, CVR-M
Official Court Reporter

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Kristi Harrington, Circuit Court Judge

Case No.

The State, ...Respondent.

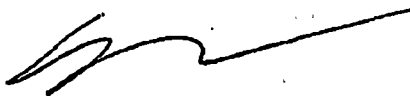
v.

Michael Carter, ...Appellant.

NOTICE OF APPEAL

Michael A. Carter, appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Kristi Harrington, on November 13, 2013. This appeal is filed at the request of Defendant Michael Carter. However, counsel is not aware of any exceptions to Rule 203.

November 13, 2013



Ash D. Chisholm
107 West 6th North Street
Summerville, SC 29483
(843) 821-9800
Attorney for Defendant

Other Counsel of Record:

Kyle Ward
Assistant Solicitor
140 North Main Street, Suite 102
Summerville, SC 29483
(843) 871-2640

RECEIVED

NOV 18 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Kristi Harrington, Circuit Court Judge

Case No.

The State, ...Respondent.

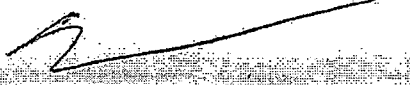
v.

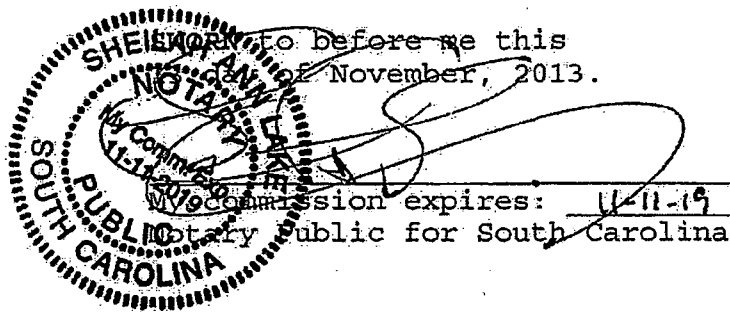
Michael Carter, ...Appellant.

PROOF OF SERVICE

PERSONALLY APPEARED before me, Ash D. Chisholm, who first being duly sworn, deposed and says:

That on the 13 day of November, 2013, he personally served a copy of the Notice of Appeal on Kyle Ward, Assistant Solicitor, via first class, postage paid wrapper, properly addressed, in a post office or official depository under the exclusive care and custody of the United States Postal Service to 140 North Main Street, Suite 102, Summerville, South Carolina 29483.


Ash D. Chisholm
107 West 6th North Street
Summerville, SC 29483
(843) 821-9800
Attorney for Defendant



COPY

FORM 5

STATE OF SOUTH CAROLINA

County of Dorchester

IN THE COURT OF COMMON PLEAS

Michael Allen Carter SCDC#3578672013-CP-18- 2269

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED - RECORDED
20 DEC 23 PM 5:00
SHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTYINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland R+E Center 4344 Broad River Rd.
Columbia SC 29210
2. Name and location of Court which imposed sentence Dorchester 1st Circuit
Court 5200 East Jim Bilton Blvd, St George SC 29477
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 GS. 18-0246
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Nov. 13. 2013
- (b) 10 years - Service of 8 and 3 years Probation.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
State of South Carolina Court of Appeals, Appellate Court Case # 2013-002456
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. None yet
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) On grounds of Ineffective Assistance of Counsel
- (b) I was under the influence of Anti-Depresant Medication at time
- (c) The Sentence Exceeds the Maximum 10 year total guideline
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) A letter from my attorney stating he was Ineffective Counsel
- (b) I was under the influence of Anti Depresant Medication's
- (c) Excessive Sentence Exceeds the 10 year Maximum Penalty
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? An Appeal, Court of Appeals
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. An Appeal, to the South Carolina Court of Appeals #2013-002456
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. State of South Carolina Court of Appeals, 1015 Sumter St. Columbia, SC 29201.
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. None at this time
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

(a) N/A
 (b) _____
 (c) _____

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

(a) your arraignment and plea? yes, Ash Chisholm, Public Defender
 (b) your trial, if any? _____
 (c) your sentencing? yes, Ash Chisholm, Public Defender
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes, the Appeal was filed by Ash Chisholm
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Ash Chisholm filed my Appeal for me With the Court of Appeals Columbia SC.
CASE # 2013-002456

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. Public Defender, Ash Chisholm Public Defenders office
107 W. 6th North Street Summerville SC, 29483

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Plea

ii. Sentencing

iii. Filing the Appeal With the South Carolina Court of Appeals Case # 2013-002456

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

This Conviction OVERTurned

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

N/A

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Michael Allen Carter, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael A. Carter

SWORN to and subscribed before me this 12TH
day of DECEMBER 2013

Sandra Sheu-Dyer (L.S.)
Notary Public

My Commission Expires: APRIL 12, 2013

FILED - RECORDED
2013 DEC 23 PM 5:30
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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

I, Michael Allen Carter, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Michael A. Carter
Applicant

SWORN or affirmed to and subscribed before me this
1274 day of December, 2013.

[Signature]
Notary Public

My Commission Expires: April 12, 2013

FILED - RECORDED
2013 DEC 23 PM 5:00
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

State of South Carolina FILED - RECORDS In the Court of Common Pleas

County of Dorchester 2014 MAR 21 PM 12:41

Michael Allen Carter, #357867 C/A No.: 2013-CP-18-2269

Applicant

CHESLEY L. LEE
CLERK OF COURT
DORCHESTER COUNTY

vs.

State of South Carolina

Amendment to Applicant's Application

Respondent

for Post-Conviction Relief

CERTIFIED COPY
2014 MAR 21 PM 1:07
CHESLEY L. LEE
CLERK OF COURT
DORCHESTER COUNTY

The Applicant, Michael Allen Carter, comes before this Honorable Court, proceeding pro se, to offer the following appendage to his Application for Post Conviction Relief concerning indictment no. :

In regards to question number ten (10) of page three of the Application for Post Conviction Relief:

State concisely the Grounds on which you base your allegation(s) that you are being held in custody unlawfully.

- A. Ineffective Assistance of Counsel;
- B. Did not knowingly or intelligently plea guilty;
- C. Coerced into plea of guilty;
- D. Unlawful sentencing scheme;

In regards to question number eleven (11) on page three (3) of the Application for Post Conviction Relief:

[A]. Applicant was denied his Sixth and Fourteenth Amendment right(s) to an effective assistance of counsel insofar as his trial counsel failed to provide competent representation and these omissions were prejudicial to his defense.

The Applicant's counsel failed to properly investigate the facts surrounding the circumstances that lead to his arrest. It has been clearly established that the amount of pre-trial research, or the lack thereof, can most definitely affect the outcome of a criminal defendant's trial. Davis v. Alabama, 100 S.Ct. 1827 (1980).

Effective assistance of counsel, i.e., that which will satisfy the requirements of the Sixth Amendment, is counsel that will be "reasonably likely to render and rendering reasonably

effective assistance given the totality of the circumstances.” Washington v. Strickland, 693 F.2d 1243, 1250 (CA5, 1982)(en banc) Cert. Granted, 466 U.S. 668, 104 S.Ct. 2052 (1984); Lockhart v. Fretwell, 113 S.Ct. 838 (1993); Mays v. Balkcom, 631 F.2d 48, 52, n. a (CA5, 1980).

In considering the totality of the circumstances, a court must examine the quality of counsel’s assistance from the time of initial retention, through the time of appeal. Goodwin v. Balkcom, 684 F.2d 794, 805 (CALL, 1981); State v. Williams, 571-SE2d 703 (Ct. App. 2002).

Would not justice best be served once a criminal defendant raised the issue of ineffective assistance of counsel, and the court determines there is a question of whether the defendant received effective assistance of counsel, should not the court allow the Applicant be granted a hearing regarding the issue?

[B]. The Applicant contends that his plea cannot be considered voluntary, due to him being denied effective assistance of counsel, and that the plea was brought about by ignorance, and the lack of competence on the part of his attorney, by issuing erroneous advice as to the plea entered by the Applicant. Hinson v. State, 377 SE2d 338 (1989).

The Applicant makes the following allegations concerning his plea:

- (1) Counsel did not actually or substantially assist him in deciding whether to plead guilty or not;
- (2) Counsel did not familiarize himself with the facts of the case;
- (3) Counsel did not impart to the Applicant an understanding of the law on the relation of the facts;
- (4) Counsel issued erroneous advice to the Applicant as to the length of the sentence he would receive by entering his plea;
- (5) Counsel issued advice to the Applicant to the effect that no defense was possible to his charge;
- (6) Counsel coerced the Applicant into entering his plea by making threats as to length of sentence he would receive by not pleading guilty.

For a plea to be entered knowingly and voluntarily, a criminal defendant must possess an understanding of the law in relation to the facts. See McCarthy v. U.S., 89 S.Ct. 1171

(1969)). Providing this understanding of the law in relation to the facts is the function of the accused's counsel.

Note: Now should we ignore the Supreme Court's admonition in Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006 (1972), to the effect that "beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor as well as felony cases." Counsel is needed to that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

Can this be said by the Applicant after relaying on the advice of his counsel, that by him pleading guilty after being told by his attorney that no possible defense existed when, in fact, at least one plausible line did? Then could it be said that the Applicant prior to entering his plea possessed an understanding of the law with regards to the facts?

It should not be assumed that counsel had contributed to the case where he concluded there was no defense possible, and that he exercised his best judgment in advising his client to plead guilty. Neither the attorney not the Court could say what a prompt and thorough investigation might disclose as to the facts, or what defenses could be yielded?

In Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55 (1933), the Court stated: "the right to be heard would be, in many cases, of little avail, if it did not comprehend the right to be heard by counsel."

Even in today's media driven society, the intelligent and educated laymen have little or sometimes no skills in the science of law. If charged with a crime, he is incapable, generally, or determining for himself whether the indictment is good or bad. He is unfamiliar with the Rule of Evidence. Left without aid of counsel, he may be put on trial without a proper charge and convicted upon incompetent evidence or evidence irrelevant to the issues or otherwise inadmissible. He would lack both the skill and knowledge adequate to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceeding against him. Without it, though he may be not guilty, he faces the dangers of conviction, because he does not know to establish his innocence, as was in the case of the Applicant.

[C]. In this regard, the applicant contends that had it not been for his counsel's offering of advice, which was based on information obtained directly from the State, and not as the fruit of its own investigation, that he would not have entered the plea of guilty that he did.

The Applicant contends that his counsel, from the outset, began to speak of a guilty plea which counsel saw and portrayed as the Applicant's only opportunity for a reduced sentence. Counsel painted a bleak picture to the Applicant with little or no hope concerning the likelihood and outcome of any planned trial. Counsel should have enlightened the Applicant about his so-called on-going deal making with the solicitor. The Applicant, faced with the pressure of the solicitor's office and his own counsel concerning the length of sentence the Applicant would receive if convicted by a jury finally caved into the demand for his plea of guilty.

The Applicant can see no reason behind the thought that his counsel be considered as having rendered anything near effective assistance to the Applicant. The Applicant would further offer that he has clearly met the burden of proof essential in the two (2) prong requirements under Strickland v. Washington, supra. There, based on the foregoing, the Applicant strongly feels that he is entitled to a correction of sentence and judgment, and to have this matter remanded back to the Court of General Sessions for re-hearing.

[D]. In addition, the Applicant contends that counsel's obligation to conduct reasonable investigation extends to matters related to the sentencing phase of trial. Trice v. Ward, 196 F3d 1151 (10th Cir. 1999).

He further contends that courts have held that an Attorney who does not know the basic sentence for an offense at the time that his client is contemplating entering a plea is ineffective, even if trial court and prosecutor are also ignorant of relevant changes in the law. Baker v. Barbo, 177 F3d 149 (3rd Cir. 1999).

For purposes of determining which sentencing guidelines were in effect on date of offense, the last date of the offense, as alleged in the indictment, is the controlling date. US v. Karro, 257 F3d 112 (2nd Cir. 2001).

RELIEF SOUGHT

Therefore, the Applicant prays that this Honorable Court, by reviewing this record, should conclude that the issues and allegations contained herein, do in fact contain merit, and that the conviction of the Applicant was in violation of the Constitutional laws of the United States, as well as the State of South Carolina, and that this conviction should be vacated as a direct result of the due process violation noted, and at a minimum reversed.

Applicant prays also that this Honorable Court would ensure that justice and fair play prevail, and that this Court would take whatever steps necessary to examine every allegation and fact, ensuring a fair and just decision of this Honorable Court.

Respectfully submitted this 18th day of March, 2014

Michael Allen Carter
/s/ *Michael Allen Carter*

Michael Allen Clark, 354867

RCI / SA-27

PO Box 2039

Ridgeland, SC 29936

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 19 DAY OF March
2014
Virginia Robinson
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES May 20, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Michael Allen Carter, #357867,)

2013-CP-18-2269

v.)

RETURN

State of South Carolina,)

Respondent.)

Respondent, making its Return to the Application for post-conviction relief filed December 23, 2013 and amended March 21, 2014, would respectfully show this Court:

I.

Applicant is presently incarcerated within South Carolina Department of Corrections pursuant to orders of commitment from the Dorchester County Clerk of Court. Applicant was indicted during the March 2013 term of the Dorchester County Grand Jury for Criminal Domestic Violence of a High and Aggravated Nature (2013-GS-18-0246). Applicant was represented by Ash Chisholm, Esquire. On November 13, 2013, Applicant appeared before the Honorable Kristi Harrington, where he pled as indicted. Judge Harrington sentenced Applicant to ten years imprisonment, suspended upon the service of eight years imprisonment followed by three years probation. Thereafter, Applicant filed a Notice of Appeal, which was dismissed by the South Carolina Court of Appeals.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. The transcript from Applicant's guilty plea proceeding has been ordered and will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel;
 - a. Failure to properly investigate the facts surrounding the circumstances leading to his arrest
2. Involuntary Guilty Plea; and
3. Unlawful Sentencing Scheme.

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent 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, SCRCF.

III.

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

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

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

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that: (1) counsel was ineffective; and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must

prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

VI.

The Applicant further alleges that he is being held unlawfully due to "unlawful sentencing scheme." Respondent submits that this allegation is without merit. Applicant was indicted for and pled guilty to Criminal Domestic Violence of a High and Aggravated Nature, S.C. Code Ann. § 16-25-65. Pursuant to S.C. Code Ann. § 16-25-65(B), a person found guilty of Criminal Domestic Violence of a High and Aggravated Nature "must be imprisoned not less than a mandatory minimum of one year nor more than ten years. The court may suspend the imposition or execution of all or part of the sentence, except the one-year mandatory minimum sentence, and place the offender on probation conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services." Respondent submits that Applicant's sentence of ten years imprisonment suspended

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

2013-CP-18-2269

MICHAEL ALLEN CARTER, #357867)

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:

Rodney D. Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, South Carolina 29405

DATED this 23rd day of April, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER

2013-CP-18-2269

3
4 MICHAEL ALLEN CARTER)

TRANSCRIPT OF RECORD

5 VS.)

6
7 STATE OF SOUTH CAROLINA)

MAY 20, 2015

ST. GEORGE, SC

8
9 B E F O R E :

10 THE HONORABLE MAITÉ MURPHY

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

12 RODNEY D. DAVIS, ESQUIRE
Attorney for the Applicant

13 J. CLAYTON MITCHELL, ESQUIRE
14 Attorney for the State of South Carolina

15 Ruth L. Mott, RPR, CRR
16 Certified Court Reporter
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
MICHAEL ALLEN CARTER				
BY THE COURT:	4			
BY MR. DAVIS:	7			
BY MR. MITCHELL:		23		
ASHLEY CHISHOLM				
BY MR. DAVIS:	28		48	
BY MR. MITCHELL:		42		
CERTIFICATE OF REPORTER	51			

E X H I B I T S

NO.	DESCRIPTION	ID	EVD
A-1	11/18/13 LETTER	42	42
A-2	12/20/13 LETTER	42	42

- - -

1 MR. MITCHELL: Your Honor, may it please the Court.

2 THE COURT: Yes, sir.

3 MR. MITCHELL: This is Michael Allen Carter versus the
4 State of South Carolina, 2013-CP-18-2269, Mr. Carter was
5 indicted in March 2013 for criminal domestic violence of a
6 high and aggravated nature. He was represented on that
7 charge by Mr. Ash Chisholm. He plead guilty on November 13,
8 2013, in front of the Honorable Judge Harrington where he
9 plead as indicted. Sentencing was deferred a few days so a
10 pre-sentencing -- or about a month, where a pre-sentencing
11 report could be issued. Mr. Carter was then sentenced to ten
12 years suspended upon the service of eight years' imprisonment
13 followed by three years' probation. He filed a notice of
14 appeal at that point which was dismissed by the Court of
15 Appeals.

16 Mr. Carter filed this application for post-conviction
17 relief March 21st, 2014, where he alleged various aspects of
18 ineffective assistance of counsel and that he entered his
19 guilty plea involuntarily. Mr. Carter is here today. For
20 the record, he's present and represented by Mr. Rodney Davis,
21 and I ask that they -- that he articulate the allegations
22 going forward today.

23 THE COURT: All right. Mr. Davis.

24 MR. DAVIS: Thank you, Your Honor. May it please the
25 Court, Your Honor, I would ask the Court -- I've certainly

1 talked with my client about the PCR process and what a
2 potential win or a loss could look like. I would ask the
3 Court if you'd consider reviewing that on the record with
4 him.

5 THE COURT: Certainly. Mr. Carter, would you please
6 stand?

7 Madam clerk, would you please swear in Mr. Carter.

8 MICHAEL ALLEN CARTER,
9 being first duly sworn, testified as follows:

10 THE COURT: Mr. Carter, do you understand what these
11 proceedings are?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: Can you explain to me what your
14 understanding of that process is?

15 THE APPLICANT: The process is that I'm basically
16 bringing a civil suit against the State because I feel that I
17 was misrepresented by my attorney and that I was brought to
18 make a plea on an issue that I probably -- that I didn't
19 fully understand.

20 THE COURT: All right. What are you actually seeking
21 the Court to do?

22 THE APPLICANT: I'm seeking either the sentence to be
23 vacated or at least to have some kind of an adjustment on the
24 sentence -- the sentence and the guidelines itself, but I'd
25 like to see a vacation of the sentence.

1 THE COURT: You understand that if the Court finds that
2 if you were somehow ineffectively represented, that basically
3 you go back to square one. What happens then is you're
4 facing the original charges. You may not receive the benefit
5 of any kind of plea bargain, and you're subject -- if you are
6 convicted, whether or not you go to trial or enter a plea, to
7 the maximum allowable punishment; so if you've served time
8 already, and I'm not sure when your max-out date is, if the
9 Court grants you relief, you could go back to square one and
10 potentially be exposed to the whole amount of time. Do you
11 understand that?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: And that's your understanding of what these
14 proceedings are?

15 THE APPLICANT: Yes, ma'am.

16 THE COURT: And you wish to go forward with these
17 proceedings?

18 THE APPLICANT: I don't lose the time that I've already
19 done, though, was my understanding.

20 THE COURT: That's correct, sir; but you could
21 potentially be looking at the full sentence. You do get
22 credit for time that you have served if you are convicted or
23 if you plead; however, your potential exposure could be the
24 full amount of the original charge, not whatever benefit you
25 may have received from any kind of plea negotiation; do you

1 understand that?

2 THE APPLICANT: Yes, ma'am.

3 THE COURT: All right, sir. Do you wish to go forward?

4 THE APPLICANT: Yes, ma'am, I do.

5 THE COURT: All right. You may proceed.

6 MR. DAVIS: Your Honor, in response to the State's
7 request and to give Your Honor a brief thumbnail sketch of
8 this, Mr. Carter was represented by Mr. Chisholm. Ms. Suggs
9 of the Public Defender's Office was involved briefly, but Mr.
10 Chisholm was the lead attorney throughout the process. On
11 the eve of a trial this plea was entered. We will be making
12 an alternative argument to the Court. Certainly we
13 understand and I've gone over with him and he wishes that
14 this conviction be vacated, and we will present what we hope
15 is testimony convincing you of the ineffective assistance and
16 that he would not have plead, and so we will be asking you to
17 undo the guilty plea.

18 In the alternative this is a unique case in the sense
19 that the guilty plea was taken by Judge Harrington, and then
20 there was a delay for pre-sentence investigation, and
21 sentencing happened at a later date. We also intend to focus
22 on the conduct of his attorney during that gap, and if you do
23 not find we met our burden as to the decision to plead
24 guilty, we would make the alternative argument that there's
25 evidence of ineffective assistance in that gap that could

1 have and should have led to a lesser sentence, and we'd be
2 asking either, if you would not vacate, to return for more
3 mitigation to be presented at sentencing. So we kind of have
4 an alternative. It's unique, but we -- certainly case law
5 would allow for specific relief, and if we cannot prove the
6 ineffectiveness prior to guilty plea, we'd ask for specific
7 relief back to time of sentencing.

8 THE COURT: All right, sir. You may call your first
9 witness.

10 MR. DAVIS: Thank you very much. We would call Michael
11 Carter to the stand.

12 THE COURT: Sir, you're already sworn. You may have a
13 seat. Your witness.

14 MR. DAVIS: Thank you very much, Your Honor.

15 DIRECT EXAMINATION BY MR. DAVIS:

16 Q. Mr. Carter, can you explain some of the initial meetings
17 after Mr. Chisholm was appointed on your case, the subject
18 matter of those initials meetings?

19 A. Pertaining to the subject matter of the meeting was the
20 charge, the CDV high and aggravated nature.

21 Q. Were the discussions at that time about whether this was
22 a case that he felt should go to trial or be resolved by
23 guilty plea?

24 A. I was informed that if it went to trial, my outcome
25 wouldn't be favorable; and that the State was under no

1 obligation to make a plea as, I guess, they claimed that they
2 had a so-called slam dunk case against me.

3 Q. And that was Mr. Chisholm's opinion of the case?

4 A. Yes, sir.

5 Q. Based on that what instructions did you give your
6 attorney to handle your case?

7 A. I wanted to take it to trial, sir.

8 Q. And at some point did that -- did you change your mind
9 about that?

10 A. The day that I came to pick 12 jurors, yes, sir.

11 Q. I'm going to back you up for just one second. Prior to
12 the date you arrived, your trial date, had there been
13 specific discussions with the State about some type of an
14 offer?

15 A. At about six months of my incarceration I was brought a
16 three-year plea, and I told them that I didn't agree with
17 three years for what happened; and he said, well, they're
18 under no obligation to make you an offer, and I said,
19 there's -- I just really -- I'm not going to sign up for
20 three years for the circumstances. I didn't feel it was
21 right, and I wanted to take the case to trial.

22 Q. Based on your knowledge of the events, what was your
23 opinion of the three-year offer?

24 A. It was too much.

25 Q. Did you voice your concerns about the State's

1 allegations against you to your attorney during those
2 discussions?

3 A. Yes, sir, I did. I said that they were unfounded. It
4 was unprovable because there was only two people's -- two
5 people were there, her and I.

6 Q. Now, moving back to the day you came to trial but a
7 trial did not happen.

8 A. Yes, sir.

9 Q. Can you help the Judge understand any discussions that
10 would have occurred on the day that you did not go to trial?

11 A. Your Honor, I -- I'm not -- I'm not -- I don't know the
12 law, for one. I -- I've trusted attorneys my whole life
13 because I've owned businesses, and they always advised me
14 properly; and I trusted my attorney when he told me, look --
15 I was told multiple times that we can't win this case. And
16 I'm like, why? And they're -- because the pictures make
17 their case. I said, the pictures aren't the case. That's
18 not the truth. They -- if a picture was worth 1,000 words, I
19 think that the picture could exonerate me. And he's like,
20 no, here's what's going to happen -- and Michelle Suggs was
21 his co-counsel. He had got her. He thought that if he had a
22 woman question Ms. Peralta about the events that happened, it
23 would be less intimidating, and so I agreed to have a
24 co-chair counsel and -- but what they kept telling me the day
25 that I came in, they're like, look, you're between a rock and

1 a hard place. We're sorry, but CDV's, they're a hot button
2 issue right now, Mr. Carter, and there's no way that we can
3 proceed and win this case. If you go up there, here's what's
4 going to happen: We're going to go up there, you're going to
5 lose the case. The prosecution's going to recommend ten
6 years, and you're going to get ten years for this; but if you
7 go up right now and plead on an open one to ten, you know,
8 you're probably going to come out better. I said, wait a
9 minute, what happened to the three years that was on the
10 table? Oh, well, that's gone. I'm like, well, why is it
11 gone? Well, because you turned it down, so it's no longer on
12 the table. I said, what are you telling me? Well, we're
13 telling you that, you know, you either go up there and go to
14 trial, at which point we're going to lose because there's no
15 way we can win this, and you're going to get ten years, or
16 you plea open on one to ten, and what I've been led to
17 believe is that you'll get less than five and maybe the three
18 that was on the table. And I said, what happened to time
19 served? It's a one year minimum. I've never been in trouble
20 ever. I've not had an assault, anything; just go up and tell
21 the Judge I'll take time served. I'll go ahead and plead
22 guilty to this just to get it over with. And he's like no,
23 he's like, if you do that, if you go up here and you say
24 anything to this Judge other than the fact that you agree
25 with what the prosecution says, she's going to waive -- she

1 won't accept your guilty plea. She's going to waive this
2 over to trial, and you're going to go to trial and you're
3 going to lose. I'm like, how is it I go up there and agree
4 with the prosecution when what they're saying isn't the
5 truth.

6 Q. Let me pause you there, Mr. Carter. To be specific,
7 you're again voicing a dispute with the factual allegations?

8 A. Yes, sir.

9 Q. Were you told by Mr. Chisholm his perception of what a
10 sentence might be if you plead?

11 A. Yes, he was -- he said that I would get probably less
12 than -- I would get -- first he said I was probably going to
13 get five years, and I about choked out; so I thought, how am
14 I going to get five years for this? I said, where's the
15 three? Well, you turned down the three. You're going to get
16 five, you'll probably get less, you know, probably around
17 three years.

18 Q. Was Ms. Suggs involved in these conversations as well?

19 A. Yes, she was there as well.

20 Q. And I think you already testified to it there, but I
21 want to make sure it's in the record, when you were being
22 advised to plead guilty, what were you told by your attorneys
23 as far as how to answer the Judge?

24 A. That I could not say anything other than agree with what
25 the prosecution said about this case. If I did anything

1 other than agree with what the prosecution said, that they
2 would waive -- that she wouldn't accept my guilty plea, and
3 she'd waive it over to trial, and remind you of this, if she
4 waives it over to trial and you go to trial, you're going to
5 lose and you're going to get ten years.

6 Q. Before we get to your ultimate decision to go in front
7 of the Judge, let me back up a little bit. Had you and Mr.
8 Chisholm discussed potential defenses?

9 A. Yes, sir.

10 Q. What defenses did you and he discuss?

11 A. We discussed self-defense.

12 Q. As far as that, what are you aware of that Mr. Chisholm
13 did to investigate and prepare to present that defense?

14 A. To my knowledge, pretty much nothing. I provided police
15 reports and prior things, any evidence that I had, electronic
16 emails, texts, all of which were told to me wouldn't be
17 acceptable.

18 Q. Acceptable by who?

19 A. Supposedly by the Court.

20 Q. So there's evidence that you had that you were told
21 would not be admitted if you went to trial?

22 A. Yes, sir.

23 Q. Did you have disputes like that with Mr. Chisholm about
24 what could or would be presented if you were to go to trial?

25 A. I did but I -- I was -- I thought that I was trusting in

1 his judgment. I mean, he told me that electronically
2 generated material isn't evidence. I -- so I -- you know, I
3 didn't know what to do. I had no choice but to trust what he
4 tells me.

5 Q. Did you have concerns with Mr. Chisholm's experience?

6 A. Yes, sir, I did.

7 Q. Can you tell the Judge why?

8 A. Your Honor, I'm sure Ash Chisholm's a really good guy,
9 he really is, and I'm sure he's a good attorney. I had
10 concerns basically because he was a young attorney. He told
11 me he had only tried ten cases in four years. He'd never
12 tried a CDV HAN ever, and I -- I wasn't -- and it made me
13 really unsure about trusting him, especially when I had
14 evidence that I have that he said wouldn't be presented, and
15 if they don't present the evidence and I go with what he
16 says, then he's right, I'm going to get ten years because I
17 can't defend myself, and so my defense couldn't be -- it's
18 not going to be presented. And I -- and I -- I trusted him,
19 you know, as an attorney. I was just more concerned that he
20 didn't have years of experience or tried a CDV HAN ever.

21 Q. We've talked about Ms. Suggs. Did she play a lead role
22 in this case or a secondary role?

23 A. She was co- chair, it was my belief. I know she had
24 more experience.

25 Q. Do you know why it was that she was brought in to assist

1 on the case?

2 A. Yes, sir, because he didn't want to seem intimidating to
3 the victim and it was better to have a woman question her
4 than him.

5 Q. Because you mentioned earlier Ms. Peralta, that's who
6 you're talking about?

7 A. Yes, sir.

8 Q. Do you have knowledge as to why he asked Ms. Suggs to
9 speak -- Mr. Chisholm asked Ms. Suggs to speak with you about
10 the decision to plead guilty or go to trial?

11 A. Because of her years of experience.

12 Q. And do you know how long she had been a lawyer at that
13 time?

14 A. I believe it's 15 years, or 15 years at least a public
15 defender.

16 Q. I believe you used the term between a rock and a hard
17 place. Is that how you felt the day of potentially going to
18 trial?

19 A. That and then some, yes. I felt beat before -- I didn't
20 have any hope. They don't give me any hope at all.

21 Q. Given that feeling, is that when you then went in front
22 of Judge Harrington to enter the guilty plea?

23 A. Yes, sir.

24 MR. DAVIS: And, Your Honor, I believe you've been
25 provided a transcript of the plea as part of this packet.

1 THE COURT: Yes, sir.

2 Q. Mr. Carter, I want to shift gears now. You were not
3 sentenced the day you plead guilty, were you?

4 A. No, sir.

5 Q. What was your understanding why there was the delay?

6 A. They -- I was so ready to get out that day. I thought
7 that if I plead, I was going to be released, and I was amazed
8 that, when I made my plea, that they sent me to something
9 called a pre-sentence investigation, which I didn't even know
10 what that was. And when I went downstairs and talked to Ash,
11 he says, oh, don't worry about it, this is a good thing. You
12 know, this gives the Judge a chance to review the case. The
13 probation department will do a background search and they'll
14 make a recommendation to the Judge, and this will work out in
15 your favor. They'll do an interview with you in between now
16 and the time when you come back to court. I said, what's
17 this, it ended up being three more months in jail.

18 Q. Did you make any attempts to contact your attorney
19 during that time frame?

20 A. Yes, sir.

21 Q. What was the purpose of trying to reach him during those
22 three months?

23 A. Several -- couple of the times, I've got letters that I
24 wrote I think you're in possession of, and I asked when it
25 was, for one, that probation department was ever going to

1 interview me because they never interviewed me. And I also
2 asked, Ash, you told me that if I made this plea, that the
3 Judge would be able to see all the information, all the
4 evidence even that I had, and but then once I made my plea,
5 it was like, well, no, the Judge will never see your
6 evidence. The only evidence the Judge will ever see is the
7 prosecution's, and the prosecution is the only ones
8 whoever -- I never even made a statement. I never got to
9 make a statement to the police or anybody.

10 Q. Quick little checklist here, did probation ever speak to
11 you directly?

12 A. No, sir. The day that I made my plea, we went
13 downstairs, and they asked me three or four questions about
14 my age, my birth date, stuff like that, had I ever been in
15 trouble before, have I ever had drug problems, alcohol, had I
16 ever had assault charges, that kind of stuff, and it was --
17 it was over in about two minutes, and I had to sign papers
18 saying that I agreed to probation and they were going to do
19 an investigation.

20 Q. Just for the record, you recall that it was August 5th
21 of '13 you entered the plea?

22 A. Yes, sir.

23 Q. Prior to going to Court for the sentencing -- and do you
24 recall that was November 13th of the same year?

25 A. Yes, sir.

1 Q. Prior to November 13th was it ever revealed to you what
2 the recommendation of the probation department was going to
3 be?

4 A. No. That was -- that was supposed to be what this time
5 was for. The three months was to do an investigation and
6 interview me, and I guess that's why they needed three
7 months, to go over it all. And that's one of the questions
8 that, when I had wrote Ash, I asked has he heard from the
9 probation department, what are the recommendations, and he
10 said he didn't have any.

11 Q. When you arrived in Court on the 13th of November, you
12 then were told what the position of probation was; is that
13 correct?

14 A. We came to the door, Your Honor, and walked into Court,
15 and as we walked in, it was a different courtroom than this
16 one, but he was handed an envelope as we come in the door and
17 I went straight to the front of the bar right up here
18 (indicating) and stood and the judge asked were we ready to
19 proceed, and I'm like, where's the recommendations, oh, it's
20 right here, he's opening it, and he started to turn pages,
21 and he gets like to the third page and I see seven years on
22 there, and I'm like, what's that? He's like, hold on, hold
23 on, let me read it. And the Judge asks him, have you had a
24 chance, Mr. Chisholm, to look over the probation's
25 recommendation for this case, and he said, well, I'm doing it

1 now, Your Honor, and I was freaking because I'm like, there's
2 no way, and he goes, well, hold on, don't be upset, he says,
3 give me a minute, he stepped away from where I was at, and he
4 went to a table where I guess the probation department had a
5 representative sitting and spoke to them for a minute, and
6 then he come back to me and he says, well, there's
7 evidently -- there's -- she's had contact from -- you've
8 called her or something, and there's been Facebook posts from
9 your daughter pertaining to her. I'm like, where? What?
10 He's like, well, you know, so he told Judge Harrington, Your
11 Honor, these are not founded, I mean, there's no -- there's
12 no evidence, but she didn't care, seems like. It was like it
13 didn't matter. She gave me -- she sentenced me -- says, are
14 you ready -- the Judge asked him, are you ready to proceed,
15 and I'm like -- I want him to stop because I'm like, can't
16 you withdraw my guilty plea or can we like -- something, do
17 something. He's like, no, he was ready to go forward with
18 the sentence anyway.

19 Q. The Court has a copy of both transcripts. Let me deal
20 with the first one from August 5th. Is it fair to say that
21 in the courtroom on the day of the guilty plea that you were
22 uncomfortable with the facts being alleged by the State?

23 A. Yes, sir, that and then some.

24 Q. Is it a fair reflection that at the sentencing in
25 November 13th of 2013 that you were uncomfortable with that

1 process as well?

2 A. Yes, sir.

3 Q. What if anything are you aware that Mr. Chisholm did in
4 that gap to prepare for the sentencing?

5 A. Nothing that I'm aware of.

6 MR. DAVIS: Your Honor, if I could have just a moment,
7 please.

8 THE COURT: Yes, sir.

9 Q. Going back to clean up just a few matters throughout
10 this whole process, Mr. Carter, you were clearly -- were you
11 provided any information about sentencing, the length of the
12 potential sentence by Mr. Chisholm that influenced your
13 decision to plead guilty?

14 A. Just as I'd stated, that if I went to trial, I would get
15 ten years; but if I plead open, I'm going to get the lower
16 end probably, you know, at least -- and this upset me because
17 he said, you know, you're probably going to get five years or
18 maybe like the three that they offered, but it will be the
19 lower end of the spectrum. If you plead open on the one to
20 ten -- he said, and if you'll plead open right now -- if we
21 go up and you get tried and get found guilty at trial, you'll
22 get ten years, but if you'll plead open on the one to ten
23 right now, the prosecution won't make a recommendation for
24 sentence, and so I look for you to get five years or probably
25 three years.

1 Q. You also, during the process, not on the record, but did
2 you have conversation with Mr. Chisholm about trying to halt
3 the -- let's do it in reverse order, trying to halt the
4 sentencing?

5 A. Yes, sir, I asked to pull my plea back. I didn't -- I
6 didn't want to even -- yes.

7 Q. And what about more time simply to prepare?

8 A. I was told that once it was already -- it was already in
9 motion the day that we come to get sentenced that it was too
10 late. He couldn't -- you know, the Judge wouldn't
11 probably -- that it was -- wasn't gonna pull back from it,
12 wouldn't accept -- you know, wouldn't take back my plea. I
13 said could we get a continuance, anything, something.

14 Q. So the Court will understand that you had intentions of
15 this being a trial, I'd like for you to succinctly and
16 directly explain the defense that you would have asked Mr.
17 Chisholm to present if this had been a trial.

18 A. Do you want the whole -- the whole scenario?

19 Q. As succinctly -- just connect the dots so the Judge will
20 understand the skeleton, the outline of the defense. This is
21 obviously not your retrial, but I want the Court to
22 understand there was a defense that you had discussed with
23 Mr. Chisholm. Can you succinctly lay out the diagram of that
24 defense?

25 MR. MITCHELL: Objection, Your Honor. He's waived all

1 defenses by pleading guilty.

2 THE COURT: He can explain what he wanted Mr. Chisholm
3 to present.

4 THE APPLICANT: Your Honor, I wanted -- I wanted the
5 evidence brought forth that showed the emails and the intent
6 of the victim that was -- I wanted -- there's malicious
7 intent here, and that could have been proven, and also the
8 self-defense issue could have been proven if he would have --
9 and he said that it was not a defense because of my size.

10 THE COURT: Mr. Carter, what it boils down to is did you
11 discuss those potential defenses with Mr. Chisholm?

12 THE APPLICANT: And he shot them -- he shot it down.

13 THE COURT: Okay.

14 Q. Had you discussed with him certainly your right to
15 remain silent if it went to trial, did you discuss that?

16 A. Yes, but I wanted to be able to tell my side of the
17 story.

18 Q. The next question is did you also discuss the ability to
19 testify and present a defense if it had gone to trial, for
20 you to testify?

21 A. Yes, sir.

22 Q. You discussed that?

23 A. Yes, sir.

24 Q. Okay. And you were prepared to testify if necessary?

25 A. Yes, sir. I was told that I would be too emotional and

1 that probably would kill myself, but I was kind of killed
2 anyway.

3 Q. Mr. Carter, finally, there's an issue about the
4 structure of Judge Harrington's sentence that you want to
5 address to the Court. Can you explain that to the Court?

6 A. Yes, ma'am. Actually it's in my folder over there, but
7 there's something called statutory sentence guidelines, Your
8 Honor, and I'm not trying to tell you your job, and this
9 Court are professionals and I'm not, but in my time in the
10 law library study with statutory sentence guidelines of CDV
11 high and aggravated nature is the minimum one year and a
12 maximum of ten years. The legislative branch guarantees the
13 statutory limits of the sentence that a Judge isn't supposed
14 to be able to circumvent that parameter, so a combination of
15 time served and probation or suspended sentence and
16 time-served or combination of any of the two or three is not
17 supposed to be superseded. And in my case my concern was
18 that I have an illegal sentence on top of the other issues
19 that I have because my sentence totals 11 years on a maximum
20 of a 1 to 10. I thought that that would have been addressed,
21 but I'm told that I -- it's -- even though I found it in the
22 law books that it's -- I guess I'm probably wrong.

23 MR. DAVIS: Thank you, Mr. Carter.

24 That's all the questions I have, Your Honor.

25 The Attorney General may have some questions for you.

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION BY MR. MITCHELL:

3 Q. All right, Mr. Carter, now, you plead guilty to CDV HAN;
4 is that correct?

5 A. Yes, sir.

6 Q. All right. Now, before Judge Harrington, correct?

7 A. Yes, sir.

8 Q. And she went over with you your rights that you were
9 waiving by pleading guilty; is that right?

10 A. Yes, sir.

11 Q. And you waived your rights to a trial, right?

12 A. Yes, sir.

13 Q. By doing that you waived any defenses to the crime,
14 correct?

15 A. Yes, sir.

16 Q. And that was fully advised to you by Judge Harrington;
17 is that right?

18 A. Yes, sir.

19 Q. All right. Now, you had some qualms with the facts as
20 presented by the solicitor; is that right?

21 A. Yes, sir.

22 Q. And you didn't quite agree but then you did agree with
23 him at the plea hearing, correct?

24 A. I was told that I didn't have a choice.

25 Q. You were told you didn't have a choice, so you lied to

1 the plea court to satisfy the Judge, is that what you're
2 saying?

3 A. I went along with something that was less than truth.

4 Q. So you, by doing that, you lied to the plea court,
5 saying that you agree with what they alleged, right?

6 A. I helped hang myself, yes.

7 Q. Okay. And then to clarify the facts, after that issue
8 came up, Judge Harrington asked you what you did and you
9 said, "I put my thumbs on her eyes, made her fear for her
10 life," is that right?

11 A. No, it's not right.

12 Q. That's not right.

13 A. If that's what --

14 Q. You didn't say that at the plea hearing?

15 A. Is that what the transcript says?

16 Q. I'm asking you if that's what you said at the plea
17 hearing.

18 A. Honestly, I don't remember.

19 Q. Okay. You told the plea court that you put a plastic
20 bag over her mouth; is that right?

21 A. No, I had a plastic bag in my hand, but if that's what
22 it says --

23 Your Honor, I'm -- just like now, I'm extremely nervous.

24 Q. No --

25 THE COURT: Mr. Carter, you don't need to be nervous.

1 Just answer the questions truthfully.

2 THE APPLICANT: Yes, ma'am.

3 Q. This is when you evoke some kind of reaction to where
4 Judge Harrington thought you were laughing; is that right?

5 A. Sort of like I did little while ago, yes, I react
6 nervously, I -- I laugh. It's stupid, but I'm -- it's what I
7 do. It's not --

8 Q. She didn't think you were taking the proceedings
9 seriously.

10 A. I was taking it seriously.

11 Q. That's --

12 A. What made me laugh, since you brought that up, what made
13 me laugh was the fact that I was agreeing to so much stuff
14 that wasn't even true. It was fictitious.

15 Q. So you're laughing that you're lying to the Court
16 pleading guilty.

17 A. It was a laugh that I had to agree with it, that I had
18 to agree because if I don't agree -- I laughed at myself
19 because I'm like, I'm agreeing to this.

20 Q. And that's what upset Judge Harrington; is that correct?

21 A. I don't know if it upset her or not. What I was forced
22 to agree with wasn't the truth.

23 Q. But you did agree with it.

24 A. I was told I didn't have a choice, sir.

25 Q. Okay. We'll move on from that. So you're really just

1 upset with the amount of time that you were given, correct?

2 A. I'm upset with the whole proceeding and what I thought
3 was the law.

4 Q. You got ten years, ten years suspended to eight, three
5 years probation, correct?

6 A. Yes, sir.

7 Q. And Judge Harrington advised you that she could give you
8 ten years as a maximum sentence; is that correct?

9 A. Yes, sir.

10 Q. So you knew the max going in, right?

11 A. Yes, sir.

12 Q. And that pre-sentencing report recommended seven years;
13 is that right?

14 A. I didn't know the pre-sentencing report.

15 Q. You did at the sentencing hearing.

16 A. I was presented with that evidence as I stood waiting to
17 be sentenced.

18 Q. Okay. So you were aware of that.

19 A. No, I wasn't.

20 Q. You were aware of it at the sentencing hearing.

21 A. Okay.

22 Q. So there's a three-month delay in that sentencing
23 hearing; is that correct?

24 A. Yes, sir.

25 Q. From the plea to the sentencing hearing, correct?

1 A. Yes, sir.

2 Q. Do you recall Judge Harrington saying that the
3 sentencing report was a benefit to you?

4 A. No, I don't recall Judge Harrington saying it, sir.

5 Q. Do you recall an issue coming up with your contact with
6 the victim from after the plea hearing to the sentencing
7 hearing in violation of Judge Harrington's orders?

8 A. I'm aware of an allegation.

9 Q. Okay. Isn't it true that you were using another
10 inmate's account to call --

11 A. No, sir it's not.

12 Q. -- the victim?

13 That's not true?

14 A. No.

15 Q. So you're telling this Court today that you did not use
16 another inmate's phone account --

17 A. Yes.

18 Q. -- to call the victim?

19 A. Yes, sir.

20 Q. Okay.

21 A. Is the Court aware that --

22 MR. MITCHELL: I have no further questions.

23 THE COURT: Any further redirect?

24 MR. DAVIS: Just one moment, please.

25 Judge, not at this time; maybe subject to recall. We

1 would call Mr. Chisholm as the next witness.

2 THE COURT: You may step down Mr. Carter. Thank you.

3 ASHLEY CHISHOLM,

4 being first duly sworn, testified as follows:

5 THE COURT: Your witness.

6 MR. DAVIS: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. DAVIS:

8 Q. Mr. Chisholm, early on in your representation of Mr.
9 Carter there was an offer of a three-year sentence for a
10 guilty plea; is that correct?

11 A. Well, I guess I should start out by saying I got the
12 case kind of midway through. It came from a private
13 attorney, and I can't remember if that was an offer that was
14 already in place when I got the case because we opened our
15 case in February, I believe it was, on a separate charge, and
16 I believe there was substitution of counsel in May. I don't
17 remember at which point during representation the three-year
18 offer was made, if it was prior to me getting the
19 substitution order in, or if it was after, but at some point,
20 yes, there was a three-year offer on the table.

21 Q. Do you recall having discussions then with the client
22 about that offer? Is that in the time frame you're not sure
23 whether you were the appointed attorney or not?

24 A. Oh, we definitely discussed it, yes, sir.

25 Q. And what was your advice to him about the three-year

1 offer?

2 A. Well, what I told him about his case, I never said
3 you're definitely going to lose, there's no chance, that, you
4 know, this is a completely hopeless case, but he did ask me
5 what my thoughts were on the case, and, you know, I gave it
6 to him, I gave him my honest opinion was I think it will be
7 an uphill battle, I think there's a likelihood that we will
8 lose at trial. For that reason I told him that I would
9 suggest he consider the three-year offer. I thought it was a
10 good offer for him.

11 Q. During these discussions isn't it accurate that he
12 denied the violent nature of the allegations?

13 A. It is.

14 Q. During your discussions isn't it clear that he had a
15 lengthy story leading up to the events that caused his arrest
16 that he presented to you as an explanation?

17 A. There was a lot of back story, yes.

18 Q. As to -- and that back story basically dealt with him
19 and Ms. Peralta and their relationship.

20 A. Yes. There was a property dispute. There were some
21 separate like criminal cases involving her and family
22 members, things of that nature we discussed.

23 Q. As to that back story, is it fair that that would have
24 been -- if this had been a trial, part of presenting a
25 self-defense claim would have been an attempt to show the

1 nature of both parties and this back story?

2 A. Yes.

3 Q. Towards that end, other than what Mr. Carter provided
4 you, what were you able to independently investigate and find
5 out about that back story?

6 A. The back story, as we were going to present it, was
7 basically going to be from the materials he provided,
8 incident reports; he had family turn over emails that had
9 been sent, things of that nature.

10 Q. As to emails or text messages, electronic
11 communication --

12 A. Sure.

13 Q. -- is it accurate that you indicated to Mr. Carter that
14 you would not be able to admit electronic evidence, that it
15 was inadmissible?

16 A. No, that's not exactly the case. What we discussed with
17 him was we were going to get -- try our best to get into
18 these matters at trial. Ms. Suggs was actually going to
19 handle the witness that we would try to introduce those
20 materials in with, but we said there may be problems with
21 foundation for the emails, for the text messages, things of
22 that nature, that if she denies sending messages, things of
23 that nature, we could run into issues, but those were things
24 that during trial preparation we discussed that we were
25 indeed going to present the email that he referred to and

1 also a message on his phone, a text message.

2 Q. And forgive me for not knowing this, Dorchester County
3 Public Defender's Office, First Circuit Public Defender's
4 Office, do you have on-staff investigators?

5 A. We do not.

6 Q. So they have to be -- you have to obtain a funding order
7 from the Court to hire an investigator on individual cases?

8 A. Yes, sir.

9 Q. Was that done in this case?

10 A. No, sir.

11 Q. Now, ultimately this leads to being placed on the trial
12 docket because no plea is negotiated, no plea is worked out,
13 and you're on the day of potential trial when the plea
14 happens; is that accurate?

15 A. I think Mr. Carter's description was accurate. He felt
16 he was between a rock and a hard place. He had an offer that
17 he had rejected on the record that had disappeared, and he
18 was basically facing the prospect of starting trial that day,
19 I believe, or pleading guilty.

20 Q. And what was -- and your advice to him was to enter a
21 plea versus having the full presentation at trial?

22 A. Well, we discussed that. What happened is I believe the
23 morning we were to start trial I, along with Ms. Suggs, the
24 solicitors, met with Judge Harrington in chambers, kind of
25 gave her, you know, an idea of what the trial was going to be

1 about, discussed it. I kind of threw out some of what I
2 anticipated the defense would be, and some judges will give
3 you an indication of what sentence they may give in that
4 scenario. She didn't do that, but the impression that I left
5 with, the impression that Ms. Suggs left with was in a guilty
6 plea we thought she would probably give him a sentence on the
7 lower end or in the middle range, which is probably where
8 Mr. Carter came away with five years to three years is that's
9 the indication, kind of our gut feeling where it would land
10 in a plea.

11 Q. And you conveyed that to Mr. Carter.

12 A. Yes, sir.

13 Q. The guilty plea colloquy begins, and when the State
14 alleges the facts, Mr. Carter has some dispute about that; is
15 that accurate?

16 A. Yes, sir.

17 Q. This was not unexpected or unfamiliar to you, his
18 complaints?

19 A. That's correct.

20 Q. Since there became a brief factual dispute on the record
21 during the guilty plea, why didn't you consider asking Judge
22 Harrington to withdraw the plea to sort that dispute out?

23 A. Basically, to give back story, as I met with Mr. Carter,
24 and I understood he wasn't going to agree with every factual
25 element that was going to be presented by the State. I

1 talked to him about that, and what I told him was if it came
2 down to it I would try to explain to the Judge that he agrees
3 with enough of what was being said to support the charge but
4 not every allegation. If you look at the transcript, I tried
5 at one point to interrupt to say that, to say, you know, we
6 agree with enough to support the charge but not every fact,
7 and basically I was told that she didn't want to hear from me
8 because I wasn't there, she wanted to hear from Mr. Carter,
9 which kind of put both of us in an unusual spot. As far as
10 why I didn't withdraw at the time, basically, we were on the
11 day of trial. We would be withdrawing into trial, and at
12 that point obviously things weren't going as I had hoped,
13 they weren't going smoothly, but I also hoped at that point
14 that things were salvageable; obviously, I didn't foresee
15 that it was going to end the way it did.

16 Q. Ultimately, the plea's accepted and the Judge continues
17 it for the pre-sentence investigation. You did not get that
18 report from Probation, Parole and Pardon Services until the
19 day of the sentencing.

20 A. My recollection of what happened is they'd had some
21 turnover in the probation department. It took a long time
22 for it to be assigned to someone, and then once it was
23 assigned, it took a long time for them to actually get moving
24 in the process. I spoke to someone I believe the week prior
25 and said, what's going on here, I don't have a report yet,

1 what's going on. And, you know, they told me they were in
2 the process. I think they told me they still had to talk to
3 Mr. Carter. They didn't give me an idea at that point of
4 what they were going to recommend. The impression I was
5 getting from them was it's probably going to be some sort of
6 split-sentence recommendation, but it certainly wasn't the
7 seven years. I got that -- he's correct, that was the day of
8 the sentencing I actually got that report.

9 Q. Based on receiving the thing that the Court had delayed
10 proceedings for the day of, you did not request a continuance
11 that day for more time to review the report?

12 A. I did not -- from what I remember from the investigation
13 report, it was basically material that had already been
14 presented. The only new allegations that I can remember that
15 I thought were -- you know, had real substance to them were
16 the allegations there had been further contact from
17 Mr. Carter to Ms. Peralta via telephone calls and through
18 Facebook or email message, and I met with probation,
19 discussed it with them. I said, do you have any proof that
20 any of this happened that you're going to present today, and
21 they told me they did not; and at that point I didn't ask for
22 a continuance because I planned to argue just that, we've got
23 unsubstantiated claims, and there wasn't really anything new
24 that was introduced in the report, so I guess that would be
25 the basis for not requesting more time.

1 Q. It's your understanding, though, the recommendation from
2 probation had gone up from the phone call a week earlier, it
3 got more severe, the recommendation got more severe.

4 A. Yes. I wasn't anticipating a seven-year sentence,
5 that's true.

6 Q. You did not ask for a continuance on November 13th, the
7 day of the sentencing, and then as it progressed there was a
8 more lengthy dispute by Mr. Carter as to the factual
9 allegations; is that fair?

10 A. About the contact?

11 Q. About the contact and about the actual incident.

12 A. You're talking about after the sentencing, correct?

13 Q. After the sentencing hearing.

14 A. Basically what happened after the sentencing --

15 Q. I apologize. Let me -- at the sentencing hearing on the
16 record --

17 A. Sure.

18 Q. -- is it fair to characterize that as Mr. Carter
19 disputing some of the factual allegations again; a more
20 lengthy dispute with the Judge about the factual allegations,
21 do you recall that?.

22 A. Yes. I mean, I think the transcript reflects that he
23 basically denied his guilt throughout.

24 Q. And with him re-raising those issues now months later,
25 did you consider at that time requesting a withdrawal of the

1 plea, since he was so adamant against the facts?

2 A. I did not at that point -- basically, to be honest, I
3 was kind of surprised by what he was saying at that point;
4 and that far into the process I didn't think there was any
5 real shot of her allowing me to withdraw the plea at the
6 sentencing, so I did not.

7 Q. In the gap, in the three-month gap Mr. Carter, who was
8 still incarcerated, had attempted to contact you in the
9 meantime; is that accurate?

10 A. I believe so, yes.

11 Q. On forms from the jail that he had handwritten, do you
12 recall those?

13 A. I don't have copies, but yes, that's -- I mean, I'm sure
14 that's the case.

15 Q. With disputes about the facts that he had acquiesced to
16 at the guilty plea.

17 A. I'd have to see it. I don't have it. I couldn't find a
18 copy when I reconstructed my file. I don't -- that doesn't
19 sound unreasonable or --

20 Q. With questions about the pre-sentence process, was he
21 contacting you about that as well?

22 A. Yes, I believe he, you know, wanted like an update,
23 what's going on with it; and obviously I didn't have an
24 update at that point because of turnover or whatever they had
25 going on, they really didn't get into it until I think

1 probably that week before the sentencing.

2 Q. Not a whole lot that you did in the gap because you
3 didn't have a report from probation until the day of the
4 sentencing.

5 A. True, that's true.

6 Q. Now going back to what you were going to testify about
7 now after sentencing.

8 A. Sure.

9 Q. There was still contact between you and Mr. Carter
10 following that, correct?

11 A. Yes.

12 Q. Do you recall a letter from November 18th, so just a few
13 days after the sentencing, that you would have written to
14 Mr. Carter kind of summarizing what had happened?

15 A. Let's see, if I could have a moment.

16 Yes.

17 Q. You reference -- your response suggests that he asked
18 you about why a withdrawal wasn't requested.

19 A. Right.

20 Q. You actually informed him of the right to have this
21 process, to do a post-conviction relief action, correct?

22 A. I did, after the sentencing especially I -- honestly, I
23 felt for Mr. Carter. He was asking me what kind of relief he
24 may be able to seek, so I told him about the appeal process,
25 to the extent that I'm aware anyway, and I did also discuss

1 that he'll learn about post-conviction relief options and
2 that he would be able to write out different grounds where he
3 felt I was ineffective, he would be appointed an attorney,
4 and he would be able to discuss it with them. And, you know,
5 I said by my not asking for a continuance at that point you
6 may be able to raise that as a ground, and I was basically
7 advising him of that in that letter.

8 Q. And when you used continuance in that context, it was
9 specifically talking about the sentencing, since you'd just
10 received the report that day?

11 A. Yes, sir. I was talking about not seeking continuance
12 after receiving the probation report.

13 Q. Do you recall a letter then from December 20th of the
14 same year from you to Mr. Carter?

15 A. Yes, sir.

16 Q. And the gist of this letter dealt with the two things
17 that probation used to enhance their recommendation; is that
18 accurate?

19 A. Yes, sir.

20 Q. Is it fair to summarize your letter as saying that you
21 had more information on December 20th than you had November
22 13th at the sentencing hearing?

23 A. Yes, sir.

24 Q. I believe we've heard -- I believe the Attorney General
25 referenced this. Probation's allegation was that calls were

1 being made from the jail to Ms. Peralta by Mr. Carter,
2 correct?

3 A. Yes, sir.

4 Q. But the allegation was based on the belief that a pin
5 number, a phone pin number to access the system by an inmate
6 who was no longer at the jail was being hijacked by Mr.
7 Carter to make those calls.

8 A. I think probation basically -- I'm assuming Ms. Peralta
9 had told probation, I've been getting calls from the jail,
10 I've been getting Facebook or email messages. I'm assuming
11 that's where it came from. What I did after the fact, I
12 tried to look into it and see if there was any evidence that
13 he had actually made calls. I called over to the jail. I
14 spoke with, I believe it was Major Van Doran, and basically
15 asked for records of his phone calls. And what Major told me
16 was that there were no calls showing under his pin number,
17 which I found unusual because I believe -- I think I had
18 talked to him from the jail at some point, and I'm assuming
19 his family had talked to him. I can't remember what they
20 told me. I met with his family on multiple occasions. But
21 what he did at that point was he said, well, what was the
22 number that was supposed to be contacted. I gave him Ms.
23 Peralta's number, and essentially what he told me was there
24 had been calls made that roughly coincided with Mr. Carter's
25 stay at the detention center. That the calls were made on a

1 pin number for an inmate that had been -- I can't remember if
2 he's deceased or if he'd just been released sometime -- you
3 know, I think maybe a couple years prior to Mr. Carter's
4 incarceration. And basically what he said is someone just
5 failed to take it out of the system. Somehow the pin got
6 circulated among the inmates, I suppose, and that basically
7 what I was left with was they -- I don't think they could tie
8 Mr. Carter to using that pin number, but what they would have
9 is calls that coincided with his stay and calls that are made
10 around the time that she was alleging.

11 Q. Just one follow-up on that. This was from the
12 Dorchester County Jail here in St. George, correct?

13 A. Yes.

14 Q. And based on your knowledge and your investigation of
15 the case, Ms. Peralta lived in this general area, correct?

16 A. Yes.

17 Q. So you have no personal knowledge as to whether she had
18 other acquaintances or friends that were incarcerated at the
19 same time that Mr. Carter was?

20 A. That's correct.

21 Q. And then as to the allegations of contact over Facebook,
22 basically you kind of hit a dead end there in the sense that
23 whatever the message was alleged to have been, you could not
24 gain actual access to it, could not be recreated, is that
25 accurate?

1 A. Yes. What I did is I spoke with his son-in-law and I
2 believe his daughter about that because I think they were
3 supposed to be the source of the contact to Ms. Peralta, and
4 I asked, you know, were there any messages sent, that kind of
5 thing, and the daughter was going to get a copy of the
6 message to me, and she never did. I can't remember, may have
7 been she had computer problems or something like that, but I
8 never got an actual copy of the message. What I was told is
9 that -- the impression I was left with was this was a letter,
10 I believe, that had been -- a picture had been taken of a
11 letter and that it was from Mr. Carter and that it would read
12 as it was being addressed to Ms. Peralta and that this was
13 somehow sent in a message, I think it was Facebook -- I don't
14 remember if it was an email or Facebook.

15 Q. But tangibly you never actually saw it?

16 A. I never got an actual copy, no.

17 Q. From Probation, Parole Services --

18 A. Right.

19 Q. -- nor from Mr. Carter's family.

20 A. Right.

21 Q. Final thing, Mr. Chisholm, was there any discussion --
22 strike that.

23 Did you -- did you appeal the guilty plea and conviction
24 in Mr. Carter's case?

25 A. I did.

1 MR. DAVIS: Your Honor, if I could have just one moment,
2 please.

3 THE COURT: Yes, sir.

4 MR. DAVIS: Your Honor, in an abundance of caution may I
5 approach the witness with a couple documents?

6 THE COURT: Yes, sir.

7 (Applicant's Exhibits 1-2 marked for identification.)

8 Q. Mr. Chisholm, I'm showing you what's been marked as
9 Exhibits A-1 and A-2, see if you can take a second and
10 identify those.

11 A. Yes.

12 Q. Are A-1 and A-2 the two letters we referenced previously
13 in testimony that you had sent to Mr. Carter?

14 A. Yes, sir.

15 MR. DAVIS: Your Honor, I'd ask that those be admitted
16 into evidence.

17 THE COURT: Any objection?

18 MR. MITCHELL: No objection.

19 THE COURT: They're in.

20 (Applicant's Exhibits 1-2 admitted into evidence.)

21 MR. DAVIS: With that, no other questions. Thank you,
22 Mr. Chisholm.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION BY MR. MITCHELL:

25 Q. Hi, Mr. Chisholm. Thanks for being here with us today.

1 Where are you currently employed?

2 A. Dorchester County Public Defender's Office.

3 Q. Where were you employed before you were in Dorchester?

4 A. Prior to coming to Dorchester I worked in Orangeburg,
5 the same First Judicial Circuit, but I was in Orangeburg
6 Public Defender's Office.

7 Q. When you were representing Mr. Carter, how long had you
8 been practicing law?

9 A. I believe around five years at that point.

10 Q. And he -- I think he mentioned ten trials in four years,
11 does that sound --

12 A. Yes, that sounds about right.

13 Q. Something like that maybe.

14 Okay. Had you handled CDV cases before?

15 A. Yes.

16 Q. All right. So Mr. Carter alleges that you told him that
17 it was likely he was going to be convicted; is that correct?

18 A. Like I said, he asked for what I thought was going to
19 happen if we go to trial, and I told him I think, if you're
20 wanting me to put an estimate on what's going to happen,
21 obviously I don't know what any jury's going to do, but I
22 told him there's a very good chance he would be convicted,
23 yes.

24 Q. So it was your advice to him that the State could likely
25 prove him guilty beyond a reasonable doubt.

1 A. Yes, sir.

2 Q. You thought the pictures were harmful because of the
3 extent of the injuries; is that right?

4 A. That's correct.

5 Q. There was significant bruising?

6 A. Yes.

7 Q. And that would have supported the charge of CDV HAN as
8 opposed to just a CDV; is that correct?

9 A. Yes. I believe CDV HAN references serious injury, which
10 isn't really clearly defined anywhere that I could find, so
11 it's open to some level of interpretation, but the
12 allegations were that, you know, the injuries caused but also
13 the injuries could have been caused because there are
14 allegations that he had essentially strangled her.

15 Q. And that's about what he admitted to at the plea hearing
16 with Judge Harrington; is that about right?

17 A. Yes, that's what she was asking about.

18 Q. So there was a three-year offer that he turned down
19 before pleading guilty?

20 A. Yes, sir.

21 Q. You didn't instruct Mr. Carter to lie on the record at
22 the plea hearing before Judge Harrington, did you?

23 A. Basically what I told him is this: We are about to pick
24 a jury. The other option you have is a guilty plea. I
25 wasn't there. I don't know what happened. I know what

1 you've told me previous to today, but as to what actually
2 happened, I don't know. I wasn't there. What I told him
3 was, not that he has to get up there and accept everything
4 they say, but what I told him is this -- we weren't able to
5 do a plea under North Carolina v. Alford, so this was a
6 regular guilty plea, and if he got up there and said, I'm
7 here to plead guilty but essentially I'm innocent of the
8 charge, that she probably would not accept the plea, and we
9 would be going to trial, so as far as that goes, I didn't
10 tell him to lie. I told him, I don't know what really
11 happened. You tell the Judge. I also -- I will say that I
12 told him that he could plead guilty and that, understanding
13 he didn't agree with every allegation that was in there, that
14 we could try to clear up that he agrees with enough to
15 support the charge but not every bit of what's being said;
16 and, again, that's where I tried to interject and say, may I
17 clear it up, and I basically wasn't allowed to speak.

18 Q. So in attempting to clear it up, he went on to admit
19 that he wrapped a plastic bag around her mouth, something
20 along those lines; is that correct?

21 A. Yes.

22 Q. Okay. And then Judge Harrington, did she become
23 perturbed at Mr. Carter's demeanor at the hearing?

24 A. Yes, very much so.

25 Q. That had an effect on -- do you believe that had an

1 effect on the sentence, his demeanor at the hearings?

2 A. I do and also her interpretation of his demeanor, as he
3 said, about the laughing. I agree with him, he does do a
4 nervous laugh, that kind of thing. I think she did
5 misinterpret that. I think at the sentencing he tried to
6 clear that up, but I think particularly at the sentencing
7 that, you know, you can't really reflect in the transcript,
8 you know, the demeanor of the Judge, but she was not pleased.

9 Q. Did you consider the pre-sentencing report -- did you
10 consider that he was not sentenced that day to be a benefit
11 to him, that sentencing was deferred?

12 A. Well, basically what I told him, and to be completely
13 honest, that is the only case I've had in seven years that we
14 actually did a pre-sentence investigation on. What I told
15 him is they're going to look at your background, they're
16 going to look at the reports they have, they're going to look
17 at the allegations here, and they're going to come up with a
18 recommendation that could actually help you. I did tell him
19 that. Obviously, I didn't know which way it was going to go.
20 I certainly didn't anticipate they were going to come back
21 recommending seven years.

22 Q. And the seven years was because probation alleged that
23 he had violated Judge Harrington's order not to have contact
24 with the victim; is that right?

25 A. I think that's what put them at that mark. I mean, they

1 said it was based on everything they looked at, background,
2 record, what he's accused of doing, all that kind of stuff;
3 but then I think -- I'm assuming that what put them at that
4 mark was the allegation with the contact.

5 Q. Had you ever -- have you ever moved to withdraw a plea
6 after -- when a sentencing's been deferred?

7 A. No.

8 Q. Do you think there was a likelihood that Judge
9 Harrington would have granted a continuance or allowed him to
10 withdraw his plea?

11 MR. DAVIS: Objection, Your Honor, calls for
12 speculation.

13 THE COURT: If you have any basis for any knowledge of
14 it.

15 THE WITNESS: I can't say. I mean, I wouldn't be
16 surprised if she would not let him withdraw it, I guess, but
17 I have no idea -- no way of knowing what she would have done.

18 Q. So the max on the sentence is ten years; is that
19 correct?

20 A. Yes, it is.

21 Q. And he was sentenced to the max, suspended, correct?

22 A. Yes.

23 Q. And the fact that a probationary term is included and
24 that that may exceed the maximum, that doesn't make it an
25 illegal sentence, does it?

1 A. I don't believe so.

2 Q. Do you recall where Judge Harrington stated that the
3 pre-sentencing report was a benefit based on Mr. Carter's
4 attitude at the hearings?

5 A. Yes. I mean, she did go over what they recommended, so
6 obviously I don't know what original sentence she
7 contemplated, but I think that's in the transcript.

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

9 THE COURT: Any redirect?

10 MR. DAVIS: Just briefly, Your Honor.

11 REDIRECT EXAMINATION BY MR. DAVIS:

12 Q. You just testified your take on the case certainly was
13 influenced by all the evidence, but photographic evidence was
14 crucial in your opinion in this case; is that correct?

15 A. Yes, that would be, I think, the key.

16 Q. Severe bruising, both eyes blood veins burst on Ms.
17 Peralta, correct?

18 A. Yes.

19 Q. But throughout the entire time you represented
20 Mr. Carter he disputed that the physicality was as violent as
21 the State's allegations.

22 A. Yes, that's fair to say.

23 Q. He disputed the strangulation.

24 A. He did.

25 Q. It's accurate that he and Ms. Peralta were the only

1 witnesses to whatever did occur.

2 A. Yes.

3 Q. And it's accurate that Ms. Peralta waited several days,
4 I believe it was five, before she reported the incident; is
5 that accurate?

6 A. It is.

7 Q. You received in discovery quite a bit of medical
8 records.

9 A. Yes.

10 Q. Did you retain -- did you retain an expert to review the
11 injuries as compared to the allegations?

12 A. I did not. There was -- I think I got one report that
13 said that she had bruising and things of that nature that
14 could be consistent with I guess the injury that had been
15 described or the assault.

16 Q. So one medical report but several photos?

17 A. Yes.

18 Q. Am I confusing things?

19 A. They're separate. The medical report was turned over
20 much closer to trial than the photographs.

21 Q. Photographs taken by law enforcement.

22 A. I think the photographs were -- they may have been taken
23 by Ms. Peralta and sent to a relative, if I'm remembering
24 correctly.

25 MR. DAVIS: Mr. Chisholm, thank you. That's all the

1 questions I have.

2 Thank you, Your Honor.

3 THE COURT: You may step down, Mr. Chisholm. Thank you.

4 Any other witnesses?

5 MR. DAVIS: Not from the plaintiff, Your Honor.

6 THE COURT: Anything from the State?

7 MR. MITCHELL: No, ma'am, Your Honor.

8 THE COURT: Counsel, I did receive the packet; however,
9 it included the transcript of record only of the sentencing
10 hearing but not the original plea. Do you have an extra copy
11 of that?

12 MR. DAVIS: I do not have an extra, but I'd be happy to
13 provide it to you.

14 MR. MITCHELL: I got an electronic copy. I can email
15 that or have it printed out, then give it to you here
16 shortly.

17 THE COURT: Sure, that would be great. Thank you.

18 MR. DAVIS: Under advisement, Your Honor?

19 THE COURT: Yes, and I'll notify both parties of a
20 ruling in writing.

21 MR. DAVIS: Thank you, Your Honor.

22 --- END OF TRANSCRIPT OF RECORD ---
23
24
25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Certified Court
6 Reporter for the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate and complete
8 transcript of record of all the proceedings had and evidence
9 introduced in the matter of the above-captioned case,
10 relative to appeal, in the 1st Judicial Circuit Court for
11 Dorchester County, South Carolina, on the 20th of May, 2015.

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

15 February 12, 2016

16

17 *Ruth L. Mott*

18 Certified Court Reporter

19

20

21

22

23

24

25

Office of the Public Defender

First Judicial Circuit

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MARK A. LEIENDECKER
Circuit Public Defender

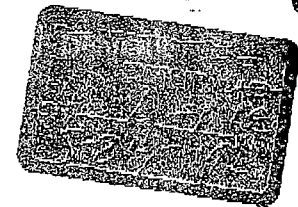
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(803) 636-4856
FAX (803) 536-9986

716 Huff Drive
St. Matthews, SC 29135
(803) 225-2900
(803) 225-2900

Please respond to the Summerville Office

November 18, 2013

Mr. Michael A. Carter
Dorchester County Detention Center
100 Sears Street
Saint George, SC 29477



RE: State of South Carolina v. Michael A. Carter
Warrant No.: 2012a1810300235; 2013a1810300003 CDVHAN; Domestic /
Violation of court order of protection

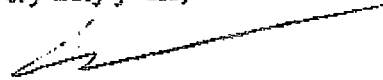
Dear Mr. Carter:

I have received your most recent correspondence. I don't believe we could have withdrawn your guilty plea based on probation's recommendation. However, if you choose to file for Post Conviction Relief, you could claim "Ineffective Assistance of Counsel" for my failure to ask for a continuance when I learned that their recommendation was 7 years. Once you file for PCR, you will be appointed an attorney that will be able to walk you through this process.

As to why I didn't seek a continuance - I never received a firm idea of what probation was recommending to begin with. I was however led to believe it would be on the lower end of the spectrum. I explained to the agent that the allegations were unproven and she seemed to feel that the mere allegations in conjunction with the rest of their investigative materials (background check, pending charges, allegations etc) warranted this recommendation. In short, I don't believe they were changing their recommendation regardless of what could be proven RE: contact. Lastly, I believe I also mentioned to the judge during sentencing that there was no proof of further contact and she didn't seem to respond favorably. The fact that there are/were pending charges already for violation of order of protection probably didn't help.

As I said before, I wish you all the best moving forward. If you write to me from prison I will do my best to get back to you as soon as I can.

Very truly yours,



Ash Chisholm
Assistant Public Defender

ADC/

Office of the Public Defender

First Judicial Circuit

107 W. 6th North Street
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Summerville, SC 29482
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FAX (843) 871-0523

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(843) 832-0154



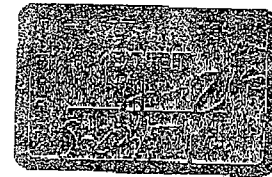
MARK A. LEIENDECKER
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710 Main Drive
St. Matthews, SC 29135
(803) 881-2100
FAX (803) 874-2400

Please respond to the Summerville Office

December 20, 2013

Mr. Michael A. Carter Scdc#00357867
Kirkland R&E Center F-3-B-244
4344 Broad River Road
Columbia, SC 29210



RE: State of South Carolina v. Michael A. Carter Scdc#00357867
Warrant No.: 2012a1810300235; 2013a1810300003 CDVHAN; Domestic /
Violation of court order of protection

Dear Mr. Carter:

I've enclosed a copy of a sheet I printed from the SCDC Inmate Search website. I've highlighted the start date of your sentence which shows that you're getting credited from 12/11/2012. I double checked this date against the detective's report in your discovery and it appears that is the day you turned yourself in. In short - it appears that you're getting credit and this should clear that up.

As for getting another judge to look at your case, the only avenues available that I'm aware of are the Appellate process and the Post Conviction Relief (PCR) hearing I told you about. As I told you before, I don't believe you have a great case on appeal but the PCR process would allow you to have a new attorney appointed to discuss how we (myself and Mrs. Suggs) handled the case. This would allow you an opportunity to discuss with a new attorney the different ways you feel your case was mishandled. More importantly, this would allow this new attorney to present these issues to a new judge that would determine whether you received ineffective assistance of counsel.

FYI - following your sentencing I did look further into the allegations that you attempted to make contact with Ms. Peralta following your plea (but before your sentencing) as alleged by probation and found out the following:

- I spoke with the Major Van Doren at the jail. I asked him how to get copies of all of your phone records from the jail. He told me he could look it up and see what they had. As

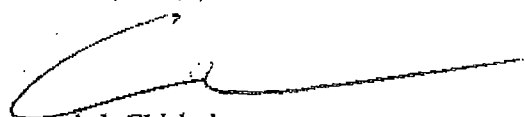
you're probably aware, each inmate at the DCDC is assigned a PIN to use for phone calls. When he looked up your PIN, he says that he didn't see any calls at all made from the PIN. When I told him that I was fairly sure you'd make some phone calls from the jail, he told me that it was common practice for inmates to use another inmate's PIN to circumvent this type of tracking. At that point, I had him search for any calls made TO Ms. Peralta's number (using the number listed in the discovery materials.) When he searched those parameters, he discovered that several calls had been made to this number starting roughly around the time your detention began and ending after you had pled guilty (but before sentencing.) The calls made to this number came back to a PIN for an inmate that had been long since released. Major Van Doren suspected that an employee neglected to remove this PIN from the active system and that someone had discovered this and used this PIN to make calls to Ms. Peralta's number. Again, the inmate that the PIN belonged to wasn't in jail at the time of these phone calls. Granted, this doesn't definitively prove that you made calls using another inmate's PIN to her phone. However, when read together, it doesn't sound good either.

- As to the facebook message -- from speaking with Brad I was left with the following impression. I believe a message was sent from your daughter's account to Ms. Peralta's account (or someone on her behalf.) This message included a picture of a letter sent by you to your daughter. I was left with the impression that the language in the letter sounds as though this letter was intended as a message from you to Ms. Peralta via your daughter. Your daughter was unable to retrieve the actual message. In short, if this message could be produced and it was as described, it wouldn't help our argument.

Again, this is just FYI in case you were wondering about the newest allegations.

Brad contacted me about acting as power of attorney to access your bank accounts etc. That's not something we do out of the office and I think it would be particularly ill advised with the pending PCR hearings. That said, I'll assist you as best I can if anything else comes up. I wish you the best moving forward in a difficult situation.

Very truly yours,



Ash Chisholm
Assistant Public Defender

ADC/

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Michael Allen Carter, #357867,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2013-CP-18-2269

ORDER OF DISMISSAL

CERTIFIED COPY
2015 OCT 13 PM 2:31
Clayton Mitchell
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 23, 2013. Respondent made its Return on April 25, 2014, requesting an evidentiary hearing be convened. Rodney D. Davis, Esquire was appointed by the Dorchester County Clerk of Court. An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Davis. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is presently incarcerated within South Carolina Department of Corrections pursuant to orders of commitment from the Dorchester County Clerk of Court. Applicant was indicted during the March 2013 term of the Dorchester County Grand Jury for Criminal Domestic Violence of a High and Aggravated Nature (2013-GS-18-0246). Applicant was represented by Counsel Chisholm. On November 13, 2013, Applicant appeared before the

Honorable Kristi Harrington, where he pled as indicted. Sentencing was deferred until November 13, 2013, and a pre-sentencing report was ordered. Judge Harrington sentenced Applicant to ten (10) years' imprisonment, suspended upon the service of eight (8) years' imprisonment followed by three (3) years' probation. Thereafter, Applicant filed a Notice of Appeal, which was dismissed by the South Carolina Court of Appeals.

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

1. Involuntary and unintelligent guilty plea.
2. Ineffective assistance of counsel in failing to move to withdraw the guilty plea.
3. Applicant was sentenced to an illegal sentence.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he was represented by Counsel Chisholm on the charges he is currently challenging. He testified they reviewed the charges and whether he should proceed to trial or plead guilty. Counsel advised him that he would likely be convicted if he went to trial. He testified the pictures of the victim would hurt his case. He testified he rejected a plea offer of three (3) years' imprisonment. He testified he was not promised anything in exchange for his guilty plea.

Applicant explained that he attempted to dispute some of the solicitor's factual allegations at his plea hearing. He testified he was told he must agree with what the judge says in order for her to accept the plea. Applicant testified he had concerns with Counsel's experience in that he had not tried any CDVHAN cases. He felt like he was between a "rock and a hard place." A pre-sentence investigation was ^{ordered} ~~order~~ after he pled guilty. He testified he tried to raise concerns that the probation office had not interviewed him as he had expected. He testified he was

uncomfortable with the facts as alleged by the solicitor. He explained he wished to withdraw the plea at the sentencing hearing. He testified Counsel did not believe that would benefit Applicant.

Applicant further testified he is serving an illegal sentence.

Counsel Ashley D. Chisholm's Testimony

Counsel testified he received the case while he was with the Dorchester County Public Defender's Office from a private attorney. He testified he advised Applicant that he would likely lose and be convicted if he were to go to trial. He explained that the incident arose from disputes over property that Applicant had with the victim and the victim's family. If the case was to go to trial, Counsel testified, they would pursue a self-defense case. He testified Applicant rejected a plea offer on the record. He testified he met with the plea judge in chambers in an effort to get an indication of the sentence she would hand down.

Counsel testified that it was very unlikely the plea judge would allow Applicant to withdraw his plea. He testified that Applicant disputed some of the facts as alleged by the solicitor. He testified that there were new allegations that Applicant attempted to contact the victim by using other inmate's pin numbers. Counsel testified those were claims that he intended to challenge. He tried to look into it and requested the records of Applicant's call. He found out that Applicant had not made any calls, but calls were being made to the victim from another inmate's pin number. This corroborated the victim's allegations. He also testified he received further confirmation that Applicant was contacting the victim through his son in law and daughter.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application

alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject

convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

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

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. This Court finds otherwise and concludes that Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should

be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he felt that he had no other choice and was coerced to plead by Counsel. This Court finds this contention meritless. This Court finds the record reflects Applicant was fully advised that he was pleading guilty and waived all challenges to the evidence against him. The plea court's very thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case. The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

Failure to Move to Withdraw Guilty Plea

Applicant further alleges that Counsel was ineffective in failing to withdraw his guilty plea before he was sentenced at the sentencing hearing. Applicant claims the pre-sentencing report was unfavorable to him and that Counsel should have foreseen that the plea judge would sentence Applicant to the higher end of the sentencing range. This allegation is without merit. The only requirements for a plea to be accepted are that the defendant "understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." Rollison v. State, 346 S.C. 506, 511, 522 S.E.2d 290, 292 (2001). Once a defendant has entered a guilty plea, he is not entitled to withdraw it as a matter of right. State v. Thomason, 355 S.C. 278, 285, 584 S.E.2d 143, 146 (2003); Riddle v. State, 278 S.C. 148, 292 S.E.2d 795 (1982). In this instance, a defendant's withdrawal of guilty plea is "left in the sound discretion of the circuit court." Thomason, 355 S.C. at 283. Moreover, "[a]n accused is not permitted to speculate on the supposed clemency of the judge and enter a plea of guilty with the right to retract it if he finds that his expectation was not realized." State v. Cantrell, 250 S.C. 376, 380, 158 S.E.2d 189, 191-192 (1967). Applicant's argument that counsel was ineffective in failing to withdraw the guilty plea is based on a mere allegation of prejudice in that he received a harsher sentence than expected.

[Withdrawal of a plea] should not be made use of solely because of defendant's surprise at the severity of the sentence imposed, in the absence of some showing that the plea was induced by fraud, misrepresentation, or other unfair or undue means on the part of the prosecuting attorney or the presiding judge.

State v. Harvey, 123 S.E. 201, 202 (1924). This Court notes that the plea judge stated the pre-sentencing report was actually a benefit to Applicant based upon his demeanor at the hearings. This Court finds Applicant failed to produce any credible evidence to support his claim that counsel should have moved to withdraw the guilty plea.

Illegal Sentence

Applicant alleges that he is serving an illegal sentence because the sum of suspended (8 years) and probationary terms (3) is longer than the total sentence (10 years). This allegation is also meritless. Applicant was sentenced to the maximum for CDVHAN (10 years), so that part of the sentence is clearly legal. See S.C. Code § 16-25-65(B)(A) ("A person who violates subsection (A) is guilty of a felony and, upon conviction, must be imprisoned not less than a mandatory minimum of one year nor more than ten years). Two years of this active sentence were suspended upon successful completion of probation. If Applicant is not able to successfully complete probation, he can be required to serve any portion of the suspended two (2) years. See S.C. Code Ann. § 24-21-460 ("[T]he circuit judge [...] shall have the right, in his discretion, to require the defendant to serve all or a portion only of the sentence imposed. Should only a portion of the sentence imposed be put into effect, the remainder of such sentence shall remain in full force and effect and the defendant may again, from time to time, be brought before the circuit court *so long as all of his sentence has not been served and the period of probation has not expired.*" (emphasis added). The fact that Applicant's incarceration could extend beyond ten (10) years from the date of sentencing does not result in a sentence in excess of ten years. Cf. Sanders v. MacDougall, 244 S.C. 160, 164, 135 S.E.2d 836, 837 (1964) ("An order revoking parole simply restores a defendant to the status he would have occupied had this form of leniency never been extended to him. The effect of such a revocation 'does not exceed or transcend the effect of the original sentence.'" (citing Johnson v. Walls, 185 Ga. 177, 194 S.E. 380 (1937)). Applicant's sentence is therefore legal. This Court denies and dismisses this allegation with prejudice.

All Other Allegations

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

V. CONCLUSION

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

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

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 16 day of Sept, 2015.

Orangeburg, South Carolina

Maité Murphy
MAITÉ MURPHY
Presiding Judge

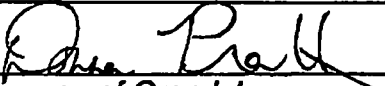
WITNESSES

E Melendez

Dorchester County Sheriff

ARREST WARRANT NUMBER
 2012A1810300235

Arrested: December 11, 2012

ACTION OF GRAND JURY**TRUE BILL**

 Foreperson of Grand Jury
 Date: March 7, 2013
VERDICT
 Foreperson of Petit Jury
 Date:

DOCKET NO. 2013GS18-0246

The State of South Carolina**County of DORCHESTER****COURT OF GENERAL SESSIONS****March 11, 2013 TERM**
THE STATE
vs.

Michael Allen Carter

Indictment for
CRIMINAL DOMESTIC VIOLENCE OF A
HIGH AND AGGRAVATED NATURE

SC Code: 16-25-65

 After being
 rights, I her
 Grand Jury

Defendant

 I _____
 hereby app
 and plead
 or to

Defendant

Witness:

C.C.C. PLS

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2013GS18-0246

At a Court of General Sessions, convened on March 11, 2013 the Grand Jurors of
Dorchester County present upon their oath:

CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE

That in Dorchester County, South Carolina, on or about November 28, 2012, the Defendant, Michael Allen Carter, did assault and/or cause physical harm or injury or offer or attempt to cause physical harm or injury to Helena Peralta, a household member of the defendant with apparent present ability under circumstances reasonably creating fear of imminent peril. Said assault was accompanied by one or more circumstances of aggravation described as the use of a deadly weapon, the infliction of serious bodily injury or reasonably caused the victim to fear imminent serious bodily injury or death in that the defendant did threaten to kill the victim while putting a plastic bag over her mouth and nose to obstruct her breath and did tie a pair of pants around her neck to prevent the victim from breathing. This offense in violation of Section 16-25-65 of the South Carolina Code of Laws, as amended.

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

Meghan Hall
Meghan Hall, Solicitor

124
STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
STATE VS.
Michael Allen Carter
AKA:

SS#: _____
Address: _____
City, State, Zip: Charleston, SC 29418-3077
DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
TO: Criminal Domestic Violence of a High and Aggravated Nature

in violation of § 16-25-65 of the S.C. Code of Laws, bearing CDR Code # 2988
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Ward, Kyle 101005 SC Bar# 101005 Defendant Attorney for Defendant 76426 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 8 days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for 3

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

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

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

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

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

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

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

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

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

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

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

3% to County (if paid in installments) \$ 18.90

TOTAL \$ 648.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS18-0246
A/W#: 2012A1810300235
Date of Offense: 11/28/2012
S.C. Code § 16-25-65
CDR Code #: 2988

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: anger management course

Batterer's treatment

no contact with victim

intensive supervision for 6 months

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

Clerk of Court/ Deputy Clerk Cheryl Graham

Court Reporter: Ronda Cummings

SCCA/217 (03/2011)

Presiding Judge Keith High

Judge Code: 1815

Sentence Date: 11/12/12