

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Horry County
Honorable D. Craig Brown, Circuit Court Judge

SC SUPREME COURT

GERARD WATTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000960

A P P E N D I X

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

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

CAITLIN HASTINGS
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2013-GS-26-1828, 1829, 3988, 3990
The State,)
))
Plaintiff,) Transcript of Record
))
vs.) September 5, 2013
))
Gerard A. Watts,)
))
Defendant.)

B E F O R E :

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Bradley C. Richardson, Esquire
Attorney for Plaintiff

J.M. Long, III, Esquire
Jonathan David McCoy, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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E X H I B I T S

(There were no exhibits marked during the hearing.)

State v. Watts

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1 (On the record, September 5, 2013. Defendant is sworn by
2 the Clerk.)

3 THE COURT: All right.

4 MR. RICHARDSON: Your Honor, presently the Defendant is
5 initialing his waiver of presentment on a couple of
6 indictments.

7 THE COURT: All right.

8 MR. RICHARDSON: Thank you.

9 THE COURT: I have four. Okay.

10 MR. RICHARDSON: Your Honor, the State would call 2013-
11 GS-26-1828, State of South Carolina, County of Horry versus
12 Gerard Antonio Watts, a true-billed indictment for attempted
13 murder. The Defendant comes before the Court pleading guilty
14 to the lesser included charge of assault and battery high and
15 aggravated nature under the statute, Your Honor. Also 2013-
16 GS-26-1829, State of South Carolina, County of Horry versus
17 Gerard Antonio Watts, true-billed indictment for possession of
18 a weapon during the commission of a violent crime, that crime
19 being assault and battery high and aggravated nature. On
20 those charges, Your Honor, the Defendant is represented by Mr.
21 Jonny McCoy. The State is recommending a sentence of 10 to 15
22 years. Today we will qualify the plea. We're bringing the
23 victim in over the weekend to have him address during
24 sentencing, Your Honor. We just ask that the sentence be held
25 in abeyance until such time as the victim could be present.

1 THE COURT: All right.

2 MR. RICHARDSON: Also, the State's recommending 10 to 15
3 years on the attempted murder and no more than five years on
4 the possession of a weapon during the commission of a violent
5 crime.

6 THE COURT: Does that, doesn't that sentence, possession
7 of a weapon during a violent crime, have to be consecutive? I
8 mean --

9 MR. RICHARDSON: It's my understanding --

10 THE COURT: Consecutive to a -- the underlying charge?

11 MR. RICHARDSON: It's my understanding, Your Honor, that
12 that can be served concurrently.

13 THE COURT: Okay. All right.

14 MR. RICHARDSON: Provided -- I think that if -- it has to
15 be at least five years. Say if you get a one year sentence
16 you're going to get five on it.

17 THE COURT: Okay.

18 MR. RICHARDSON: Also, the State is presenting to the
19 Court a waiver of presentment on indictment 2013-GS-26-3988
20 charging the Defendant, Gerard Antonio Watts with possession
21 with intent to distribute heroin second offense, Your Honor.
22 It originally was charged as a trafficking heroin. He's
23 pleading to that, waiving presentment. Also, 2013-GS-26-3990,
24 State of South Carolina, County of Horry versus Gerard Antonio
25 Watts, waiver of presentment on threatening the life of a

1 public employee, that employee being a trooper, Your Honor.

2 The Defendant is recommended -- is being represented by
3 J. M. Buddy Long, III, with regard to those charges. The
4 State's recommending on the possession with intent second a 10
5 to 15 year sentence in the discretion of the Court, with
6 regard to threatening the life of a public employee, no more
7 than ten years. I believe that's the max on that one, Your
8 Honor, all these sentences to run concurrent, Your Honor.

9 THE COURT: All right. Mr. Watts, you're represented by
10 Mr. McCoy and Mr. Long on these various charges; is that
11 right?

12 MR. WATTS: Yes, sir.

13 THE COURT: And have your attorneys, either together or
14 singularly, explained to you the nature of these offenses, the
15 offenses that you are pleading to?

16 MR. WATTS: Yes, sir.

17 THE COURT: Do you understand what assault and battery of
18 a high and aggravated nature is?

19 MR. WATTS: Yes, sir.

20 THE COURT: Do you understand that for that you could
21 receive up to -- what's that -- is that 15 years?

22 MR. WATTS: That's up to 20 years, Your Honor.

23 THE COURT: Up to 20 years. You understand that? Do you
24 understand it?

25 MR. WATTS: Yes, sir.

1 THE COURT: Okay. And did you understand that possession
2 of a weapon during a violent crime you could get up to five
3 years for that?

4 MR. WATTS: Yes, sir.

5 THE COURT: Did you understand that for the distribution
6 of -- was it heroin?

7 MR. LONG: Possession.

8 MR. RICHARDSON: Possession with intent to distribute
9 heroin, Your Honor, second offense.

10 THE COURT: Second offense, that that carries up to --

11 MR. RICHARDSON: Five to 30, Your Honor.

12 THE COURT: Up to 30 years, and that the threatening the
13 life of a public official or an employee carries up to five --
14 ten years.

15 MR. RICHARDSON: Ten years.

16 THE COURT: Ten years. You understand that?

17 MR. WATTS: Yes, sir.

18 THE COURT: All right. Have your attorneys gone over the
19 evidence in these cases with you?

20 MR. WATTS: Yes, sir.

21 THE COURT: Have they explained to you what the State
22 would have to prove and how the State would use that evidence
23 in a jury trial?

24 MR. WATTS: Yes, sir.

25 THE COURT: Do you understand how a jury trial works?

1 MR. WATTS: Yes, sir.

2 THE COURT: Do you understand that if you plead guilty
3 you are waiving your absolute right to a jury trial? You
4 understand that?

5 MR. WATTS: Yes, sir.

6 THE COURT: Do you further understand that if you do
7 that, that is you give up your right to a jury trial, you're
8 also giving up many, many other rights as well. Some of those
9 rights would be things like your right to remain silent,
10 that's your Fifth Amendment Right. You do not have to
11 testify. No one could make you testify in your trial unless
12 you wanted to. If you chose not to, I would tell the jury
13 they could not use that against you, couldn't even talk about
14 it. You would also have the right, of course, to have your
15 attorneys with you throughout the trial. You would also have
16 the right to require the State to prove your guilt beyond a
17 reasonable doubt, that is convince each and every juror of
18 your guilt beyond a reasonable doubt before there could be a
19 conviction. Do you understand that?

20 MR. WATTS: Yes, sir.

21 THE COURT: Again, these are just some of the many rights
22 you have that go along with a jury trial, but if you plead
23 guilty, waive your general right to a jury trial, you are
24 giving up these rights as well. Is that what you want to do?

25 MR. WATTS: Yes, sir.

1 THE COURT: Do you understand that this would be an
2 irrevocable waiver of your right to a jury trial?

3 MR. WATTS: Yes, sir.

4 THE COURT: Okay. Now, tell me about your attorneys.
5 Are you satisfied with the services you've received from Mr.
6 McCoy and Mr. Long?

7 MR. WATTS: Yes, sir.

8 THE COURT: Have they done everything that you think that
9 they could to help you?

10 MR. WATTS: Yes, sir.

11 THE COURT: You're perfectly satisfied?

12 MR. WATTS: Yes, sir.

13 THE COURT: All right. Mr. Watts, I see that you're 31.
14 Is that correct?

15 MR. WATTS: Yes, sir.

16 THE COURT: And are you married?

17 MR. WATTS: Not yet.

18 THE COURT: Do you have children?

19 MR. WATTS: Yes, sir.

20 THE COURT: How many?

21 MR. WATTS: One.

22 THE COURT: One. And have you been working anywhere?

23 MR. WATTS: Yes, sir.

24 THE COURT: What kind of work do you do?

25 MR. WATTS: I was working at the strip club.

1 THE COURT: Surf Club. Okay, what do you do there?

2 MR. WATTS: I was security.

3 THE COURT: All right. Mr. Watts, how far did you go in
4 school?

5 MR. WATTS: Tenth grade.

6 THE COURT: And have you ever had any mental health
7 problems or addiction issues that might prevent you from
8 understanding what we're doing here today?

9 MR. WATTS: No, sir.

10 THE COURT: Do you understand?

11 MR. WATTS: Yes, sir.

12 THE COURT: All right. Have you taken any drugs or
13 alcohol in the last 24 hours?

14 MR. WATTS: No, sir.

15 THE COURT: Okay. Listen very carefully. Mr. Richardson
16 is going to tell me why you're charged with these offenses.

17 MR. RICHARDSON: And Your Honor, I neglected to say, I
18 believe counsel asked that I state that we'll be dismissing
19 2013-A26 -- 26-10200481 a resisting arrest and 2013-GS-26 -- I
20 mean, 2013-A26-10200482, failure to stop for a blue light,
21 along with 2013-A26-0201106, simple possession of marijuana
22 second or subsequent offense, 2013-A26-10201108, possession of
23 a stolen pistol and 2013-GS-26-1834, a true-billed indictment
24 for possession of marijuana second or subsequent offense at
25 the culmination of this plea, as a condition of this plea.

1 With regard to 2013-GS-26-1828 and 1829, on or about
2 December 1, 2012, the Defendant went to a Club Crush, which is
3 located off of Highway 17 Bypass or was located off Highway 17
4 Bypass in the Myrtle Beach Section of Horry County, just past
5 the back gate, Your Honor. Inside he encountered one Adrian
6 Jerell Lane. He and Lane, according to both of them, had had
7 some difficulties in the past. He and Lane had an altercation
8 inside the club or they eyed each other throughout the club.
9 At some point the Defendant, according to Lane, reached in his
10 -- down in his shoe, pulled out a handgun and chased Lane, had
11 grabbed Lane but then chased him through the club firing. The
12 Defendant in his statement indicated he had a 22 revolver. We
13 found 380 casings, three of them throughout or in the parking
14 lot. As he exited chasing Lane, a security guard with APS
15 Security, armed security that was called out to the club, as
16 they saw him firing the handgun, APS Security told him to
17 freeze and drop the, drop the gun. The Defendant then turned
18 around at them. APS deployed their weapon and fired at him
19 several times striking the Defendant at least one time. The
20 Defendant was picked up by -- he fell to the ground and an
21 object flew from his hands. APS Security saw some guys that,
22 that were around him at the time go in the grass saying,
23 "Where is it? Where is it?" They picked something up. The
24 Defendant was picked up, put in the bed of a truck, taken to
25 South Strand Medical Facility. At some point he gave a false

1 name. They were unable to treat him at South Strand.
2 Transferred him to Grand Strand Regional where, where he
3 continued to give a false name. He was interviewed by
4 detectives there that night.

5 The victim in this case, Adrian Jerell Lane, was also
6 taken to Grand Strand Regional Medical Center. He was
7 interviewed. He has been -- I can get into it more
8 specifically whenever we do the victim impact at the time of
9 sentencing. Adrian Lane has been operated on at least four
10 times at this time, Your Honor. The bullet went through his
11 buttocks area, ripped through his rectum, tearing through his
12 bowels and bladder and exited through his abdomen. They did
13 not recover that.

14 Watts was interviewed twice. On the second interview,
15 that, I believe that was conducted outside of the hospital.
16 He confessed to the shooting stating Lane had shot at him
17 previously and he just figured he'd shoot Lane before Lane
18 could shoot at him at another time. Watts admitted to having
19 a firearm that night.

20 As to 2013-GS-26-3988 and 90, I believe, are the ones
21 he's pleading on, the failure -- the trafficking or possession
22 with intent heroin second and the threatening the public
23 official, on or about April 11th, 2013, while he was out on
24 bond for the attempted murder charge, Your Honor, highway
25 patrol attempted to initiate a traffic stop on the vehicle's

1 Defendant -- on the Defendant's vehicle. The trooper stated
2 that he was going down River Oaks Drive in the Myrtle Beach
3 Section of Horry County. The Defendant was about a half a car
4 length behind him, following too close. The officer, when
5 they got to the turn, Your Honor, pulled in the median and
6 allowed the Defendant to get in front of him so he could
7 initiate a traffic stop. When he hit his blue lights and
8 siren the Defendant sped up, went down the road a ways, turned
9 into the Days Inn Motel off of Highway 501 here in Horry
10 County, Your Honor. The Defendant left the vehicle either in
11 neutral or in drive and exited the vehicle on foot. The
12 vehicle continued to go on, rolled into the Days Inn Motel,
13 Your Honor.

14 The trooper parked his car, gave chase, chased him up to
15 the fourth floor. At some point the Defendant turned a blind
16 corner and then came back out. The trooper had lost sight of
17 him momentarily. When he came back out he had his hands in
18 his pockets. So the trooper told him to remove his hands from
19 his pockets. The Defendant failed to comply with that
20 request. At that point the Defendant or the trooper deployed
21 his tazer, eventually getting the Defendant to the ground.
22 Once the Defendant was secured, the trooper stepped around the
23 corner, noticed a trashcan where the Defendant had disappeared
24 just before that and there was a baggy of what turned out to
25 be 40 bindles, 40 slips of heroin in a plastic bag. The

State v. Watts

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1 street weight on that packaging and all was ten grams, Your
2 Honor. I've talked with SLED. They said it's going to come
3 back well over the two grain measure that you need for
4 inference weight. Additionally, there are 40 slips, much more
5 than for personal use. That was at the top of the trashcan.

6 The Defendant was arrested and taken to J. Reuben Long
7 where the Defendant at some point there stated that he should
8 have whooped the trooper's ass like his friend whooped another
9 trooper's ass. When corrections officers removed the
10 handcuffs from the Defendant at the jail, the Defendant lunged
11 towards the trooper in a threatening manner according to the
12 trooper in an attempt to -- in an apparent attempt to assault
13 the trooper. The correction officers had to physically
14 restrain the Defendant. All this occurred here in Horry
15 County, Your Honor.

16 THE COURT: All right. Mr. Watts, is that what occurred?

17 MR. WATTS: Yes, sir.

18 THE COURT: Is that what you did?

19 MR. WATTS: Yes, sir.

20 THE COURT: All right. And is that why you're pleading
21 to all these charges?

22 MR. WATTS: Yes, sir.

23 THE COURT: Has anyone threatened you, intimidated you?
24 Has anyone done anything inappropriate to make you feel as
25 though you had to plead guilty to this?

1 MR. WATTS: No, sir.

2 THE COURT: Are you pleading freely and voluntarily?

3 MR. WATTS: Yes, sir.

4 THE COURT: Have you had all the time you need to think
5 about this?

6 MR. WATTS: Yes, sir.

7 THE COURT: Do you need any more time to talk with your
8 attorneys about it?

9 MR. WATTS: No, sir.

10 THE COURT: Do you believe that this is the best thing
11 for you, the best thing that you can possibly do?

12 MR. WATTS: Yes, sir.

13 THE COURT: To resolve your cases?

14 MR. WATTS: Yes, sir.

15 THE COURT: Okay. And have you been truthful with me?

16 MR. WATTS: Yes, sir.

17 THE COURT: All right. I find that there is a
18 substantial factual basis for the plea and it's made freely,
19 voluntarily, knowingly and intelligently after the advice of a
20 very competent attorney -- of competent attorneys with whom he
21 says he's satisfied, and I will accept his pleas to all of
22 these charges.

23 Now, I understand you're bringing back the victims later?

24 MR. RICHARDSON: That's correct. The victim is at the
25 Department of Corrections right now in the infirmary, Your

State v. Watts

15

1 Honor. We're going to have him transported back so he can
2 speak to the Court. Also, I'm going to see if the trooper
3 would like to speak to the Court. That's Trooper Sarvis.

4 THE COURT: All right. Okay.

5 MR. RICHARDSON: You'll be our plea judge next week. I
6 could certainly bring the Defendant back before the Court.

7 THE COURT: All right. Bring him back before me. Mr. --
8 before you leave, Mr. Watts, let me advise you that upon my
9 sentencing you will have ten days in which to file a notice of
10 intent to appeal what I do here today. If you fail to do
11 that, you waive, you give up any rights of appeal that you may
12 have. Let me advise you that I am sure that you don't know
13 how or where to do it, but if you were to decide you wanted to
14 appeal you have Mr. McCoy and Mr. Long who are obligated to
15 help you file that notice of intent to appeal. Thereafter, if
16 you could not afford an attorney to carry on with the appeal,
17 one would be appointed for you at no cost.

18 Thank you very much.

19 MR. RICHARDSON: Thank you, Your Honor.

20 MR. MCCOY: Thank you, Your Honor.

21 MR. LONG: Thank you.

22 (Adjourned.)

23

24

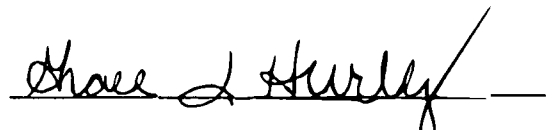
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C E R T I F I C A T E

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I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Guilty Plea held in the case of The State versus Gerard Antonio Watts, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 5, 2013.

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


Grace L. Hurley, CVR-CM-M
Official Reporter

February 7, 2015.

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF HORRY) CASE NOS.: 2013-GS-26-1828
2013-GS-26-1829
2013-GS-26-3988
2013-GS-26-3909

September 11, 2013

BEFORE: The Honorable Larry Hyman

STATE OF SOUTH CAROLINA;

Plaintiff,

vs.

GERARD WATTS,

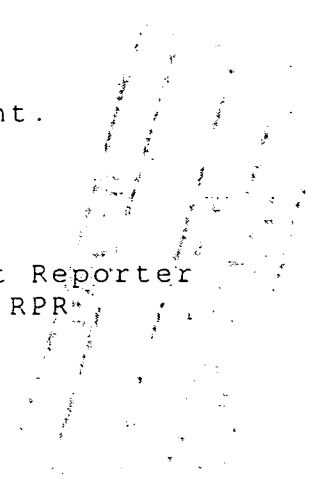
Defendant.

 ORIGINAL

APPEARANCES:

Brad Richardson, Esq.
Attorney for the State.

Buddy Long, Esq.
Johnny McCoy, Esq.
Attorneys for the Defendant.

Official Court Reporter
Natalie Dahl, RPR


P R O C E E D I N G S

1
2 MR. RICHARDSON: We're before you for the purpose
3 of sentencing. Last week -- last Tuesday or Wednesday
4 -- Wednesday, I believe, Defendant Gerard Watts came
5 before you and plead on Indictment Nos.
6 2013-GS-26-1828. On that one he pled it down from
7 attempted murder to a statutory assault and battery of
8 a high and aggravated nature.

9 Also, 2013-GS-26-1829, use of a weapon during the
10 commission of a violent crime. The State is
11 recommending a 10- to 15-year sentence on that, Your
12 Honor.

13 Also, he pled on 2013-GS-26-3988, waiver on
14 possession with intent to distribute heroin, second
15 offense. 3909, which was threatening a public
16 official, Your Honor. On the heroin charge the
17 recommendation was 10 to 15 years on that, and up to
18 10 years on threatening, Your Honor.

19 That brings us back up to speed. With regards to
20 the assault and battery of a high and aggravated, or
21 attempted murder, on or about December 1, 2012 the
22 Defendant saw Adrian Lane -- the victim is here, he's
23 been transported here from the Department of
24 Corrections -- saw the victim at Club Crush. When he
25 saw him, he went for a firearm, began firing in a

1 crowd at the nightclub at Mr. Lane. Whenever he got
2 interviewed, he stated that he did so because Adrian
3 Lane would shoot at him later. As he exited the club,
4 he continued to shoot. The security guard pulled his
5 firearm and ended up shooting Mr. Watts furthering
6 endangering the crowd.

7 When he was taken to the hospital, he gave a
8 false name to begin with, and when he was confronted
9 that they knew who he was, he indicated he was Gerard
10 Watts and he did draw a firearm in that club. He
11 never mentioned that Adrian Lane was armed, just
12 preemptive strike, so to speak. He posted a bond in
13 the amount of \$37,000 surety. On February 15th, 2013,
14 while out on bond, he had a charge of possession of
15 marijuana, second.

16 In April, with regards to 2013-GS-26-3988 and
17 3990, Defendant, while out on two bonds, ran from
18 police after they tried to initiate a traffic stop.
19 He exited the vehicle allowing the vehicle to stay in
20 neutral, it went into the entrance of the hotel,
21 wrecked into it. It was during the daytime, people
22 coming in and out of the hotel, Your Honor. Officers
23 chased him down. When he was arrested, it was
24 discovered he dumped 40 slips of heroin in the
25 trashcan. They got those out, and he was originally

1 charged with trafficking.

2 After he was arrested, he threatened Trooper Matt
3 Sarvis stating he ought to whip his ass like one of
4 his buddies whipped another trooper's ass. At J.
5 Reuben Long, the Defendant -- handcuffs were removed
6 and he lunged at Trooper Sarvis and had to be
7 forcefully restrained by correction officers.

8 Your Honor, Trooper Sarvis can't be with us today
9 because he's deployed for military purposes at this
10 point. Bond was set by you on or about May 18, 2013
11 in the amount of \$150,000. He got out on that bond,
12 and about a week later, on May 23rd, he was located in
13 a house during the service of a drug search warrant.
14 Agents entered the house and they found marijuana in
15 front of him in a room that had clothing, which
16 appeared to be the Defendant's. The Defendant had
17 been out on his previous cases. They found a 380
18 handgun up under some clothing. He was charged with
19 possession of a stolen pistol, the 380 being stolen,
20 and charged with the possession of marijuana that was
21 in front of him.

22 We had a bond revocation hearing and you ordered
23 that bond be revoked and he be held until disposition
24 of the case. The case was scheduled to go on the
25 attempted murder charge and use of a firearm charge

1 this week when the Defendant decided to plea. He's
2 represented by Mr. McCoy and Mr. Long. The Defendant
3 has prior convictions: '01, possession of cocaine,
4 two years suspended to one year probation and a fine.
5 Failure to stop for blue lights, two years suspended
6 to one year probation and a violation on that. '05,
7 felon in possession of a firearm, 43 months followed
8 by 36 months of supervision, and in '07 he got a
9 violation on that. In 2010 he got a conditional
10 release violation for 18 months. 2010, possession
11 with intent to distribute cocaine, for which he
12 received a sentence of three years.

13 THE COURT: All right. This weapon -- use of a
14 weapon during a violent crime, does that have to be
15 consecutive?

16 MR. RICHARDSON: No, sir. I believe it can be.

17 THE COURT: All right. I'll hear from you,
18 Mr. McCoy or Mr. Long, or both of you. I think you
19 represent him on different things.

20 MR. MCCOY: I'll lead off. There is two separate
21 cases. I believe the third case has been resolved and
22 dismissed. The gun in the house was actually taken
23 possession of by the actual owner of the house. They
24 charged a couple of people with the gun. So let's
25 just address my case first, which is the Club Crush

1 shooting of Mr. Adrian Lane.

2 Your Honor, to start off with, my client is 31
3 years old, as you heard last week. He pled guilty to
4 these charges after being arraigned for trial. He
5 takes care of three kids, works as a security guard,
6 and his mom is sick. She's on a -- kind of a breath
7 assister. She is not doing too well as far as I think
8 she has a collapsed lung. His fiancée is in the
9 courtroom, and she would like to address the Court at
10 the proper time; I'm not sure when that would be. I
11 would like to address for a second the shooting that
12 actually took place at Club Crush, if I may.

13 The reason that we pled guilty to the ABHAN so
14 late in the game, Your Honor, is we went through all
15 of our defenses. The defense of self-defense was a
16 strong one in this case, and it was made for us by the
17 discovery. The victim in this case, and I never talk
18 about the victim, but in such a case as this, my
19 client never was charged with a shooting before, ever
20 a violent crime other than a felony of possession, and
21 that is the one time I heard about the gun charge.
22 Other than that, it's all drug charges.

23 So when I looked at the discovery I get from the
24 prosecutor's office, it's advised that Lane is armed
25 and dangerous. They were all in the hospital. He

1 believed he was currently wanted for a homicide that
2 took place at the Tequila Empire. Then, they were
3 advised that Mr. Lane was wanted by numerous agencies,
4 including the FBI. So I asked my client did you know
5 about this guy being wanted by all of these people and
6 involved in all of these shootings, and he said all he
7 knew is that when he saw him reach, he reached second.
8 I'm not saying he's not guilty by reason of
9 self-defense, but we had a case and we would like you
10 to take that into consideration during sentencing on
11 this.

12 The security guard would have testified that I
13 saw him raise his pistol. There was three shell
14 casings fired from a 380 and a 9-millimeter. The
15 9-millimeter was fired by the security guard. He hit,
16 according to the discovery, several innocent people in
17 the parking lot, and this is their other witness. He
18 hit my client, along with just unloading his gun.

19 So we got my client shooting twice. Once, we
20 don't know where it went, the other time they believe
21 it went into Mr. Lane, and then the security guard
22 opens fire in the parking lot shooting a couple
23 people, including my client. We move on from there to
24 my client saying, yes, I shot him. I saw him reach
25 for something. That is in one of my tapes in

1 discovery. But, Your Honor, when we wrap together at
2 the very end going to trial, the heroin charge that
3 Mr. Long represents him on and the other drug charges,
4 they say you need to take this 10 to 15 years. It's
5 such a unique situation. We had to sit down and
6 hammer it through for 24 straight hours.
7 Mr. Richardson and I texted back and forth, Mr. Long
8 and I talked back and forth, my client and I talked
9 for 24 straight hours and agreed that this was the
10 best thing for the State and not go through two
11 trials, maybe three, so Mr. Watts could get back out
12 and take care of his mother and three kids and fiancée
13 in the courtroom and put this behind him.

14 Your Honor, as far as the drug charges go,
15 Mr. Long will discuss that. His history is all drugs.
16 He's got crack charges and heroin, and he's told me
17 that he's addicted. He never even knew what drug
18 court was. I thought he would have been a good
19 candidate but for the attempted murder. We're pleaing
20 that down to an ABHAN, and I believe under individual
21 circumstances, if I had just my case separated out,
22 this ABHAN would be a couple years sentencing based on
23 all of the surrounding factors taken into
24 consideration. We'll move on to Mr. Long, if it
25 pleases the Court.

1 THE COURT: Mr. Long.

2 MR. LONG: Very briefly. A wise man that I had
3 the opportunity to practice with for a number of years
4 learned from a very wise judge who told him that it's
5 not the length of a sentence that serves as a
6 deterrent to crime, but the certainty of it. Whether
7 Mr. Watts knows that or not, he knows here that he's
8 pleaing and he's going to receive a lengthy prison
9 sentence knowing that Your Honor will hear the facts
10 and circumstances, things of that nature.

11 If the function of our Department of Corrections
12 is to rehabilitate, and admittedly to punish, then it
13 doesn't require a 15-year sentence in Mr. Watt's case
14 to punish him. He's been shot, he was Tasered a
15 couple of times, he had money confiscated from him, in
16 jail for some length of time already. He knows when
17 he comes in and pleads guilty that he's going to face
18 a significant amount more time. It comes at a point
19 in his life where he let's down and disappoints those
20 who needs him the most, Your Honor, and that is
21 incredible punishment.

22 THE COURT: Let me ask you this. Why would
23 someone with his record be armed to begin with?

24 MR. LONG: Because of the drugs he was involved
25 with, Your Honor, quite simply. You are familiar with

1 the culture and what goes on and the robbery of drug
2 dealers and drug buyers, things of that nature. It's
3 similar to the old west.

4 THE COURT: Sad state of affairs.

5 MR. McCOY: Very sad. I asked him that same
6 question, and he said I would have gotten shot first.
7 It's my city, I've grown up here all my life right
8 down the street, and it is sad. We ask for mercy.

9 THE COURT: Mr. Long.

10 MR. LONG: That's it. Any sentence you give him
11 is going to be punishment, and any additional beyond
12 10 years is excessive.

13 THE COURT: All right. Do you want to tell me
14 anything, Mr. Watts?

15 MR. WATTS: (Deponent shakes head.)

16 MR. McCOY: No, sir.

17 MR. WATTS: No, sir.

18 MR. RICHARDSON: Mr. Lane is here, and he doesn't
19 want to address the Court. He's gone through four
20 surgeries and on a colostomy bag at this point.

21 THE COURT: Threatening the life of a public
22 official or employee, the sentence is 10 years. On
23 the assault and battery of a high and aggravated
24 nature, sentence of the Court is 13 years. On the
25 sentence of possession of a weapon during a violent

1 crime, five years and it shall not be consecutive. On
2 the possession with intent to distribute heroin,
3 I believe --

4 MR. RICHARDSON: Second offense, Your Honor.

5 THE COURT: Second offense, sentence of the Court
6 is 10 years. All of these are concurrent, given
7 credit for the time he served.

8 (Whereupon, the proceedings concluded.)
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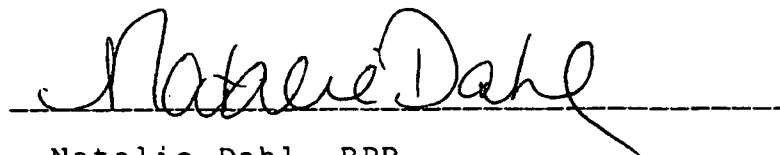
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for 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 captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 11th day of September, 2013.

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

June 10, 2014,



Natalie Dahl, RPR

Court Reporter

The South Carolina Court of Appeals

The State, Respondent,

v.

Gerard Antonio Watts, Appellant.

Appellate Case No. 2013-002021

The Honorable Larry B. Hyman, Jr.

Horry County

Trial Court Case No. 2013GS2601829, 2013GS2601828,
2013GS2603990, 2013GS2603988

ORDER

It appears that Gerald A. Watts, with full understanding of all possible consequences of this action, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Gerard Antonio Watts, 222851
Jonathan David McCoy, Esquire
Robert Michael Dudek, Esquire
Bradley Coy Richardson, Esquire

FILED

May 6, 2014

Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 22, 2014

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: The State v. Gerard A. Watts
Lower Court Case No. 2013GS2601829, 2013GS2601828,
2013GS2603990, 2013GS2603988
Appellate Case No. 2013-002021

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Gerard Antonio Watts, 222851
Jonathan David McCoy, Esquire
Robert Michael Dudek, Esquire
Bradley Coy Richardson, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire

FORM 5

STATE OF SOUTH CAROLINA)
County of Horry)

IN THE COURT OF COMMON PLEAS

Gerard Antonio Watts #222851)
Full name and prison number (if any) of Applicant)

14

3106

v.

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

HORRY COUNTY
MAY 15 PM 2:53
JUDITH S. WARD
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution

2. Name and location of Court which imposed sentence Horry County Court of General Sessions

3. Name(s) of co-defendant(s) (if any) N/A

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

(a) 2013-GS-26-1828 ; 1829 ; 3990 ; 3988 (ABHAN ; Poss. of

- (b) Weapon during Violent Crime; Threatening Public Official;
- (c) Agg. PWID)

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

- (a) September 11, 2013 ; 13 years
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty guilty plea
- (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:
 - i. The South Carolina Court of Appeals
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. Withdraw & Dismiss
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. May 6, 2014
 - 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) Six Amendment Violation

(b) Fourteenth Amendment Violation

(c) _____

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

(a) Involuntary Guilty Plea

(b) Ineffective Assistant of Counsel

(c) Due Process Violation

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

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?

No

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) This is my first PCB
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Jonathan D. McCoy, Esquire
1240 21st Avenue North, Suite 105
 - ii. Myrtle Beach, SC 29577
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea Hearing ; Sentencing ; and Appeal
 - ii. _____
 - iii. _____

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

Vacate convictions and sentencing and reverse and remand for a new trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Dorchester)

14
VERIFICATION

3106

I, Gerard Antonio Watts, 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.

Gerard A Watts

SWORN to and subscribed before me this 12th
day of MAY, 2014.

Suz M. Cross (L.S.)
Notary Public

My Commission Expires: Jan 26, 2024

CLERK OF COURT
14 MAY 15 PM 2:53
JUDICIAL COUNTY

HORRY COUNTY
14 MAY 15 PM 2:58
MELBA H. GIGGINS-WARD
CLERK OF COURT

SWORN or affirmed to and subscribed before me this
12th day of May, 2014.
Notary Public
M. G. G...
My Commission Expires: Jan 21, 2014

~~Gerard H. Watts~~
Applicant

I, Gerard Antonio Watts, 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 therefor.

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

3104

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Gerard A. Watts, #222851,)	Case No. 2014-CP-26-3106
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief filed May 15, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2013, the Horry County Grand Jury indicted Applicant for attempted murder (2013-GS-26-1828) and possession of a weapon during the commission of a violent crime (2013-GS-26-1829). Jonathan David McCoy, Esquire, represented Applicant on those charges. In September 2013, the grand jury indicted Applicant for possession with intent to distribute heroin (2013-GS-26-3988) and threatening the life of public employee (2013-GS-26-3990). J. M. Long, III, Esquire, represented Applicant on those charges. On September 5, 2013, Applicant pled guilty to as indicted to possession with intent to distribute heroin, and threatening the life of public employee possession of a weapon during the commission of a violent crime. He also pled guilty to assault and battery of a high and aggravated nature as a lesser included offense of attempted murder. The Honorable Larry B. Hyman Jr. sentenced Applicant to concurrent sentences of five (5) years

for possession of a weapon during the commission of a violent crime, thirteen (13) years for assault and battery of a high and aggravated nature, ten (10) years for possession with intent to distribute heroin, and ten (10) years for threatening the life of public employee.

Applicant filed a timely notice of appeal, but voluntarily dismissed his appeal. The South Carolina Court of Appeals dismissed the appeal on May 6, 2014. The remittitur was returned to the circuit court on May 22, 2014.

II.

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

1. "Ineffective Assistant of Counsel"
2. "Involuntary Guilty Plea"
3. "Due Process Violation"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent moves pursuant to Rule 12(e), SCRCPP, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel, involuntary guilty plea, and due process violations. The Uniform Post-Conviction Procedure Act requires applicants to "*specifically* set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCPP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to that question, Applicant fails to set forth any specific facts to explain his allegations. Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

IV.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot

be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. 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).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact

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).

V.

Without waiving its motion for a more definite statement in Part III, supra, Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (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, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d

at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

VI.

Without waiving its motion for a more definite statement in Part III, supra, Respondent further submits Applicant's allegation of due process violations is without merit. To the extent this allegation is a recitation of his claims of ineffective assistance of counsel and involuntary guilty plea, Respondent submits this allegation is without merit and incorporates its response in Parts IV and V, supra.

In the event Applicant alleges independent claims of due process violations, Respondent submits such claims are likewise without merit. A due process violation only occurs "when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (citing 21 Am.Jur.2d, Criminal Law § 640 (1981)). Respondent submits the record fully demonstrates Applicant's plea procedures fully complied with the requirements of due process. Accordingly, Respondent submits this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC.

VII.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VIII.

WHEREFORE, having made its return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

December 18, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
 GERARD A. WATTS, #222851)
)
) Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
) Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2014-CP-26-3106

AFFIDAVIT OF SERVICE BY MAIL

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

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 18TH day of December, 2014.


 Norma Bigbee, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO: 2014-CP-26-03106
3 PCR HEARING

4 -----
5 B E F O R E: The Honorable D. Craig Brown
6 February 10, 2016
7 -----

7 GERARD WATTS,
8 Petitioner,
9 vs.

 ORIGINAL

10 STATE OF SOUTH CAROLINA,
11 Respondent.
12 -----

13 APPEARANCES:

14 Daniel Selwa, Esq.
15 For the Petitioner.

17 Jessica Kinard, Esq.
18 For the Respondent.

21 Court Reporter:
22 Natalie Dahl, RPR
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25

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I-N-D-E-X

WITNESS PAGE

GERARD WATTS

Direct Examination by Mr. Selwa..... 7

Cross-Examination by Ms. Kinard..... 12

JOHNNY McCOY

Direct Examination by Ms. Kinard..... 17

Cross-Examination by Mr. Selwa..... 24

E-X-H-I-B-I-T-S

PETITIONER'S EXHIBITS

MARKED & ADMITTED

NO EXHIBITS

CALL OF CASE

P-R-O-C-E-E-D-I-N-G-S

1
2 MS. KINARD: This is Gerard Watts versus the
3 State of South Carolina, Case No. 2014-CP-26-3106. We
4 are before the Court on an application for
5 post-conviction relief filed May 15, 2014. Applicant
6 is presently confined in the South Carolina Department
7 of Corrections pursuant to orders of commitment from
8 the Horry County Clerk of Court.

9 On May 2013, the Horry County Grand Jury indicted
10 the applicant for attempted murder and possession of a
11 weapon during the commission of a violent crime.
12 Jonathan Daniel McCoy represented him on those
13 charges. In September 2013, the Grand Jury indicted
14 applicant for possession with intent to distribute
15 heroin and threatening the life of a public employee.
16 Mr. JM Buddy Long the Third represented the applicant
17 on those charges. On September 5, 2013, applicant
18 pled guilty as indicted to possession with intent to
19 distribute heroin and threatening the life of a public
20 employee, as well as possession of a weapon during the
21 commission of a violent crime.

22 He also pled guilty to assault and battery of
23 high and aggravated nature of a lesser included
24 offense of attempted murder. The Honorable Larry B.
25 Hyman, Junior, sentenced applicant to concurrent

CALL OF CASE

1 sentences of five years for possession of a weapon, 13
2 years for assault and battery of a high and aggravated
3 nature, ten years for possession with intent to
4 distribute heroin, and ten years for threatening the
5 life of a public employee.

6 The applicant filed a timely Notice of Appeal,
7 but voluntarily dismissed his appeal. The Court of
8 Appeals dismissed that on May 6, 2014. A remittitur
9 was returned on May 22, 2014.

10 The State is present and ready to proceed. The
11 applicant is present and represented by Daniel A.
12 Selwa the Second.

13 THE COURT: Mr. Selwa.

14 MR. SELWA: Yes, Your Honor. I believe we are
15 ready to go forward. This was a situation where I
16 thought it was --

17 MS. KINARD: I'm sorry, I neglected to mention
18 this was added to the roster as a 12(e) motion for a
19 more definite statement filed by the State as part of
20 its return; that was filed on December 18, 2014, which
21 is approximately 14 months ago. Furthermore, the
22 applicant and his attorney were made aware through
23 initial drafts of the roster the first week of January
24 of this year this case would be going forward. No
25 amendments have been filed with the court or provided

CALL OF CASE

1 to the State. At this point, the State believes it
2 would be prejudiced by any further amendments. We
3 object to any oral amendments at this time. We cannot
4 defend the case adequately based on what is presented
5 in the PCR application, and without any amendments or
6 further information, we believe that there is very
7 little to go on and we would be prejudiced by anything
8 being added at this date.

9 THE COURT: Mr. Selwa.

10 MR. SELWA: I spoke to my client. The allegation
11 is that his petition was ineffective assistance of
12 counsel, and that was kind of the focus of what we
13 were talking about. It is just a general ineffective
14 assistance of counsel, failure to investigate, failure
15 to do the job. I don't know how much more specific I
16 can get on it.

17 THE COURT: It is raised in here as involuntary
18 guilty plea on Paragraph 11 of his application, as
19 well as a general ineffective assistance of counsel as
20 stated by Mr. Selwa.

21 I'll allow the matter to go forward. Let me ask
22 this question before he takes the stand. Ms. Kinard,
23 you heard what Mr. Selwa said, do you need to talk to
24 Mr. McCoy, who is a witness in this matter? If so, I
25 will allow you to do that.

CALL OF CASE

1 MS. KINARD: Perhaps a minute while he's getting
2 set up to double check a couple of things.

3 THE COURT: Okay. Swear him, please.

4 (GERARD WATTS, having been duly sworn,
5 testified as follows:)

6 THE COURT: I have a question before we go any
7 further. You filed this motion, Ms. Kinard, back in
8 December of 2014; is that correct?

9 MS. KINARD: Yes, Your Honor.

10 THE COURT: Is there any discussion between
11 counsel, yourself and Mr. Selwa, since the filing of
12 this or prior to filing it?

13 MS. KINARD: Other than a few E-mails back and
14 forth in the last month. We haven't gotten anything
15 going.

16 MR. SELWA: This was under, I think, Josh.

17 MS. KINARD: Yes, my predecessor filed this.

18 MR. SELWA: We had a lot of discussion between
19 Josh and I.

20 MS. KINARD: Oh, you did?

21 MR. SELWA: Yeah. Yeah.

22 THE COURT: I say this, and I told Ms. Kinard and
23 I think Mr. Fowler or Mr. Falk, who is in here now,
24 back in chambers yesterday. It amazes me -- and I'm
25 not saying that is here, but I'm putting it out there

GERARD WATTS - DIRECT EXAMINATION BY MR. SELWA

1 for future reference -- the lack of communication with
2 lawyers these days. It is so easy to shoot an E-mail,
3 and never, ever in the history has it been easier to
4 communicate with people. I just see it over and over
5 where lack of communication with lawyers -- you are
6 doing -- it is just not good, I'll put it at that.
7 All right. Go ahead, Mr. Selwa.

8 DIRECT-EXAMINATION

9 BY MR. SELWA:

10 Q Mr. Watts, you heard the AG's office go over what
11 you have been convicted of and the sentences you have
12 for those convictions. You are here today claiming
13 that your trial attorney, who helped you along with the
14 plea, was ineffective; is that correct?

15 A Yes, sir.

16 Q And you're alleging that your plea was
17 involuntarily given; is that correct as well?

18 A Yes, sir.

19 Q Can you tell the Court what it is that was
20 ineffective about Mr. McCoy's representation?

21 A I told my lawyer a couple of times what the
22 situation was with the attempted murder charge. I was
23 not the one that shot the person, and the victim was
24 willing to say something for me, and he never asked him
25 about it.

GERARD WATTS - DIRECT EXAMINATION BY MR. SELWA

1 Q So you asked him to investigate and interview
2 witnesses?

3 A Yeah, the victim of this crime.

4 Q And so the victim was the one that you wanted him
5 to investigate?

6 A Yes, sir.

7 Q Did you ask him to do anything else?

8 A I just asked him to do that, because that is
9 really the only case -- was really strong with all the
10 choices I had.

11 Q And did you have time to meet with Mr. McCoy?

12 A He came to see me a couple of times when I was in
13 the county jail. When I was out on bond, I ain't never
14 really saw him, when I was out on bond.

15 Q Did you get an opportunity to speak to him about
16 his investigation or work on the file?

17 A Yeah, I asked him about it. He told me I needed
18 more money for him to send an investigator to do the --
19 investigate the crime more.

20 Q And were you able to get any more money for the
21 investigator?

22 A No, sir, because I was locked up.

23 Q Did Mr. McCoy say that he would hire an
24 investigator after you didn't give him any money?

25 A No, sir.

GERARD WATTS - DIRECT EXAMINATION BY MR. SELWA

1 Q Did you expect Mr. McCoy to investigate on his
2 own?

3 A Yes, sir.

4 Q And did you ask him to continue even in the
5 absence of having money for an investigator?

6 A Yes, sir.

7 Q To your knowledge, did he continue to investigate
8 the matter as you asked him?

9 A If he investigated the matter, I wouldn't have
10 gotten charged for no attempted murder, because I
11 wasn't the one that shot the person at the club that
12 night. They never had no evidence. They just had a
13 security guard who shot me in the back, who said he saw
14 me shoot somebody. How can he saw me shoot somebody
15 when he shot me in the back?

16 Q So did Mr. McCoy talk to the victim at all?

17 A As far as my knowledge, no.

18 Q Did he talk to you about talking to the security
19 guard?

20 A No, because Brad Richardson wouldn't let nobody
21 know where the security guard was at at the time being.

22 Q And you had to rely on Mr. McCoy in order to make
23 your decision to plead guilty; is that correct?

24 A Yes, sir.

25 Q Were you about to go forward for a trial?

GERARD WATTS - DIRECT EXAMINATION BY MR. SELWA

1 A I was going for trial to the judge, who I was in
2 front of that day, saying he wouldn't be the judge,
3 Judge Cottingham would be my judge. So I talked to my
4 mother, and she was like you choose to go up in front
5 of him, I was like, really, I'm scared, because I know
6 his background. When I talked to my lawyer, I called
7 my lawyer at 5 o'clock that day, and he asked me what I
8 wanted to do. Only thing I asked for him to do is one
9 thing, talk to the victim, because the victim got
10 shot -- at the strip club, it had cameras all around
11 the club. So when the detective interviewed me and
12 decided to do their own thing, the detective basically
13 told me what to say on the tape because he know what is
14 going on with the whole situation about how this
15 occurred. I was incarcerated in the federal prison for
16 a gun charge. There was a beef going on with my side
17 of town, with people who got shot. It was Crips and
18 Bloods who was beefing. I came home into the beef.
19 All of this came from my girl cousin getting killed at
20 the club that night by the person who allegedly got
21 shot, that is where all that come from.

22 So the detective told me when he stopped the
23 tape, he say that you are going to testify against
24 those people who killed your cousin, and I told the
25 detective that ain't my job, that's his job to do that

GERARD WATTS - DIRECT EXAMINATION BY MR. SELWA

1 when my girl cousin got killed in 2012 at Empire, that
2 is what all of this occurred from. It was a beef
3 going on, and I got drawn into it. I never discharged
4 my gun that night, and I admitted it to the police
5 officer. If the man that got shot by me, he would
6 have gotten shot by a .22, that is the gun I had on
7 me. I admitted that. I admitted I had a gun on me.
8 I never shot the person. He knows to this day that I
9 wasn't the one that shot him, because he came to my
10 mother and sister and told them I got your brother in
11 jail for nothing; I lied.

12 Q So you think that Mr. McCoy would have been able
13 to talk to the victim and get a different story?

14 A Yes, sir.

15 Q And because he didn't do that, you were forced to
16 take a plea?

17 A I took the plea, and they dropped three of my
18 charges. I had seven charges, dropped three of my
19 charges. I took a plea because he wasn't putting
20 effort to go talk to my victim. If he talked to my
21 victim, I know I wouldn't have never gotten convicted
22 of the charge.

23 Q Had he done what you asked of him, would you have
24 -- you would have gone forward to trial; is that
25 correct?

GERARD WATTS - CROSS-EXAMINATION BY MS. KINARD

1 A I would have went to trial, yeah. I would have
2 went to trial.

3 Q You are asking today for the judge to grant you
4 that opportunity?

5 A Yes, sir.

6 Q You realize that the charges that were dismissed
7 will come back before the Court?

8 A Yes, sir.

9 Q And you are willing to accept that?

10 A Yes, sir.

11 Q Any other claims you have against Mr. McCoy's
12 representation?

13 A No. I ain't have no other claims outside of
14 that. He did what he could do for me.

15 Q Do you feel like his representation has
16 prejudiced you?

17 A A little bit.

18 Q You feel like you would have won at a trial?

19 A Yeah, going by the background and how he do his
20 cases, yeah, I would have won that case in trial.

21 MR. SELWA: Answer any questions AG has for you.

22 CROSS-EXAMINATION

23 BY MS. KINARD:

24 Q I'm sorry, Mr. Watts, I didn't understand, why
25 was your guilty plea an involuntary plea?

GERARD WATTS - CROSS-EXAMINATION BY MS. KINARD

1 A Because that is what me and my lawyer -- he sat
2 down and he was like if you go to trial, I can win this
3 case right here. See, Brad Richardson was taking me
4 for one case; he wasn't taking me to trial for all of
5 my cases. Johnny said if we go to trial, yeah, you
6 will win this. He was like, You got to go to court for
7 another case. So I was like, What can you do to make
8 this, like, get right? So he was like -- I tell him
9 you need to talk to my victim. They brought my victim
10 to my hearing. He was going to stand up and talk in my
11 hearing. Brad Richardson told him not to, because he
12 know -- Brad Richardson know he was going to tell the
13 truth of what happened with the situation.

14 Q Is your victim here today?

15 A No, ma'am.

16 Q So your victim can't testify as to what he or she
17 would have said?

18 A Not here, no, ma'am, right now. If I go to
19 trial, he will.

20 Q Didn't you say that Mr. Richardson wouldn't let
21 people speak to the victim?

22 A Yes, ma'am.

23 Q Do you believe that Mr. McCoy could have spoken
24 to him?

25 A Yes, ma'am. When I talked to him at the table, I

GERARD WATTS - CROSS-EXAMINATION BY MS. KINARD

1 said you need to talk to my victim, and he tell me
2 don't look at him. He said if I would have looked at
3 him, it would have felt that I was scaring him.

4 Q When you pled guilty, three charges were dropped?

5 A Yes, ma'am.

6 Q Do you remember answering questions that the
7 Court asked?

8 A Yes, ma'am.

9 Q Did you answer those questions truthfully?

10 A Yes, ma'am.

11 Q During that, did you answer that you believe your
12 attorney had done everything he could to help you?

13 A Yes, ma'am.

14 Q You stated he had?

15 A Yes, ma'am.

16 Q You understood this would be a waiver of your
17 rights to a jury trial?

18 A Uh-huh.

19 THE COURT: Is that a yes?

20 A Yes, sir.

21 THE COURT: Thank you.

22 Q Did you understand the possible sentences you
23 could have received if you went to trial?

24 A For attempted murder, I was carrying 20 -- 20
25 years.

GERARD WATTS - CROSS-EXAMINATION BY MS. KINARD

1 Q Regardless of what it could carry, it could be
2 quite awhile and longer than what you carry now?

3 A Yes, ma'am.

4 Q So you understood you were giving up several
5 Constitutional rights by pleaing?

6 A Yes, ma'am.

7 Q And you testified you were satisfied with the
8 services of your attorney?

9 A I wasn't satisfied. I had to take it and deal
10 with it. You know, when I got -- when I got to prison,
11 I did more research on my case. Being a case like
12 that, only evidence you got is a security guard.

13 Q Did you agree with the statement that the
14 Solicitor said -- stated what happened that night?

15 A I didn't agree to that.

16 Q Do you remember testifying to that?

17 A You never heard the statement that he said.

18 MS. KINARD: May I approach the witness?

19 THE COURT: Yes, ma'am.

20 Q (MS. KINARD) Looking at Pages 9 through 13
21 during which Mr. Richardson -- I believe it was
22 Mr. Richardson -- reviews the facts of the case, and
23 I'll jump to the middle of Page 13. This occurred
24 here in Horry County, and I'll show you these
25 recitations of the facts, running from blue lights, so

GERARD WATTS - CROSS-EXAMINATION BY MS. KINARD

1 on and so forth, and you testified and you said --
2 excuse me, the Court asked, Is that what occurred, and
3 you said, Yes, sir. Is that what you did? Yes, sir.
4 Do you recall that?

5 A Yeah. Johnny McCoy didn't have that case.

6 Q That was Buddy Long's case?

7 A Uh-huh.

8 THE COURT: Is that a yes?

9 A Yes, sir.

10 Q (MS. KINARD) Regardless, you were pleading to
11 all of these together to receive one sentence, in
12 essence; is that correct?

13 A Yes, ma'am.

14 Q And you stated earlier that one reason you pled
15 is so you wouldn't have to go through two cases; is
16 that correct?

17 A Yes, ma'am.

18 Q Okay. Do you remember the Court asking if you
19 felt this was the best thing you could do, by pleading
20 to these cases?

21 A Yes, ma'am.

22 Q And so you stated that you did, indeed, think
23 this was the best thing you could do?

24 A I told my two lawyers I didn't like the situation
25 of me pleading to 13 years for a charge I really didn't

JOHNNY McCOY - DIRECT EXAMINATION BY MS. KINARD

1 do. The other charges, I don't have no problem
2 admitting to that; I did that. On me just shooting a
3 person, that ain't me. Selling drugs, I understand
4 that; that is me. I never had no violence on my
5 record, and I've been getting in trouble for a long
6 time.

7 Q So your main issue is that you received a
8 sentence for a crime you didn't commit?

9 A 13 years for attempted murder I never did.

10 Q But you pled guilty to it?

11 A Yes, ma'am.

12 MS. KINARD: That's all I have.

13 THE COURT: Any redirect?

14 MR. SELWA: Nothing further.

15 MS. KINARD: State calls Johnny McCoy.

16 (JONATHAN McCOY, having been duly sworn,
17 testified as follows:)

18 DIRECT EXAMINATION

19 BY MS. KINARD:

20 Q How long have you been practicing law?

21 A Admitted in November of 2008. I've been
22 practicing criminal defense since 2009.

23 Q Is that the bulk of your practice?

24 A Correct.

25 Q How did you come represent Mr. Watts?

JOHNNY McCOY - DIRECT EXAMINATION BY MS. KINARD

1 A I don't know. He was referred to me. That
2 neighborhood, I represent a lot of those guys, which he
3 mentioned my trial record, I had something to do with
4 that. One of his cell mates was a close friend in high
5 school, so that probably has something to do with it.

6 Q Is that a retained case?

7 A Yeah. He came and hired me for the attempted
8 murder and possession of a weapon during a violent
9 crime, and then we got him a bond, and when he was out
10 on bond, he got picked up for something else, drug
11 related and talking trash to a police officer, saying
12 he was going to beat him up or something, but I didn't
13 represent him on those two.

14 Q Do you recall who did?

15 A Buddy Long.

16 Q And the plea entered into this case, both of your
17 names are on the transcript, can you tell me how that
18 came about?

19 A Any time you have a case where there is a pretty
20 substantial charge and the person has the bond revoked
21 because they were picked up for another crime, the --
22 the effort turns to kind of trying to resolve
23 everything, not only for the efficiency of the court,
24 but also for the best of the client, because two cases
25 is never, never as good as resolving it in a package

JOHNNY McCOY - DIRECT EXAMINATION BY MS. KINARD

1 situation.

2 In this case, they were dead-set with Buddy on
3 the ten years, and when I spoke with him -- Mr. Watts,
4 he was informing me of his other offers. I said,
5 Well, we're on an attempted murder right now -- I
6 think it was 20 years out of the gate, and once we got
7 it down to something manageable, it became a
8 mathematics equation at that point on how to deal with
9 all four cases at once.

10 One of Buddy's involved violence, and so
11 obviously he was worried about that. The trooper took
12 a warrant out on him for saying something to him about
13 hurting him or something. So there was one violence
14 with Buddy, and then the heroin second, which is an
15 enhanceable offense, and then my case, which was
16 reduced to ABHAN, which was not necessarily
17 I'm-going-to-kill-this-guy -- I mean, you can get an
18 ABHAN for shooting blanketly in a bar or club or
19 parking lot in the direction of people.

20 Initially, with no Miranda, he admitted that he
21 shot -- he shot the guy, albeit with a .22, he said he
22 walked out to his car and came back in the club and
23 shot Mr. Lang because he didn't want to get shot
24 first, because he knew Mr. Lang from the Tequila
25 Empire shooting, had a beef with him.

JOHNNY McCOY - DIRECT EXAMINATION BY MS. KINARD

1 So he initially told the cops -- I wasn't
2 involved in the case at that point, these were the
3 cops interviewing him, and then they came back and
4 interviewed him sometime again later, and he stated
5 that he shot -- he shot Mr. Lang and it was
6 self-defense. But he did -- he did state that he
7 walked out to his car, got a gun and returned back,
8 and that is our main issue with that case. Because,
9 you know, self-defense of a later -- it has to be
10 immediate. We kind of went over that.

11 Now, if you would like, I could touch on the
12 issue of tracking down Mr. Lang.

13 Q Is that the victim in this case that he believes
14 you didn't interview?

15 A Adrian Lang, yes, ma'am.

16 Q Yes, please talk about that.

17 A First of all, Adrian Lang gave a fake name in the
18 hospital. This is a guy who did not want to be
19 involved in this case at all, which is common for this
20 area. When that happens, when they are -- when the
21 victim is giving false names to the police officer, and
22 then I'm sure they said something about his record,
23 because he was wanted at the time, so he kind of bucked
24 up and gave his order of events, and they matched up
25 identically to the manager of the club, to the security

JOHNNY McCOY - DIRECT EXAMINATION BY MS. KINARD

1 officer, and then to the guy who was allegedly a random
2 guy, albeit, but to the guy who drove Gerard to the
3 hospital. The manager said a guy with a black hoody
4 and jeans started a scuffle in the front of the club.
5 The security officer said a guy with a black hoody and
6 jeans was outside running and firing his weapon, and
7 Mr. Watts touched on that earlier, how he identified
8 Mr. Watts. Then, the guy who picked up Mr. Watts -- I
9 still don't know his connection, but I think he saw him
10 laying there and picked him up and took him to the
11 hospital -- he identified Mr. Watts as wearing a black
12 hoody and jeans.

13 So, you know, Adrian's statement that it was, you
14 know, Mr. Watts, this was a retaliation for Tequila
15 Empire, all that other stuff, you know, showed motive
16 and everything else. Once I started talking to
17 Mr. Watts and he said you have to talk to Adrian about
18 whether or not I shot him, because he's not going to
19 say -- he's not going to say I shot him, two things
20 took place. One, it struck me that they may win this
21 case without Adrian based on the chronological events
22 adding up, with the manager stating what the guy
23 looked like who started the scuffle and then the
24 shooting, I mean just one pop outside. The officer
25 did say he saw the pop, muzzle flash towards five

JOHNNY McCOY - DIRECT EXAMINATION BY MS. KINARD

1 people. All of that matching up to the random guy
2 picking him up and taking him to the hospital, and all
3 of them are the same clothing, same build, same guy.

4 Be it as it may, I tried to personally track down
5 Adrian with my limited resources. Mr. Watts is
6 absolutely correct in that in that case talking to --
7 talking to a victim of that caliber, who does not want
8 to be involved, whatsoever, it is kind of hard for
9 somebody without -- for somebody without the
10 technology and a private investigator to go out on the
11 street and find the guy, particularly if they don't
12 want to be found.

13 I was on this case for over a year-and-a-half, I
14 believe it was, and my office is on 21st Avenue,
15 which is right in the middle of everyone's
16 neighborhood who was involved in this case. I
17 remember specifically saying, All he has to do is come
18 in and talk to me, you know. It just gets to the
19 point of, He's not going to come in and talk to you,
20 you need to figure out a way to find him and talk to
21 him. I can figure out a way, it is called a private
22 investigator. I'll track him down if you want me to,
23 but Brad is going to get upset if we get up to the
24 victim and he's like, Look, I don't want to talk to
25 you all, stop harassing me. So we were walking a fine

JOHNNY McCOY - DIRECT EXAMINATION BY MS. KINARD

1 line there.

2 You know, even if the victim did change his
3 story, which I don't know if he would have or not
4 because, honestly, I mean, there was no way for me to
5 track him down; a private investigator probably could
6 have. Even if we did, I still thought that this was
7 the best option no matter what, because just shooting
8 into a crowd. Also, with his post-Miranda statements
9 and pre-Miranda statements given when he was at the
10 hospital, and then when he was out before he hired me,
11 it was -- to get it down to an ABHAN and try to kind
12 of roll it into one, it was a mathematics equation at
13 that point. The closer I could get it to ten years,
14 or whatnot, the more excited the defense team got,
15 both Buddy and I and Mr. Watts, I thought.

16 Q Thank you. So just to recap, I believe I heard
17 Mr. Watts state that he did not shoot a gun that night?

18 A Well, I mean, he told the two officers that he
19 did. I mean, he admitted that he had a gun on him.
20 They found a 380 casings, and he had a .22 on him, but
21 they covered that in the report by saying that there
22 was two or three guys walking around looking for stuff.
23 I mean, they had this random guy walking around in the
24 ditch picking up stuff. That was -- the allegation was
25 that they were picking up shells or whatever, but the

JOHNNY MccOY - CROSS-EXAMINATION BY MR. SELWA

1 thing is Mr. Watts admitted to firing two shots, and
2 they found random two 380 shells, so I don't know how
3 we could have justified that.

4 Q And those admissions were in pre- and
5 post-Miranda statements?

6 A Right. Right before I was involved in the case.

7 MS. KINARD: Nothing further.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. SELWA:

11 Q Mr. McCoy, you said they were going to try
12 multiple charges at separate times?

13 A I believe so. I mean, yes, sir, I believe so.

14 Q So they were going to try the attempted murder,
15 and then they were going to try the other charges at
16 later dates; is that what you are saying?

17 A Unless he was going to plead guilty to them; I'm
18 not really sure. I mean, either way he was getting --
19 I mean, just as he did here, he admitted to the heroin
20 charges, so he was going to get, you know, at least ten
21 on that. And then the threatening a public official, I
22 guess he -- same thing, that was ten there. So even if
23 we didn't try my case, you know, he was still going to
24 prison for ten years based on those crimes. I guess
25 the percent would be a little bit less, but not much.

JOHNNY McCOY - CROSS-EXAMINATION BY MR. SELWA

1 Q So what did they dismiss in lieu of him pleading
2 to the ABHAN?

3 A They would dismiss the attempted murder, and they
4 dismissed some of Buddy's charges. So we pled to
5 ABHAN, possession of a weapon during a violent crime,
6 and then they dismissed the attempted murder; that was
7 one of mine and two of Buddy's. I think a failure to
8 stop -- I can't remember, but something with Buddy's
9 case.

10 Q Being that -- did Mr. Watts indicate that he
11 could not afford the investigator?

12 A He did. He couldn't afford an investigator. I
13 mean, it would have -- to track Adrian down would have
14 been costly.

15 Q Was there any options for him at that point since
16 he was indigent or could not afford the investigator?

17 A Just me asking around and calling, you know, the
18 local people, who I know. And then, obviously, you
19 know, we called the victim's advocate and asked if
20 there is any point he wants to speak, let us know.
21 That is the first thing I do in my cases, I inform the
22 victim's advocate of my cell phone number, if the
23 victim at any point wants to talk to me, please have
24 them call. It's never happened in eight years of
25 criminal defense.

JOHNNY McCOY - CROSS-EXAMINATION BY MR. SELWA

1 Q Based on the circumstances and the facts as you
2 knew in the case, do you feel that the victim's story
3 would have been different to you, and ultimately
4 different on the stand?

5 A I think definitely he would have told a different
6 story to me. He would have told me that PR didn't
7 shoot him, Mr. Watts didn't shoot him. I mean just in
8 talking to Mr. Watts and knowing the people on the
9 street and the way they were talking about the case,
10 but I think on the stand -- I don't know. In my
11 experience, he probably would have told what he told
12 the officers on the stand, because they -- I mean they
13 had a ton of charges on this guy -- a ton of charges on
14 this guy. So it was my understanding that they took --
15 they took Adrian's statement, and then they went to
16 Mr. Watts and kind of coupled those together with the
17 charges.

18 Now, if a victim wants to talk to me, yeah, they
19 are always welcome. They are not coming in to tell me
20 how much they hate my client, but the word on the
21 street was that he didn't want anything to do with it.
22 I was trying through my -- I went to high school here,
23 grew up here with these guys, so I know all of these
24 guys. I was trying to track them down, but it was
25 difficult. If I said we could get a private

JOHNNY McCOY - CROSS-EXAMINATION BY MR. SELWA

1 investigator -- we came here for something else, and
2 at that point Brad was like, Let's roll this all into
3 one, and that is when we met with Gerard and went over
4 his options.

5 Q And the witness was present when Mr. Watts pled
6 guilty; is that correct?

7 A I think he was. Yes, he was. I remember
8 telling -- the victim, right? You said "witness."

9 Q I'm sorry.

10 A If he was here, and if he would have spoken, as
11 Mr. Watts told me he was going to, if he would have
12 said the things that I was told that he was going to
13 say, Mr. Watts would have probably gotten a couple of
14 years less shaved off, because his injuries were a big
15 impact on the 13 years. I don't know how much of an
16 impact, but they were a pretty big impact, the
17 surgeries on the rectum and things.

18 Q So your testimony is that he did not speak up and
19 provide a victim's impact statement to the judge on
20 sentencing?

21 A Right. He did not. I was surprised only because
22 of -- Mr. Watts told me for a week or whatever, however
23 long, that he was going to speak, and that was unusual
24 for a victim to come in a case like this.

25 Q Can you corroborate Mr. Watts' testimony that

JOHNNY McCOY - CROSS-EXAMINATION BY MR. SELWA

1 Mr. Richardson at that point told him not to speak, did
2 you see anything like that before?

3 A I mean, no. I can guess, but, no. I mean, I
4 didn't hear him say anything to the guy, but, you know,
5 there was no -- they typically read a statement,
6 written statement from the victim, or something of that
7 nature. There was nothing. He just said that he was
8 present and didn't wish to speak.

9 Q If you were to try that case, that particular
10 case on the attempted murder, do you feel that you
11 would have won that?

12 A I don't. I've tried a lot of cases that I didn't
13 think I would win, and I won. This case would have
14 been real difficult. I don't think we could have put
15 Mr. Watts on the stand, based on the changing of
16 stories, with him now saying he didn't fire a weapon,
17 but to the cops he did. I think that Adrian would have
18 testified, just as he told the officers, because of all
19 the charges hanging over his head, and that is just the
20 nature of the game -- the security officers were not
21 moving at all. He was very upset and shaken, and he
22 described Mr. Watts' clothing. And then you have the
23 guy who took Mr. Watts to the hospital and described
24 Mr. Watts' clothing. So you have a chain of people.
25 So could we have won? I mean, you can always win, but

JOHNNY McCOY - CROSS-EXAMINATION BY MR. SELWA

1 I don't know.

2 Q What was Mr. Watts' feelings on that based on the
3 fact that he would have to go forward and didn't want
4 to?

5 A I thought he was happy, I thought he was. I got
6 to know Mr. Watts. I know a lot of his friends and
7 same people, you know. It really was at the very end
8 of the deal, it came down to a mathematics equation,
9 because as we sit here today, even if the case is
10 reopened, he'll go back for trial on attempted murder,
11 but he'll still be in there for however much longer on
12 the other stuff. I was looking as far as like a plea
13 offer goes for the best interest of my client. When I
14 recommended to him, you know, this is where we are at,
15 this is probably a pretty good resolution. You know,
16 the threatening of a public official carries more time
17 than that.

18 Q And so Mr. Watts, because he had to plea to that,
19 he received three years above and beyond for whatever
20 crimes he was already getting?

21 A Correct.

22 Q So he's going to be in jail after he has finished
23 his other sentences on those other crimes; is that
24 correct?

25 A For about 18 months. I would think -- I mean,

CLOSINGS

1 percentage, I don't know a whole lot about the
2 correctional facility, but, yeah.

3 MR. SELWA: Nothing further.

4 MS. KINARD: No redirect.

5 THE COURT: You may step down.

6 MR. McCOY: Thank you.

7 MS. KINARD: No further witnesses, but request a
8 brief closing.

9 THE COURT: Mr. Selwa, anything from you?

10 MR. SELWA: Nothing --

11 THE COURT: By way of argument.

12 MR. SELWA: For closing?

13 THE COURT: Yes.

14 MR. SELWA: Thank you, Your Honor. Yes, Your
15 Honor. I think we heard Mr. McCoy testify that he
16 tried and did put forth an effort to investigate to
17 talk to the victim. It seems like the victim, at
18 least in Mr. Watts' eyes, was on his side and may have
19 been prevented from testifying on his behalf because
20 of his own issues. But we feel that had Mr. McCoy
21 done investigation or requested an investigation
22 through the indigent defense or a motion for funding,
23 that maybe things might have been different on that
24 charge. Understandably, he had other charges pending
25 and the deal was contingent upon pleading to those

CLOSINGS

1 other charges, and some other charges were being
2 dismissed.

3 There is prejudice in this situation. You heard
4 Mr. McCoy state that he recognized that Mr. Watts was
5 going to be in jail an extra three years as it is on
6 paper, above and beyond the other charges. You heard
7 Mr. Watts testify that he wished to revisit this. He
8 wants a new trial, and he feels he can win. We feel,
9 Your Honor, that overall the job was good on this
10 case, you know, he got a good deal, but I think that
11 pushing all of these charges together in the way that
12 they were really prejudiced Mr. Watts on this
13 particular -- this particular offense. We feel that
14 Mr. Watts didn't have any other opportunity or any
15 other avenue to take at that point and had to take
16 that plea.

17 So, Your Honor, it is our contention that
18 Mr. McCoy's representation on that charge fell below
19 the standard, and the prejudice that resulted from
20 such is that Mr. Watts will be in jail for 13 years.

21 THE COURT: Yes, ma'am.

22 MS. KINARD: Thank you, Your Honor. A lot has
23 been said of the potential testimony of the victim in
24 this case; that simply is not something that the court
25 can consider here. Witnesses must be present to

CLOSINGS

1 account for their testimony, and they must be
2 presented at a PCR hearing. Case law is Underwood V.
3 State, 309 S.C. 560. It is a straight-forward case
4 that says if you are going to rely on what someone
5 else would have said, they need to be here to say it.

6 Regarding the duty to investigate, that is
7 limited to a reasonable investigation and, the cite on
8 that is Ard V. Catoe, 372 S.C. 318. Mr. McCoy
9 testified thoroughly there was, in his opinion, very
10 little to be gained and a lot of effort to be wasted
11 in the search for Mr. Lang, especially because it was
12 not entirely clear what his testimony would be.

13 It was also said that pleading guilty -- that
14 Mr. Watts pled guilty to avoid a greater sentence and
15 to avoid having to roll the dice, as it were, at
16 trial. Pleading guilty to avoid a greater sentence
17 does not render a plea involuntary, and the citation
18 on that is Brady versus U.S. and Wicker V. South
19 Carolina, 310 S.C. 8.

20 Mr. Selwa stated that Mr. Watts is serving three
21 more years for this charge than he was for the ten
22 that he got on the others, and I think that is a red
23 herring when it comes to analyzing this. This offense
24 was taken from an attempted murder to an ABHAN, which
25 is an improvement in and of itself. He's, therefore,

CLOSINGS

1 serving, you know, a lesser sentence, and Mr. McCoy
 2 was able to work out a great deal for Mr. Watts. He
 3 and Mr. Long were able to wrap up all of these cases
 4 into one plea. They were able to use the best of what
 5 they had, including -- as Mr. McCoy stated -- pre- and
 6 post-Miranda statements that were not going to do any
 7 favors for Mr. Watts.

8 Because of all of the evidence that Mr. McCoy and
 9 Mr. Long had -- granted, we're only dealing with
 10 Mr. McCoy at this moment -- they certainly had an
 11 articular strategy, it was valid and they performed it
 12 to the best of their abilities. They certainly
 13 performed within the reasonable professional norms,
 14 and I do not think it can be said that anything they
 15 did prejudiced -- was deficient -- excuse me. They
 16 were not deficient in their efforts. They worked
 17 diligently for their client, and even Mr. Watts and
 18 Mr. Selwa stated that they did a great job, he was
 19 happy with his representation, just wanted the time to
 20 be a little different. That is not the kind of
 21 standard that PCRs are heard under.

22 Therefore, because representation was not
 23 deficient, Mr. Watts could not have been prejudiced by
 24 the performance and, therefore, this case fails both
 25 prongs of the Strickland test, and the State

RULING

1 respectively requests that no relief be granted.

2 THE COURT: Based upon what I heard here today,
3 the law requires that an applicant must show counsel's
4 performance was deficient and that the deficient --
5 and -- and that the deficient performance prejudiced
6 the defendant in the context of the guilty plea. The
7 deficiency prong inquiry turns on whether the plea was
8 voluntarily, knowingly and intelligently entered. The
9 Court finds based upon testimony that has been
10 elicited from this witness stand today, that there was
11 nothing that would indicate to the Court that such
12 plea was not entered into knowingly, voluntarily and
13 intentionally.

14 Furthermore, as it relates to the deficient
15 prong, defendant must show or establish that counsel
16 failed to render reasonably effective assistance under
17 prevailing professional norms. The Court finds that
18 the applicant has failed to meet that burden of
19 establishing that his counsel, Mr. McCoy, failed to
20 render reasonable effective assistance under
21 prevailing professional norms. The crux, so to speak,
22 of his argument is that counsel failed to investigate
23 or talk to Mr. Lang. The Court finds based on
24 testimony here today, regardless -- regardless, based
25 upon counsel's view of the evidence of the case that

RULING

1 the defendant could have been convicted without Lang's
2 testimony, who was the victim in this case.

3 Furthermore, the Court finds that counsel,
4 Mr. McCoy, articulated a valid reason in manner and
5 method which he handled the case. After finding that
6 applicant has failed to show that counsel's
7 performance was deficient, Court finds that the
8 applicant doesn't even get to the prejudice prong
9 assuming that applicant had shown counsel's
10 performance was deficient.

11 Court further finds that the applicant has failed
12 to prove that there is a reasonable probability that
13 the outcome would have been different. Furthermore,
14 he has failed to show that there is a reasonable
15 probability sufficient -- that there is a reasonable
16 probability sufficient to undermine the outcome;
17 therefore, the Court respectively denies the
18 applicant's post-conviction relief.

19 If you'll get me an order.

20 (Whereupon, the proceedings concluded.)

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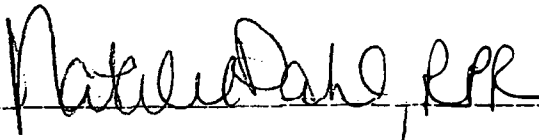
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for 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 matter of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 10th day of February, 2016.

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

July 2, 2016



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
 Gerard Watts, #222851,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS)
 FOR THE FIFTEENTH JUDICIAL CIRCUIT)
 Case No. 2014-CP-26-3106)

HORRY COUNTY
 2016 MAR 11 PM 1:28
 HEARINGS CLERK OF COURT
 JESSICA E. KINARD

ORDER OF DISMISSAL
(Ends action)

This matter came before the Court by way of an Application for Post-Conviction Relief filed May 15, 2014. Respondent filed a return and motion for more definite statement on or about December 18, 2014. The Court convened an evidentiary hearing into the matter on February 10, 2016, at the Horry County Courthouse. Applicant was present and represented by Daniel A. Selwa, II, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's plea counsel, Jonathan D. McCoy, Esquire, testified at the hearing. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2013, the Horry County Grand Jury indicted Applicant for attempted murder (2013-GS-26-1828) and possession of a weapon during the commission of a violent crime (2013-GS-26-1829). Jonathan David McCoy, Esquire, represented Applicant on those charges. In September 2013, the grand jury indicted Applicant for possession with intent to distribute heroin (2013-GS-26-3988) and threatening the life of public employee (2013-GS-26-3990). J. M. Long,

Copy

III, Esquire, represented Applicant on those charges. On September 5, 2013, Applicant pled guilty as indicted to possession with intent to distribute heroin, threatening the life of public employee, and possession of a weapon during the commission of a violent crime. He also pled guilty to assault and battery of a high and aggravated nature as a lesser included offense of attempted murder. The Honorable Larry B. Hyman, Jr. sentenced Applicant to concurrent sentences of five (5) years for possession of a weapon during the commission of a violent crime, thirteen (13) years for assault and battery of a high and aggravated nature, ten (10) years for possession with intent to distribute heroin, and ten (10) years for threatening the life of public employee.

Applicant filed a timely notice of appeal, but voluntarily dismissed his appeal. The South Carolina Court of Appeals dismissed the appeal on May 6, 2014. The remittitur was returned to the circuit court on May 22, 2014.

II. ALLEGATIONS

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

1. "Ineffective Assistant of Counsel"
2. "Involuntary Guilty Plea"
3. "Due Process Violation"

At the call of the case, no amendments had been made to the PCR application in order to resolve the motion for more definite statement. PCR counsel stated that Applicant wished to go forward on the three stated grounds, as well as failure to investigate. Though the hearing at issue involved several charges on which Applicant was represented by either Mr. McCoy or J.M. Long, III, Applicant only found issue with Mr. McCoy's performance. The hearing proceeded on all of these grounds against Mr. McCoy.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Summary of Testimony

Applicant was called to testify first, and began by saying that he did not shoot the victim in the underlying case. He thought that the victim would say something to that effect, but the victim was not interviewed to Applicant's knowledge. Further, he thought that the solicitor may not have allowed people to speak to the victim. Applicant testified that plea counsel stated he would need more money for an investigator, but none was ever hired. Applicant lastly testified that the victim spoke to his family and told them that Applicant should not be in jail. This Court does not find Applicant's testimony to be credible, as it is nearly all contradicted by other testimony, either of plea counsel or at the plea hearing.

Plea counsel (Mr. McCoy) was called next, and spoke about the desire of all involved to dispose of these charges concurrently with the charges on which Mr. Long represented the Applicant so that all could avoid the hassle of several trials. He testified that the solicitor was "dead set" for ten years on those charges, and they had negotiated twenty years on the attempted murder if pled as assault and battery of a high and aggravated nature. Plea counsel testified that there were issues to consider, particularly that Applicant confessed before being mirandized, and stated that he didn't want to get shot, so he shot first. This led plea counsel to carefully review the elements of self-defense with the Applicant. Plea counsel concurred with Applicant that there were difficulties in finding and speaking to the victim – he understood that he was using false names and moving around. In essence, it is hard to

find someone that does not want to be found. This led to the discussion of the possibility of hiring a private investigator, which would involve money, and was not tried because the recall of the witnesses' accounts matched so closely. He further testified that, based on the totality of the evidence, pleading was in the Applicant's best interest. This Court finds plea counsel's testimony to be very credible.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's 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. In the context of a guilty plea, Applicant must show there is a reasonable probability that, but for plea 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).

The Court finds Applicant failed to meet his burden to show plea counsel rendered ineffective assistance of counsel. The plea hearing transcript shows no misunderstanding of the charge that Applicant was present for, or of the consequences that he faced. At the plea hearing, Applicant acknowledged that he had been given sufficient time to consider his options with counsel, and that he had done everything requested. Plea counsel spoke eloquently and at length during the sentencing phase about the trajectory this case had taken. This testimony was echoed and bolstered during the PCR hearing, with nothing from Applicant to contradict it. This Court finds plea counsel adequately conferred with Applicant and was thoroughly competent in his representation. For these reasons, the request for relief on this ground is denied and dismissed.

C. Involuntary Guilty Plea

This Court also finds Applicant's allegation that his guilty plea was involuntary is without merit. A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)).

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. Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by

colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. Holden at 573, 713 S.E.2d at 615 (citing Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999)). The longstanding test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Id.

In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the guilty plea, and also from the record of the PCR hearing. Roddy, 339 S.C. at 33, 528 S.E.2d at 420. "[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). "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, 654 S.E.2d 870, 874 (2007). Further, "a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." Brady v. U.S., 397 U.S. 742, 757 (1970).

Based on the guilty plea transcript as well as evidence at the PCR hearing, this Court is convinced that Applicant's guilty plea was entered into freely, voluntarily, knowingly, and intelligently. There is no evidence in the transcript or presented at the PCR hearing to show otherwise. There can be no question that Applicant was fully aware of his sentence and its collateral consequences at the time

of the plea hearing. As a result, Applicant has failed to meet his burden, and this allegation is denied and dismissed.

D. Due Process Violation

This Court also finds that Applicant's challenge of his receipt of the promises of the due process of law is without merit. As a threshold matter, the Applicant failed to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This matter was scheduled for a motion hearing for a more definite statement pursuant to Rule 12 (e) of the South Carolina Rules of Civil Procedure; however, this Court ordered the case to proceed on its merits, and this particular allegation was never amended to present a more definite statement. Furthermore, no specific allegations of due process violations were made at the hearing on the merits. Since the Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, whether in his application or at the hearing, this Court orders that this allegation is denied and dismissed.

E. Failure to Investigate

This Court further finds that Applicant's allegation that plea counsel failed to conduct an adequate investigation is without merit. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). Failure to conduct an independent investigation does not constitute ineffective

assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Both witnesses testified to discussions had regarding the difficulty of contacting the victim, and plea counsel explained in detail how he dealt with this situation strategically. Further, both witnesses stated that the possibility of hiring a private investigator was discussed and ultimately abandoned. Plea counsel was certainly familiar enough with this case to be able to explain the circumstances to the court, and to be able to craft a beneficial plea deal for the Applicant. For these reasons, any relief sought for this allegation is denied and dismissed.

F. All Other Allegations

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

IV. 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. The record shows no prejudice to the Applicant, nor does it show any action by plea counsel that would be deficient under the terms provided by Strickland. Plea counsel was not deficient and did not perform at a level that fell below prevailing professional norms. Even if he had, there is no evidence to show prejudice to this Applicant. Additionally, Applicant has failed to show that his guilty plea was anything other than knowingly, intelligently, and voluntarily entered, and has not shown that, but for the defects


he alleges in his plea, he would have proceeded to trial. Applicant has failed to show that there was any violation of due process, or that plea counsel failed to investigate any aspect of this case. 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7 day of March, 2016.



 The Honorable D. Craig Brown
 Presiding Judge

Flour, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 GERARD WATTS, #222851)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

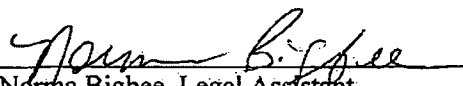
IN THE COURT OF COMMON PLEAS
 2014-CP-22-3106

AFFIDAVIT OF SERVICE BY MAIL

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

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 23rd day of March, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

WITNESSES

Charles McLendon Horry County Police
Department

ARREST WARRANT NUMBER

M975812
CDR: 3410 16-03-0029
DOA: 12/6/2012

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *[Signature]* APR 25 2013

VERDICT

Foreperson of Petit Jury
Date:

C DOCKET NO. 2013-GS-26-01828

The State of South Carolina
County of Horry

Bradley C. Richardson
12H05557

COURT OF GENERAL SESSIONS

May, 2013 TERM

THE STATE

vs.

Gerard Antonio Watts B/ M



ATTORNEY: McCoy, Jonathan David

Indictment for
ATTEMPTED MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

WITNESSES
 Charles McLendon Horry County Police
 Department

C

DOCKET NO. 2013-GS-26-01829

The State of South Carolina
 County of Horry

Bradley C. Richardson
 12H05557

COURT OF GENERAL SESSIONS

May, 2013 TERM

ARREST WARRANT NUMBER

M975815
 CDR: 0549 16-23-0490
 DOA: 12/6/2012

THE STATE

vs.

Gerard Antonio Watts

B/ M



ATTORNEY: McCoy, Jonathan David

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
 Date: *[Signature]*

APR 25 2013

VERDICT

Indictment for

POSSESSION OF A WEAPON
 DURING THE COMMISSION
 OF A VIOLENT CRIME

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Foreperson of Petit Jury
 Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

**INDICTMENT
POSSESSION OF A WEAPON
DURING THE COMMISSION
OF A VIOLENT CRIME**

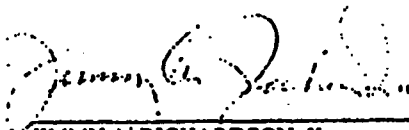
At a Court of General Sessions, convened on April 25, 2013, the Grand Jurors of Horry County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

CDR: 0549 16-23-0490

That Gerard Antonio Watts did in Horry County, on or about December 1, 2012, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Matthew B Sarvis South Carolina Dept of Public Safety

DOCKET NO. 2013-GS-26-03988

**The State of South Carolina
County of Horry**

Bradley C Richardson
13H01753

COURT OF GENERAL SESSIONS

October, 2013 TERM

ARREST WARRANT NUMBER

2013A2610200480
CDR: 0184 44-53-0370(b)(1)
DOA: 4/11/2013

THE STATE

vs.

Gerard Antonio Watts B/ M



ATTORNEY: Long, III, J. M. "Buddy"

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

**POSSESSION WITH INTENT TO
DISTRIBUTE HEROIN**

ORIGINAL

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

WITNESSES

Matthew B Sarvis South Carolina Dept of Public Safety

C DOCKET NO. 2013-GS-26-03990

The State of South Carolina

County of Horry

Bradley C. Richardson
13H01753

COURT OF GENERAL SESSIONS

October, 2013 TERM

ARREST WARRANT NUMBER

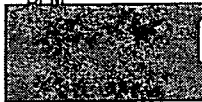
2013A2610200483
CDR: 2605 16-03-1040(B)
DOA: 4/11/2013

THE STATE

vs.

ACTION OF GRAND JURY

Gerard Antonio Watts
B/M



Foreperson of Grand Jury
Date:

ATTORNEY: Long, III, J. M. "Buddy"

VERDICT

Indictment for
THREATENING THE LIFE OF PUBLIC
EMPLOYEE

ORIGINAL

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

