

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Horry County

S.C. SUPREME COURT

Honorable D. Craig Brown, Circuit Court Judge

BERNARDO J. EVANS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000604

APPENDIX

TIFFANY L. BUTLER
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-26-2764
2014-GS-26-4205

STATE OF SOUTH CAROLINA,)
)
Plaintiff,) **Transcript of Record**
)
vs.)
) October 7, 2014
)
BERNARDO JOSPH EVANS,)
)
Defendant.)

B E F O R E:

Honorable Benjamin Culbertson
Horry County Courthouse
Conway, South Carolina

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

Martin D. Spratlin, Esquire
Attorney for Plaintiff

Jonny D. McCoy, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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October 9, 2014

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(No exhibits were marked during hearing.)

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BY THE COURT

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1 (OCTOBER 9, 2014)

2 BERNARDO JOSEPH EVANS, HAVING BEEN
3 DULY SWORN, TESTIFIES AS FOLLOWS:

4 MR. SPRATLIN: Your Honor, this is the matter of State of
5 South Carolina, County of Horry, versus Bernardo Joseph Evans
6 charged in true-billed indictment 2013-GS-26-02764 with armed
7 robbery. He is also waiving presentment to the Grand Jury and
8 pleading guilty on waiver of indictment 2014-GS-26-04205 for
9 assault and battery of a high and aggravated nature under the
10 statutory interpretation. He is represented by Attorney Jonny
11 McCoy. He is entering a guilty plea to both of these charges
12 without recommendation from the State. Present in the
13 courtroom is the victim, Sarah Thomas. However, the victim
14 does not wish to speak. She wishes for her mother to speak on
15 her behalf. If I could approach, I have to the two sentencing
16 sheets as well as the waiver of indictments.

17 THE COURT: All right.

18 Mr. McCoy, you represent Bernardo Joseph Evans on the
19 charge of armed robbery and assault and battery of a high
20 aggravated nature.

21 MR. MCCOY: I do, Your Honor.

22 THE COURT: Have you discussed with your client the
23 charges against him, his rights as a Defendant and the
24 consequences of being convicted of these crimes?

25 MR. MCCOY: I have, Your Honor.

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1 THE COURT: In your opinion, does your client understand
2 the charges against him, his rights as a Defendant and the
3 consequences of being convicted of these crimes?

4 MR. MCCOY: He does, Your Honor.

5 THE COURT: Does he wish to plead guilty or not guilty?

6 MR. MCCOY: Guilty, Your Honor.

7 THE COURT: Do you agree with his decision to plead
8 guilty to these charges?

9 MR. MCCOY: I do.

10 THE COURT: Based upon the information you have, if this
11 case proceeded to trial, do you feel that the State could
12 prove your client's guilt beyond a reasonable doubt?

13 MR. MCCOY: I do, Your Honor.

14 THE COURT: Has your client received a competency
15 evaluation?

16 MR. MCCOY: No, Your Honor, I don't believe he needs one.

17 THE COURT: All right. Sir, your name is Bernardo Joseph
18 Evans?

19 MR. EVANS: Yes, sir.

20 THE COURT: All right. Mr. Evans, you have been charged
21 and indicted by the Grand Jury for armed robbery and you've
22 been charged with assault and battery of a high and aggravated
23 nature. And according to your attorney, you wish to plead
24 guilty to both of these charges; is that correct?

25 MR. EVANS: Yes, sir.

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1 THE COURT: All right. Before I can accept a guilty plea
2 from you, I've got to go over some questions with you. Now,
3 the purpose of my questioning is to be sure that you
4 understand the charges against you, that you understand your
5 rights as a Defendant, that you understand the consequences of
6 pleading guilty and I must be sure that you're pleading guilty
7 voluntarily. Now, during the past seventy-two hours, have you
8 taken any medication, consumed any alcohol or drugs or been
9 under any influence that would affect your ability to know why
10 you're here?

11 MR. EVANS: No, sir.

12 THE COURT: Do you understand why you're here today?

13 MR. EVANS: Yes, sir.

14 THE COURT: Is there anything about this hearing that you
15 want to ask your lawyer or ask me before we proceed?

16 MR. EVANS: No, sir.

17 THE COURT: All right. Now, one of your rights as a
18 Defendant is that you could not be prosecuted for any crime
19 unless and until you're indicted by the Grand Jury. What that
20 means is when you're charged with a crime, the State has an
21 obligation to present your case to a Grand Jury for review.
22 The Grand Jury looks over your case and determines if there's
23 any evidence to indicate you committed the crime. If the
24 Grand Jury finds there is evidence you committed the crime,
25 the Grand Jury would indict you and the State could go forward

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1 and prosecute you on that charge. On the other hand, if the
2 Grand Jury found that there was no evidence against you or
3 that the evidence against you was insufficient to support the
4 charge, then the Grand Jury would not indict you and the State
5 could not prosecute you. At this point in time, you have not
6 been indicted for assault and battery of a high and aggravated
7 nature. Therefore, at this point in time, the State cannot
8 prosecute you on that charge and I cannot accept a guilty plea
9 from you unless you waive presentment to the Grand Jury.
10 Waiving presentment to the Grand Jury means that you are
11 relieving the State from its obligation to have the Grand Jury
12 review the case and indict you before the prosecute you; do
13 you understand that?

14 MR. EVANS: Yes, sir.

15 THE COURT: Do you wish to waive presentment to the Grand
16 Jury on that charge so that you can plead guilty?

17 MR. EVANS: Yes, sir.

18 THE COURT: All right. Even though you waive presentment
19 to the Grand Jury on the assault and battery of a high and
20 aggravated nature charge and even though you've been indicted
21 on the armed robbery charge, under the Constitution of the
22 United States, you're presumed innocent of both of these
23 crimes and you have the right to have your guilt or innocence
24 determined by a jury trial of your peers. The State bears the
25 burden of proving your guilt beyond a reasonable doubt. You

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1 do not have to prove your innocence and you cannot be
2 compelled to testify against yourself. You also have the
3 right to confront and cross examine anybody who testifies
4 against you. If you chose, you can present a defense to these
5 charges but when you plead guilty, you give up all of those
6 rights; do you understand that?

7 MR. EVANS: Yes, sir.

8 THE COURT: And do you want to give up those rights and
9 plead guilty to these charges?

10 MR. EVANS: Yes, sir.

11 THE COURT: All right. Now, you understand that for
12 armed robbery, that carries up to thirty years in prison. You
13 understand that?

14 MR. EVANS: Yes, sir.

15 THE COURT: And you understand that assault and battery
16 of a high and aggravated nature carries up to twenty years in
17 prison?

18 MR. EVANS: Yes, sir.

19 THE COURT: You understand that if I impose the maximum
20 sentences allowed by both and I order them to run
21 consecutively, I could send you to prison for fifty years; do
22 you understand that?

23 MR. EVANS: Yes, sir.

24 THE COURT: Do you understand that armed robbery carries
25 a mandatory minimum sentence which means that the absolute

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1 minimum sentence you can receive for that crime is ten years
2 in prison?

3 MR. EVANS: Yes, sir.

4 THE COURT: Do you understand that for both of these
5 crimes, regardless of whatever sentence I impose you will not
6 be eligible for parole and you'll have to serve at least
7 eighty-five percent of whatever sentence I set; do you
8 understand that?

9 MR. EVANS: Yes, sir.

10 THE COURT: Do you understand that both of these are
11 classified as a violent crime? Now, what that means is if you
12 are ever convicted of another violent crime, then that third
13 violent crime conviction, you will not be eligible for
14 probation and you will not be eligible for parole on that
15 charge; do you understand that?

16 MR. EVANS: Yes, sir.

17 THE COURT: Do you understand that both of these crimes
18 -- well, armed robbery is classified as a most serious crime.
19 Assault and battery of a high and aggravated nature is
20 classified as a serious crime. Now, what that means is if
21 you're ever convicted of another serious crime or if you're
22 ever convicted of another most serious crime, because it would
23 be your third serious crime conviction or your second most
24 serious crime conviction, the sentence that you receive for
25 that subsequent conviction can be enhanced to life in prison

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1 without the possibility of parole. It's called the two-strike
2 rule and the three-strike rule. So, you'll have a most
3 serious crime conviction on your record and you'll have a
4 serious crime conviction on your record. So, any other
5 convictions of a serious or most serious crime, you'll be
6 looking at life in prison without the possibility of parole.
7 Do you understand that?

8 MR. EVANS: Yes, sir.

9 THE COURT: Knowing your rights as a Defendant and
10 knowing the maximum sentence that can be imposed, knowing the
11 mandatory minimum sentence, which must be imposed, and knowing
12 that both of these are classified as violent crimes, one is
13 classified as a serious crime and a most serious crime and the
14 consequences of those classifications, do you wish to plead
15 guilty or not guilty to armed robbery.

16 MR. EVANS: Guilty.

17 THE COURT: Do you wish to plead guilty or not guilty to
18 assault and battery of a high and aggravated nature?

19 MR. EVANS: Guilty.

20 THE COURT: Has anybody promised you anything or
21 threatened you in any way to get you to plead guilty?

22 MR. EVANS: No, sir.

23 THE COURT: Are you pleading guilty voluntarily?

24 MR. EVANS: Yes, sir.

25 THE COURT: Are you satisfied with the services of your

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1 lawyer?

2 MR. EVANS: Yes, sir.

3 THE COURT: Are you pleading guilty to these crimes
4 because you committed these crimes?

5 MR. EVANS: Yes, sir.

6 THE COURT: All right. I need you to listen carefully,
7 while the Solicitor gives me the facts of your case.

8 All right, sir.

9 MR. SPRATLIN: Thank you, Your Honor. Back on or about
10 March 16th, 2013 in the early morning hours, the victim in
11 this case, Ms. Sarah Thomas, was working at a Scotchman
12 convenience store in Horry County. She was the only person
13 working in the store at this time. The Defendant entered the
14 store, was looking around for a while until it came down to
15 just him and her in the store. The Defendant then approached
16 -- the Defendant then pretended to go into the restroom, went
17 into the restroom, came out of the restroom pretending like he
18 needed some toilet paper. At which time, Ms. Thomas went over
19 to check on the Defendant, at which point he pushed her into
20 the bathroom. In the bathroom, Your Honor, this -- and that
21 -- all of that incidents were captured on video tape at the
22 Scotchman convenience store. On the -- in the bathroom, Your
23 Honor, the victim states that the Defendant pulled out a
24 taser, threatened to use it upon her if she did not perform
25 fellatio upon him. A customer came in the store while this

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1 was going on, she exited the store to take -- exited the
2 bathroom to take care of the customer, at which time, Mr.
3 Evans, according to the video attempted to lurk around her. I
4 think he even referred to the customer when the customer asked
5 a question if she was all right, he said -- and I'm -- don't
6 quote this correctly -- but he said it's baby momma drama or
7 something to that effect indicating that there was a
8 relationship between them. At which time, the customer who
9 had come in the store then left and Mr. Evans goes up to the
10 victim, demands money out of the cash register, takes the
11 money. They then go into a back room, Your Honor, off camera,
12 at which time the victim states the Defendant again stated to
13 her that she needed to perform fellatio upon him and actually
14 again threatened her with both a taser and a box cutter type
15 instrument. Ms. Thomas was able to get away and wound up
16 running from the store or running next door to a campground
17 area and calling -- and getting security to call the police
18 who did respond at about 500 hours, that morning. Since he
19 used a weapon, Your Honor, and demanded money from her, he did
20 commit the crime of armed robbery and based upon his assault
21 with the taser, as well as a box cutter, he committed the
22 crime of assault and battery of a high and aggravated nature.
23 The State through plea negotiations will be dismissing the
24 criminal sexual conduct charge as well as a kidnapping charge
25 in exchange for his plea to the armed robbery and assault and

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1 battery or a high and aggravated nature. As I stated ---

2 THE COURT: Excuse me, now, the armed robbery, did he
3 actually steal something?

4 MR. SPRATLIN: Yes, Your Honor, he got money out of the
5 cash register.

6 THE COURT: Okay. All right. Go ahead.

7 MR. SPRATLIN: Present in the courtroom is Ms. Mary
8 Thomas, the mother of Sarah Thomas. Ms. Sara Thomas has gone
9 through a rough time since this incident occurred. She's been
10 in counseling, been in therapy. She's not quite there where
11 she wants to speak to the Court. She would like her mother,
12 however, to speak on her behalf at the time the Court feels is
13 appropriate.

14 THE COURT: All right. Mr. Evans, you understand what
15 the allegations are against you?

16 MR. EVANS: Yes, sir.

17 THE COURT: Is that what happened in this case?

18 MR. EVANS: As far as just the armed robbery and the
19 assault, the ---

20 MR. MCCOY: Yes, Your Honor. We're pleading guilty to
21 the armed robbery and the ---

22 THE COURT: Well, and I understand ---

23 MR. MCCOY: --- assault and battery.

24 THE COURT: And I understand that. And Mr. Evans, you
25 understand, as I told you, you have the right to remain

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1 silent. Nobody can force you to testify or admit your guilt.
2 However, when you plead guilty, you waive that right and I
3 cannot accept the guilty plea from you unless you admit that
4 you broke the law and you admit the facts that constitute the
5 breaking of the law. If not, I can't accept the guilty plea
6 and you don't have to plead guilty. You're entitled to a jury
7 trial to determine your guilt or innocence on these charges
8 and if you want a jury trial, you can get a jury trial. If
9 you want to plead guilty, you have just as much of a
10 constitutional right to plead guilty as you do to a trial.
11 And if you want to plead guilty, you can plead guilty but you
12 can't plead guilty by saying I plead guilty to a crime but I
13 did not commit the crime; do you understand that?

14 MR. EVANS: Yes, sir.

15 THE COURT: All right. Now, you understand what the
16 State is saying you did in this case?

17 MR. EVANS: Yes, sir.

18 THE COURT: And what I need you to do is, if that's what
19 happened and you want to plead guilty, you need to say that's
20 what happened. And if that's not what happened, you don't --
21 you can say that's not what happened. Now, you understand
22 what the allegations are?

23 MR. EVANS: Yes, sir.

24 THE COURT: And do you want to plead guilty to these
25 charges?

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1 MR. EVANS: Yes, sir.

2 THE COURT: Is that what you want to do?

3 MR. EVANS: Yes, sir.

4 THE COURT: Are you doing it voluntarily?

5 MR. EVANS: Yes, sir.

6 THE COURT: All right. Is anybody forcing you to do it?

7 MR. EVANS: No, sir.

8 THE COURT: All right. Has anybody promised you anything
9 to get you to do it?

10 MR. EVANS: No, sir.

11 THE COURT: All right. Is that what happened in this
12 case?

13 MR. EVANS: Yes, sir.

14 THE COURT: Okay. All right. Mr. McCoy, anything in
15 mitigation?

16 MR. MCCOY: Your Honor, there's a lot in mitigation in
17 this case, Your Honor. Let me just start off by saying that
18 this is a -- standing in front of you is a drug addict and I
19 can say that because I am the son of an addict, an alcoholic,
20 and they call it like it is, that's part of the recovery. The
21 confusion with what took place in the bathroom is because he
22 was on a hallucinogenic and at the time doesn't recall exactly
23 what took place in the bathroom but he understands through the
24 video, and we've watched it -- I don't want you to think, Your
25 Honor, he's not taking responsibility, he's just absolutely --

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1 he saw what he did and that's what he meant by his hesitation,
2 Your Honor.

3 As far as Bernardo goes, he is -- he's thirty-two years
4 old, which is the same age as me. He's from Myrtle Beach,
5 went the Myrtle Beach High School. And I first met Bernardo
6 when we were on a twelve-year-old rec league team. I had just
7 moved to Myrtle Beach and I had no friends. I was the same
8 guy you see here that everybody kind of likes to kind of poke
9 fun at and made fun of every now and then and he was probably
10 the same size in comparison then as he is now and he wouldn't
11 let anybody touch me or talk trash to me. We stayed on the
12 same team for almost ten years. And then when I went away to
13 school, every time I came home, I'd see Bernardo and his
14 father. They own a barbeque restaurant here in town and it's
15 called True BBQ. A portion of their proceeds go to a
16 Christian-based church. Bernardo has worked there full time.
17 Prior to that, he worked at Myrtle Beach High School as a
18 football coach. Prior to that, he played professional
19 football. And, Your Honor, this is all from me knowing him.
20 Your Honor, I haven't even asked him anything; this is just me
21 knowing him. He has been an exemplary citizen for thirty-two
22 years minus six minutes. He has no record, absolutely,
23 nothing. He has less of a record than I do. He has no points
24 on his license. I've never had a case like this. I've never
25 dreaded coming to court one day. This is the hardest day that

1 I've had to come to court and it will forever be. I
2 understand addiction as much as I can but when people try
3 voluntarily to get help as Bernardo did initially. He went to
4 New York on his own, inpatient on his own, paid for it on his
5 own, came back, did well, relapsed one night. The discussions
6 we've had, he relapsed, he bought some stuff or took some
7 stuff that he didn't know completely what it was and became a
8 different person for six minutes. And that's what happened on
9 that video. What happened on the video makes no sense. He
10 stayed in the convenience store, he purchased some stuff and
11 then he talks to her and then her lures her in the bathroom
12 and he takes money out of the register and he stays there and
13 he talks to customers, he lets her out of the bathroom. It
14 all happened -- the occurrence in the bathroom was only about
15 a forty-second time period, although I'm not mitigating the
16 fact that it was a very serious situation. What I mean to say
17 is, Your Honor, when you think about punishment and the three
18 pillars of criminal law, rehabilitation, restitution and
19 retribution, when you're dealing with somebody like Mr. Evans
20 who is never, ever, ever been a danger to the community, just
21 the opposite. His father is a preacher, along with owning
22 that barbeque place, they work together. He's also worked
23 with his dad as a bondsman, recovery bondsman. He's a gentle
24 giant. And far as the three pillars of criminal law,
25 rehabilitation has one hundred percent taken place in this

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1 man. Ever since this incident, before this incident took
2 place, they say that addicts, they ask for help, they beg for
3 help and then in the final ending, they explode for help and
4 this is what happened on that night. He is extremely sorry.
5 He prays for the victim every day. He thinks about what took
6 place that night and tries to make sense of it. He's just
7 placed it on in the hands of a higher power and his family.
8 And there is no -- there is no amount of apologies that he
9 could ever make but he has done it continuously to me and to
10 his family. As far as a GPS monitoring, I have a letter from
11 the Horry County Sheriff's Office and it just states on -- Mr.
12 Scotty Jordan, March 22nd of 2013, March 22nd, 2013, he was
13 placed on home detention center monitor -- home detention GPS
14 monitor as a condition for the bond for these charges, CSC,
15 set by Judge Butler to this date -- and this is dated October
16 7th of this year. Mr. Bernardo -- to this date, Bernardo has
17 no violations and has been successful in all home detention
18 programming. That's eighteen months, Your Honor, where he's
19 been in bed, he's done the proper thing. Your Honor, I just
20 ask when the Court would allow to hear briefly from his --
21 from two members that I think that you would like to hear from
22 and take into consideration during sentencing to give you a
23 better understanding of who this man really is and what really
24 took place on that night because it doesn't make any sense
25 when you're dealing with a case like this and somebody who

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1 just -- Your Honor, he has a beautiful girlfriend, beautiful
2 -- they have lived together for years, beautiful. She's here.
3 She has supported him the whole time. They have a child
4 together. He's always supported his child. And he has money,
5 Your Honor; there's no reason for him to rob the Scotchman.
6 Bernardo and I have -- everybody has gone through rough times
7 but he knows that he can call me. As an officer of the Court,
8 I have loaned Bernardo money before to buy his daughter's
9 Christmas presents. It was three months before the incident
10 took place. And I remember thinking I just gave him money and
11 he's maybe gonna go spend it on drugs and then his girlfriend
12 described to me every present and then at that moment, I
13 realized I doubted somebody that I had known my entire life.
14 I felt horrible for it but I had every reason to be because
15 he's an addict. The point is, Your Honor, he had every
16 opportunity for money, he has a beautiful wife and children.
17 There's no -- he's not a danger to the community as far as
18 wanting to go out and commit a sex act, wanting to go out and
19 steal money; he doesn't need that. This was a momentary
20 relapse to a deadly disease that there is no explanation for.
21 And he's fighting it and, Your Honor, I respectfully request
22 that you hear his fight briefly from his counselor, one of
23 eight years, and his father whenever the Court will indulge.
24 THE COURT: All right. I'll hear from Mr. Evans or
25 anybody that wants to speak on his behalf.

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1 MR. MCCOY: Mr. Dan, please. Your Honor, at this time,
2 I will ask Dr. Dan -- I'm not gonna be able to pronounce the
3 last name.

4 DR. SCHOETTLE: Schoettle.

5 MR. MCCOY: Schoettle. He was the 2010 South Carolina
6 Drug and Alcohol Addiction Counselor of the Year. He's been
7 Bernardo's counselor for eight years. This is prior to any
8 incident taking place or Bernardo even needing the Court's ---

9 THE COURT: All right. If you could slide that
10 microphone over there so he can speak into it. First, sir, I
11 need you to give me your name and then I'll need you to spell
12 your name, please.

13 MR. SCHOETTLE: Good morning, Your Honor. My name is Dan
14 Schoettle, S-C-H-O-E-T-T-L-E.

15 THE COURT: All right. Mr. Schoettle, what would you
16 like to say?

17 MR. SCHOETTLE: Your Honor, I'm a retired alcohol and
18 drug abuse counselor with thirty-two years' experience working
19 addicts and alcoholics. I retired from the Horry County
20 Alcohol and Drug Abuse Commission which his now called
21 Shoreline Behavioral Health Services. I met Bernardo there, I
22 believe it was closer to nine years ago when I was counseling.
23 I saw him make tremendous changes in his life and got to know
24 him over the next years into my retirement. I've had him in
25 my house as a friend. I have five children that are grown,

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1 three stepchildren, eighteen grandchildren and I would in a
2 heartbeat have Bernardo twenty-four hours a day around me. I
3 have on the way into this courtroom today passed at least
4 fifteen different people coming in here, three of whom were in
5 the building that I've worked with as a counselor. I have
6 experience knowing that when we're under the influence of
7 alcohol and drugs -- I heard for the first time today what
8 happened, I could see that very clearly as being one of those
9 type incidents. I have nothing but the kindest things to say
10 about Bernardo. I've met his father and I've met his mother,
11 I've met one of his other family members, who was a sister,
12 back then, it's been a while. I drove 128 miles today to come
13 here and say that I think we have a fantastic recovery going
14 on. He's fully focused on staying recovered. That's what I
15 have to say, Your Honor.

16 THE COURT: Thank you.

17 MR. SCHOETTLE: You're welcome.

18 MR. MCCOY: Thank you, Your Honor. Briefly, Ms. Pat.

19 THE COURT: Ma'am, your name?

20 MS. UNGER: My name is Patricia Unger, U-N-G-E-R.

21 THE COURT: All right, Ms. Unger, what would you like to
22 say?

23 MS. UNGER: I am a licensed professional counselor intern
24 licensed by the State of South Carolina and also a Certified
25 Addiction Counselor I. Mr. Evans has been my client since

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1 November of 2013. I took over his case after he had completed
2 intensive outpatient successfully and aftercare, also
3 successfully. He could have chosen to leave services at the
4 time but he was dedicated to his recovery and has continued
5 into services. I think the last time I saw him was about two
6 weeks ago. I have seen him, he brought his child with him
7 many times. I have seen him interact with her in a loving
8 manner. He is dedicated to his recovery. He is dedicated to
9 his family and his faith. And it breaks my heart to see what
10 addiction can do. I believe that he is firm in his recovery.
11 His diagnosis of dependence includes a specifier of sustained
12 full remission. And in my experience with him, I find him to
13 be gentle, trusting man.

14 THE COURT: Thank you.

15 MR. MCCOY: And, Your Honor, in conclusion, his father
16 who is also a reverend.

17 THE COURT: All right. Yes, sir, your name?

18 MR. JOSEPH EVANS: Joseph Evans.

19 THE COURT: All right. Mr. Evans, what would you like to
20 say?

21 MR. JOSEPH EVANS: Bernardo is my son. He has an
22 addiction. As he was growing up, we took them everywhere. We
23 didn't hire a babysitter. We didn't raise him in the manner
24 that he portrayed. He's not -- I understand how the justice
25 works but he's not the monster that the system makes him out

State v. Evans - 2013-GS-26-2764, 2014-GS-26-4205
BY THE COURT

22

1 to be. Another thing, you know, if you would allow me, I
2 would like to apologize to the victim.

3 THE COURT: You need to just speak to the Court. I'm
4 sure they can hear you.

5 MR. JOSEPH EVANS: Okay. I apologize to the victim.
6 He's not that type of person. He's a loving person. He's a
7 gentle person. He's a person of character and it's just the
8 addiction. We spent thousands of dollars sending him to up
9 north, to Sumter Teen Challenge and, you know, it's a shame
10 that he relapsed -- had a setback. He could've called one of
11 us, but he didn't. He took it upon himself, you know. But
12 that's all I can say.

13 THE COURT: Thank you, sir.

14 MR. MCCOY: Thank you, Judge.

15 THE COURT: Anyone else?

16 MR. MCCOY: No, Your Honor, just -- Ms. Evans would like
17 to address the Court briefly and then I have something -- some
18 information, Your Honor.

19 THE COURT: All right. Mr. Evans, what would you like to
20 say?

21 MR. EVANS: First of all, I do want to apologize to the
22 family and the people. I can't explain how much I do regret
23 everything. I'm very sorry that this even took place. I know
24 it's irrelevant but at the time I'd just lost a family member.
25 I had a brand new daughter. I was coaching. I had three

State v. Evans - 2013-GS-26-2764, 2014-GS-26-4205
BY THE COURT

23

1 jobs, really, that I was working. I was taking care of four
2 people in my house and I really was just stressed out. And
3 the matter was -- somebody honestly, they gave me something
4 and it turned out to be something that -- I know it's
5 irrelevant but that's what happened. And in regards to that,
6 it set me off. I had five years clean. I did nothing but
7 work. I coached at the high school, other people's kids. I
8 coached the middle school football team and I just -- I did
9 all the right things. I did all the right things. I even
10 started prior to this, I had my own foundation which is Sweet
11 Feet Athletes. I gave out shoes and equipment to kids that
12 didn't have anything who needed stuff. And I know I'm a big
13 guy but my heart is just as big as I am and this is just truly
14 a incident that happened and I'm sorry, I'm very sorry. I
15 just -- I just really ask that you -- I'm not that type
16 person. I understand and I just ---

17 THE COURT: All right, sir.

18 MR. EVANS: Thank you, sir.

19 THE COURT: Anyone else?

20 MR. MCCOY: No, Your Honor.

21 THE COURT: I think you said the victim or someone on the
22 victim's behalf.

23 MR. SPRATLIN: Yes, Your Honor. Ms. Mary Thomas would
24 like to speak on the victim's behalf.

25 THE COURT: All right, ma'am, if you'd please come to the

1 podium.

2 MS. THOMAS: This is a statement that my daughter
3 prepared for you.

4 THE COURT: All right. And your name?

5 MS. THOMAS: It's Mary Pauline Thomas.

6 THE COURT: All right. Ms. Thomas, what would you like
7 to say?

8 MS. THOMAS: This attack has traumatized me so much that
9 I rarely speak about it but here are a few ways it has really
10 impacted my life. One, night terrors and lots of sleepless
11 nights. Two, I don't go out unless I'm forced to or I'm
12 testing myself. Three, uncontrollable flashbacks and anxiety
13 attacks. Paranoia, everybody, everywhere, everything, every
14 time. Self-harm, she had to be hospitalized. She tried to
15 take her own life. She's very withdrawn and unable to focus
16 much for long. She -- we bought her a great big dog to try
17 and make her feel safe in her own home. She has acute post-
18 traumatic stress disorder and depression from this. I believe
19 the consequences should fit the crime committed. He deserves
20 the maximum penalty. I don't believe that he has any remorse
21 for his actions because he had a smile on his face in the
22 mugshot. I honestly hope he learns what he did was wrong
23 while he taking his punishment. And that's from my daughter
24 Sarah Thomas. And I have a statement if I'm allowed.

25 THE COURT: All right.

State v. Evans - 2013-GS-26-2764, 2014-GS-26-4205
BY THE COURT

25

1 MS. THOMAS: The attack has impacted her life in a very
2 negative manner. It is a life-altering event. Sarah no
3 longer trusts her judgment, second guesses her every decision.
4 She is a shell of a person. She lives in a constant state of
5 paranoia and anxiety. This prevents her from doing basic
6 activities. She lives in a physical and mental prison. Sarah
7 is withdrawn from the world. Her quality of life has been
8 greatly diminished. She isn't even allowed the simple act of
9 sleep. The night terrors are so bad so can't sleep without
10 heavy medication. Sarah is in therapy three days a week and
11 attends group once a week. She goes to therapy fifteen hours
12 a week and has been since four days after the event. She is
13 trying with every ounce of her being to work through this and
14 come back to the person she was. One of the hardest things
15 for me was I can't fix this. I'm helpless to fix this. And
16 here's my daughter in the fetal position on the floor and I
17 can't do anything about it. She's broke and he broke her.
18 Every night before I come home from work, I have to pause
19 before I come in because I pray, I pray she's not on the floor
20 dead waiting for me. And he's at home with his family while
21 my daughter cowers inside her very own home. He had -- I've
22 had to leave work several occasions to care for her. I've
23 missed tons of days for doctor's appointments, therapies,
24 this, that and the other. All of this has put a tremendous
25 stress on our entire family, mentally, physically, spiritually

State v. Evans - 2013-GS-26-2764, 2014-GS-26-4205
SENTENCE BY THE COURT

26

1 and financially. What's worst of all is none of this was
2 necessary. She was at work doing her job when Bernardo made a
3 conscious decision to rob and rape her. Sarah is always
4 looking for the monster, the monster in her head. I feel this
5 deviant behavior deserves the maximum penalty, sir.

6 THE COURT: Thank you. Anyone else?

7 MR. SPRATLIN: No, Your Honor, no one else wishes to
8 speak from the State.

9 THE COURT: Did you say there was any prior record?

10 MR. SPRATLIN: No, Your Honor. He has no prior
11 convictions.

12 MR. MCCOY: Your Honor ---

13 THE COURT: I don't ---

14 SENTENCE OF THE COURT:

15 THE COURT: All right, Mr. Evans. I will accept your
16 guilty plea. I find that it's made knowingly, voluntarily,
17 fully advised of your rights as a Defendant and the nature of
18 the charge against you and the consequences of your guilty
19 plea. I also find that there is a factual basis to support
20 the charges against you.

21 On the charge of assault and battery of a high and
22 aggravated nature, the sentence of the Court is that you be
23 confined in the State Department of Corrections for fifteen
24 years. On the charge of armed robbery, the sentence of the
25 Court is that you be confined in the State Department of

State v. Evans - 2013-GS-26-2764, 2014-GS-26-4205
SENTENCE BY THE COURT

27

1 Corrections for ten years. The sentences will run
2 concurrently and you'll be given credit for any time served
3 thus far.

4 MR. MCCOY: Thank you, Your Honor.

5 MR. SPRATLIN: Thank you, Your Honor.

6 THE COURT: Okay.

7

8 (ADJOURNED - 11:36 A.M.)

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, 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 hearing held in the case of State of South Carolina versus Bernardo Joseph Evans, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on October 9, 2014.

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

Kay H. Richardson
Official Court Reporter

March 6, 2015.

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



Kay H. Richardson
Official Court Reporter

March 6, 2015.

FORM 5

STATE OF SOUTH CAROLINA)
County of Horry)
Bernardo J. Evans 361706)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

20 15 CP26 709

v.

State of South Carolina)
)
)
)
)

APPLICATION FOR

POST-CONVICTION RELIEF

MELANIE HUGHES
CLERK OF COURTS
2015 JAN 27 AM 10:56
HORRY COUNTY

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 Kirkland: R&E Center C1-51B 4344
Broad River Rd. Columbia, SC 29210
2. Name and location of Court which imposed sentence Horry County
Court House, Conway SC,
3. Name(s) of co-defendant(s) (if any) NA
NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery
 - (b) Assault & Battery High Aggravated Nature

- (c) NA
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Armed Robbery - (10 years) (No Parole) - (10/9/11)
 - (b) Assault & Battery High Aggravated Nature (15 yrs) - (10/9/11)
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty Check (✓)
 - (b) after a plea of not guilty NA
 - (c) after a plea of nolo contendere NA
- 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. NA
 - ii. NA
 - iii. NA
 - (b) the result in each such Court to which you appealed:
 - i. NA
 - ii. NA
 - iii. NA
 - (c) the date of each such result:
 - i. NA
 - ii. NA
 - iii. NA
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NA
 - ii. NA
 - iii. N
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) My attorney told me that I couldn't.
 - (b) My attorney told me there was nothing I could do.

(c) NA

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

- (a) Ineffective Counsel
- (b) They charged me with (Armed Robbery)
- (c) They charged me with (Assault & Battery High Nature)

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

- (a) (A) Ineffective Counsel is on back of sheet (3)
- (b) (B) Wrong charge of (Armed) Robbery on back sheet
- (c) (C) Wrong charge of (ABHAM) on back of sheet (4)

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. Sued This Form (Post-Conviction Relief)
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Harry County Court, Conway SC
 - ii. _____
 - iii. _____
 - iv. _____

(3)
Info on back
from 11-A

Armed Robbery) -

around or about March 16th (I) the defendant allegedly walked into a scotchman gas station, told the clerk that there was something wrong with the rest-room and pushed her in. In the restroom (I) the defendant allegedly pulled out a razor and a tazer and forced her to have sex with me, not once but twice, then (I) the defendant allegedly used the tazer to force her to give me the money out of the cash drawer. (May I add that none of this is proven by the prosecution!)

ABHAM) Assault & Battery High Aggravated Nature -

The original charge was (CSC 1st) But was dropped to an ABHAM because the (CSC 1st) never took place!

around or about March 16th (I) the defendant allegedly walked to a scotchman gas station, told the clerk that there was something wrong with the rest-room and pushed her in. In the restroom (I) the defendant allegedly pulled out a razor and a taser and forced her to have sex with me not once but twice. Then (I) the defendant allegedly used the taser and razor to force her to give me the money from out the cash drawer. (May I add that none of this was proven either, because if rape had really occurred they would have never dropped that (CSC 1st) charge! Also the (ABHAM) was supposed to be (Simple Assault) but the prosecutor lied to my lawyer and charged me with an (ABHAM).

(c) the disposition thereof:

- i. Armed Robbery - (10 Yrs)
- ii. (ABHAW) Assault & Battery High Aggravated Nature (5)
- iii. NA
- iv. NA NA

(d) the date of each such disposition:

- i. Armed Robbery (10/9/14)
- ii. (ABHAW) Assault & Battery High Aggravated Nature (10/9/14)
- iii. NA
- iv. NA

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

- i. NA
- ii. NA
- iii. NA
- iv. NA

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
- NA

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

(a) which grounds have been presented:

- i. NA
- ii. NA
- iii. NA

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

- i. NA
- ii. NA
- iii. NA

④
Info on Back
from 11-B/C

2 greater of a charge (Armed Robbery) -
 prosecution charged me with (Armed Robbery) with just
 the word of victim, never proving (if) the defendant ever he
 or even presented any weapon. Therefore the charge of (Arm
 robbery) is to greater of a charge.

2 greater of a charge (ABHAM) Assault & Battery High Aggravated Nat
 prosecution charged me with (ABHAM) without proving or
 presenting any real facts of charge. Therefore charge is to
 great.

initially: I feel I was given a harsh sentence for my
 first time ever being in any kind of legal trouble
 am a first time offender that has (NO) prior records
 at all. I was active in the community and church, I
 also was on a (very strict GPS House Arrest) and was
 it even given "any" credit for that (24 month period).
 I am sorry about this whole situation because this
 is not the man I am. I was forced to take a
 deal that I didn't want to take because the
 prosecution and my attorney were on another level.
 I have seen many 1st, 2nd, 3rd time offender get probation
 or less time than I've gotten. Some of them have
 had worse charges than I've had. Not taking any-
 thing away from this situation at all but I think
 I got a hard deal for a first time offender. I'm look-
 ing to give back the time that I was given and given
 more lenient sentence and time credit for the (very
 strict GPS monitor I was on for 2 years). If the whole
 case can't be dropped completely, do to the wrong charge
 and the way the prosecution treated my attorney and myself.

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) Because my Attorney never filed any motions or anything
- (b) NA
- (c) NA

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? NA
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

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. Attorney Johnny McCoy
240 21st Ave North Suite 105 Myrtle Beach, SC 29577
 - ii. NA
 - iii. NA
- (b) the proceedings at which each such attorney represented you:
 - i. (Arraignment and plea) -
Attorney Johnny McCoy
 - ii. (Sentencing) -
Attorney Johnny McCoy
 - iii. NA

⑤
Info on Back
for (11/b,c)

1) Ineffective Counsel

Counsel performance fell below standard of reasonableness and resulted in an unreliable or fundamentally unfair outcome of my proceeding. Counsel also failed to file potential meritorious motions. Counsel also failed to notify (me) of decisions not to file notice of appeal (made the decision without my consent). Counsel failed to file timely motions to suppress illegally seized evidence (*Kimmelman v. Morrison*, 477 U.S. 365, 385 (1986)). Failure to investigate eyewitnesses or victim since their testimony was important to prosecute case. Within two-months period before trial counsel failed to meet or communicate with client and failed to interview any witnesses or potential expert consultants. Failure to raise obvious and significant issues without legitimate strategic purpose. Failure to file notice of appeal when asked to by and for the defendant and Counsel also failed to inform (or defend) of (10-day) deadline for filing appeal after (I) the defendant expressed desire to appeal conviction. At (my) the defendant's sentencing Counsel failed to explain the full nature of my plea and charges and what they carry. Also failed to withdraw guilty plea (I didn't want to take at all!) Counsel coerced defendant to plead guilty and disrupted defendant's negotiations. Counsel failed to investigate or perform certain pretrial motions, matter of fact told me that I shouldn't have a pretrial, that goes against (*Kimmelman v. Morrison*, 477 U.S. 365, 385-91, (1986)). Counsel failed to use important evidence and testimony and never challenged the physical evidence that was found or the statements made by victim, or point out that other charges brought up and minimized in court case had been dropped and was supposed to be totally dropped by the prosecution.

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

I would like very much for motion to give my time back & receive credit for my (GPS monitor). Also a more lenient sentencing for a first time "EVER" offender

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

(NO)

NA

STATE OF SOUTH CAROLINA)
County of Horry)

VERIFICATION

20 CP26

I, Bernardo J. Evans, 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.

Bernardo J. Evans

SWORN to and subscribed before me this 26 day of January, 15.

Joseph E. [Signature] (L.S.)
Notary Public

My Commission Expires: November 15th 2017

HORRY COUNTY
2015 JAN 27 AM 10:57
MELANIE HUGHES - WARD
CLERK OF COURT

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

20 15 CP26 709

I, Bernardo J. EVANS, 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.

Bernardo J. Evans
Applicant

SWORN or affirmed to and subscribed before me this

26 day of January, 15.

Joseph [Signature]
Notary Public

My Commission Expires: November 15th 2017

HORRY COUNTY
2015 JAN 27 AM 10: 57
MELANIE HUGGINS-NEAL
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
 Bernado J. Evans, #361706,)	 Case No. 2015-CP-26-709
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for Post-Conviction Relief filed January 27, 2015, 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 June 2013, the Horry County Grand Jury indicted Applicant for armed robbery (2013-GS-26-2764) and kidnapping (3012-GS-26-2765). Applicant waived presentment of an indictment for assault and battery of a high and aggravated nature (2014-GS-26-4205). Johnathan D. McCoy, Esquire, represented Applicant. On October 7, 2014, Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature. The Honorable Benjamin H. Culbertson sentenced Applicant to concurrent terms of ten years for armed robbery and fifteen years for assault and battery of a high and aggravated nature. Applicant did not appeal his plea or sentence.

II.

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

1. "Ineffective Counsel"
2. "they charged me with (Arm Robbery)"

3. "they charge me with (Assault & Battery High Nature)"

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, SCRCF.

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), SCRCF, to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel. 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), SCRCF, 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 PCR application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to that question, Applicant includes a summary of the facts of his case, but includes no facts collaterally challenging his attorney's performance. Thus, Applicant fails to set forth any specific facts to explain his allegation of ineffective assistance of counsel. 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.

Respondent submits Applicant's allegation regarding the charges against him should be dismissed. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant's allegation regarding the charges against him is an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 ("[T]he Uniform Post-conviction Procedure Act 'shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.'" (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973))). Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). Because Applicant admitted his guilt at the plea hearing, he cannot now challenge the sufficiency of the evidence against him. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("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.” (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, Respondent request these allegations be dismissed pursuant to Rule 12(b)(6), SCRPC.

VI.

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

VII.

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.

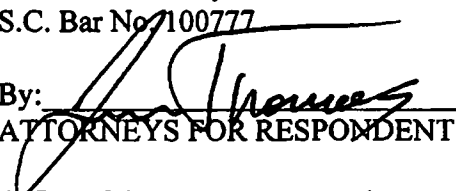
Respectfully submitted,

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

August 28, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
)
 BERNADO J. EVANS, #36170)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

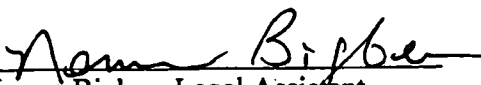
2015-CP-26-709

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:

James Kristian Falk, Esquire
PO Box 1058
Charleston, SC 29402

DATED this 28TH day of August, 2015.


 Norma Bigbee, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
COUNTY OF HORRY) CASE NO: 2015-CP-26-00709
PCR HEARING

B E F O R E: The Honorable D. Craig Brown
February 11, 2016

BERNARDO J. EVANS,
Petitioner,

vs.

 **ORIGINAL**

STATE OF SOUTH CAROLINA,
Respondent.

APPEARANCES:

James Falk, Esq.
For the Petitioner.

Jessica Kinard, Esq.
For the Respondent.

Court Reporter:
Natalie Dahl, RPR

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I-N-D-E-X

WITNESS PAGE

JONATHAN McCOY

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BERNARDO J. EVANS

Direct Examination by Mr. Falk..... 15

Cross-Examination by Ms. Kinard..... 27

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

PETITIONER'S EXHIBITS

MARKED & ADMITTED

NO EXHIBITS

CALL OF THE CASE

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

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MS. KINARD: This is Bernardo Evans versus South Carolina Case No. 2015-CP-26-0709. This is an application for a post-conviction relief filed January 27, 2015. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In June 2013, the Horry County Grand Jury indicted him for robbery and kidnapping. The applicant waived presentment of the indictment for assault and battery of a high and aggravated nature. Jonathan McCoy, Esq., represented the applicant.

On October 7, 2014, the applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature. The Honorable Benjamin H. Culbertson sentenced the applicant to concurrent terms of 10 years for armed robbery and 15 years for assault and battery of a high and aggravated nature. The applicant did not appeal his plea or sentence.

The State is present and ready to go forward. Mr. Evans is here and represented by James Falk. I also would like to put on the record that the State moved pursuant to Rule 12(e) of the South Carolina Rules of Civil Procedure for a more definite statement. The amendment was received by the State

JONATHAN McCOY - DIRECT EXAMINATION BY MR. FALK
1 yesterday. Even though this return was filed on
2 August 28, 2015 and the -- the applicant was aware of
3 the presentation of this case on the roster for
4 approximately a month. Thank you.

5 THE COURT: Mr. Falk.

6 MR. FALK: I call Mr. McCoy to the stand.

7 (JONATHAN McCOY, having been duly sworn,
8 testified as follows:)

9 DIRECT-EXAMINATION

10 BY MR. FALK

11 Q Did you represent Bernard Evans?

12 A I did.

13 Q Can you go over your relationship with Mr.
14 Bernardo Evans. How long have you known him?

15 A To give you an idea, I loaned him money before
16 Christmas before this happening so he could buy his
17 daughter Christmas presents. He was one of my close
18 friends; he still is. I've known him since I was 11.

19 Q How did you hear about these charges?

20 A Watching the news, just like everybody else in
21 Myrtle Beach. The girl that was raped, her family was
22 pretty public about finding Bernardo. His picture was
23 on all of the news. The surveillance camera video was
24 on all the news stations, and I called him -- I think
25 he called me -- somebody called me, because he was

JONATHAN McCOY - DIRECT EXAMINATION BY MR. FALK

1 coaching at the high school at the time. My brother is
2 a coach as well. We arranged a turn-in, whole deal. I
3 mean, no question that it was him on the video. Before
4 he even turned himself in, everyone was saying, Where
5 is Bernardo.

6 Q Did you advise him to turn himself in?

7 A Of course. If he hadn't already been picked up
8 at that time, absolutely.

9 Q You didn't take him to the police department?

10 A No.

11 Q Did you advise him to go to the police department
12 and make a statement?

13 A He didn't make a statement. I would never tell
14 anyone to make a statement without me present. Never
15 in nine years would I ever advise a client to make a
16 statement without me being present, ever.

17 Q Do you ever recall telling him to go to the
18 station?

19 A No. I may have told him to turn himself into the
20 jail, but he never made a statement, and that would be
21 because I told him not to.

22 Q Was there a preliminary hearing in this case?

23 A No, I don't think there was.

24 Q Did you waive the preliminary hearing?

25 A I don't think I filed one, or he never filed one

JONATHAN McCOY - DIRECT EXAMINATION BY MR. FALK

1 with him.

2 Q Was that -- what was your basis for that?

3 A Well, when you put a rape victim through a
4 preliminary hearing, you kind of lose a little ground
5 during your negotiations, particularly when this one
6 had tried to commit suicide right after the incident
7 took place. I told Bernardo that it would be ill
8 advised for us to do a preliminary hearing when the
9 probable cause was on a surveillance video, which I
10 already had seen.

11 Q You had seen the video?

12 A Yes.

13 Q And after seeing the video, was my client present
14 in it?

15 A Yes.

16 Q Were all the offenses charged visible in the
17 video?

18 A Yes. The criminal sexual conduct, you couldn't
19 see him raping her or him criminally sexually
20 assaulting her, but her coming out of the bathroom that
21 he pushed her in and shut the door, she was pulling her
22 pants up and zipping it up, so all she would have
23 had -- yeah, that was beyond a reasonable doubt in my
24 mind.

25 Q Did he ever tell you when he went to the police

JONATHAN McCOY - DIRECT EXAMINATION BY MR. FALK

1 department and the discussions he had with the
2 detectives?

3 A I don't think so, no. I mean, if he did, I would
4 have remembered that, and it would have been in my
5 discovery, which it wasn't, other than the fact that it
6 just said I'm an attorney. But when he and I first
7 spoke, I was federally -- protected in federal court,
8 so I couldn't be -- I mean, I was just telling him go
9 turn yourself in. I couldn't be there, but I
10 definitely told him not to say anything.

11 Q When did you review the evidence with my client?

12 A Every chance he wanted to. Every time we talked.
13 He was out on bond. He would come to the office. His
14 dad would come to the office. I mean, a lot --
15 needless to say, he is one of my close friends. He
16 would text me whenever he wanted to, and we would talk
17 about it.

18 Q So you had a copy of the surveillance video?

19 A I did.

20 Q Did my client see the video?

21 A I know he came to the office to view it. I know
22 my paralegal had it. Whether he closed his eyes, I
23 don't know, or whether he just never watched it, but I
24 do know, for a fact, that we went over the surveillance
25 video many times, and I do know that -- because he

JONATHAN McCOY - DIRECT EXAMINATION BY MR. FALK

1 didn't remember the situation, he continuously told me
2 I can't believe -- don't tell me anymore, I can't
3 believe it. But, I mean, the surveillance video was at
4 my office. His father knew that. He knew that. If he
5 didn't watch it when he came into my office to watch it
6 on several occasions, which was always available, I
7 wouldn't know that.

8 But he knew -- I mean, I asked him to several
9 times. I asked him to in a matter -- basically
10 telling him the gravity of the situation. I wanted
11 him to see the video. He needed to see the video.

12 Q What did you tell him about plea negotiations on
13 the assault and battery charge?

14 A I told him thank God that they were dropping the
15 criminal sexual conduct first degree and reducing it to
16 an ABHAN, because the girl was in a rape crisis
17 facility. Her mom was here speaking on her behalf
18 because she had just tried to commit suicide again
19 before this -- before the plea hearing. If the CSC
20 would have gone up, he would have gotten -- he would
21 have gotten hammered on that. If we would have pled on
22 the CSC, he would have been hammered on that.

23 When it was reduced to ABHAN by the sex crimes
24 prosecutor, I didn't think I could do it because all
25 he does is prosecute sex crimes, and so when we got it

JONATHAN McCOY - DIRECT EXAMINATION BY MR. FALK

1 reduced to a non-sexual offense, that he wouldn't have
2 to register and do all the other stuff in prison that
3 goes along with that kind of charge, we were all
4 extremely happy about that.

5 Q When did you review the sentencing range for the
6 ABHAN?

7 A During the plea negotiations that day with his
8 father in that room right there. It was actually in
9 this courtroom. His father and myself, we sat back
10 there. His father is heavily involved in the church,
11 so we prayed together. I told him that I thought after
12 discussing with Judge Culbertson for a lengthy period
13 of time that I could get him the minimum on the armed
14 robbery, but he wanted to hear the victim impact
15 statement before he sentenced him on the ABHAN. By
16 that time, we were so thrilled that the CSC was wiped
17 off the table. I mean, the kidnapping was on video. I
18 mean, kidnapping was pretty obvious. So, you know, you
19 have to remember, we got the kidnapping dropped, CSC
20 dropped, and the only thing that stayed was armed
21 robbery, which was completely on the video twice,
22 robbing the place twice, and locking the door to the
23 actual convenience store, which is a kidnapping, and
24 then locking her in the bathroom, which is a
25 kidnapping. She said it happened in a closet or like a

JONATHAN McCOY - DIRECT EXAMINATION BY MR. FALK

1 storage room for the third time because the whole thing
2 took several minutes.

3 So as far as going over the sentencing range. I
4 gave him the sentencing sheet and we discussed ABHAN.
5 We discussed what it carried, and mainly the
6 significant difference in a CSC first carrying with it
7 registry and all that other good stuff; the ABHAN did
8 not.

9 Q What did you do to investigate this case and
10 prepare for trial?

11 A I watched the surveillance video. I read the
12 discovery and I talked to my client who remembered
13 doing a lot of drugs, and without question I couldn't
14 put him on the stand if he was going to say that he
15 didn't do this. He would have had to say I just don't
16 know if I did it. So I would have no witnesses. I
17 would have just the video, the surveillance tape, the
18 girl who had tried too kill herself three times now --
19 to say that she's lying would have been a miraculous
20 statement for a jury to believe that she would have
21 tried to kill herself three times and she was
22 institutionalized because of this.

23 Other than that, I told him from the outset that
24 this is a case that we need to hope for the best in
25 plea negotiations, and he agreed.

JONATHAN McCOY - DIRECT EXAMINATION BY MR. FALK

1 Q So you didn't hire a private investigator?

2 A No, I did not.

3 Q You have one that works for you in your office?

4 A No.

5 Q Did you ever have a conversation with him
6 contemporaneous with the date of the plea that he would
7 have to come up with another \$5,000 or a sum of money
8 to take the case to trial?

9 A No. He never paid me a dollar for this case, and
10 I never asked him for anything, including his father
11 who is sitting in the courtroom right there. This is
12 one of my close friends. If the \$5,000 was brought up,
13 it was brought up if he asked for a private
14 investigator, because that is what the investigator
15 charges.

16 Q What conferences did you have with the detectives
17 in this case?

18 A I mean, Did you see the surveillance tape? Yeah
19 I saw it. It is pretty brutal. Yeah, it is pretty
20 brutal. The pictures are spot on.

21 At one point, when he was holding the Doritos bag
22 and standing next to the cash register, you know, it
23 almost looked like -- to the detectives it looked like
24 he had been casing her before, and I had to convince
25 them that it was a random situation involving drugs

JONATHAN McCOY - CROSS-EXAMINATION BY MS. KINARD
1 and whatnot for them to agree to the plea.

2 MR. FALK: One moment, please. Did you have a
3 conversation with Neil Frebowitz.

4 A About this case, I'm sure.

5 Q Do you know if he was still with the --

6 A No, he's not. I think he works for the FBI now,
7 maybe SLED. I don't know where he works. He doesn't
8 work for Horry anymore. I have no idea. I'm sure I
9 talked to him about the case.

10 MR. FALK: Nothing further.

11 THE COURT: Cross-examination.

12 MS. KINARD: Thank you.

13 CROSS-EXAMINATION

14 BY MS. KINARD:

15 Q Was the video really, in your opinion, all that
16 anyone needed to see?

17 A A hundred percent absolutely positively. If the
18 jury would have seen that video, he would have been
19 convicted of CSC first, armed robbery and kidnapping a
20 hundred percent.

21 Q What kind of sentence would that have carried?

22 A That would have put him in jail, if you run it
23 consecutively, for the rest of his life. I believe
24 kidnapping was 30 years, but CSC could have put him in
25 there for the rest of his life.

JONATHAN McCOY - CROSS-EXAMINATION BY MS. KINARD

1 Q So from the outset, your goal was a plea?

2 A Absolutely.

3 Q And he agreed with that?

4 A Absolutely.

5 Q Did he at any time say that he wanted to go to
6 trial?

7 A No.

8 Q Did you talk about this case a lot with his
9 family?

10 A Yes.

11 Q At any time did they want a trial?

12 A No. They always said we're putting our faith in
13 God. They are very religious people. I would see him
14 at the restaurant, which is Christian based. They were
15 here. We met at the office. Even after of the plea, I
16 mean, I talked to Bernardo after the plea when he was
17 in prison and it was a good conversation. I talked to
18 his dad multiple times. I know it was a horrible,
19 horrible, horrible, horrible, horrible night that
20 should have never happened, but it did nonetheless. If
21 the victim hadn't been so impacted, which is rightfully
22 so. If you were in that situation, it is
23 understandable.

24 With the video evidence and the taser being
25 found, I mean, it was just -- it was just -- and

JONATHAN McCOY - CROSS-EXAMINATION BY MS. KINARD

1 Bernardo didn't remember any of it, what was I
2 supposed to do? I mean, what witnesses was I supposed
3 to -- hey, Bernardo, who were you with? I don't know.
4 What did you smoke? I don't know.

5 I mean, I don't know what else I was supposed to
6 do except to get it reduced to an ABHAN and armed
7 robbery, which I thought was an absolute miracle.

8 Q You discussed all of that with his --

9 A Absolutely. He knew that.

10 Q Specifically, you discussed the impact on the
11 victim?

12 A Yes. Yes. We did not know -- at the time we
13 only knew that she was in treatment, we did not know
14 that she tried to commit suicide, because it was so
15 close in proximity for the plea, but the first time we
16 knew she was in treatment because of it, because
17 Scotchman or someone was investigating her work -- I
18 don't know, something to do with workman's comp. I
19 don't know.

20 Q And you explained all the elements of the
21 possible charges?

22 A Absolute.

23 Q And what the State would have to prove?

24 A Yes.

25 Q And what he was giving up as a result of

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 pleading?

2 A Yes. And Judge Culbertson goes over that as
3 well, yes.

4 Q Do you feel there were any questions left out in
5 the open that he needed answered?

6 A No. We sat in that room for an hour. Martin let
7 us sit here and pray with his father and go over things
8 with his family. I mean, he was 100 percent. We
9 hugged. I mean, you know, it was one of those things
10 you just -- he knew he had to go to prison. I mean,
11 you know, if we didn't get that plea that day, the way
12 it went down afterwards -- I think if we were here on
13 the same plea right now and had to do it all over
14 again, the girl is still in treatment, I don't think we
15 would have ever gotten ABHAN.

16 MS. KINARD: Nothing further. Thank you.

17 MR. FALK: No redirect.

18 THE COURT: You may step down thank you.

19 (BERNARDO EVANS, having been duly sworn,
20 testified as follows:)

21 DIRECT-EXAMINATION

22 BY MR. FALK:

23 Q When did you first talk to Mr. McCoy about this
24 case?

25 A The first time that I remember talking to him

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 was -- it was the Monday that they showed the
2 surveillance tape on TV. I didn't see the
3 surveillance, but my mother said that there is a guy on
4 there that didn't -- she didn't say it was me, but she
5 said it was someone similar, you ought to go and talk
6 to the police department. So from there, I called
7 Johnny, and Johnny said you should talk to the police,
8 and that was the whole deal, was just to go talk to
9 them, it wasn't turning myself in.

10 Q So when did you go to talk to the police?

11 A That very day. I left from work and went there.

12 Q And did Mr. McCoy come with you?

13 A No, sir, he didn't.

14 Q Did you expect that he was going to be there?

15 A Yes, sir, I did.

16 Q What made you expect that?

17 A Because he said he was going to meet me at the
18 station.

19 Q And so he never showed up at the station?

20 A No, sir. No, sir.

21 Q What happened? Did you have any discussions with
22 the detectives?

23 A Yeah. When I got there, he told me that Mr.
24 McCoy said that I said I did it and I was very
25 remorseful, and then he stuck a paper in my face, it

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 was a blurry picture of a guy standing in the doorway,
2 and he was like circle the picture and tell me that is
3 you. I said, No, I can't because, first of all, you
4 know, he's not here, and second of all, I can't say
5 it's me.

6 Q So I understand the detective said that Mr. McCoy
7 called him and said that -- I didn't hear the first
8 part.

9 A He said I was coming to turn myself in and that I
10 was very remorseful for what I did, but I never said I
11 did anything.

12 Q So he was referring to Mr. McCoy?

13 A Yes, sir.

14 Q So it is your testimony he had a conversation
15 with the detective?

16 A Yes, sir.

17 Q And saying that you were very remorseful?

18 A Yes, sir.

19 Q And what else happened when you were at the
20 police station?

21 A After he asked me to circle the picture and write
22 the person on the picture was me, and I told him I
23 couldn't do it, he then was like, I'm not trying to
24 coerce you into saying that or pressuring you saying it
25 is you. He said, We'll wait awhile for Mr. McCoy to

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 come.

2 After that, we probably waited like an hour or
3 two. He never came. So from there -- he never -- the
4 police never told me that I was being charged with
5 anything. He just brought me to J. Reuben Long, and I
6 sat there for a few hours. After about like midnight,
7 like 12:00, a little after midnight, he came in with
8 warrants and said that I was being placed under arrest
9 and being charged with the charges.

10 Q So you went from the police department to the
11 detention center?

12 A Yes, sir.

13 Q When did you next contact Mr. McCoy?

14 A He ended up being in my bail -- what is that?

15 Q Bond hearing?

16 A Bond hearing, yes, sir.

17 Q Did you ever look at the video with him?

18 A No, sir, I didn't.

19 Q You heard his testimony. Did you ever refuse to
20 look at it?

21 A When the case first came up I did, because I
22 didn't believe that I did anything like that. I
23 couldn't believe the stories that were going on. The
24 very first time -- I didn't know anything about a video
25 though, until it was like the second general sessions

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 hearing when I came from roll call. He had a disk in
2 his hand. He was like -- well, I got the motion that
3 day and also seen the disk. He said, You can watch it.
4 I still couldn't believe -- because it was only then
5 maybe like a month in. At that time, I just couldn't
6 believe that that -- this was the situation, because I
7 have no record. I was doing real good. I coached. I
8 had a real good job for the city, never got in any
9 trouble.

10 Later on, I did ask to see the film, and he told
11 me that the film would be at the Solicitor's Office,
12 or something like that, as in he didn't have it at his
13 office. And then I remember a time that he said that
14 the tape -- in the tape it was me, because he showed
15 it to his paralegal, but I'm thinking how can you show
16 it your paralegal if you didn't have it at your
17 office.

18 Q Was there ever a conversation about needing more
19 money to take the case to trial?

20 A When I got here that day, I didn't know what
21 quite was going to go on. I was really just under the
22 impression that I was coming in general sessions. He
23 did say at one time that we would have to make a
24 decision, but we only had, like -- about my case, we
25 only talked maybe three, four times actually about my

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 case. Did I send him text messages? Yeah, I sent him
2 lots of text messages. I called him a lot of times,
3 and I know he is a busy guy and he didn't get really a
4 chance to contact me a lot of times when I called.

5 As far as my case, man, we only talked about my
6 full case about three, four times prior to that day.
7 We sat in that room, literally, about an hour or two,
8 because I did not want to take a plea. I actually
9 wanted to go to trial. I wanted to go to trial. I
10 didn't want to take a plea, and that is why we sat in
11 the room, prayed. It was a really hard day, really a
12 hard day.

13 Q You heard Mr. McCoy testify that you had no
14 recollection of that night?

15 A No, sir. And that is another reason why I felt
16 like -- from what I read in my motions and stuff like
17 that, I never -- they say there was a surveillance
18 tape, but then the surveillance tape they had also had
19 a sheet where it was written down of what occurred.
20 Even with the stuff like the taser and the bag of
21 chips, there was never no bag of chips. There was some
22 other stuff they had, but they threw it out, as far as
23 like evidence.

24 I really -- I really don't know what happened at
25 all. Yes, I knew that I did drugs. I relapsed after

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 five years. I relapsed, and I told him before that
2 someone gave me cocaine mixed with crystal meth. Even
3 after the situation I talked to a guy -- not to a guy,
4 but to the guy, and he knew that he gave me something
5 that was wrong. I didn't buy it or purchase it, it
6 was something that was given. The point is I still
7 took it, but the thing is I had no recollection of
8 anything, so I couldn't say that I went to this store
9 or I went to this place or that place, you know. I
10 didn't -- I have no knowledge of anything about that
11 at all.

12 Q Did they discuss an Alford plea?

13 A No, sir, never.

14 Q You said you were praying back there for an hour,
15 how did -- you are saying you didn't want to plea?

16 A No, sir.

17 Q Why did you eventually plea?

18 A First of all, I have no knowledge of the law, you
19 know. I'm banking solely on what he is going to do. I
20 put a lot of trust in him, that he would make the best
21 decision. I sat there and sat there, and the Solicitor
22 is telling me that I'm going to get 90 years, you know.
23 And I'm hearing this -- I've never been in any trouble,
24 and I'm being told that right now I have to make a
25 decision or I'm going to get 90 years. There is no

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 walking back out that door.

2 You know, me knowing personally that I can't say
3 that I did anything, I can't take 90 years, you know.
4 They are there, and what he tells me is I can take 10
5 years plus get two years for my ankle monitor, and the
6 assault and battery was mainly is supposed to be just
7 a misdemeanor charge, so it was looking like zero. So
8 I'm under the impression that maybe I'll get 10 years
9 plus an ankle bracelet, and I go home in four, five,
10 six years. I still didn't want to do that. I still
11 didn't want to do that. I absolutely did not want to
12 take that plea at all. I really did want to go to
13 trial, because I felt like I -- I wanted to know. I
14 wanted to know. I wanted to know for myself,
15 personally.

16 Q But you did plea?

17 A Unfortunately, I did.

18 Q You told the judge you were satisfied with
19 Mr. McCoy?

20 A You know, as a friend, I can't lie. Johnny is a
21 real good friend. He's been -- the time around
22 Christmas, you know, I really did need a couple of
23 dollars, and he helped me out. We've been to clubs,
24 bars, we've been out to eat. As an individual, he's a
25 real good guy. I just feel like at that time he wasn't

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 ready for my case. I know he's been practicing law
2 with other law firms coming out of school. I used to
3 see him when I was in college, see him at Carolina when
4 we went up there, but practicing law by himself, he
5 only had just started his own law firm that year, you
6 know. So I just think at that time that he wasn't
7 ready for my case.

8 Q Did he tell you he needed more money to take it
9 to trial?

10 A For him, no. But for a private investigator he
11 was like if you insist on going to trial, then you have
12 to come up with \$5,000 to pay the private investigator
13 and we'll go from there. But, you know, my thing is if
14 we're here, then nobody investigated from the
15 beginning.

16 Q Did you have \$5,000 for the investigator?

17 A Not right there then, but I'm sure we could have
18 come up with it.

19 Q Your testimony is that you wanted to have a
20 trial?

21 A Yes, sir.

22 Q Why did you not go to trial?

23 A We didn't go to trial because he said it was me
24 on the tape. I never seen the tape. I never knew
25 about major evidence. I was never questioned by the

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 police. When I went to talk to them, that is when they
2 made me a suspect, because I went to talk to them.
3 Nobody ever was like, That's him, that's him, pointing
4 fingers at me. No one knew anything, not even the
5 police. When I went there for questioning, there is
6 nobody else. There is nobody else to talk to. No one
7 else is coming and busting the door to talk to him so,
8 you know, it was that. Once all of that went through,
9 I did, I really insisted that we go to trial. I did
10 not want to take plea at all.

11 Q Is there anything else you want to add?

12 A Yes. I have a few things. One thing was they
13 said during plea negotiations they came up with a thing
14 or with a deal, but there was never a plea negotiation.
15 They said without recommendation -- it is in my
16 transcript -- that I entered a plea without
17 recommendation, but they go back behind and they say
18 that I took a plea that was recommended. Even on the
19 sentencing sheets there is no real recommendation other
20 than -- it was supposed to be 0 to 20 for ABHAN, which
21 I did personally -- I was told it was a misdemeanor,
22 and on the 0 to 20, they put 20 years, no parole. Like
23 that was the recommendation, you know. But they said
24 they didn't.

25 I also have -- as far as even with the

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 ineffectiveness of the counsel, there were little
2 things, you know, that I felt even with the
3 pretrial -- we didn't have a pretrial because he told
4 me that I want to stay out of court as much as
5 possible, so there is no need, but then you find out
6 that is where all these things come out in the light,
7 you find out about the surveillance tape and other
8 evidence they have.

9 I looked into my warrants, and I'm not a lawyer,
10 but as I read some stuff with the warrants, I know
11 they are true billed, dated on one day, but there is
12 no true bill stamp on any of the indictments. They
13 said I was arrested on the 21st, and I went and --
14 when I went to talk to the police on the 19th, that
15 was the day that he took me to the police department.
16 I sat there.

17 I went to bond -- to get my bond on the 20th,
18 and I was released on the 21st, and I know that
19 because they only did ankle bracelets on Tuesdays and
20 Thursdays. So the Thursday was the 21st, and that
21 is the day I was released.

22 Also, the other issues with the warrant was -- I
23 don't know if it matters, but the fact that they state
24 I was doing one thing, but the indictments and all of
25 that state something else.

BERNARDO EVANS - DIRECT EXAMINATION BY MR. FALK

1 Also the Grand Jury waiver. I was told that --
2 we were supposed to come up with some type of an
3 agreement prior to just that day. We just went that
4 day, and everything was done that day. The waiver,
5 everything was just like -- everything. It was really
6 rushed and it was really rough.

7 I was told that I was supposed to come in front
8 of the -- the clerk was supposed to bring me, and at
9 that time I was supposed to either decide what I want
10 to do, the waiver or whatever, according to 17-23-130
11 and 120, the proceedings for the waivers.

12 Also, the fact that the officer, Neil (sic), he
13 was forced to resign, and I wanted -- I asked that
14 question, too, why was he forced to resign --

15 MS. KINARD: Objection, relevance, Your Honor.

16 THE COURT: Overruled. Go ahead.

17 A That was one question I wanted to know, why is he
18 gone. I also wanted to know why the officer was the
19 sole witness in the Grand Jury, that was a question
20 that was never answered for me.

21 Q How much time did he spend going over your
22 discovery with you?

23 A Actually, for about 20 minutes -- not even that,
24 maybe 15 minutes, 10 to 15 minute in the courtroom the
25 first day that I went to general sessions.

BERNARDO EVANS - CROSS-EXAMINATION BY MS. KINARD

1 Q What did he review with you as far as any kind of
2 investigation that he had done?

3 A Really nothing, other than he said he watched the
4 tape.

5 MR. FALK: No further questions.

6 THE COURT: Ms. Kinard.

7 CROSS-EXAMINATION

8 BY MS. KINARD:

9 Q Did you watch the tape?

10 A No, ma'am.

11 Q Did you see the still photos taken from the case?

12 A No, ma'am, other than the one that the police had
13 at the department that day.

14 Q You said something about a Doritos bag?

15 A Yes, ma'am.

16 Q Was that from that picture?

17 A No, ma'am. That was -- he just said something
18 about a Doritos bag, but I know that wasn't in the
19 paperwork.

20 Q Did you say you have the paperwork?

21 A I don't have -- it was in the motion. I don't
22 have the motion now, but I know in the motion it didn't
23 say anything about a Doritos bag.

24 Q What kind of motion are you talking about?

25 A Motion of discovery.

BERNARDO EVANS - CROSS-EXAMINATION BY MS. KINARD

1 Q Did you get a copy of the discovery?

2 A Yes, ma'am.

3 Q So you had all of that to look at whenever you
4 wanted to?

5 A Yes, ma'am.

6 Q When did you tell Mr. McCoy you wanted a trial?

7 A I stated that the whole time.

8 Q When did Mr. McCoy officially agree to represent
9 you?

10 A Any time. We were friends. Any time that
11 something was to ever happen, he would always be there
12 by my side.

13 Q So you trusted him?

14 A I really did. I mean, because he's -- he's a
15 friend. We played football together, went to school
16 together. I had no reason not to. I just really
17 thought it would have been -- he would have fought a
18 little harder.

19 Q Did you trust him throughout the process?

20 A For the most part I did.

21 Q Did you trust that he had your best interest at
22 heart?

23 A I felt like he would do the best he could do. I
24 can't say that he had my best interest because how the
25 outcome came. It just didn't seem like he fought as

BERNARDO EVANS - CROSS-EXAMINATION BY MS. KINARD

1 hard as he could for a friend, you know. I could have
2 seen if I was just another guy, but, you know, we were
3 friends.

4 Q Did he tell you he thought this plea decision was
5 in your best interest?

6 A At the time, he did because he got the same thing
7 that I was getting, you know. They are going to give
8 me 90 years. You don't want to see your friend go to
9 jail for 90 years. Me, being blind to the law, I
10 didn't know that I couldn't get 90 years. First of
11 all, to even say 90 years, and me not even know what is
12 going on as far as the real deal, you know. When he
13 started talking to them about -- when the Solicitor
14 brought up the thing with the 10 and the ABHAN, it
15 sounded better than 90 years.

16 Q Did you hear Mr. McCoy testify that by his
17 calculation you could have been in jail for life under
18 those charges?

19 A Yes, ma'am.

20 Q Did he discuss that with you?

21 A No. I always heard 90 years.

22 Q Regardless, we're talking about a lot time?

23 A Yes, ma'am.

24 Q Is it fair to say you are between a rock and a
25 hard place?

BERNARDO EVANS - CROSS-EXAMINATION BY MS. KINARD

1 A It is when you are blind.

2 Q Fair enough. You said earlier, I wanted to know,
3 you wanted to go to trial because you wanted to know?

4 A Yes, ma'am.

5 Q What does that mean?

6 A I wanted to know what happened. Was it really me
7 on the tape? Is it really me in the store? Who did
8 it? Is there any witnesses, or is there any evidence
9 other than the tape? You know, I didn't know other
10 than what I read in the motion. And in the motion, all
11 I ever seen was a video, but I never....

12 Q Even though Mr. McCoy told you where you could
13 watch it?

14 A Yes, but I never watched it. Even when I asked
15 to watch it, it wasn't there when I asked him to watch
16 it.

17 Q And if he didn't have it, he told you where you
18 could find it, didn't he?

19 A He said we'll have to make another time to watch
20 it with the Solicitor.

21 Q Regardless, there is opportunities for you to
22 watch the video?

23 A Even when I asked, we never watched it. We never
24 watched it together, and he has stated in the
25 transcripts that we watched it together. We never

BERNARDO EVANS - CROSS-EXAMINATION BY MS. KINARD

1 watched the tape together.

2 Q All the other evidence, that was not stuff you
3 were provided with, the still shots and all of that,
4 wasn't in discovery?

5 A There is no still shots, no.

6 Q At the sentencing hearing, did anyone speak on
7 your behalf?

8 A They did, and the only reason that kind of
9 happened is because we didn't know what was going to
10 happen. I didn't know what I was really getting into.
11 The people that I had come talk to me was on stand-by
12 for anything, because we didn't know.

13 Q Regardless, Mr. McCoy got those people to speak
14 on your behalf?

15 A No, I asked those people to come.

16 Q Were they subpoenaed?

17 A One.

18 Q But they presented a statement on your behalf in
19 mitigation?

20 A Yes, ma'am.

21 Q You took the plea because you felt it was the
22 right thing?

23 A I felt I was pressured.

24 Q Did you say that in the transcript?

25 A It was there all along. I even tried to back

BERNARDO EVANS - CROSS-EXAMINATION BY MS. KINARD

1 out. I was told to come here and say yes to
2 everything.

3 Q How did you try to back out?

4 A Because when he asked, Is this what you did, is
5 this what you are planning, and I was like, Well, no.

6 Q I'm looking at Pages 13 and 14 when you are asked
7 if you want to plead guilty, is it voluntarily, anyone
8 forcing you to do it --

9 A And I should have said yes.

10 Q But you didn't?

11 A Yeah.

12 Q And you were under oath?

13 A Because I was told -- I mean, I cried for three
14 hours straight. When I got here, I cried. When I left
15 here, I cried. I was told to say yes to everything,
16 and I don't know anything about law at the time, never
17 been in a courtroom. You are trusting this person
18 right here is going to do the best they can do.

19 Q I'm not trying to minimize your situation, sir,
20 but you have to understand looking at the transcript
21 you accepted this plea freely and voluntarily; is that
22 correct?

23 A When you look at the pages of the transcript,
24 ma'am, it still is not voluntarily, and it wasn't
25 freely, because behind it was still pressure.

ARGUMENT

1 Q Understand.

2 MS. KINARD: No further questions.

3 THE COURT: Mr. Falk.

4 MR. FALK: No redirect, but I don't think he was
5 put under oath. It is not shown in the transcript.

6 THE COURT: You may step down.

7 MS. KINARD: It's on Page 3.

8 THE COURT: Argument.

9 MR. FALK: My client testified that he felt he
10 was in a rock and a hard place, forced to take this
11 plea. He retained his friend to represent him, and
12 when he was put into the situation where he either was
13 going to plea that day or they were throwing 90 years
14 if he didn't plea, he would have to come up with
15 \$5,000 to go forward, it is clear that he was really
16 looking for some proof that he was involved in the
17 situation. He wants to watch the video tape, and he
18 never got a chance prior to the plea.

19 He testified that he didn't -- it was important
20 for him to watch the videotape because he couldn't
21 recall what happened that night because of the drugs
22 he was on. So he was left -- he felt he was left with
23 no choice, but he had to take a plea when he would
24 rather go to trial.

25 THE COURT: Ms. Kinard.

ARGUMENT

1 MS. KINARD: Thank you, Your Honor. I think it
2 is clear from testimony from Mr. McCoy that Mr. Evans
3 was given a repeated opportunity to watch this video,
4 whether it was at Mr. McCoy's office or through the
5 Solicitor. Mr. McCoy stated he made himself available
6 for his friend as often as possible, and stated the
7 only request for money was that for an investigator if
8 they decided to go forward at trial.

9 I think it is very clear from testimony, as well
10 as the transcript, that Mr. Evans chose the lesser of
11 two evils by picking the plea. Just because a
12 defendant pleads for fear of getting a lesser sentence
13 by going to trial, that does not make his plea
14 unknowing or un-voluntary. That is well established
15 case law, which I can supplement for the record later.

16 Mr. McCoy stated that the evidence was
17 overwhelming, and that also nullifies any argument of
18 deficiency. If the evidence is overwhelming, then
19 even the worse lawyer -- even the best lawyer is
20 presumed not to overcome that sometimes. It is very
21 hard to overcome a surveillance video. Just as
22 Mr. McCoy stated, there were no other witnesses, but
23 you have photographic evidence that this is the man
24 that was there, regardless of the fact whether he
25 remembered it or not. There is simply no evidence, no

ARGUMENT

1 proof presented today that Mr. McCoy did anything but
2 represent Mr. Evans to the best of his ability. He
3 certainly did that with an articulate strategy of
4 getting him a plea deal with the least time served
5 possible, as well as representing him to the best of
6 his ability. He was not deficient. He operated under
7 reasonable prevailing norms of professional standards,
8 and because he did so, he was not deficient and
9 therefore could not have prejudiced Mr. Evans. The
10 State requests that you deny any relief that Mr. Evans
11 is requesting.

12 THE COURT: Based on what I hear, I find the
13 applicant failed to meet his burden of proving, first
14 of all, that counsel's performance was deficient. In
15 other words, he has failed to prove that counsel
16 failed to render reasonably effective assistance under
17 prevailing professional norms as alleged.

18 Furthermore, even if the defendant had been able
19 to prove deficient performance, defendant failed to
20 prove that he has been prejudiced by such. In the
21 context of a guilty plea, defendant has failed to
22 prove -- or applicant failed to prove that his plea
23 was not voluntarily, knowingly and intelligently
24 entered into. Therefore, such relief as requested by
25 the applicant is hereby denied. Thank you.

ARGUMENT

1 (Whereupon, the proceedings concluded.)
2

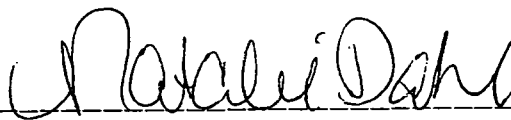
3 CERTIFICATE OF REPORTER
4

5 State of South Carolina)

6 County of Horry)
7

8 I, Natalie Dahl, Official Court Reporter for the
9 State of South Carolina, do hereby certify that the
10 foregoing is a true, accurate and complete Transcript
11 of Record of the proceedings had and evidence
12 introduced in the matter of the captioned case,
13 relative to appeal, in the Court of Common Pleas for
14 Horry County, South Carolina, on the 11th day of
15 February, 2016.

16 I do further certify that I am neither of kin,
17 counsel, nor interest to any party hereto.
18

19 April 20, 2016
2021 
22 _____

23 Natalie Dahl, RPR

24 Court Reporter
25

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
 Bernardo J. Evans, #361706,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-26-0709

ORDER OF DISMISSAL
 (Ends action)

HORRY COUNTY
 CLERK OF COURT
 MELANIE HUGHES-WARD
 10 MAR 10 PM 2:28

This matter came before the Court by way of an Application for Post-Conviction Relief filed January 27, 2015. Respondent filed a return on or about August 28, 2015. The Court convened an evidentiary hearing into the matter on February 11, 2016, at the Horry County Courthouse. Applicant was present and represented by James K. Falk, 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 June 2013, the Horry County Grand Jury indicted Applicant for armed robbery (2013-GS-26-2764) and kidnapping (2012-GS-26-2765). Applicant waived presentment of an indictment for assault and battery of a high and aggravated nature (2014-GS-26-4205). Johnathan D. McCoy, Esquire, represented Applicant. On October 7, 2014, Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature. The Honorable Benjamin H. Culbertson

copy

sentenced Applicant to concurrent terms of ten years for armed robbery and fifteen years for assault and battery of a high and aggravated nature. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "Ineffective Counsel"
2. "they charged me with (Arm Robbery)"
3. "they charge me with (Assault & Battery High Nature)"

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 called plea counsel first to testify, and he began to testify regarding the longstanding friendship he had with the Applicant. He never questioned that he would represent the Applicant, and never charged the Applicant for his services. He further stated that he told Applicant to turn himself in but not make a statement until he could get there, as he was protected for a federal court matter. Plea counsel then testified regarding evidence in the case, which included a surveillance tape that had, as he characterized it, evidence that would convince any jury beyond a reasonable doubt that Applicant had committed the crimes for which he was charged. Additionally, he testified that the evidence in the case was always available for Applicant to see, including the surveillance tape, even if they needed an appointment with the solicitor to go view it. He then testified about plea negotiations, and how difficult this case could be because of the degree to which the victim continued to suffer, including suicide

attempts. This factored into decisions such as not to have a preliminary hearing (especially combined with the evidence at hand) and extensive plea negotiations in order to avoid a trial. Plea counsel discussed his investigations into the case, and that there was not much to look into beyond the surveillance tape. He mentioned to Applicant that an investigator could be hired, which would cost about five thousand dollars, but one was never hired. This Court finds plea counsel's testimony to be very credible.

Applicant testified next and went through his memory of events. Applicant's testimony differed from plea counsel's significantly. This Court does not find applicant to be very credible. He testified that he did turn himself in on plea counsel's advice, but added that the officers said plea counsel had called and told them that Applicant had committed the crime and that he was remorseful. Applicant also admitted that he did not want to watch the surveillance tape at first, but also did not think that plea counsel had a copy of the tape for him to watch. Applicant testified that plea counsel demanded more money if they were going to go to trial, which is counter to plea counsel's testimony that money was never discussed except in relation to the possibility of hiring an investigator. Regarding facts, Applicant testified that he had no knowledge of what happened the night of the incident other than a drug relapse. He pled because he had no knowledge of the law and trusted plea counsel, though he felt as if they were not ready for the case. Applicant was under the impression that he was pleading to ten (10) years plus ankle monitoring for two (2) years, but he still did not want that sentence.

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 testified that he negotiated extensively on his client's behalf, and that this led to the best outcome possible. His testimony was that they both agreed from the

outset that their best hope was to push hard in negotiations, and this is the tactic that was used. This Court finds plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

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 that 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 firmly convinced that Applicant's guilty plea was entered into freely, voluntarily, knowingly, and intelligently. Applicant testified to those exact statements during the plea hearing, and 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. Furthermore, plea counsel spoke eloquently and thoroughly during mitigation. As a result, Applicant has failed to meet his burden, and this allegation is denied and dismissed.

D. 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. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

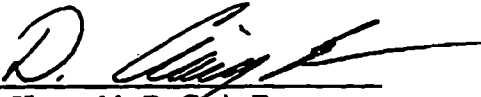
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCPP, 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.

Remainder of page intentionally left blank.

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

Flourence, South Carolina

DOCKET NO. 2013-GS-26-02704

The State of South Carolina
County of Horry

Martin D. Sprafkin 13H01378

COURT OF GENERAL SESSIONS

June, 2013 TERM

THE STATE

vs.

Bernardo Joseph Evans
B/M WATERGATE DR
Myrtle Beach, SC 29568
DOB:
SSN:

ATTORNEY: McCoy, Jonathan David

Indictment for
ARMED ROBBERY

ORIGINAL

Jimmy A. Richardson, II, Solicitor

WITNESSES

Joseph Manjarrez Horry County Police
Department

ARREST WARRANT NUMBER

2013A2610700169
CDR: 0139 16-11-0330(A)
DOA: 3/21/2013

ACTION OF GRAND JURY

Foreperson of Grand Jury JUN 27 2013
Date:

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

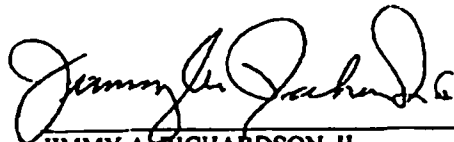
At a Court of General Sessions, convened on June 27, 2013, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Bernardo Joseph Evans did in Horry County on or about March 16, 2013, while armed with a deadly weapon, or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon to wit: a stun gun or tazor, take and carry away personal property of Sara Thomas from or in the immediate presence of Sara Thomas with intent to deprive Sara Thomas of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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

PLED GUILTY/TRIAL
COURT DATE

2014 OCT -9 PM 5:19

10/14/14

DOCKET NO. 2013-GS-26-027105

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

Martin D. Spratlin 13H01378

COURT OF GENERAL SESSIONS

June, 2013 TERM

THE STATE

vs.

Bernardo Joseph Evans
B/M WATERGATE DR
Myrtle Beach, SC 29588
DOB:
SSN:

ATTORNEY: McCoy, Jonathan David

Indictment for
KIDNAPPING

ORIGINAL

Jimmy A. Richardson, II, Solicitor

WITNESSES

Joseph Manjarrez Horry County Police
Department

ARREST WARRANT NUMBER

2013A2610700170
CDR: 0095 16-03-0910
DOA: 3/21/2013

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *[Signature]* JUN 27 2013

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

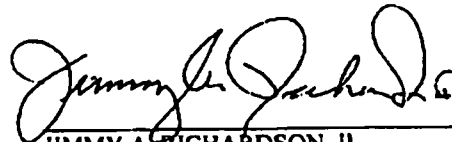
At a Court of General Sessions, convened on June 27, 2013, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Bernardo Joseph Evans did in Horry County on or about March 16, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Sara Thomas, without authority of law, in violation of Section 16-03-0910, 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

DOCKET NO. 2014-GS-26-04205

WITNESSES

Joseph Manjarrez Horry County Police
Department

The State of South Carolina

County of Horry

Martin D. Spratt III 13HD1378

COURT OF GENERAL SESSIONS

OCTOBER, 2014 TERM

THE STATE

vs.

Bernardo Joseph Evans
B/M WATERGATE DR
Myrtle Beach, SC 29588
DOB:
SSN:

ATTORNEY: Jonny D. McCoy

Indictment for

ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

Jimmy A. Richardson, II, Solicitor

ARREST WARRANT NUMBER

2014GS2604205
CDR: 0160 16-03-0652
DOA: 3/21/2013

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

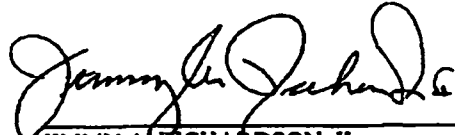
At a Court of General Sessions, convened on October 16, 2014, the Grand Jurors of Horry County present upon their oath:

ASSAULT AND BATTERY
OF A HIGH AND AGGRAVATED NATURE

CDR: 3411 16-3-600(B)

That Bernardo Joseph Evans did in Horry County on or about March 16, 2013 commit an unlawful act of injury to Sara Thomas which resulted in great bodily injury or the act was accomplished by means likely to produce death or great bodily injury to the victim in violation of Section 16-3-600(B), 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

FILED
Horry County
2014 OCT -9 PM 5:19
COURT DATE
PLED GUILTY