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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Appeal from Greenville County

Daniel D. Hall, Circuit Court Judge

KENNETH DARRELL RIVERA,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000737

APPENDIX

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Appellate Defender

ALAN WILSON
Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 State of South Carolina
2 County of Greenville In the Court of General Sessions

4	State of South Carolina,	)	
5		)	2014-GS-23-05139
		)	2014-GS-23-10896
6	-vs-	)	2014-GS-23-10897
		)	
7	Kenneth D. Rivera,	)	March 5, 2015
		)	
8	Defendant.	)	
		)	
9		)	Transcript of Record

B E F O R E:

The Honorable R. Scott Sprouse, Judge

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

Mark L. Moyer, Esquire
(substitute counsel appeared)
Attorney for the State

Dorothy A. Manigault, Esquire
Attorney for Defendant

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 3:37 p.m.)

4 THE CLERK: Your Honor, this is case
5 2014-GS-23-5139, Kenneth Darrel Rivera, indictment for
6 possession of a firearm by a person convicted of a
7 crime of violence, pleading to the same. It is a true
8 bill; 2014-GS-23-10896 for armed robbery and possession
9 of a weapon during the commission of a violent crime,
10 pleading to armed robbery. It is a waiver;
11 2014-GS-23-10897 for possession of a firearm by a
12 person convicted of a violent crime, pleading to the
13 same. It is a waiver.

14 (WHEREUPON, the defendant was sworn.)

15 THE COURT: You are Kenneth Darrel Rivera; is that
16 correct, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You are charged with possession of a
19 firearm by a person convicted of a violent crime. It
20 carries a maximum sentence up to five years. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have another count of possession
24 of firearm by a person convicted of a violent crime.
25 Again, that carries up to five years incarceration. Do

1 you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You also have a charge of armed
4 robbery which carries minimum sentence of ten years
5 incarceration and a maximum sentence of up to 30 years
6 incarceration. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that if you are
9 convicted, those sentences could be imposed
10 consecutively, meaning you have to serve one before you
11 serve the next one and then serve that one before you
12 serve the third one. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is there a recommendation by the
15 State?

16 THE SOLICITOR: Yes, sir, your Honor.

17 THE COURT: What is that?

18 THE SOLICITOR: 15 years.

19 THE COURT: Straight 15 years, no probation?

20 THE SOLICITOR: Yes, sir. It's for just 15.

21 THE COURT: Mr. Rivera, did you hear the
22 recommendation by the State?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Other than that recommendation, has
25 anyone promised you anything or coerced you into

1 pleading guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you understand I am not bound by
4 that recommendation of the State?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Knowing that, how do you wish to plead
7 to these three charges?

8 THE DEFENDANT: Plead guilty.

9 THE COURT: Now, are you under the influence of
10 any alcohol, drugs or anything that might affect your
11 judgment?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you pleading guilty of your own
14 free will?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: When you plead guilty, you give up
17 certain rights that you would have had. You could have
18 had a trial by jury on these charges in which you would
19 be able to participate in the selection of that
20 12-person jury of your peers who would hear the
21 evidence in this case. And in order for you to be
22 convicted, they would have to unanimously find you
23 guilty. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You also would have had the right to

1 call witnesses on your behalf. You could have
2 confronted the witnesses against you, remain silent and
3 it couldn't be held against you. You could have also
4 presented any defenses that you might have to the
5 charge. Do you understand those rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You are presumed innocent, and the
8 State has the burden of proving guilt beyond a
9 reasonable doubt. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, you have been indicted on one of
12 the cases, but two of these cases, one of the firearm
13 charges and the armed robbery, have not yet been
14 presented to the Grand Jury. You would have had a
15 right to require the State to present these charges to
16 the Grand Jury who, in turn, would have --- for it to
17 come to this court, would have had to have issued
18 what's called a true bill. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you waive presentment to the Grand
21 Jury on these charges so that we might proceed today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have been represented by
24 Ms. Manigault in this action. Have you had enough time
25 to talk to her?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has she answered your questions?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions of her now?

5 THE DEFENDANT: No.

6 THE COURT: Are you completely satisfied with her
7 services?

8 THE DEFENDANT: Yes.

9 THE COURT: All right.

10 Madam Solicitor, tell me the facts.

11 THE SOLICITOR: Yes, sir, your Honor. On
12 March 16th of 2014 officers were dispatched to a hotel
13 on Mills Avenue in Greenville County in response to a
14 complaint of people arguing.

15 Officers found this defendant matching the
16 description of the person complained of. The defendant
17 kept trying to put his hands in his pockets against the
18 instructions of the officers. He was patted down and
19 officers found a pistol in his pocket. His prior
20 record prevents him from being in possession of a
21 firearm lawfully.

22 Then on September 29th of 2014 the armed robbery
23 occurred at Little Cricket store on Old Augusta Road in
24 Greenville County. The defendant walked into the store
25 and asked the clerk for cigars. When the victim turned

1 around to get them, the defendant pulled out a pistol
2 and demanded money. The victim gave the defendant
3 money from the register and the defendant left.

4 Witnesses got the license tag of the vehicle and
5 that led officers eventually to the defendant's home
6 where the defendant was found with a gun and he was
7 still dressed as he had been during the robbery, and he
8 gave a statement admitting to his involvement in the
9 armed robbery.

10 THE COURT: How many days has he served?

11 THE SOLICITOR: 158.

12 THE COURT: Is the victim here?

13 THE SOLICITOR: The victim is not present, your
14 Honor. The Little Cricket store and the clerk were
15 notified and have been contacted by our office, and
16 they are not present.

17 THE COURT: Okay. Thank you.

18 THE SOLICITOR: Yes, sir.

19 THE COURT: Mr. Rivera, did you hear the facts
20 that the solicitor put on the record?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you agree with those facts?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Ms. Manigault, have you had an
25 opportunity to go over the facts and the applicable law

1 with your client?

2 MS. MANIGAULT: Yes, sir.

3 THE COURT: And do you concur in his decision to
4 plead guilty to these three charges?

5 MS. MANIGAULT: I do.

6 THE COURT: All right. I find there is a factual
7 basis for the plea. Defendant pleads guilty freely and
8 voluntarily, knowingly with the advice of competent
9 counsel with whom he is satisfied. I find defendant
10 waives presentment to the Grand Jury on one of the
11 firearm charges and the armed robbery charge.

12 All right. Ms. Manigault, be happy to hear from
13 you.

14 MS. MANIGAULT: May it please the Court, your
15 Honor. We'd ask the Court to consider accepting the
16 recommendation made by the State. As the Court has
17 heard, my client immediately gave a statement to the
18 police officer outlining his involvement in the armed
19 robbery. So he's never denied his guilt.

20 We were in plea negotiations, and we were trying
21 to get a minimum of ten years which did not work out.
22 He decided that he would go ahead and accept the
23 15-year offer, and we would hope that the Court would
24 accept it.

25 My client is 28 years old. He has lived in

1 Greenville for approximately 11 years. He was born in
2 Virginia. He worked as a chief cook at Barley's Tap
3 Room Pizzeria, which is downtown, for about 18 months.
4 He has one child age ten that lives with the mother.
5 He is single. He went to Greenville High School and
6 also got a degree from CC Pearce Community College in
7 culinary arts, so he has had a good opportunity in his
8 life to try to make something of himself. I don't know
9 how he got off the road on this one. But we're asking
10 the Court for mercy and asking that you would accept
11 the recommendation in this case.

12 THE COURT: Okay. Thank you, Ms. Manigault.
13 What's the prior record?

14 THE SOLICITOR: '05 burglary second. And then
15 from '06, a strong-arm robbery and possession of crack.

16 THE COURT: Mr. Rivera, I'd be happy to hear from
17 you, sir.

18 THE DEFENDANT: Just ask for leniency. I know I'm
19 guilty of it, of the charge. I'm a good person, just
20 stumbled off, stumbled off course, lost focus in what I
21 had going on.

22 THE COURT: Your lawyer is telling me you've got a
23 culinary arts degree. I mean, that's a skill that
24 people pay good money for. So, I mean, that's what
25 baffles me about this because I see people come in here

1 all the time that hadn't finished high school, don't
2 have any skills. But you've got a skill that you can
3 make a good living. It's a shame, now. You're
4 28 years old, so you will still have an opportunity to
5 have a career when you get out. You're losing a big
6 chunk of your working life because of this kind of
7 stuff, but, you know -- it's a shame.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I don't know any other way to describe
10 it.

11 THE DEFENDANT: Lesson learned. Just got to stay
12 focused.

13 THE COURT: I'll approve the recommendation of the
14 State on 2014-GS-23-10896. The defendant is committed
15 to the Department of Corrections for a period of
16 15 years. He would receive credit for 158 days time
17 served.

18 2014-GS-23-10897, defendant is committed to the
19 Department of Corrections for a period of five years
20 concurrent, 158 days time served.

21 On 2014-GS-23-05139, defendant is committed to
22 Department of Corrections five years concurrent,
23 158 days time served. Good luck to you sir. Get this
24 behind you and start over.

25 (WHEREUPON, the hearing ended at 3:46 p.m.)

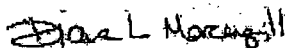
1 Certificate of Reporter.
2

3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Greenville County, South
10 Carolina, on the 5th day of March 2015.

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

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

15 July 31, 2015

16 

17 _____
18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

County of GreenvilleKenneth D. Rivera #318979

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-23- 03232

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 MAY 20 PM 4 47INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution and Reception and Evaluation Center (KCI-R&E)
2. Name and location of Court which imposed sentence Greenville County Courthouse 305 East North Street Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014A2330208978 Armed Robbery, 2014A2330208982
 - (b) 2014A2330208980 Possession of Firearm by convicted Felon

- (c) 2014A2330208977 Poss. Weapon During Violent crime
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 5, 2015 for a term of 15 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I Pled guilty and lost rights to an appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) My Court appointed attorney was ineffective
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) My attorney wasn't present at my preliminary hearing;
- (b) she refuse to get all evidence on my case; and I was
- (c) told if I plea two(2) charges will be dismiss.
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? Yes
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. Excessive Force Civil action Pending in the U.S. District court
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. United States District court P.O. Box 2317 Florence, SC 29503
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Pending
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. April 1, 2015
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

no

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) I am now aware that my attorney was ineffective
 (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? no
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

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

(a) the name and address of each attorney who represented you:

i. Dorothy Manigault
205 E. North Street, Suite 123 Greenville, SC 29601

ii. _____

 iii. _____

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

i. 2014A2330208978 Arm Robbery; 2014A2330208980
POSSESSION OF A Firearm by a person convicted of a
 ii. Crime; 2014A2330208979 Poss. Weapon During Violent
Crime; 2014A2330208982 Poss. OF A Stolen Pistol
 iii. _____

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

I am seeking time reduction

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

no

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Kenneth D. Rivera #318979, 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.

Kenneth D. Rivera
Kenneth D. Rivera

SWORN to and subscribed before me this 6th
day of May 2015.

[Signature] (L.S.)
Notary Public

My Commission Expires: April 12, 2023

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

I, Kenneth D. Rivera #318979, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Kenneth D. Rivera
Kenneth D. Rivera
Applicant

SWORN or affirmed to and subscribed before me this
6th day of July, 2015.
[Signature]
Notary Public

My Commission Expires: April 12, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	C.A. No. 2015-CP-23-3232
Kenneth Darrel Rivera,	)	
S.C.D.C. No. 318979,	)	
Applicant,	)	
v.	)	RETURN
State of South Carolina,	)	
Respondent.	)	

In response to the post-conviction relief application filed May 20, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the July 2014 term of General Sessions for possession of a firearm by a person convicted of a crime of violence (2014-GS-23-5139). The Applicant waived presentment on the charges of armed robbery (2014-GS-23-10896, count 1), possession of a weapon during the commission of a violent crime (2014-GS-23-10896, count 2), and possession of a firearm by a person convicted of a crime of violence (2014-GS-23-10897). Dorothy A. Manigault, Esquire represented the Applicant.

On March 5, 2015, the Applicant pled guilty.¹ The Honorable R. Scott Sprouse

¹ The State nol prossed the following charges: unlawful carrying of a pistol (2014-GS-23-4934), possession of a weapon during the commission of a violent crime (2014-GS-23-8979, count 2), and sale or delivery of pistol to, and possession by, certain persons (2014-GS-23-10895).

sentenced the Applicant to concurrent terms of 5 years for each count of possession of a firearm by a person convicted of a crime of violence and 15 years for armed robbery. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Attorney was not present at preliminary hearing.
 - b. "She refuse to get all evidence on my case, and I was told if I plea two (2) charges will be dismiss."

III.

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

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

The proper measure of performance is whether the attorney provided representation

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

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

September 15, 2015

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

KENNETH DARREL RIVERA, 318979

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-23-3232

AFFIDAVIT OF SERVICE BY MAIL

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

Kenneth Darrel Rivera, 318979
 Lieber Correctional Institution
 Post Office Box 205
 Ridgeville SC 29472

DATED this 15th day of September, 2015.


 Judy A. Carey, Legal Assistant
 For Respondent

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(Respondent's Witness)	
<u>DOROTHY A. MANIGAULT:</u>	
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
A-1	Plea Offer	5	6

P R O C E E D I N G S

MS. RATIGAN: May it please the Court, this is the case of Kenneth Darrell Rivera vs. The State of South Carolina. The docket number is 2015-CP-23-3232.

Mr. Rivera was indicted for possession of a firearm by a person convicted of a crime of violence. He also waived presentment on the charges of armed robbery, possession of a weapon during the commission of a violent crime, and a second count of possession of a firearm by a person convicted of a crime of violence. He was represented on these charges by Ms. Manigault.

On March 5, 2015, Mr. Rivera pled guilty before Judge Sprouse. Judge Sprouse sentenced him to concurrent terms of 5 years for each count of possession of a firearm by a person convicted of a crime of violence and 15 years for armed robbery. The State nol prossed the possession of a weapon during the commission of a violent crime charge and also nol prossed an unlawful carrying of a pistol and a sale or delivery of a pistol to and possession by certain persons charges.

Mr. Rivera did not file an appeal, and the State is ready to proceed.

THE COURT: All right.

MS. HORLBECK: Your Honor, we're ready, and we would call Mr. Rivera to the stand.

1. THE COURT: All right. Thank you.

2 And, Mr. Rivera, if you'd please come forward.

3 WHEREUPON,

4 KENNETH RIVERA,

5 After having been duly sworn, testified as follows:

6 THE CLERK: Please state your full name.

7 THE WITNESS: Kenneth Rivera.

8 THE CLERK: Thank you. You may be seated.

9 DIRECT EXAMINATION

10 BY MS. HORLBECK:

11 Q Mr. Rivera, who represented you in this case?

12 A Ms. Dorothy Manigault.

13 Q Okay. How long did Ms. Manigault represent you in
14 this case?

15 A Five months.

16 Q All right. One of the allegations you raised in your
17 petition is you believed that one of your possession of
18 pistol charges would be dropped if you pled to the other
19 two charges?

20 A Yes, ma'am.

21 Q All right. Tell the Court a little bit about that
22 allegation.

23 A I had received -- I had received a document from
24 Solicitor Moyer, Mark Moyer, stating that if I plead to
25 armed robbery and possession of a firearm, that possession

1 of a weapon of a violent crime and possession of a stolen
2 pistol would be dropped.

3 Q All right. And is that letter addressed to you or is
4 it addressed to your attorney?

5 A It's addressed to my attorney.

6 Q All right. And was that letter forwarded to you by
7 your attorney?

8 A Yes, ma'am.

9 Q All right. And did you contact your attorney after
10 you received that letter?

11 A Yes, ma'am.

12 Q And when you contacted your attorney, what, if
13 anything, did you say about that offer?

14 A I stated that if they drop the two charges, I would
15 plea to it.

16 Q All right. And you were willing. So were you willing
17 to plead to the armed robbery charge and one of the
18 possession of a weapon charges?

19 A Yes, ma'am.

20 Q Okay. All right. And let me take a look at this
21 document you're talking about. Thank you. Show it to the
22 AG's office.

23 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
24 identification.)

25 MS. HORLBECK: And we'd like to move Applicant's 1

1 into evidence. It's a copy of a plea offer.

2 THE COURT: Any objection?

3 MS. RATIGAN: No, Your Honor.

4 THE COURT: All right. So moved into evidence.

5 (WHEREUPON, Applicant's Exhibit No. 1 was admitted into
6 evidence.)

7 MS. HORLBECK: Thank you, Judge.

8 BY MS. HORLBECK:

9 Q All right. Mr. Rivera, so when it came time for you
10 to plead guilty, there were actually two pistol charges
11 that you pled to, correct? Or two possession of a weapon
12 charges that you pled to, right?

13 A Yes, ma'am.

14 Q In addition to an armed robbery; is that right?

15 A Yes, ma'am.

16 Q All right. Now tell me why that is. What happened?

17 A I was out on bond for possession of a weapon, and when
18 I committed a crime, I was -- I was caught with another
19 weapon. So it was two different cases.

20 Q All right. So are you saying that you got additional
21 charges?

22 A Yes, ma'am.

23 Q All right. And the additional charges that you got
24 while you were out on bond, were those additional new
25 charges, were they addressed in that plea offer?

1 A Yes, ma'am.

2 Q They were? Okay.

3 I'm going to hand you Applicant's 1 again. Take a
4 look at it.

5 A (Reviews document) The armed robbery is new, and
6 possession of a firearm is new.

7 Q Okay. So tell me what charges Applicant's 1 offers
8 that you plea to.

9 A The armed robbery and possession of a firearm.

10 Q All right. And tell me what charges and their
11 indictment numbers that that offer says will be dismissed.

12 A Possession of a weapon during a violent crime,
13 possession of a stolen pistol.

14 Q Okay. Tell me the indictment number for the
15 possession of a weapon during a violent crime.

16 A 2014A2330208979.

17 Q All right. And the number for the possession of a
18 stolen pistol charge?

19 A 2014A2330208982.

20 Q All right. Are there other charges that you received
21 that are not addressed in that plea offer?

22 A Yes, ma'am.

23 Q There are? Okay. So what charges would those be?
24 Would those be your new charges?

25 A I guess. I had six additional charges, now I only see

1 four on this paper.

2 Q Okay. All right. So the third charge that you pled
3 to, could that possibly be one of the new charges that you
4 received that's not addressed in that plea offer?

5 A Yes, ma'am.

6 Q Did you ever receive a plea offer that addressed all
7 of your charges?

8 A No, ma'am.

9 Q No? Okay.

10 All right. Now, on the day of your plea, did you talk
11 to Ms. Manigault about the State's plea offer?

12 A No. Not that I recall.

13 Q All right. So when you pled guilty, what was your
14 understanding of the State's offer? What did you think
15 they were offering on the day you pled?

16 A 15 years if I plead to the -- to the armed robbery and
17 the possession of a firearm.

18 Q All right. What was your understanding of what would
19 happen to the remainder of your charges if you pled to two
20 charges?

21 A They would be dropped.

22 Q Okay. Why did you have that understanding?

23 A Because from the -- from the statement I received from
24 the solicitor, from the plea deal.

25 Q Okay. Did you have that understanding because of a

1 conversation you'd had with your attorney?

2 A No.

3 Q Okay. All right. Now, when you pled guilty, do you
4 recall the Court reviewing -- or do you recall signing
5 three sentencing sheets?

6 A I don't -- I don't remember signing three.

7 Q Okay. How many do you recall signing, if any?

8 A One.

9 Q Okay. When you pled guilty and stood in front of a
10 judge, do you remember the judge reviewing with you the
11 charges that you were going to plead to?

12 A Yes, ma'am.

13 Q Do you remember how many charges the Court reviewed
14 with you during your plea?

15 A Officially, I heard him say three, three charges.

16 Q Okay. All right. At that point, explain to the Court
17 why you didn't say something to the judge.

18 A Because I was under -- I was under the impression that
19 if I plea, that these charges would be dropped. So I was
20 facing a lot of time, so 15 years was a "skate rock," so I
21 pled.

22 Q So at the time of your plea, you understood that you
23 were pleading to two possession of a weapon during a
24 violent crime charges, right?

25 A Yes, ma'am.

1 Q And the armed robbery?

2 A Yes, ma'am.

3 Q Okay. When you heard the judge read out those three
4 charges, the armed robbery and the two possession of a
5 weapon during a violent crime charges, did you stop the
6 Court and say anything, and say, "Hey, I'm only supposed to
7 plead to one of those"?

8 A No, ma'am.

9 Q All right. And why is that again?

10 A Again, the 15 years and from the time I was facing.

11 Q Okay. All right. You also raised an allegation about
12 your preliminary hearing. Tell the Court a little bit
13 about that.

14 A Ms. Manigault, she was never there. It was somebody I
15 have never even met before, heard of. He was unprepared.
16 The investigator over the crime, over the charge, he wasn't
17 prepared. It was just crazy.

18 Q All right. Let me back you up a little bit. Do you
19 remember -- you may or may not remember this. Do you know
20 the date or the month and the year that your preliminary
21 hearing was held?

22 A It was in December of 2014.

23 Q Okay. And was it held at this courthouse or somewhere
24 else?

25 A It was held here.

1 Q Okay. Were you still in jail at the time of your
2 preliminary hearing?

3 A Yes, ma'am.

4 Q Were you transported to this courthouse to attend your
5 preliminary hearing?

6 A Yes, ma'am.

7 Q All right. And tell me, do you know the name of the
8 -- to your knowledge, do you know who represented you
9 during that time?

10 A No, ma'am. I haven't the slightest idea.

11 Q All right. Was Ms. Manigault appointed to represent
12 you or was she retained to represent you?

13 A Appointed.

14 Q All right. Do you know if the person standing next to
15 you at your preliminary hearing, was that an attorney,
16 another attorney from the Public Defender's Office?

17 A I don't even know. He didn't even go into basics.

18 Q Okay. Did that person who showed up, did that person
19 ask any questions of the witness?

20 A Not really.

21 Q All right. You said they were unprepared. What do
22 you mean by that?

23 A Like my file, any evidence supporting my allegations.
24 He had just a piece of paper.

25 Q Okay. How do you think the outcome of the case would

1 have been any different if -- and of the preliminary
2 hearing would have been any different if Ms. Manigault had
3 showed up?

4 A She could have questioned ---

5 Q I'm sorry. Had been present. That didn't sound very
6 nice. That's not the way I meant it.

7 A She could have questioned him about why he was -- why
8 he was unprepared, the detective.

9 Q All right. Why do you say the detective was
10 unprepared?

11 A Because he didn't even have -- he was going off --
12 read from the statement.

13 Q Right.

14 A He didn't have the phone records, he didn't have the
15 video. He didn't have nothing.

16 Q Okay. And you think if Ms. Manigault had been
17 present, what would have been different in the outcome of
18 the case?

19 A It probably would have been a little more different
20 because she would have had ---

21 Q In what way, though? Be specific.

22 A Like she would have had my file, she would have had my
23 whole case in front of him. From what he's stating in his
24 report, from all the witnesses stating in their support,
25 and most definitely he -- if he -- he was unprepared, so

1 I'm pretty sure, being that she's an attorney, she would
2 have challenged that he was unprepared.

3 Q All right. Do you know the outcome of the preliminary
4 hearing? Was your case bound over, do you know?

5 A No, ma'am. I don't know.

6 Q No, ma'am, you don't know?

7 A I don't know.

8 Q Okay. All right. Did Ms. Manigault review discovery
9 with you in your case?

10 A No.

11 Q Not at all?

12 A No.

13 Q Did she provide a copy of discovery to you?

14 A From what I've been received from the solicitor under
15 Rule 5, that's it, which was inadequate.

16 Q Right. Who sent you a copy of your discovery?

17 A Mark Moyer.

18 Q Okay. All right. And you said that one of the
19 allegations you raised in your petition was that your
20 attorney did not receive all the evidence in the case.
21 Tell me about that.

22 A Like in my Rule 5, it states phone records, video, my
23 confession, statements from the witnesses. I don't have
24 none of that.

25 Q All right. And how do you know all those things, all

1 those pieces of evidence exist in your case?

2 A Because the solicitor, Mark Moyer, he sent it to me
3 that way, what's inside my Rule 5. The cover letter was
4 everything inside my Rule 5.

5 Q All right. Did you ever write to the Public
6 Defender's Office or to Ms. Manigault about getting a copy
7 of your discovery?

8 A Yes, ma'am.

9 Q All right. And you're saying that they didn't provide
10 it to you, but the State did?

11 A Yes, ma'am.

12 Q Okay.

13 A I have copies of the letters I've been writing
14 Ms. Manigault, I've been writing Mr. Mark Moyer. I have
15 all that whenever you'd like to see it.

16 Q When did you receive a copy of your discovery? What
17 was the date of the cover letter?

18 A Let me see. I think it was October -- it was
19 initialed October 22, 2014.

20 Q Okay. Is that the day you received it or is that the
21 date on the cover letter?

22 A The date on the cover letter.

23 Q All right. Do you know what date you received
24 discovery?

25 A It was in October. I don't ---

1 Q Was it before you pled guilty?

2 A Yes, ma'am.

3 Q Okay. All right. And did Ms. Manigault review any
4 phone records or video or your statement with you?

5 A No, ma'am.

6 Q Did an investigator from the Public Defender's Office
7 review any of that with you?

8 A No, ma'am.

9 Q Did you discuss any of the evidence in your case with
10 Ms. Manigault?

11 A Yes, ma'am.

12 Q What did you and she discuss?

13 A I wrote -- I wrote it in a letter because I only seen
14 her like twice.

15 Q Right. What did you and she discuss?

16 A Really just this hearing, the case. I seen her one
17 time. And she was appointed -- stating that she was
18 appointed to me. And the next time I seen her was the day
19 I actually was going to court.

20 Q Okay. If you were not able to review any of the
21 evidence in your case, tell me, why did you decide to plead
22 guilty?

23 A It was a -- it was a -- it was a good offer, from what
24 he was saying. With my record, I probably would have got
25 over 20 years.

1 Q All right. And you said there was a confession in the
2 case?

3 A Yes, ma'am.

4 Q And was that a statement that you wrote?

5 A A statement that I verbally recorded on video.

6 Q Okay. And was that a statement that was recorded by
7 the police?

8 A Yes, ma'am.

9 Q Did you remember making that videotaped statement?

10 A I remember actual the date that that happened. I
11 don't remember everything that was said in the statement,
12 but I do remember sitting in front of the camera giving my
13 statement.

14 Q Did you admit to the charges?

15 A Yeah. I admitted to the -- to the armed robbery.

16 Q All right. Okay. Are there any other allegations you
17 want to make today against Ms. Manigault?

18 A No, ma'am.

19 MS. HORLBECK: That's all I have. Answer any
20 questions that Ms. Ratigan may have for you.

21 CROSS EXAMINATION

22 BY MS. RATIGAN:

23 Q And, Mr. Rivera, your testimony was that, according to
24 Applicant's Exhibit 1, if you pled guilty to armed robbery
25 and one of the firearms charges, that they would drop these

1 other two charges?

2 A Yes, ma'am.

3 Q Is your testimony today that those charges were not
4 dropped?

5 A Yes, ma'am.

6 Q Okay. So your testimony is -- your belief is that
7 those charges were never dismissed by the State?

8 A Yes, ma'am. Because I have -- I have a document where
9 they're still saying that I got detained on these charges,
10 these same two charges.

11 Q And your testimony today is that you believe that
12 better preparation by Ms. Manigault would have resulted in
13 a better outcome at the preliminary hearing?

14 A Yes, ma'am.

15 Q But you admit you gave a statement where you confessed
16 to the armed robbery, correct?

17 A Yes, ma'am.

18 Q You think still, even with that statement, that if
19 Ms. Manigault had shown up to the prelim, you would have
20 had the charges dismissed?

21 A Yes, ma'am.

22 MS. RATIGAN: Okay. That's all I have, Your Honor.

23 MS. HORLBECK: I don't have anything further, Judge.

24 THE COURT: Thank you, Mr. Rivera. You can step down.

25 MS. HORLBECK: And that's the applicant's case.

1 THE COURT: All right. Ms. Ratigan?

2 MS. RATIGAN: Thank you, Your Honor. We call
3 Ms. Manigault.

4 WHEREUPON,

5 DOROTHY MANIGAULT,

6 After having been duly sworn, testified as follows:

7 THE CLERK: Please state your full name for the
8 record.

9 THE WITNESS: Dorothy A. Manigault.

10 DIRECT EXAMINATION

11 BY MS. RATIGAN:

12 Q Ms. Manigault, do you recall representing Mr. Rivera
13 on these charges?

14 A Yes.

15 Q And were you appointed or were you retained?

16 A Appointed through the Public Defender's Office.

17 Q And did you file the usual Brady and Rule 5 motions?

18 A Yes.

19 Q Did you receive discovery from the State?

20 A Yes, I did.

21 Q To the best of your knowledge, did you receive full
22 discovery from the State?

23 A Yes.

24 Q Was Mr. Rivera on bond or was he at the detention
25 center when you represented him?

1 A He was at the detention center.

2 Q Did you go meet with him at the detention center about
3 his charges?

4 A Yes, I did.

5 Q Did your review with him -- well, let me back that up.
6 How many charges were you appointed to represent him on, do
7 you recall?

8 A Six.

9 Q And did you review with him the elements of these
10 charges?

11 A Yes.

12 Q And the sentencing ranges?

13 A Yes.

14 Q And did you review with him his version of events?

15 A Yes.

16 Q Did these charges all stem from one incident or were
17 there multiple incidents?

18 A The armed robbery charge -- he was originally arrested
19 on weapons charges and the criminal domestic violence,
20 three original charges. He made bond on those charges, and
21 while he was on bond, was rearrested for armed robbery and
22 two additional weapons charges. So in all, he had four
23 weapons charges.

24 Q I believe you have in front of you -- no. I actually
25 took it. I'm handing Ms. Manigault Exhibit 1.

1 A Yes.

2 Q Do you recall receiving that from Mr. Moyer?

3 A Yes, I -- I did.

4 Q Did you receive any other plea offers from the State
5 or was that the only one?

6 A I received this from Mr. Moyer. There's a second page
7 that tells when it expired. That's not here. I received
8 an additional plea offer from Mr. Moyer with the same date
9 on it on two weapons charges saying that the plea offer,
10 the deadline had passed for that.

11 Q So Applicant's 1, that was the first offer you
12 received?

13 A Correct.

14 Q How did you and the State end up settling on the
15 charges that would be pled to and the sentence that would
16 be recommended?

17 A The sentence was -- when I went to see my client, he
18 admitted that he had made a confession in the car and on
19 video, and he wanted me to ask Mr. Moyer if he would
20 consider giving him 10 years as a recommendation. So I
21 went back to Mr. Moyer a few times to try to get the
22 10 years that my client asked for, which he denied. He
23 said the best that he could do -- would do would be 15 if
24 he pled by the due date. And so he just picked the armed
25 robbery and the two weapons charges out of the four.

1 Q So the State is the one that just kind of picked the
2 charges he would proceed on?

3 A Yes. Because at the armed robbery, he was apprehended
4 30 minutes later with a weapon. And with the original
5 three charges, the two weapon and the criminal domestic
6 violence, the officer went to the incident location, and he
7 had a gun at that location also that they retrieved from
8 him. So Mr. Moyer just picked two weapons charges.

9 Q In Exhibit 1, it lists two different charges that were
10 to be dismissed.

11 A Yes.

12 Q To the best of your knowledge, were these charges
13 dismissed by the State?

14 A Yes. To the best of my knowledge, according to the
15 documentation.

16 Q Were you appointed by the time there was a prelim held
17 in this case, or were you appointed after that, do you
18 know?

19 A Repeat the question.

20 Q Were you appointed at the time that they had a
21 preliminary hearing in this case, or were you appointed
22 sometime afterwards?

23 A No. I was appointed at the time.

24 Q Did you appear at that preliminary hearing or did
25 someone else appear on your behalf?

1 A Another attorney from the Public Defender's appeared
2 on my behalf. The system in the Public Defender's Office
3 is one attorney would handle all prelims.

4 Q Would that attorney have had access to your file?

5 A Yes.

6 Q When you had your meetings with Mr. Rivera, you did
7 discuss and review the discovery with him?

8 A Yes.

9 Q If he had any questions or concerns about any of the
10 evidence, did he relay those to you?

11 A No. He was mainly interested in getting a 10-year
12 sentence. That was his main interest. He denied none of
13 the allegations in any of the six charges, so he had always
14 freely admitted the allegations for the armed robbery, for
15 both sets of weapon charges, the criminal domestic
16 violence. So he admitted all of that. He had no concern
17 about any of the cases themselves. He just wanted
18 10 years.

19 Q Now, Mr. Moyer picked the two weapons charges and the
20 armed robbery that Mr. Rivera would plead guilty to. Did
21 you discuss with Mr. Rivera that these were the charges
22 that he would be pleading guilty to?

23 A Yes. When we were signing the sentencing sheets, we
24 were discussing it. I'd go over the sentencing sheet, tell
25 him what the charges are, what the penalty is. If he has

1 questions, he'll ask, if not, then he'll sign.

2 Q Did Mr. Rivera ever tell you he only wanted to plead
3 guilty on two charges?

4 A I can't say for sure. I can say he wanted to plead
5 guilty to the least amount of charges as possible. I can
6 put it that way.

7 Q During the plea itself, do you recall Mr. Rivera ever
8 expressing any surprise that there were three charges or
9 asking to halt or withdraw the plea?

10 A No. Because we probably generally sign the sentencing
11 sheets the morning of the plea. So we're downstairs in
12 lockup on the first floor going over -- making sure that
13 the client wants to continue with the plea offer or enters
14 a plea or change their mind or whatever, and we go over
15 everything again downstairs in lockup. He did not say
16 anything about signing those three sentencing sheets.

17 MS. RATIGAN: That's all I have, Your Honor.

18 THE COURT: Thank you.

19 Anything further?

20 MS. HORLBECK: Just very briefly, Judge.

21 THE COURT: Let me see that exhibit.

22 CROSS EXAMINATION

23 BY MS. HORLBECK:

24 Q Ms. Manigault, did Mr. Rivera ever ask you for a copy
25 of discovery, do you know?

1 A Yes.

2 Q And what was your response?

3 A We provided it on October the -- October the 30th.

4 Q Of?

5 A Of 2014.

6 Q All right. Mr. Rivera talked about phone records. Do
7 you remember if phone records were -- is that an important
8 part of this case, do you know?

9 A No, no. But we do have them. We did get them.

10 Q From -- did you get them or did you -- I mean, did you
11 get them from the State or did you subpoena them?

12 A No. I got them from the State.

13 Q Oh, okay. All right. And a copy of those phone
14 records were provided to Mr. Rivera?

15 A Everything -- the CDs or the discs were taken to the
16 jail and played for him.

17 Q Okay.

18 A Everything that we got paperwise was given to him from
19 the Public Defender's Office.

20 Q All right. And did you ever receive one letter from
21 the State about a plea offer regarding all charges?

22 A No.

23 Q All right. So the final plea offer was a verbal one
24 from the State?

25 A The final plea offer, yes. We worked out the charges

1 that he's saying that should have been dismissed. The
2 State did submit nol prossed documents to the clerk's
3 office, and they were dismissed.

4 Q Okay.

5 A But he forgets that he had two -- another set of
6 weapons charges that he did not promise to dismiss.

7 Q Okay. Were those dismissed?

8 A The two that he's talking about, yes, were dismissed.
9 The other two was what he pled to.

10 Q Okay. All right. And did you review all that with
11 Mr. Rivera before y'all stood up in front of the judge to
12 plead?

13 A Yes.

14 MS. HORLBECK: Okay. All right. That's all I have.
15 Thank you.

16 THE COURT: Thank you, Ms. Manigault. You can step
17 down.

18 Anything further, Ms. Ratigan?

19 MS. RATIGAN: I have no witnesses to present, Your
20 Honor.

21 I would just note that in the judge's packet and the
22 documents filed with the clerk of court, the two
23 indictments noted by Mr. Rivera, you have nol prossed
24 sheets where they have been nol prossed from the State.

25 THE COURT: Anything further?

1 MS. HORLBECK: No, Your Honor.

2 THE COURT: All right. Thank you.

3 I find the defendant has not met his burden in his
4 application, and I deny his application for postconviction
5 relief. Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****
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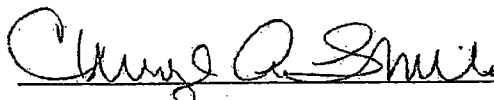
1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)4 COUNTY OF GREENVILLE)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of Common Pleas for
13 Greenville County, South Carolina, on the 16th day of
14 February, 2016.

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

17
18 April 13, 2016
19
20

21 
22

23 Cheryl A. Smith, CVR-M

24 Court Reporter
25

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185



Solicitor
W. Walter Wilkins

1/26/2015

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Telefax: 864-467-8610

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Initials:

FEB 03 2015

13th Circuit Public Defender

51

RE: Plea Offer for State v. Kenneth Darrel Rivera

Dear Dorothy Manigault:

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

Call my office
with your response
to this offer
D Manigault

The Defendant will plead guilty to the following:

Warrant Number: Charge:

2014A2330208978 Armed robbery

2014A2330208980 Possession of a Firearm by a Person Convicted of a Violent Crime

The State will dismiss the following:

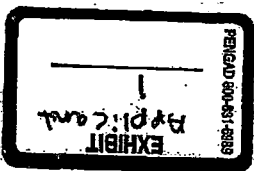
Warrant Number: Charge:

2014A2330208979 Poss. Weapon During Violent Crime

2014A2330208982 Possession Of A Stolen Pistol

The State will make the following sentence recommendations/negotiation:

If defendant pleads guilty by the due date I will recommend a sentence of 15 years.



STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Kenneth Darrel Rivera,
S.C.D.C. No. 318979,

Applicant,

v.

State of South Carolina,

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2015-CP-23-3232**ORDER OF DISMISSAL**FILED-C. CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 MAR 15 PM 4 44

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 20, 2015. The Respondent made its return on September 15, 2015. An evidentiary hearing was held on February 16, 2016 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Dorothy A. Manigault, Esquire. The Court had before it the guilty plea transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the July 2014 term of the Greenville County Grand Jury for possession of a firearm by a person convicted of a crime of violence (2014-GS-23-5139). The Applicant also waived presentment on the charges of armed robbery (2014-GS-23-10896, count 1), possession of a

weapon during the commission of a violent crime (2014-GS-23-10896, count 2), and possession of a firearm by a person convicted of a crime of violence (2014-GS-23-10897). He was represented by Dorothy A. Manigault, Esquire.

On March 5, 2015, the Applicant pled guilty to two counts of possession of a firearm by a person convicted of a crime of violence and armed robbery.¹ The Honorable R. Scott Sprouse sentenced the Applicant to concurrent terms of 5 years for each count of possession of a firearm by a person convicted of a crime of violence and 15 years for armed robbery. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Attorney was not present at preliminary hearing.
 - b. "She refuse to get all evidence on my case, and I was told if I plea two (2) charges will be dismiss."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ The State not prossed the following charges: unlawful carrying of a pistol (2014-GS-23-4934), two counts of possession of a weapon during the commission of a violent crime (2014-GS-23-8979, count 2 and 2014-GS-23-10896, count 2), and sale or delivery of pistol to, and possession by, certain persons (2014-GS-23-10895).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

The Applicant stated plea counsel did not review discovery material with him. The Applicant stated plea counsel did not appear at his preliminary hearing (and another attorney appeared instead) and that better preparation for the hearing would have resulted in a different outcome. The Applicant stated he believed he would receive a 15-year sentence in exchange for guilty pleas to two charges but that he ultimately pled guilty to three charges. The Applicant stated plea counsel told him two weapons charges would be dismissed if he pled guilty (but that these charges had not been dismissed).

Plea counsel testified she reviewed the discovery materials with the Applicant and discussed the charges, sentencing ranges, and the Applicant's version of events. Plea counsel

testified another attorney from the Public Defender's Office had her full file and appeared at the preliminary hearing. Plea counsel testified the State made two plea offers in this case. Plea counsel testified the Applicant wanted a 10-year sentence. Plea counsel testified the assistant solicitor said the best offer would be for a 15-year sentence if the Applicant pled guilty by the due date. Plea counsel testified the Applicant knew he was pleading guilty to three charges that day and did not waver at the plea hearing. Plea counsel testified the charges that were to have been dismissed have, in fact, been dismissed.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly review discovery materials with him prior to his guilty plea hearing. Plea counsel testified she reviewed these materials with the Applicant. This Court finds plea counsel's testimony is credible. This Court finds the Applicant has failed to produce any credible evidence or testimony to support his allegation and has also failed to demonstrate he suffered any prejudice. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly handle the issue of his preliminary hearing. Plea counsel testified that, as was the practice in the Public Defender's Office, another attorney could (and in this case did) handle one of her preliminary hearings. Plea counsel testified this attorney would have had her entire file for the hearing. This Court finds plea counsel's testimony is credible. This Court finds the Applicant has failed to demonstrate either that the attorney who handled the preliminary hearing was unprepared or that he was prejudiced in any way. This Court finds the lack of prejudice is especially evident since the Applicant gave a statement admitting to the commission of the

armed robbery. See Butler v. State, 286 S.C. 441, at 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately discuss the plea offer with him. Plea counsel testified the State made two plea offers and that, while the Applicant wanted a 10-year sentence, the assistant solicitor told her the best offer in this case would be for a 15-year recommendation in exchange for guilty pleas to armed robbery and two weapons charges. Plea counsel testified she discussed the offers with the Applicant and he was aware of the terms of the recommendation. Plea counsel also testified the charges that the State agreed to dismiss had been dismissed. This Court finds plea counsel's testimony is credible. This Court finds plea counsel properly conveyed and discussed the plea offers with the Applicant. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court has reviewed the plea transcript and notes the Applicant did not object when the three charges were read at the plea hearing and the recommendation was announced. (Plea transcript, pp.2-3). The transcript has, therefore, refuted the Applicant's allegation that he believed he was only pleading guilty to two charges that day. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007) (noting the guilty plea transcript clearly refuted applicant's allegation that he did not understand the terms of the guilty plea). This Court has also examined the clerk of court records and notes there is documentation that the charges the Applicant complained were not dismissed have, in fact, been not proessed by the State.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

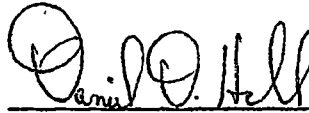
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of March, 2016.



Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

J Praln

Greenville Police Department

3/16/2014

ARREST WARRANT NUMBER
2014A2320600659

ACTION OF GRAND JURY
TRUE BILL

Nancy W Ellis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-
LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2014

THE STATE

vs.

KENNETH DARREL RIVERA

Indictment for

3434

**POSSESSION OF A FIREARM BY PERSON
CONVICTED OF A CRIME OF VIOLENCE**

VIOLATION § 16-23-0500

**ENTERED
ACCT.**

005139 *T.W. Balla*

FILED

JUN - 6 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A FIREARM BY PERSON CONVICTED OF A
CRIME OF VIOLENCE

At a Court of General Sessions, convened on JUL 29 2014 the Grand Jurors of Greenville
County present upon their oath:

That KENNETH DARREL RIVERA did in Greenville County on or about the 16th day of March 2014,
posses a firearm and/or ammunition within the State, the defendant having been convicted of a crime of
violence, to wit: Burglary and/or Robbery, as defined by Section 16-01-0060. This is in violation of 16-
23-0500 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 0-5 years

COUNTY OF Greenville
STATE VS.

Kenneth Darrel Rivera

AKA:

Race: Sex: M Age: 28

DOB: 1986 SS#

Address:

City, State, Zip: Greenville, SC 29611-4702

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was

TO: Possession of a Firearm by a Person Convicted of a Violent Crime

INDICTMENT/CASE#: 2014GS2305139

A/W#: 2014A2320600659

Date of Offense: 3/16/2014

S.C. Code § : 16-23-0500(A)

CDR Code #: 3434

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Moyet, Mark 64155 Kenneth R. Rivera Dorothy A. Noyes 3615
Moyet, Mark SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 158 Days T/S☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

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

Clerk of Court/ Deputy Clerk Paul BallCourt Reporter: Thomas

SCCA/217 (03/2011)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2752Sentence Date: 3-5-2015

WITNESSES

Thomas Motes

Greenville County Sheriffs Office

9/29/2014

✓ **ARREST WARRANT NUMBER**
 2014A2330208978, 2014A2330208979

ACTION OF GRAND JURY*Foreperson of Grand Jury***VERDICT**

Foreperson of Petit Jury
 Date:

DOCKET NO. 2014-GS-23-
 LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS**TERM 2014****THE STATE****vs.****KENNETH DARREL RIVERA**

Indictment for

0139, 0549

**ARMED ROBBERY AND POSSESSION OF A
 WEAPON DURING THE COMMISSION OF A
 VIOLENT CRIME**

VIOLATION § 16-11-0330 and § 16-23-0490

**ENTERED
 ACCT. 12/4**

FILED**DEC 05 2014**

Clerk of Court
 Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

COUNT ONE

ARMED ROBBERY

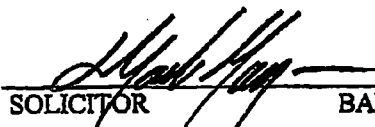
That KENNETH DARREL RIVERA did in Greenville County, on or about the 29th day of September, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: money belonging to Lil Cricket from the person or presence of Danny Lewis. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That KENNETH DARREL RIVERA did in Greenville County, on or about the 29th day of September, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 64155

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Kenneth Darrel Rivera

AKA:

Race: Sex: M Age: 28DOB: 1986 SS#: Address: City, State, Zip: Greenville, SC 29611-4702DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Armed robberyIN THE COURT OF GENERAL SESSIONS ⁶¹⁰⁷¹⁰⁰ ^{10-30 years}INDICTMENT/CASE#: 2014GS2310896A/W#: 2014A2330208978Date of Offense: 9/29/2014S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. KR (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Mayer, Mark64155
SC Bar#Kenneth Rivera
DefendantKenneth C. Napier
Attorney for Defendant3615
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 158 Days T/S☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

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

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

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

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

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

Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Paul B. W.Court Reporter: Thomas

SCCA/217 (03/2011)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Judge Code: 2752Sentence Date: 3-3-2015

010097

WITNESSES

Thomas Motes

Greenville County Sheriffs Office

9/29/2014

ARREST WARRANT NUMBER

2014A2330208980

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2014

THE STATE

vs.

KENNETH DARREL RIVERA

Indictment for

3434

**POSSESSION OF A FIREARM BY A PERSON
CONVICTED OF A CRIME OF VIOLENCE**

VIOLATION § 16-23-0500

FILED

DEC 05 2014

**Clerk of Court
Greenville County**

**ENTERED
ACCT. 12/1**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
POSSESSION OF A FIREARM BY A PERSON CONVICTED OF A
CRIME OF VIOLENCE**

At a Court of General Sessions, convened on _____
County present upon their oath:

the Grand Jurors of Greenville

That KENNETH DARREL RIVERA did in Greenville County on or about the 29th day of September 2014, possess a firearm and/or ammunition within the State, the defendant having been convicted of a crime of violence, to wit: Burglary, as defined by Section 16-01-0060. This is in violation of §16-23-0500 of the South Carolina Code of Laws (1976) as amended.

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

SOLICITOR

BAR # 64155

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Kenneth Darrel Rivera

AKA:

Race: Sex: M Age: 28

DOB: 1986 SS#:

Address:

City, State, Zip: Greenville, SC 29611-4702

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was

TO: Possession of a Firearm by a Person Convicted of a Violent Crime

IN THE COURT OF GENERAL SESSIONS 0-5 years

INDICTMENT/CASE#: 2014GS2310897

A/W#: 2014A2330208980

Date of Offense: 9/29/2014

S.C. Code § : 16-23-0500(A)

CDR Code #: 3434

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 2nd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury (defendant's initials) KPThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Moyer, Mark

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 158 Days TIS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 135.90

Clerk of Court/ Deputy Clerk

Court Reporter: Thomas

SCCA/217 (03/2011)

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning ☐Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code: 2752

Sentence Date: 3-5-2015

GCD/SCD

General Sessions Tracking Sheet
Indictment # 0000GS23

Name: Rivera, Kenneth Darrel

Warrant/Ticket #: 2014A2320600658

AKA:

Date of Arrest: 03/16/2014

Addr:

Greenville, SC 29611-4702

Date of Offense: 03/16/2014

Date Rcv by Clerk 03/21/2014

Magistrate: Hawley, Matthew Raymond Jr.

SSN#

Counts: Code: 0044/Weapons / Unlawful carrying of
pistol

Sex: M Race: B

DOB: 1986

DL# SC

Indictment # 0000GS23

Disposition Information

1. Transmitted to SOL & SCCA:

2. Disp Received by Clerk:

3. Date of Disposition: 3/6/15

FILED**2014-4934****MAR 09 2015**Clerk of Court
Greenville County

- Disposition
- ☐ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain: Pled guilty to other charges

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Court Reporter: _____

Defense Atty: Dorothy MannigaultSolicitor: L Mark Hoyer 64155

Counts: _____ Code: _____

Sentence: _____

GCPD/SCDC

General Sessions Tracking Sheet
Indictment # 0000GS23

Name: Rivera, Kenneth Darrel

Warrant/Ticket #: 2014A2330208982

AKA:

Date of Arrest: 09/29/2014

Addr:

Date of Offense: 09/29/2014

Greenville, SC 29611-4702

Date Rcv by Clerk: 10/02/2014

Magistrate: Cagle, Diane Day

SSN#

Counts: Code: 2364/Weapons / Sale or delivery of
pistol to, and possession by, certain persons
unlawful; stolen pistol

Sex: M Race: B

DOB: 1986

DL# SC/

Indictment # 0000GS23

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: 3/6/15

FILED

MAR 09 2015

2014-10895

- | | | |
|-------------------------------------|-----------------------------|--|
| Disposition | 1. Guilty plea | Clerk of Court |
| | 2. Trial -- guilty | Greenville County |
| | 3. Trial -- not guilty | |
| ☒ | 4. Dism/Not Pros/Pros Ended | Explain: <u>Pled guilty to other charges</u> |
| | 5. Judicial Commitment | Explain: _____ |
| | 6. Judicial Dismissal | Explain: _____ |
| | 7. Remanded | Explain: _____ |
| | 8. Dismissed at Prelim | Explain: _____ |
| | 8. No Bill | Explain: _____ |
| | 9. Failure to Appear | Explain: _____ |
| | 10. Other | Explain: _____ |

Judge: _____

Court Reporter: _____

Defense Atty: Dorothy HargrettSolicitor: L Mark Hargrett 64155

Counts: _____ Code: _____

Sentence: _____

GCDC/SCDC

General Sessions Tracking Sheet
Indictment # 0000GS23

Name: Rivera, Kenneth Darrel

AKA:

Addr: [REDACTED]
Greenville, SC 29611-4702SSN# [REDACTED]

Sex: M Race: B

DOB: [REDACTED] 1986DL# SC [REDACTED]

Warrant/Ticket #: 2014A2330208979

Date of Arrest: 09/29/2014

Date of Offense: 09/29/2014

Date Rev by Clerk 10/02/2014

Magistrate: Cagle, Diane Day

Counts: Code: 0549/Weapons / Possession of weapon
during violent crime, if not also sentenced to
life without parole or death

Indictment # 0000GS23

FILED

MAR 09 2015

Clerk of Court
Greenville County

2014-10896

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: 3/6/15

- Disposition
- ☐ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain: Plaf guilty to other charges

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Court Reporter: _____

Defense Atty: Norothy MangaultSolicitor: L Mark Moyer 64155

Counts: _____ Code: _____

Sentence: _____