

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

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OCT 26 2016

S.C. SUPREME COURT

JOE LOUIS BROWN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APELLATE CASE NO. 2016-001092

A P P E N D I X

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina	)	
	)	
v.	)	Case No. 12-GS-10-4413 et al
	)	Case No. 12-GS-08-1493 et al
Joe Louis Brown,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 7, 2014, before The Honorable Benjamin Culbertson in Courtroom 4C of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Burns Wetmore, Assistant Solicitor
 Kelly Young, Assistant Solicitor
 9TH CIRCUIT SOLICITOR'S OFFICE
 101 Meeting Street, 4th Floor
 Charleston, South Carolina 29402
 Appearing for State of South Carolina

Aaron Mayer, Esq.
 Brian Burke, Esq.
 2000 Sam Rittenberg Blvd, Suite 2011
 Charleston, South Carolina 29407
 Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
 dgarrison@accourts.org

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1 (OFF RECORD IN-CHAMBERS CONFERENCE)

2 (DEFENDANT PRESENT)

3 THE COURT: All right. What have
4 we got?

5 MR. MAYER: Judge, I went to speak
6 with my client about what we talked about in
7 chambers and my client would like to address
8 the Court if he may.

9 THE COURT: Well, I'll leave --
10 you're his attorney, do you have any
11 objection to him addressing the court?

12 MR. MAYER: I don't, Your Honor.

13 THE COURT: All right. If you
14 could, please stand. Your name is Joe Louis
15 Brown?

16 DEFENDANT: Yes, sir.

17 THE COURT: All right. Mr. Brown,
18 I understand you want to address the Court;
19 is that correct?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. Well,
22 before you do that, I need to let you know
23 that anything you say can be used against
24 you, all right? So if you have any question
25 about what you want to say, I suggest you go

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1 over it with your attorney first, okay? I
2 will allow you to address the Court; however,
3 you have the right to remain silent.
4 Anything you say can be used against you in a
5 court of law, even though you're in this
6 setting.

7 DEFENDANT: Yes, sir.

8 THE COURT: Okay. Do you under-
9 stand that?

10 DEFENDANT: Yes, sir. I under-
11 stand.

12 THE COURT: Do you need to talk to
13 your attorney about anything?

14 DEFENDANT: Well, as I stated
15 earlier to him, you know, I told him I wasn't
16 planning on going on the bus today.

17 THE COURT: I'm sorry, what?

18 DEFENDANT: Oh, I said, as I
19 stated to him earlier I wasn't planning on
20 going on the bus or anything like ??? that
21 day. But I was told one thing when I made
22 the deal, when I made it with my two
23 attorneys. And then he said all of a sudden
24 things have changed. I came down here, you
25 know, for a plea, of ten consolidated. But

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1 then when I got down here, he told something
2 new was -- he told me that, you know, he
3 guaranteed, he guaranteed I would get the ten
4 when I came down here.

5 I don't know, if him and the
6 solicitor had worked something out or
7 whatever. He told me that he it would
8 probably best for me to take the plea.

9 THE COURT: Well, Mr. Brown, I
10 hate to interrupt you. I apologize. But
11 there's nothing I can do about there, okay?

12 There is no Constitutional right to
13 a plea bargain, okay? You cannot hold them
14 to make an offer to you.

15 Your choices are to plead guilty or
16 to go to trial to determine your guilt or
17 innocence.

18 The State cannot force you to plead
19 guilty, okay? So if you want a trial, you
20 can get a trial.

21 The State cannot keep you from
22 pleading guilty. If you want to plead
23 guilty, you can plead guilty, and I will
24 accept your guilty plea. They cannot force
25 you to plead guilty. They cannot keep you

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1 from pleading guilty.

2 Now, when you're talking about a
3 negotiated sentence or a recommendation on
4 your sentence or whatever the case may be,
5 that's up to the State as to whether or not
6 they want to make one or whether or not they
7 don't want to make one. You do not have the
8 right or a Constitutional right to force them
9 to offer you a certain numbers of years.

10 By the same token, they cannot
11 condition your guilty plea on you accepting a
12 negotiated sentence. If you want to plead
13 guilty without a negotiated sentence, without
14 a recommendation or whatever the case may be,
15 let me decide the sentence, you can do that
16 if you want.

17 DEFENDANT: You see, I was asking
18 -- I was asking two different -- the way, how
19 it was broken down to me was, 'well, if you
20 take this plea you can', he said -- they told
21 me, said it will be twenty-five. 'If you
22 take this plea we'll be able to make sure
23 that we get you ten -- that we get you ten
24 years, and you'll only have do to six more
25 since you've been in jail for already two

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1 years.'

2 And I wasn't really prepared for
3 that. That's probably -- and when he came to
4 me, to see me this morning, I was like,
5 'well, you told' -- 'well, you guaranteed me
6 this.' And he told me, like I said, he told
7 me not to throw him under the bus. I told
8 him, you know, that right a few minutes ago
9 he could get more time to go over this or
10 whatever. But like I said -- I'm only
11 recalling what he told me. I'm only going
12 off his comments, because I ain't never been
13 in a situation like this before where ---

14 THE COURT: All right.

15 DEFENDANT: And was told that I
16 had to be in front of the Court, so I'm
17 basing all my decision based on what he said.
18 My whole sole reason to even come down here
19 for a plea was the fact that my lawyer told
20 me, 'well, okay, we can get you ten
21 consolidated.'

22 That's that. I went off his basis
23 because I ain't never been in the system. I
24 don't know anything about it so I was relying
25 solely on my lawyer.

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1 THE COURT: Mr. Brown, your choice
2 is you need to make a decision as to whether
3 or not you want to go to trial or whether or
4 not you want to plead guilty, or whether or
5 not you want to accept the offer by the
6 State.

7 DEFENDANT: He said ---

8 THE COURT: Those are your three
9 choices, okay?

10 DEFENDANT: You said plead, go to
11 trial, or -- ?

12 THE COURT: Or as I understand the
13 State's offering to let you plead guilty
14 under a negotiated sentence of eighteen
15 years; is that correct?

16 SOLICITOR YOUNG: To all his current
17 charges and the charges in Berkeley.

18 THE COURT: Okay. So in other
19 words you could plead guilty to all of the
20 charges against you -- which are armed
21 robbery, possession of a weapon during the
22 commission of a violent crime and burglary
23 third?

24 SOLICITOR YOUNG: It's an attempted
25 armed robbery, a strong-arm robbery, an

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1 unlawful carrying times two. A kidnapping in
2 Berkeley, an armed robbery in Berkley, and I
3 believe that's all, Your Honor.

4 THE COURT: All right. So you can
5 plead guilty to all of those under a
6 negotiated sentence of eighteen years, which
7 means if the Court accepts it, I would impose
8 an eighteen-year sentence.

9 Or you can go to trial on possession
10 of a firearm during the commission of a
11 violent crime, and armed robbery.

12 Or you can plead guilty to armed
13 robbery and possession of a firearm during
14 the commission of a violent crime without any
15 negotiation, without any recommendation, and
16 I would impose the sentence on those two
17 charges.

18 Those are your options, okay?

19 DEFENDANT: I do understand what
20 you saying, sir. And like I said, I appreci-
21 ate you explaining the situation to me. But
22 this is honestly my first real look at what's
23 really going on. Like I said, I was told one
24 thing. So to me this is -- this is -- it
25 didn't even register to me because like I

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1 said before, I was basing it off of what he
2 was saying. He was saying, okay, all these
3 -- 'the cases that you're going here for,
4 you'll get a negotiated deal for ten years,
5 and you'll have to do six.'

6 So, now like what you're saying is
7 me, so he knew the -- he was saying with both
8 of the solicitors are negotiating with each
9 other. And when him and Brian first came to
10 see me, he said well, they both said, well
11 you can get a consolidated deal for ten
12 years, put all of them together so we can
13 wrap this up. My lawyer said to me
14 personally -- he said to me personally he
15 doesn't feel like he would beat it in trial,
16 whether I'm innocent or not. He said he
17 wouldn't feel like he could beat it in the
18 trial.

19 THE COURT: But, see, Mr. Brown,
20 what you're talking about -- I think what
21 you're doing is you're asking me to do
22 something that I cannot do.

23 DEFENDANT: No, I'm not ---

24 THE COURT: You do not have a
25 right to force the State to offer you

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1 anything.

2 DEFENDANT: No, I'm not -- I'm
3 asking not for you, I'm just telling you --
4 I'm just letting you know what's going on so
5 that we can get it on the record so that we
6 can give you a clear understanding. Like all
7 this is as far as taking a plea, I was told
8 one thing. And like I say, I based it on
9 what he was saying.

10 THE COURT: But, Mr. Brown, still
11 that may have been. It may not have been. I
12 don't know. All I'm saying is you don't have
13 a right to that. So they can withdraw that
14 offer.

15 DEFENDANT: Well, he explained it
16 as though -- he explained as though -- like I
17 said, I didn't know that.

18 THE COURT: I understand you
19 didn't know. I understand ---

20 DEFENDANT: I only came down here
21 on the basis of what he told me. That's --
22 I -- like I say, I'm not trying to make any-
23 thing out of order or be disrespectful but
24 I'm saying I was told this, so I went on that
25 basis. Like I said ---

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1 THE COURT: Well, then I under-
2 stand from what you're saying, Mr. Brown, you
3 just want to go to trial on the charge of
4 armed robbery and possession of a firearm
5 during the commission ---

6 DEFENDANT: Well, as far as my
7 lawyer's concerned, my lawyer said that he
8 wouldn't be ready to take it -- he told me he
9 wouldn't be ready to take it to trial. I had
10 my charges ---

11 THE COURT: Excuse me for a
12 second. Mr. Mayer, are you ready to go
13 trial?

14 MR. MAYER: I am ready to go to
15 trial.

16 THE COURT: All right.

17 DEFENDANT: But you just told me,
18 you just told me that you wouldn't be ready
19 -- on the 31st he came, I had my trial on the
20 31st. He came to see me. He came and saw me
21 on a Friday, which was ---

22 THE COURT: Mr. Brown, what are
23 you asking me to do?

24 DEFENDANT: I'm only basing this
25 off of ---

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1 THE COURT: What are you asking me
2 to do?

3 DEFENDANT: I'm asking you for an
4 extension so that me and my lawyer can have
5 some time to talk about this.

6 THE COURT: Okay

7 DEFENDANT: Because what he's
8 bringing to me is last minute. Like a lot of
9 stuff what I'm getting is last minute.

10 THE COURT: All right. I'm
11 denying your request for a continuance.

12 DEFENDANT: But you (addressing
13 Mr. Mayer) told me, you told me ten years.

14 THE COURT: Mr. Brown.

15 DEFENDANT: He told me ten years.

16 THE COURT: Mr. Brown, I denying
17 your request. That's the end of that issue.

18 DEFENDANT: You lied to me. You
19 lying to this people in front of my face.
20 You literally lying.

21 THE COURT: All right. I'm going
22 to enter a not guilty plea on behalf of the
23 Defendant. And let's go ahead and we'll pull
24 the jury and go to trial.

25 DEFENDANT: I'm not -- he said

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1 he's not ready to go to trial.

2 THE COURT: No, he just told me
3 that he was.

4 DEFENDANT: You just lying --
5 Aaron, do not lie. Aaron, tell the truth.

6 DEPUTY: Back off.

7 DEFENDANT: No, I'm not going to
8 do anything.

9 DEPUTY: Back off. Stay right
10 there.

11 MR. MAYER: I ---

12 DEFENDANT: He just told me right
13 now. Aaron, you told me that you wasn't
14 ready for trial.

15 THE COURT: Mr. Brown ---

16 DEFENDANT: Aaron, do not do this.

17 THE COURT: All right. Let's go
18 ahead and ---

19 DEFENDANT: Aaron.

20 THE COURT: I'm going to excuse
21 you from the courtroom ---

22 DEFENDANT: Yes, sir.

23 THE COURT: --- while we pull the
24 jury.

25 DEPUTY: (Addressing Defendant).

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1 Come on.

2 (DEFENDANT REMOVED FROM COURTROOM)

3 MR. MAYER: Just for the record, I
4 never told him I'm not ready.

5 THE COURT: And I understand. I
6 understand. It's just time for him to make a
7 decision and we'll go forward. I'm entering
8 a not guilty plea now.

9 Let's -- I'm trying to decide -- we
10 need to pull the jury, but I hate to do it
11 without him being in here. How do we want to
12 handle this?

13 MR. MAYER: Is there any way to
14 send them to lunch first? This guy feels
15 like I put his back up against the wall.

16 THE COURT: And I understand.

17 CLERK: If you want, sir, we've got
18 our forty-two that we're going to be bringing
19 up so we could just have those forty-two go
20 to lunch and come back at whatever time you
21 say if it's going to help get this thing ---

22 THE COURT: Well, and I mean,
23 that's probably going to be the best thing to
24 do. I hate doing it. I hate making them all
25 come back. But given the current situation,

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1 I don't want them in here, bring him back in
2 and have him erupt like that.

3 CLERK: Yes, sir.

4 THE COURT: Because that would
5 certainly prejudice him in front of the jury.
6 Now, what I would advise, Mr. Mayer, is to
7 let your client know we're going to go
8 forward. We're going to pick a jury. And
9 how he acts in the courtroom is certainly
10 going to influence a jury pool, the way they
11 see him, okay?

12 MR. MAYER: Yes, sir.

13 THE COURT: Now, when do we want
14 to do the *Biggers* hearing, do we want to...

15 SOLICITOR YOUNG: Your Honor, I
16 believe -- I have my technical witness coming
17 around 1:30. So we can do it after we pick
18 the jury, before they're sworn or -- I can
19 tell him to come earlier. I could see if he
20 could.

21 THE COURT: Well, let's do this.
22 Let's just go ahead and get started at 2:00.
23 We'll do the *Biggers* hearing. Anything
24 pretrial besides that?

25 SOLICITOR YOUNG: Not that the State

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1 is aware of.

2 MR. MAYER: No, Your Honor.

3 CLERK: I'll have the jury back at
4 2:15.

5 THE COURT: That'd be fine.

6 CLERK: Start back with -- or back
7 at 2:00 and ---

8 THE COURT: Well, that'll be good.
9 We'll do it at 2:15.

10 CLERK: Yes, sir.

11 SOLICITOR YOUNG: Now, how many
12 witnesses do you think we should have prepare
13 for today?

14 THE COURT: Well, if we pick a
15 jury at 2:15, you're looking at -- say as
16 soon as after *voir dire*, saying a quarter to
17 three to 3:00 before we get the jury sat,
18 because this is a five and ten strike; is
19 that correct?

20 MR. MAYER: Yes, sir.

21 SOLICITOR YOUNG: Yes, sir.

22 THE COURT: Okay. Five and ten.
23 Then you've got opening charges, opening
24 statements. How long is your first witness
25 going to be, because we may not even get into

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1 the witnesses until tomorrow morning.

2 SOLICITOR YOUNG: Maybe about an
3 hour to be safe.

4 THE COURT: Okay. If your first
5 witness is going to be an hour, that might
6 very well be the only one we get to today.

7 SOLICITOR YOUNG: Okay.

8 THE COURT: Because, like I say,
9 poll at 2:15, *voir dire*, jury selection,
10 opening charges, opening statements, that'll
11 probably carry us to bout 3:30 or 4:00 there.
12 So I'll play it by ear. If your first
13 witness is going to be an hour and it's going
14 to be no more than one witness.

15 SOLICITOR YOUNG: And just to
16 clarify that our first witness is also
17 testifying in the *Biggers* hearing.

18 THE COURT: Okay. All right.
19 Sounds good. And the ---

20 CLERK: I'll go ahead and send the
21 jury to lunch,

22 THE COURT: All right. And I hate
23 to do it that way, but I don't know of any
24 other way to do it. All right. And that
25 will be fine. And we'll just be back at 2:00

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1 ready to go, okay?

2 SOLICITOR YOUNG: Thank you.

3 (LUNCH RECESS)

4 (DEFENDANT PRESENT)

5 SOLICITOR YOUNG: Your Honor, I
6 believe that we have reached a negotiated
7 plea agreement.

8 THE COURT: All right. Who wants
9 to put the agreement on the record?

10 SOLICITOR YOUNG: I can, Your Honor.
11 The State has offered a negotiated eighteen-
12 year sentence to all of his charges here as
13 well as in Berkeley armed robbery. The
14 State, in Berkeley, will be *not* *prossing* a
15 kidnapping charge in relation to that armed
16 robbery.

17 THE COURT: Okay. So I've been
18 handed some indictments. Let's go over them
19 to make sure that we've got everything.

20 The Berkeley charge I have is 2012-
21 GS-08-1493, a true bill indictment for armed
22 robbery.

23 SOLICITOR YOUNG: That's correct,
24 Your Honor.

25 THE COURT: All right. I also

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1 have 2012-GS-10-4413, true billed indictment
2 for armed robbery?

3 SOLICITOR YOUNG: That's correct,
4 Your Honor.

5 THE COURT: 2012-GS-10-4414, true
6 billed indictment for possession of a firearm
7 during the commission of a violent crime?

8 SOLICITOR YOUNG: That's correct.

9 THE COURT: 2012-GS-10-4149, true
10 billed indictment for unlawful carrying of a
11 pistol?

12 SOLICITOR YOUNG: That's correct.

13 THE COURT: 2012-GS-10-4150, a
14 true billed indictment for unlawful carrying
15 of a pistol?

16 SOLICITOR YOUNG: Yes, Your Honor.

17 THE COURT: 2012-GS-10-4417, a
18 true bill of indictment for possession of a
19 firearm during the commission of a violent
20 crime?

21 SOLICITOR YOUNG: Yes, Your Honor.

22 THE COURT: 2012-GS-10-4416, a
23 true billed indictment for attempted armed
24 robbery?

25 SOLICITOR YOUNG: Yes, Your Honor.

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1 THE COURT: 2012-GS-10-4420, a
2 true bill of indictment for attempted strong
3 armed robbery?

4 SOLICITOR YOUNG: That's correct,
5 Your Honor.

6 THE COURT: All right. Is that
7 all of the charges?

8 SOLICITOR YOUNG: Yes, Your Honor.

9 THE COURT: All right. If we
10 could ---

11 SOLICITOR YOUNG: Your Honor, if I
12 may?

13 THE COURT: Yes.

14 SOLICITOR YOUNG: The Defendant
15 still has not signed all these sheets.

16 THE COURT: Excuse me?

17 SOLICITOR YOUNG: He has not sign
18 the sentencing sheets yet.

19 THE COURT: Okay. Let's go ahead
20 and get him to sign it.

21 DEFENDANT: Can I ask the ---

22 THE COURT: All right. Mr. Brown,
23 I'll give you an opportunity to speak in a
24 little while, okay?

25 DEFENDANT: Yeah. Just before I

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1 sign anything I just want to -- I just had
2 something on my heart to get off before I
3 just sign.

4 THE COURT: I'll give you an
5 opportunity a little bit later to speak. You
6 need to sign these sentencing sheets first.
7 If you don't want to go forward with the
8 sentencing, I'll allow you to withdraw it.
9 But this is just procedural. You have to do
10 this first.

11 DEFENDANT: By signing that means
12 that it's set in stone. Like I said, I came
13 in here to plead. But if I sign these, that
14 means the sentence is going to -- that this
15 plea was ---

16 MR. MAYER: (Sidebar with
17 Defendant).

18 THE COURT: I have a series of
19 questions to go over with you, Mr. Brown,
20 before I can even accept your guilty pleas.

21 DEFENDANT: Yes, sir.

22 THE COURT: Before I can accept
23 the negotiated sentence. I may not accept
24 any of it, okay? It's just that you cannot
25 plead guilty without signing those sheets.

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1 DEFENDANT: Oh, okay. I just
2 didn't understand, that's all.

3 MR. MAYER: Your Honor, is it okay
4 for him to remain standing, so he can reach
5 the ---

6 THE COURT: That'll be fine.
7 That'll be fine.

8 (DEFENDANT SIGNS SENTENCING SHEETS)

9 MR. MAYER: Thank you, Judge.

10 THE COURT: All right.

11 MR. MAYER: Judge, I don't know if
12 I introduced Brian Burke earlier, but he has
13 the case in the Berkeley County Circuit.

14 THE COURT: Oh, okay. And your
15 name, sir?

16 MR. BURKE: Brian, B-R-I-A-N,
17 Burke, B-U-R-K-E.

18 THE COURT: All right. Can we put
19 the Defendant under oath?

20 CLERK: I can.

21 THE COURT: All right.

22 CLERK: Would you just raise your
23 right hand as best you can?

24 DEFENDANT: (Raises right hand)

25 CLERK: Do you swear or affirm the

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1 testimony you should give this Court to be
2 the truth, and nothing but the truth, so help
3 you God?

4 DEFENDANT: Yes, sir.

5 CLERK: Thank you, sir.

6 THE COURT: All right. Mr. Mayer
7 and Mr. Burke, if I can get both of you to
8 stand, please?

9 (DEFENSE COUNSEL STANDS)

10 THE COURT: Mr. Mayer, I under-
11 stand you represent Joe Louis Brown on one
12 count of armed robbery and two counts of
13 possession of a weapon during the commission
14 of a violent crime; two counts of unlawful
15 carrying of a pistol; and two counts of
16 attempted armed robbery. Is that correct?

17 MR. MAYER: That is correct, Your
18 Honor.

19 THE COURT: All right. And Mr.
20 Burke, I understand you represent Mr. Brown
21 on one count of armed robbery. Is that
22 correct?

23 MR. BURKE: Yes, and one count of
24 kidnapping that's being dismissed.

25 THE COURT: Okay. All right. All

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1 right. Mr. Mayer and Mr. Burke, have you
2 discussed with your client the charges
3 against him, his rights as a Defendant and
4 the consequences of being convicted of these
5 crimes?

6 MR. MAYER: Yes, Your Honor.

7 MR. BURKE: Yes, Your Honor.

8 THE COURT: In your opinion, does
9 your client understand the charges against
10 him, his rights as a Defendant and the
11 consequence of being convicted of these
12 crimes?

13 MR. MAYER: I think he does.

14 MR. BURKE: Yes, Your Honor.

15 THE COURT: And does he wish to
16 plead guilty or not guilty?

17 MR. MAYER: He wishes to plead
18 guilty.

19 MR. BURKE: Guilty under North
20 Carolina versus Alford, Your Honor.

21 THE COURT: Okay. Is that agree-
22 able with the State?

23 SOLICITOR YOUNG: Yes, Your Honor.

24 THE COURT: Okay. Mr. Mayer, Mr.
25 Burke, do you agree with your client's

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1 decision to plead guilty to these charges?

2 MR. MAYER: Absolutely.

3 MR. BURKE: Yes, Your Honor.

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

9 MR. MAYER: Yes.

10 MR. BURKE: Yes, Your Honor.

11 THE COURT: Has your client
12 received a competency evaluation?

13 MR. MAYER: No.

14 MR. BURKE: No, Your Honor.

15 THE COURT: Do you feel that he
16 needs a competency evaluation?

17 MR. MAYER: No.

18 MR. BURKE: No, Your Honor.

19 THE COURT: Sir, your name is Joe
20 Louis Brown?

21 DEFENDANT: Yes, sir.

22 THE COURT: All right. Mr. Brown,
23 you have been charged and indicted by the
24 grand jury on two counts of armed robbery,
25 two counts of possession of a weapon during

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1 the commission of a violent crime, two counts
2 of unlawful carrying of a pistol, and two
3 counts of attempted armed robbery. And,
4 according to your attorneys, you wish to
5 plead guilty to these charges; is that
6 correct?

7 DEFENDANT: Uh, (pause) -- I was
8 told that we couldn't beat this in trial.

9 THE COURT: Okay. What I'm going
10 to do -- you can either answer yes or no.
11 You need to want to plead guilty or no, you
12 don't want to plead guilty. What do you want
13 to do, Mr. Brown?

14 DEFENDANT: I don't want to, but I
15 can't beat this at trial.

16 THE COURT: Okay. You don't want
17 to plead guilty. We'll stand at-ease. I've
18 entered a not guilty plea. Let's go ahead
19 and ---

20 DEFENDANT: I'll plead.

21 THE COURT: No, sir. We're going
22 to go ahead and pull the jury.

23 DEFENDANT: I can't beat this in
24 trial. I'm going to have to plead guilty. I
25 can't win at trial.

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1 THE COURT: No, sir.

2 DEFENDANT: I can't beat this in
3 trial.

4 THE COURT: Okay. You cannot
5 plead guilty unless it's voluntary. And
6 you've told me that you're coerced into
7 pleading guilty.

8 DEFENDANT: I plead guilty.

9 THE COURT: No. So we're going to
10 go ahead. Let's pull the jury. We'll go
11 forward with the armed robbery ---

12 DEFENDANT: I can't -- I don't
13 want to go to trial. I plead guilty, Your
14 Honor.

15 THE COURT: Mr. Brown. Mr. Brown.

16 DEFENDANT: I'm sorry. I'm sorry.

17 THE COURT: Listen to me.

18 DEFENDANT: I plead guilty.

19 THE COURT: Be quiet and listen.

20 A guilty plea is not valid if it's coerced.

21 You have told me that you were forced into

22 pleading guilty, that you do not want to

23 plead guilty. Therefore, I'm not accepting

24 your guilty plea.

25 DEFENDANT: He didn't force me.

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1 I felt in my heart, I felt like I couldn't
2 beat this in trial. He didn't force me. My
3 lawyer actually didn't force me. He's a
4 great lawyer and ---

5 THE COURT: If you are under any
6 duress, whether it's from your lawyer,
7 whether it's from other duress, it's ---

8 DEFENDANT: He, my lawyer, he said
9 he -- he didn't coerce me into doing any-
10 thing.

11 THE COURT: Are you coerced in any
12 way?

13 DEFENDANT: No. No, sir.

14 THE COURT: Do you want to plead
15 guilty?

16 DEFENDANT: Yes, sir.

17 THE COURT: Has anybody forced
18 you?

19 DEFENDANT: No, sir.

20 THE COURT: Has anybody coerced
21 you in any way?

22 DEFENDANT: No, sir.

23 THE COURT: Is this what you want
24 to do?

25 DEFENDANT: (Pause -- no verbal

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1 response).

2 THE COURT: All right. Due to the
3 hesitation ---

4 DEFENDANT: Yes, sir.

5 THE COURT: No, I'm not -- this
6 isn't what you want to do. I'm going to give
7 you your trial on your armed robbery charge
8 and on the possession of a weapon during the
9 commission of a crime.

10 DEFENDANT: I don't need to go --
11 I don't want to go to trial.

12 THE COURT: I'm sorry, Mr. Brown,
13 but you ---

14 DEFENDANT: I don't need to go to
15 trial.

16 THE COURT: --- you ---

17 DEFENDANT: I wasn't, I wasn't,
18 I wasn't, the reason why I'm hesitating is
19 because I'm just nervous, that's all.

20 THE COURT: Well, no. Mr. Brown,
21 the hesitation leads me to believe ---

22 DEFENDANT: I'm just nervous.

23 THE COURT: --- that you don't
24 want to ---

25 DEFENDANT: No, sir.

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1 THE COURT: All right. Now, let
2 me tell you how we're going to proceed.

3 DEFENDANT: Your Honor, I was just
4 nervous. That's all.

5 THE COURT: Sir, just be quiet.

6 DEFENDANT: I'm just nervous.

7 THE COURT: We're going to pull
8 the jury in. We're going to proceed to
9 trial. Now, if you get unruly, if you
10 continue to talk when you're told to be
11 quiet, if you continue to speak without being
12 asked by the Court, I'm going to exclude you
13 from the courtroom.

14 DEFENDANT: I have tried ---

15 THE COURT: Now, listen. You're
16 about to be -- you have the right to be
17 present during your trial, unless you're
18 unruly. And if you continue to be unruly,
19 I'm going to ban you from the courtroom and
20 the attorneys are going to go forward with
21 the trial without you being here. So if you
22 want to be present during the trial of your
23 case, you need to be here. You need to be
24 quiet. You need to listen to your attorney.
25 You need to listen to the Court. And you

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1 don't speak out of turn. Do you understand
2 that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Okay.

5 DEFENDANT: I'm sorry.

6 THE COURT: All right. Yes, sir?

7 MR. MAYER: Judge, what happened a
8 minute ago may have been my failure to
9 explain that he would have an opportunity to
10 speak to the Court after the Court accepted
11 his plea. It's so, so, so inadvisable for
12 him to go forward. He knows that, Your
13 Honor.

14 THE COURT: And I understand that.

15 MR. MAYER: He just wants the
16 Court to hear his two cents worth.

17 THE COURT: And I've told him I'd
18 give him an opportunity speak. But he has
19 lead me to believe ---

20 DEFENDANT: I'm sorry.

21 THE COURT: --- that he does not
22 want to plead guilty, that he does not want
23 to do this, that he is being coerced into
24 doing this, he feels like he's being forced
25 into doing this. From his prior appearance

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1 in the courtroom, from his continued out-
2 bursts, his continued wanting -- I mean, I
3 asked him point-blank, "Is this what you want
4 to do?" And there was such a delay I could
5 tell this is not what he wants to do. So I
6 do not feel that he is doing this voluntarily
7 and I'm not going to allow him to do it. No,
8 sir. Let's go ahead ---

9 DEFENDANT: May I speak?

10 THE COURT: --- we're going to get
11 the jury in here ---

12 DEFENDANT: May I please speak ---

13 THE COURT: No, sir. No, sir.

14 DEFENDANT: He actually didn't
15 coerce me into doing anything, sir.

16 THE COURT: Yes, sir. I'm not
17 going allow you to plead.

18 DEFENDANT: I'm just afraid
19 because I've never been in a situation like
20 this.

21 THE COURT: Well ---

22 DEFENDANT: It's just ---

23 THE COURT: Well, we're going to
24 give you your trial.

25 DEFENDANT: I don't want to go to

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1 trial, sir.

2 THE COURT: Well, you're going to
3 trial.

4 DEFENDANT: I don't want to go
5 trial. I'm denying to go to trial.

6 THE COURT: All right. Let's get
7 the jury up here, and we'll ---

8 DEFENDANT: I don't want them
9 deciding it.

10 CLERK: Folks in the audience ---

11 DEFENDANT: I don't want to go.

12 CLERK: --- would you please move
13 to the back row.

14 DEFENDANT: I didn't mean I want a
15 trial.

16 THE COURT: All right.

17 DEFENDANT: Please, Your Honor, I
18 don't want to go.

19 THE COURT: Let me see the
20 attorneys back in my office.

21 (DEFENDANT REMOVED FROM COURTROOM)

22 (BRIEF RECESS)

23 (DEFENDANT PRESENT)

24 THE COURT: As a result of my in-
25 chambers meeting with the attorneys we're

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1 going to do this all over, starting all over,
2 okay?

3 All right. Ms. Young, I understand
4 that we have State versus Joe Louis Brown
5 indictments 2012-GS-10-4417, 2012-GS-10-4416,
6 2012-GS-10-4420, 2012-GS-10-4413, 2012-GS-10-
7 4414, 2012-GS-10-4150, 2012-GS-08-1493 and
8 2012-GS-10-4149. These are true-billed
9 indictments charging the Defendant with two
10 counts of armed robbery, two counts of
11 possession of a weapon during the commission
12 of a violent crime, two counts of unlawful
13 carrying of a pistol, and two counts of
14 attempted armed robbery.

15 I understand that the Defendant is
16 pleading guilty to all charges, entering an
17 *Alford* plea on one count of armed robbery,
18 that being 2012-GS-08-1493.

19 SOLICITOR YOUNG: Your Honor, we're
20 actually allowing him to plead under *Alford*
21 to all charges.

22 THE COURT: Okay. All right.

23 SOLICITOR YOUNG: I'm sorry. I
24 misspoke earlier.

25 THE COURT: Okay. So *Alford* pleas

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1 under all charges.

2 MR. MAYER: Which we believe may
3 have accounted for some of the confusion
4 earlier, Your Honor.

5 THE COURT: All right.

6 MR. MAYER: It's an *Alford* plea.

7 THE COURT: All right. And what
8 is the concession being made by the State to
9 the *Alford* plea?

10 SOLICITOR YOUNG: I'm sorry?

11 THE COURT: There's a concession.
12 In other words for an *Alford* plea, there has
13 to be a concession by the State?

14 MR. MAYER: They are agreeing not
15 to seek life without parole, Your Honor.

16 THE COURT: Okay.

17 SOLICITOR YOUNG: And we're also *not*
18 *prossing* a kidnapping up in Berkeley.

19 THE COURT: All right. And this
20 is a guilty plea with a negotiated sentence
21 of eighteen years; is that correct?

22 SOLICITOR YOUNG: Yes, Your Honor.

23 THE COURT: All right. Mr. Burke
24 and Mr. Mayer, you represent the Defendant on
25 two counts of armed robbery, two counts of

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1 possession of a weapon during the commission
2 of a violent crime, two counts of unlawful
3 carrying of a pistol, and two counts of
4 attempted armed robbery?

5 MR. MAYER: Yes, Your Honor.

6 MR. BURKE: Yes, Your Honor. I'm
7 court-appointed in Berkeley County on one
8 armed robbery.

9 THE COURT: All right.

10 MR. BURKE: I do not represent him
11 on the other charges. Mr. Mayer represents
12 Mr. Brown on the prior armed robbery.

13 THE COURT: Okay. All right.
14 Have you discussed with your client the
15 charges against him, his rights as a
16 defendant, and the consequences of being
17 convicted of these crimes?

18 MR. MAYER: Yes, Your Honor.

19 MR. BURKE: Yes, Your Honor.

20 THE COURT: In your opinion, does
21 your client understand the charges against
22 him, his rights as a defendant, and the
23 consequences of being convicted of these
24 crimes?

25 MR. MAYER: Yes, Your Honor.

1 MR. BURKE: Yes, Your Honor.

2 THE COURT: And does he wish to
3 plead guilty or not guilty?

4 MR. MAYER: Guilty under Alford,
5 Your Honor.

6 MR. BURKE: Guilty under Alford,
7 Your Honor.

8 THE COURT: Do you agree with that
9 decision?

10 MR. MAYER: Yes, Your Honor.

11 MR. BURKE: I do, Your Honor.

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

17 MR. MAYER: Yes, Your Honor.

18 MR. BURKE: Yes, Your Honor.

19 THE COURT: Has your client
20 received a competency evaluation?

21 MR. MAYER: No, Your Honor.

22 MR. BURKE: No, Your Honor.

23 THE COURT: Do you feel that he
24 needs a competency evaluation?

25 MR. MAYER: No, Your Honor.

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1 MR. BURKE: No, Your Honor.

2 THE COURT: All right. Thank you.

3 Mr. Brown, if you would please stand. Place
4 him under oath again.

5 CLERK: Please raise your right
6 hand as best you can.

7 DEFENDANT: (Raises right hand).

8 CLERK: Do you swear or affirm to
9 tell the truth, and nothing but the truth so
10 help you God?

11 DEFENDANT: Yes, sir.

12 CLERK: You may put your hand down.

13 JOE LOUIS BROWN, having been duly sworn
14 to tell the truth, and nothing but the truth,
15 testified as follows:

16 THE COURT: Sir, your name is Joe
17 Louis Brown?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right. Mr. Brown,
20 you have been charged and indicted by the
21 grand jury on two counts of armed robbery,
22 two counts of possession of a weapon during
23 the commission of a violent crime, two counts
24 of unlawful carrying of a pistol, and two
25 counts of attempted armed robbery. And

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1 according to your attorneys, you wish to
2 plead guilty under the Supreme Court case of
3 North Carolina versus -- or Alford versus
4 North Carolina; is that correct?

5 DEFENDANT: Yes, sir.

6 THE COURT: All right. Before I
7 can accept your guilty plea, I've got to go
8 over some questions with you to be sure that
9 you understand the charges against you, that
10 you understand your rights as a Defendant,
11 that you understand the consequences of
12 pleading guilty. And I must be sure that
13 you're pleading guilty voluntarily.

14 Now, during the past seventy-two
15 hours have you taken any medication, consumed
16 any alcohol or drugs or been under any
17 influence that would affect your ability to
18 know why you're here?

19 DEFENDANT: No, sir.

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

22 DEFENDANT: Yes, sir.

23 THE COURT: Is there anything
24 about this hearing that you want to ask your
25 lawyers or ask me before we proceed?

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1 DEFENDANT: No, sir.

2 THE COURT: All right. Now, even
3 though you've been indicted by the grand
4 jury, under the Constitution of the United
5 States you're presumed innocent of these
6 crimes. And you have the right to have your
7 guilt or innocence determined by a jury trial
8 of your peers. The State bears the burden of
9 proving your guilt beyond a reasonable doubt.
10 You do not have to prove your innocence and
11 you cannot be compelled to testify against
12 yourself. You also have the right to
13 confront and cross-examine anybody who
14 testifies against you. If you choose, you
15 can present a defense to these charges. And
16 when you plead guilty, then you give up all
17 of those rights. Do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: And do you want to
20 give up those rights and plead guilty to
21 these charges?

22 DEFENDANT: Yes, sir.

23 THE COURT: All right. Now, there
24 are two ways in which you can plead guilty to
25 crimes. Number one is under an admission

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1 that you committed the crime. Another is
2 that you can -- pleading what's commonly
3 referred to as an *Alford* plea. It's a plea
4 pursuant to the Supreme Court Case of *Alford*
5 versus North Carolina in which you still
6 admit committing the crime, but you are
7 admitting committing the crime under a
8 concession made by the State. In other
9 words, in this case, the State has agreed to
10 drop a kidnapping charge against you. And
11 the State has agreed not to seek life in
12 prison without the possibility of parole in
13 your sentence. And as a result, you are
14 accepting that -- excuse me, you're accepting
15 that concession made by the State, as well as
16 their negotiated sentence and pleading guilty
17 to these charges; is that correct?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right. Now, you
20 understand that there is no legal distinction
21 between an *Alford* plea and an admission of
22 guilt. You're going to be subject to the
23 same sentence, you're going to have the same
24 record. The consequences of an admission of
25 guilt exists for an *Alford* plea as well; do

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1 you understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right. And
4 knowing that, do you still wish to plead
5 guilty to these charges?

6 DEFENDANT: Yes, sir.

7 THE COURT: All right. Now, I
8 understand that you've reached a negotiated
9 sentence with the State, which means that if
10 I accept your guilty plea and I accept a
11 negotiated sentence, I will sentence you to
12 eighteen years in prison.

13 However, I am not obligated to
14 accept that negotiated sentence.

15 But if I do not accept it, you can
16 withdraw your guilty plea.

17 Please keep in mind, however, that
18 if you ever plead guilty to these charges
19 without a negotiated sentence, or if you went
20 to trial on these charges without a
21 negotiated sentence, for armed robbery, each
22 one of those counts, you could receive up to
23 thirty years in prison. For each possession
24 of a weapon during the commission of a
25 violent crime, you could receive up to five

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1 years in prison. For the attempted armed
2 robberies, you could receive up to twenty
3 years for each one of those charges. And for
4 the unlawful carrying of a pistol, for each
5 one you could receive up to a year and a
6 thousand dollar fine.

7 So if you received the maximum
8 sentence for each one of these charges and
9 those sentences ran consecutively, you could
10 go to prison for ninety-two (92) years and be
11 fined two thousand dollars (\$2,000). Do you
12 understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you also understand
15 that armed robbery carries a mandatory
16 minimum sentence, which means that if you
17 ever pled guilty to that charge or if you
18 went to trial on those charges, the minimum
19 sentence that could be imposed with that
20 charge is ten years in prison?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do you also understand
23 that both armed robbery and possession of a
24 weapon during the commission -- excuse me.
25 Armed robber and attempted armed robbery,

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1 both are classified as violent crimes. What
2 that means if you're ever convicted of
3 another violent crime, then for that third
4 violent crime conviction, you would not be
5 eligible for parole and you could not receive
6 a probationary sentence; do you understand
7 that?

8 DEFENDANT: Yes, sir.

9 THE COURT: Do you also understand
10 that armed robbery and attempted armed
11 robbery are classified as most serious
12 crimes. That means if you're ever convicted
13 of another most serious crime, or if you're
14 convicted of another crime, that's classified
15 as a serious crime, then the sentence
16 convictions could be enhanced to life in
17 prison without the possibility of parole. So
18 any serious crime convictions in the future
19 or any most serious crime convictions in the
20 future, you could to prison for the rest of
21 your life without any release or parole. Do
22 you understand that?

23 DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that
25 possession of a weapon during the commission

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1 of a violent crime, for armed robbery and for
2 attempted armed robbery, not part of your
3 sentence can be suspended and you're not
4 eligible for parole. Do you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you also understand
7 that one of these crimes, one of these
8 indictments for armed robbery, was issued in
9 Berkeley County. And you have the right to
10 have your trial or guilty plea in Berkeley
11 County. And to plead guilty here in
12 Charleston County requires you to waive your
13 right to appear in Berkeley County to face
14 that charge. Do you understand that?

15 DEFENDANT: Yes, sir.

16 THE COURT: And do you waive your
17 right to appear in Berkeley County so that
18 you can plead guilty to that charge here in
19 Charleston County?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. Knowing
22 your rights as a defendant, knowing the
23 negotiated sentence that will be imposed if
24 accepted by the Court, knowing the maximum
25 sentence you could receive without a

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1 negotiated sentence, knowing that these --
2 that armed robbery and attempted armed
3 robbery are classified as violent and most
4 serious crimes, and knowing that no part of
5 your sentence can be suspended and no part of
6 your sentence -- or that you will not be
7 eligible for parole, do you wish to plead
8 guilty or not guilty to two counts of armed
9 robbery?

10 DEFENDANT: Guilty.

11 THE COURT: Do you wish to plead
12 guilty or not guilty to two counts of
13 possession of a weapon during the commission
14 of a violent crime?

15 DEFENDANT: Guilty.

16 THE COURT: Do you wish to plead
17 guilty or not guilty to two counts of unlaw-
18 ful carrying of a pistol?

19 DEFENDANT: Guilty.

20 THE COURT: Do you wish to plead
21 guilty or not guilty to two counts of
22 attempted armed robbery?

23 DEFENDANT: Guilty.

24 THE COURT: Has anybody promised
25 you anything, other than this negotiated

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1 sentence to get you to plead guilty?

2 DEFENDANT: No, sir.

3 THE COURT: Are you pleading
4 guilty voluntarily?

5 DEFENDANT: Yes, sir.

6 THE COURT: Has anybody coerced
7 you into pleading guilty?

8 DEFENDANT: No, sir.

9 THE COURT: Are you satisfied with
10 the services of your lawyers?

11 DEFENDANT: Yes, sir.

12 THE COURT: Are you pleading
13 guilty to these charges because you want to
14 accept the concession made by the State in
15 pleading guilty to these charges, rather than
16 going to trial on these charges as indicted?

17 DEFENDANT: Can you repeat that
18 again, sir?

19 THE COURT: I said, are you
20 pleading guilty to these charges because you
21 want to accept the concessions made by the
22 State, that being that they will drop the
23 kidnapping, that they will not seek life in
24 prison without the possibility of parole, and
25 that they will agree to an eighteen year

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1 negotiated sentence. Is that the reason
2 you're pleading guilty to these charges
3 rather than going to trial, straight up on
4 two counts of armed robbery, two counts of
5 possession of a weapon during the commission
6 of a violent crime, two counts of unlawful
7 carrying of a pistol, and two counts of
8 attempted armed robbery?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right. I need you
11 to listen carefully while the Solicitor gives
12 me the facts of these case, okay?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right.

15 SOLICITOR YOUNG: Thank you, Your
16 Honor, may it please the Court?

17 THE COURT: Yes, ma'am.

18 SOLICITOR YOUNG: In regards to
19 Indictment 2012-GS-08-1493, that's the
20 Berkeley charge for armed robbery. That
21 occurred on April 28th, 2012 around 9:30 a.m.,
22 this Defendant and a co-defendant entered the
23 Dollar General Store at 380 Highway 52, in
24 the Moncks Corner area of Berkeley County.
25 After spending several minutes walking around

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1 the store, the Defendant and co-defendant
2 walked up to the cash register where two
3 employees were working. The co-defendant
4 pulled out what appeared to be a handgun from
5 his waistband, demanded the money from the
6 register. Mr. Brown stood by the front door,
7 which is just a few feet from the register,
8 to serve as sort of a lookout and keep the
9 door closed during the robbery. The co-
10 defendant took approximately three hundred
11 and thirty dollars (\$330) cash from the
12 register, along with a hat, gloves and
13 sunglasses from the store. During the
14 robbery, the Defendant held the door closed
15 when a customer from outside attempted to
16 enter the store. Both the Defendant and co-
17 defendant left the scene in the same car.
18 The suspects were linked to several other
19 robberies in the Charleston area. The
20 Defendant was picked out of a lineup by one
21 of the clerks and one of the customers that
22 had tried to enter the door during the
23 robbery.

24 In regards to indictments 2012-GS-
25 10-4416, and 4417, both the attempted armed

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Hearing of April 7, 2014

Before The Honorable Benjamin H. Culbertson

1 robbery and possession of a weapon during the
2 commission of a violent crime that occurred
3 on April 27th, 2102 around 11:20 p.m., at 1943
4 Savannah Highway, which is the Holiday Inn
5 Express. The Defendant and co-defendant
6 entered the Holiday Inn Express dressed as
7 females. Both subjects were wearing black in
8 color wigs and altered their appearance to
9 look like females. They walked up to the
10 front desk. This Defendant engaged the
11 victim in kind of a general conversation. He
12 then pulled out a black semiautomatic handgun
13 and said "this is no shit." The victim then
14 fled the room because of fearing for her
15 life. Both Defendants fled the business
16 through the front door without getting any
17 money from the business.

18 In regards to 2012-GS-10-4420,
19 that's an attempted strong armed robbery.
20 This occurred also on April 27th, 2012 around
21 11:15 p.m. at 1963 Savannah Highway, which is
22 the AMF Bowling Lanes, right next door to the
23 Holiday Inn Express. The Defendant and the
24 same co-defendant entered the business, again
25 dressed as females wearing black in color

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Before The Honorable Benjamin H. Culbertson

1 wigs. They approached the clerk on the main
2 register, kind of engaged in conversation.
3 Again asked the clerk general questions and
4 then finally said, "Don't do anything stupid.
5 There's a lot of kids in here. Give me the
6 money." The Defendants then fled the
7 business before actually receiving any of the
8 money. The co-defendant in that case has
9 confessed.

10 A search warrant was conducted at
11 250 Nassau Street, which is where this
12 Defendant was living at the time. Detectives
13 were able to locate wigs and clothing worn
14 during that robbery. Additionally, Jolita
15 Gathers, who was the Defendant's girlfriend
16 at the time, positively identified the co-
17 defendant from a press release photograph and
18 stated she believed the second subject was
19 this defendant.

20 In regards to indictment 2012-GS-10-
21 4413 and 4414, that's an armed robbery and
22 possession of a weapon during the commission
23 of a violent crime. That occurred on April
24 30th, 2012 around 9:00 p.m. at 341 Folly Road,
25 which is the Arbys on James Island. The

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1 Defendant and co-defendant entered that Arbys
2 and both of them kind of again talked to the
3 clerk for a minute, took a while to order.
4 At that point, this Defendant pulled out a
5 gun and said, "you know what f'ing time it
6 is", and began to rob the Arbys. They fled
7 with four hundred and seventy-five dollars
8 (\$475) cash.

9 The victim, Robin Gibbes is present
10 in the courtroom today, Your Honor. I don't
11 know if she would like to address you at the
12 appropriate time or not. She did pick out
13 this defendant and the co-defendant in a
14 photographic lineup.

15 In regards to 2012-GS-10-4149 and
16 4150, that's the two unlawful carrying
17 charges. Those occurred on May 1st 2012 while
18 at Meeting Street and Harris Street.
19 Basically, officers were doing surveillance
20 in that area of 250 Nassau Street in relation
21 to this string of armed robberies. They
22 observed the Defendant walk towards a black
23 BMW. He removed an unknown object, walked
24 back towards the rear of the apartment. At
25 that point, moments later, he's observed

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1 walking back towards the vehicle. When
2 officers approached he advised that he was
3 armed. And officers located two nine-
4 millimeter weapons on him.

5 Your Honor, his only prior record is
6 a 2008 unlawful carrying.

7 And I believe the victim Robin
8 Gibbes would like to address Your Honor.

9 THE COURT: All right. I'll give
10 her the opportunity in just a minute.

11 SOLICITOR YOUNG: Okay.

12 THE COURT: On one of these
13 sentencing sheets, 2012-GS-10-4420, that
14 indictment is for attempted strong armed
15 robbery. But you have on your sentencing
16 sheet strong armed robbery. As I understand
17 it, he's pleading guilty to attempted?

18 SOLICITOR YOUNG: It should be
19 attempted strong armed robbery. I apologize.

20 THE COURT: I'm changing the CDR
21 code and the charge to conform with that.

22 SOLICITOR YOUNG: Thank you.

23 THE COURT: All right. Mr. Brown,
24 do you understand what the allegations are
25 against you?

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1 DEFENDANT: Yes, sir.

2 THE COURT: What the State's
3 saying you did in these cases?

4 DEFENDANT: Yes, sir.

5 THE COURT: All right. Are those
6 the facts to which you're pleading guilty in
7 these cases?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right. Mr. Mayer
10 and Mr. Burke, anything in mitigation?

11 MR. MAYER: Well, yes, sir, Your
12 Honor. And I want to start by commenting
13 that Joe Brown has been a great client.
14 We've worked together now since, I think it
15 was October 2012, Your Honor. And have sat
16 down a lot and I've looked at his cases a
17 lot. He has more education than my average
18 client, Your Honor. He did graduate high
19 school. He graduated right here from Stahl,
20 back in 2007. He was just beginning to put
21 together some work history. I believe at the
22 Walmart, worked at the Walmart for a couple
23 of years. Two years full is my understanding
24 of that, in addition to a place called Fatz
25 Cafe where he worked about six months. And

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1 also Pizza Hut where he worked for about six
2 months. So he was doing essentially the
3 menial job thing when he decided, 'hey, I can
4 do better than this.' And he was just
5 thinking of enrolling in Trident to pursue
6 some higher education when all of this stuff
7 happened.

8 So he's got -- he's got a son, Your
9 Honor, whose birthday, I believe, is [REDACTED]
10 [REDACTED] [REDACTED] ---

11 DEFENDANT: [REDACTED]

12 MR. MAYER: [REDACTED], I'm sorry,
13 Your Honor. And he's got a mom who has been
14 very supportive and a step-dad who has been
15 very, very supportive. I believe he's got a
16 sister as well. They've been very supportive
17 and we'd just ask the Court to, just ask the
18 Court to accept the negotiation here, Your
19 Honor.

20 Joe has had a lot of time to think
21 about these charges against him, the facts
22 and this is a very reasoned decision that
23 he's coming to, to agree to this negotiation.

24 As you heard the Solicitor mention,
25 he's got no real record to speak of. And I

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1 think that's part of the reason that he just
2 doesn't really understand the system that
3 he's been caught up in. Now, that being
4 said, he certainly understands what he's
5 doing. And, I'm just saying that as a way of
6 saying he's got no real record, Your Honor.
7 So we would ask the Court to accept the
8 negotiation.

9 I know that Mr. Burke was not
10 planning to be here today and he came down on
11 the spur of the moment. I don't know if he
12 has anything he would like to say about the
13 Berkeley charge.

14 THE COURT: All right. Mr. Burke
15 anything you want to say?

16 MR. BURKE: Thank you, Your Honor.
17 I would just reiterate that Joe's an
18 extremely intelligent young man. One of the
19 most intelligent, even though he doesn't have
20 a formal education past high school.
21 Unfortunately, it seems that intelligence got
22 diverted somewhere along the line. There's
23 been a lot of back and forth between my
24 officer and Mr. Mayer's office and the
25 Solicitor's office, us trying to do what we

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1 could to make sure that Joe still has a
2 future. And he's got a future with this plea
3 deal. There's no doubt in my mind that for a
4 lot of people come out of prison may be worse
5 off than they went in. He's going to come
6 out a better person, a more learned person
7 and he's going to focus that energy towards
8 making good and making up for lost time. He
9 has his son and his mom. It's very difficult
10 to explain to somebody who doesn't have a
11 real lengthy criminal history or essentially
12 none at all, that you went from nothing to
13 the possibility of life without parole. And
14 the shock of that, I think, and the desire to
15 get over that shock and then come to terms
16 with just how serious all of this is, it
17 takes a long time. But Joe's there and
18 understands that and he's given himself a
19 chance to get out and have a life, and a long
20 meaningful life. And we ask that you
21 accepted the negotiated sentence of eighteen
22 years, and allow this young man to serve his
23 time and get out and come out and join the
24 rest of us and be productive to society.

25 THE COURT: All right. Mr. Brown,

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1 anything you'd like to say?

2 DEFENDANT: I received this
3 morning, before they talk about the classes
4 that they took, I want to tell my mother that
5 I apologize not so much for the wrong -- but
6 I do apologize for my wrongs too. I just
7 want to apologize because she raised me
8 better than this.

9 I want to apologize to Ms. Robin
10 Gibbes, and anybody who was close to me.
11 I didn't know that an event like this could
12 really affect someone's life. I know I was
13 supposed to know that when I came here, but
14 when I looked at her, she reminded me of my
15 little sister. And I just really apologize
16 to her. I hope one day I can tell her face-
17 to-face. You know. I pray that, like I
18 said, I heard the tape, you know, I heard her
19 crying, you know, speaking of her father. I
20 just want her to know -- I don't know what
21 kind of health he's in, but I pray for him.
22 And I pray for you that you would have the
23 mercy on your heart to forgive me and forgive
24 anyone who was involved in this. You know, I
25 don't -- like I say, I don't know you but I

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1 really, I really do apologize with all my
2 heart.

3 THE COURT: Thank you.

4 DEFENDANT: Sir?

5 THE COURT: Thank you. Does the
6 victim wish to speak?

7 SOLICITOR YOUNG: You can just stand
8 right there and state your name for the
9 record.

10 MS. GIBBES: Robin Gibbes.

11 THE COURT: Robin?

12 MS. GIBBES: Robin Gibbes.

13 THE COURT: All right. Ms.
14 Gibbes, what would you like to say?

15 MS. GIBBES: I would like to say
16 I've been working for the company for like
17 eleven years, and whatever happened two years
18 ago, that really affected me. And I was on
19 the verge of losing my dad at the same time.
20 It was just -- I was of a devastated mind.
21 (Pause) -- it was just hard to be to -- you
22 know. You know. I still work for the same
23 company and, you know, I -- that's all I have
24 to say.

25 THE COURT: Thank you, ma'am. Any

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1 other victims present?

2 SOLICITOR YOUNG: No, Your Honor,
3 just the detective in the case, but I don't
4 believe he wishes to address the Court.

5 THE COURT: All right. Mr. Brown,
6 I will accept your guilty plea. I find that
7 it's made knowingly, voluntarily, fully
8 advised of your rights as a defendant, the
9 nature of the charge against you and the
10 consequences of your guilty plea. I also
11 find that there is a factual basis to support
12 these charges against you. Likewise, I'll
13 accept the negotiated sentence for each.

14 On the charges of armed robbery and
15 the charges of attempted armed robbery for
16 each count, the sentence of the Court is that
17 you be confined to the State Department of
18 Corrections for eighteen (18) years.

19 On each charge of possession of a
20 weapon during the commission of a violent
21 crime, the sentence of the Court is that you
22 be confined to the State Department of
23 Corrections for five (5) years.

24 On each charge of unlawful carrying
25 of a pistol, the sentence of the Court is

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1 that you be confined to the State Department
2 of Corrections for one (1) year.

3 The sentences will run concurrent.
4 You'll be given credit for any time served
5 thus far, all right.

6 DEFENDANT: May I something before
7 I -- I just wanted to -- like I said, I know
8 I'm not supposed to look at her, but I really
9 do apologize. I really do pray for your
10 father.

11 THE COURT: Thank you, sir.

12 DEFENDANT: To the State, I'm
13 sorry.

14 SOLICITOR YOUNG: Thank you.

15 THE COURT: Thank you.

16 (HEARING CONCLUDED)

17

18

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FORM 5

STATE OF SOUTH CAROLINA

County of CharlestonJoe Louis Brown 359475
Full name and prison number (if any) of Applicant

State of South Carolina

2014-0-10-5287
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2014 AUG 28 AM 10:56
JULIE A. HARRIS
CLERK OF COURT
FILEDINSTRUCTIONS - 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: South Carolina Department of Corrections, Lieber Correctional Institution - PO Box 205 CB-30 Ridgewood SC 29472
2. Name and location of Court which imposed sentence: Charleston County
3. Name(s) of co-defendant(s) (if any): MELVIN GATHERS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012651004420, 2012651004416, 2012651004413, 2012651004417, 2012651004414, 2012651004419, 2012651004415

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) April 7, 2014 (18 years plea)
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty YES
(b) after a plea of not guilty NO
(c) after a plea of nolo contendere NO
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed:
i. _____
ii. N/A
iii. _____
(b) the result in each such Court to which you appealed:
i. _____
ii. N/A
iii. _____
(c) the date of each such result:
i. _____
ii. N/A
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. N/A
iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
(a) Counsel failed to do so

- (b) _____
(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE ATTACHED SHEETS
(b) _____
(c) _____

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

(a) SEE ATTACHED SHEETS
(b) _____
(c) _____

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? NONE
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE
(d) any other petitions, motions or applications in this or any other Court? NONE

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. _____
ii. NIA
iii. _____
iv. _____

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

i. _____
ii. NIA
iii. _____

- iv. _____
- (c) the disposition thereof:
- i. unknown
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. unknown
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. unknown
- ii. _____
- iii. _____
- iv. _____

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

No

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

- (a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. _____

ii. N/A

iii. _____

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

- (a) Applicant has just learned of his rights to readdress
(b) the courts on these issues.
(c) _____

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

- (a) your arraignment and plea? YES
(b) your trial, if any? NO
(c) your sentencing? YES
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO (counsel failed to comply)
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

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

- i. Aaron mayer
2000 Sam Rittenberg Blvd, Ste. 2011
ii. Charleston, SC 29407
iii. _____

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

- i. Arraignment, Plea, Sentencing
Failed to file my appeal
ii. _____
iii. _____

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

I would like to be granted my original plea
of 10 years (85%) that I was promised.
I was given 18 years (85%)

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Charleston)

VERIFICATION

I, JOE Louis Brown 354475, 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.

Joe Brown

SWORN to and subscribed before me this 26th
day of August, 2014.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, Joe Louis Brown 359475, 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.

Joe Brown
Applicant

SWORN or affirmed to and subscribed before me this
26th day of August, 2014.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

When I went to court on April 7, 2014 I was led to believe that I was going to receive Ten years (85%). But once I got to court my lawyer told me that things had suddenly changed.

I never negotiated the Eighteen years that I was forced to plea to. My lawyer told me that he was sorry, and he told me that this was all new to him.

I explained to my lawyer (Aaron Mayer) that I didn't agree to what was going on. He told me to take the plea because rather I was innocent or not he couldn't beat it in trial. He then told me not to throw him under the bus too bad once we got in front of the judge.

At the last minute He told me about the North Carolina vs. Alford law which I knew nothing about at the time. He told me that was the best that he could do.

I was ineffectively counseled by my lawyer, and I am simply asking to be granted my original plea of Ten years.

With all of that being said, thanks for taking out the time to read my request. *Bmm*

CASE

TN vs. James Ray Brown

Relief Recommended To Counsel

Vacate conviction due to ineffective
assistance to counsel

Court action Taken

Conviction vacated due to "involuntary &
unknowing ple entered due to counsel's erroneous
advice

CASE

Dover vs. State, 405 S.E. 2d 391

U.S. v. Booker, 543 U.S. 221, 125 S.Ct. (2005)

U.S. v. Booker, 543 U.S. 221, 125 S.Ct. (2005)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	
Joe Louis Brown, #359475,	)	2014-CP-10-5287
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 28, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the July, 2012, term of the Charleston County Grand Jury for two counts of Unlawful Carry of a Pistol (2012-GS-10-4149; -4150). The Applicant was also indicted at the August, 2012, term of the Charleston County Grand Jury for Armed Robbery (2012-GS-10-4413), two counts of Possession of a Firearm or Knife during Commission of a Violent Crime (2012-GS-10-4414; -4417), Attempted Strong Arm Robbery (2012-GS-10-4420), and Attempted Armed Robbery (2012-GS-10-4416). Aaron Mayer, Esquire, represented the Applicant. On April 7, 2014, the Applicant appeared before the Honorable Benjamin H. Culbertson and entered an Alford plea to all charges in exchange for the State's agreement not to seek life without parole and to *nolle pros* a kidnapping charge in Berkeley.¹ The Honorable Benjamin H. Culbertson

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

sentenced the Applicant to imprisonment for eighteen (18) years. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction(s), Applicant's records from SCDC, the application and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
 - i. "[Counsel] told me to take the plea because rather [sic] I was innocent or not he couldn't beat it in trial"
2. Involuntary Guilty Plea

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

Respondent construes these allegations as ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. 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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon

as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Applicant also alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, *supra*; Dover, *supra*. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the 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. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Respondent submits that Applicant's claim of involuntary plea is, in essence, a claim of

ineffective assistance of counsel, and it should therefore, be treated as such.

V.

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

VI.

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

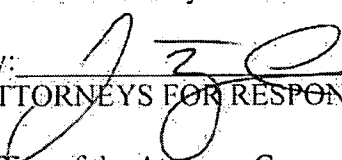
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

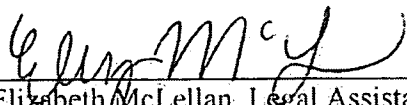
May 29, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-5287
	)	
JOE LOUIS BROWN, #359475,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Joe Louis Brown, #359475
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

DATED this 29th day of May, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2014-CP-10-05287
4 JOE LOUIS BROWN,)
5 Applicant,)
6 vs.) Transcript of Record
7 THE STATE OF SOUTH CAROLINA,) Volume I
8 Respondent.) DATE: December 17, 2015
9 _____)

10 B E F O R E:

11 THE HONORABLE DEADRA L. JEFFERSON

12
13 A P P E A R A N C E:

14 JAMES KRISTIAN FALK
15 Attorney for the Applicant

16 JAMES RUTLEDGE JOHNSON
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter

20

21

22

23

24

25

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1 THE COURT: Ready to proceed?

2 MR. FALK: Yes, ma'am.

3 THE COURT: Defense ready to proceed?

4 MR. JOHNSON: Yes, ma'am.

5 THE COURT: Bring out Joe Lewis Brown.

6 (Whereupon, Mr. Brown is present.)

7 THE COURT: All right. We are resuming the record
8 on Joe Lewis Brown, 2014-CP-10-5287, which is an application
9 for post-conviction relief.

10 This is an application for post-conviction relief.
11 The application for post-conviction relief was filed August
12 29th of 2014. The return was filed on June 1st of 2015. He
13 alleges ineffective assistance of counsel. He wants -- what
14 he's seeking is original plea deal of 10 years, which he says
15 he was promised. However, the record does not bear out such
16 promise ever existed, especially recorded contemporaneously
17 with the proceedings.

18 Basically, what he says is that his lawyer misled
19 him in pleading guilty and, therefore, his plea was not
20 freely and voluntarily given, in a nutshell.

21 He pled guilty on April 7th of 2014, before Judge
22 Culbertson. And although he entered an Alford plea, it's
23 still a guilty plea in the eyes of the law. And he was
24 advised of that. And it was in exchange for the State's
25 agreement not to seek life without parole. And they also

1 nolle pros'd a kidnapping charge in Berkeley.

2 And at that time, he entered a plea of guilty to two
3 counts -- to one count of armed robbery, 2012-GS-10-4413; two
4 counts of possession of a firearm during the commission of a
5 violent crime, 2012-GS-10-4414 and 4417; strong-arm robbery,
6 2012-GS-10-4420; and attempted armed robbery,
7 2012-GS-10-4416.

8 He was represented by Mr. Aaron Mayer. He was
9 sentenced to 18 years and he did not appeal those
10 convictions.

11 Mr. Falk, are you ready to proceed?

12 MR. FALK: Yes, Your Honor.

13 THE COURT: Mr. Johnson, are you ready to proceed?

14 MR. JOHNSON: Yes, Your Honor.

15 THE COURT: You may proceed, Mr. Falk.

16 MR. FALK: I call Mr. Joe Lewis Brown to the stand.

17 THE COURT: Sir, if you would stand for me, please,
18 and raise your right hand to be sworn.

19 JOE LOUIS BROWN,

20 having been duly sworn, testifies as follows:.

21 THE COURT: Sir, state your name for the record.

22 MR. BROWN: Joe Lewis Brown.

23 THE COURT: You may be seated.

24 And, Mr. Falk, you may proceed when you are ready.

25 DIRECT EXAMINATION

1 BY MR. FALK:

2 Q. Mr. Brown, were you ever represented by -- who were
3 you represented by in your trial?

4 A. Mr. Aaron Mayer.

5 Q. How did you come in contact with Mr. Mayer?

6 A. One of the inmates --

7 THE COURT: I need you to speak into the microphone.
8 You don't have to look to Mr. Falk when you're answering the
9 questions.

10 A. One of the inmates at Charleston County Detention
11 Center actually introduced me to him. He actually gave me
12 his card and asked if I got in contact with him.

13 Q. So he was -- you retained him? You paid him to
14 represent you; is that correct?

15 A. Yes, sir.

16 Q. Okay. And what I want to do now is talk to you
17 about the plea that you entered on April 7th, 2014.

18 A. All right.

19 Q. And did you have a chance to review that transcript
20 of that plea?

21 A. Yes, sir.

22 Q. Okay. At the very beginning, do you have a copy --
23 do you happen to have a copy of that?

24 A. I have one right here.

25 Q. Let me pull it out for you. What I'm going to do is

1 show you the pages. I think that might be easier.

2 Mr. Brown, I'm going to show you the very first page of the
3 plea. And as you see, at the very top of the page, it says:
4 Off the record in-camera conference. Defendant present.

5 So was there a meeting with you, the solicitor, the
6 judge and the lawyer before the trial started?

7 A. No. They actually gave my lawyer some time to speak
8 with me before I came and took my -- well -- well, what I
9 thought was going to be my ten-year plea, but they gave me a
10 chance to speak to him before I came and spoke to the judge.

11 Q. Mr. Brown, I need you to kind of just answer my
12 questions.

13 A. All right.

14 Q. And at the end of this, if there's anything you
15 think I didn't cover, we can fill in the blanks then. Just
16 it was unclear to me whether or not you were a participant in
17 the meeting with the judge in his chambers prior to the
18 start.

19 A. No, I never met with the judge in any chambers.

20 THE COURT: Does it actually say it was a chambers
21 meeting?

22 MR. JOHNSON: Off the record in-chambers conference,
23 and then it says defendant present, which I thought was
24 unusual.

25 THE COURT: They might have had him present. I

1 would assume they were discussing the trial, though, and how
2 many witnesses and length of trial and things like that. He
3 would not have had any substantial conversation off the
4 record.

5 BY MR. FALK:

6 Q. But you were in court that day on April 7th; is that
7 correct?

8 A. Yes, sir.

9 Q. And were you ready to go to trial that day?

10 A. I was not ready to go to trial that day.

11 Q. What kind of conversations have you had that week
12 prior to that trial with your lawyer?

13 A. Well, Aaron Mayer told me that it would be better
14 for me to take the ten-year plea because he wasn't ready for
15 trial and he didn't think that I could beat -- that I
16 could -- that we could win at trial.

17 Q. Okay. So what kind of record did you have prior to
18 this?

19 A. I actually didn't have a criminal record.

20 Q. So did he talk to you about the possibility of
21 testifying on your own behalf?

22 A. I don't really recall him ever mentioning anything
23 of that matter to me.

24 Q. So prior to April 7th, what did you do? Did you
25 review the discovery with him?

1 A. We went over it from time to time whenever. And,
2 you know, I told him to do more, do more investigation or
3 whatever. But he, as far as going to Rule 5, we talked about
4 certain stuff. He came and saw me a couple of times.

5 Q. Now, there were two videos as part of the discovery,
6 was there not?

7 A. Yes, there was.

8 Q. Did you all have any discussions about whether those
9 videos -- whether you were in those videos?

10 A. Yes. We actually watched them together. And, you
11 know, he concluded that he couldn't tell by the footage on
12 who was who or whatever, you know. And I told him that I
13 didn't know who was who on the videos or whatever. So that's
14 about all we had on that.

15 Q. Okay. And the plea starts with you wanting to
16 address the Court. We are back now on April 7th. You wanted
17 to tell something to the court?

18 A. Yeah.

19 Q. At the very beginning, I'm still on page 2.

20 A. I guess, yeah. Because once I spoke with him, he
21 told me that -- well, he told me that things had changed. He
22 said that it wasn't offered anymore, but I told him the only
23 reason I came down here was because you told me -- you
24 promised me the ten-year, you promised me that I was going to
25 get a ten-year plea.

1 Q. And that was a plea on armed robbery, right?

2 A. Yes, sir.

3 Q. Did he tell you the sentence on that?

4 A. He said the minimum, I think he said, was 10 years,
5 or something like that.

6 Q. And so he thought that -- you were led to believe
7 that you were going to plead to the minimum?

8 A. Right.

9 Q. Now, it's your position today that you were not
10 responsible for those?

11 A. Right.

12 Q. And you heard Mr. Gathers' testimony?

13 A. Yes.

14 Q. What conversation did you have with Mr. Gathers
15 about that letter or that testimony?

16 A. Well, as far as his testimony, whatever, you know,
17 that was voluntary on his part. I actually didn't -- you
18 know, we didn't have too much discussion about as far as
19 about that letter or whatever, you know. So ...

20 Q. He said that he was your cousin?

21 A. Well, actually, we are not related by blood, but I
22 actually have a son with his cousin. So ...

23 Q. I see. And so you told the Court -- so you've been
24 talking about a ten-year deal. How did that conversation
25 come up?

1 A. Well, the actual ten-year, it came about because my
2 lawyer told me that would be the best plea for me to take.
3 He told me, you know, that -- at the time he said, this is --
4 this is the most that he could have done for me. So, you
5 know, going with his advice, I didn't really know too much
6 about it, so I just -- I was just going based on what he was
7 telling me. He told me that 10 years would be the best that
8 he could get me.

9 Q. When was the first time you learned that there was
10 no ten-year deal?

11 A. Once I got down -- well, he told me about it once I
12 got down there to take my ten-year plea.

13 Q. So the first time you heard about that was on April
14 7th?

15 A. Uh-huh.

16 THE COURT: Sir, if you could say yes or no.

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 BY MR. FALK:

20 Q. And that was going to be 10 years consolidated,
21 right, on all charges?

22 A. Uh-huh.

23 Q. And the charges that you were -- you heard
24 Mr. Gathers testify about -- nevermind. I will strike that
25 question.

1 You told the Court on page 4 of the transcript, you
2 said a couple times in the very first paragraph that he
3 guaranteed that you were going to get 10 years.

4 A. Yes, I did.

5 Q. Why did you think he would guarantee it?

6 A. I mean, because being that he's my lawyer, I was
7 basically depending on his advice. I didn't really -- like I
8 told you, I didn't really know which direction to go. So I
9 was basically going on his advice on what he was advising me
10 to do.

11 Q. But you thought he had already talked to the
12 prosecution about it?

13 A. I thought he had everything worked out because
14 that's the only reason why I came down here to take a plea
15 because he told me I was going to get 10 years.

16 Q. Okay. Let me look on page 5. Look towards the
17 bottom, like line 21.

18 THE COURT: Please repeat that page again.

19 BY MR. FALK:

20 Q. I'm on page 5 of the transcript. His testimony
21 begins on 17. And I'm looking at line 21.

22 Are you recalling there was a conversation you had
23 with Mr. Mayer?

24 A. I don't know where you at.

25 Q. Could you just read there where it says "defendant",

1 just to yourself for a second. Do you remember saying that
2 in court?

3 A. I actually do remember partially saying that in
4 court.

5 Q. And it looks like on line 21, you are recounting a
6 conversation where it says: If you take this plea, you will
7 be able to make sure that you get to 10, I will give you 10.

8 A. I'm actually recalling a conversation that we had
9 prior to me coming down to take the ten-year plea.

10 Q. Okay. And he advised you how much you could get if
11 you went forward to trial?

12 A. Yeah. He told me that if I went to trial, there was
13 a chance that I could get life without parole.

14 Q. Okay. Did he tell you on April 7th that he wasn't
15 prepared for trial?

16 A. He told me that -- he told me that it would be best
17 for me to take the plea.

18 Q. If you look at line 6 -- look at page 6, line 2,
19 and you had told the Court there in that -- you see that line
20 2 where it says: I wasn't really prepared for that?

21 A. Uh-huh.

22 Q. What are you talking about there?

23 A. About the fact that I wasn't really prepared to get
24 18 years. I was prepared to get 10 years. So when he
25 introduced -- when he told me that things had changed,

1 whatever, I wasn't -- that's not really what I came with.
2 That's not really what I came down here for on that day.

3 Q. And if you look further, like line 7, where it says:
4 He told me not to throw him under the bus; what were you
5 talking about there?

6 A. Because he knew -- basically, when he was telling me
7 I'm throwing him under the bus, he knew he promised me 10
8 years, and I guess he felt like as --

9 MR. JOHNSON: Objection to what he thinks counsel
10 knew, Your Honor.

11 THE COURT: Sustained, speculation, lack of
12 foundation. You can only saying what he knows or what
13 Mr. Mayer actually said to you.

14 BY MR. FALK:

15 Q. And he said?

16 A. He actually -- Aaron Mayer basically told me, you
17 know, as far as throwing him under the bus, he told me --

18 Q. Don't -- all right. The transcript says that he
19 said that he told you not to throw him under the bus.

20 A. Because he promised me -- he promised me 10 years.

21 Q. Okay. And that's what you think that conversation
22 was about?

23 A. Yes. Because, like I say, as I was talking to
24 him -- excuse me, because I'm actually kind of nervous. But
25 as I was -- as I was speaking to Mr. Aaron Mayer inside of

1 the interviewing thing, whatever, I was talking to him, I was
2 like, well, how come you saying 18 now but you were saying
3 10, or whatever. I was like, you know, as far as you
4 representing me, I don't feel like you are really doing a
5 good job, or whatever, and stuff like that.

6 And that's when the comment came about not throwing
7 him under the bus, because you told me one thing and when I
8 get down here, it was one other thing. And he said, I
9 understand, but please don't throw me under the bus, or
10 whatever.

11 Q. Do you know if Mr. Mayer hired a private
12 investigator in this case?

13 A. He never spoke to me about hiring a private
14 investigator.

15 Q. So the judge eventually gets around to telling you
16 what your options were that day.

17 A. Yes.

18 Q. That you could either plea or go to trial.

19 A. Yes.

20 Q. And you knew that they were going to pick a jury
21 that day, right?

22 A. Yes.

23 Q. So it wasn't that you were going to go to trial next
24 week, the following week or the following month. Y'all would
25 start the trial that day?

1 A. Yes.

2 Q. And you testified earlier that you had no confidence
3 that he was prepared for trial.

4 A. Well, I was basically -- yes, excuse me. I was
5 going on what he was telling me. He told me that he wasn't
6 prepared for trial. He told me that he felt that, you know,
7 that I should just take the 10 years.

8 Q. Because if you look on page 11, you told the
9 court -- if you look at line 6 on page 11, which is right
10 there, and he told you that he wouldn't be ready for trial;
11 is that correct?

12 A. He told me that.

13 Q. And I'm looking at page 11, line 6 through 10. And
14 then the judge asked him whether or not Mr. Mayer was ready
15 for trial.

16 A. Uh-huh.

17 Q. What did he tell the judge?

18 THE COURT: Please say yes or no. The court
19 reporter can't record uh-huh.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Thank you.

22 THE WITNESS: He told the judge that he would be
23 ready to go to trial.

24 BY MR. FALK:

25 Q. So on April 7th, were you asking for a continuance?

1 A. Yes.

2 Q. Why did you want a continuance?

3 A. Because I was asking for a continuance because I had
4 no idea that I was coming down here for 18-year plea. And I
5 wanted more time to talk with him because I didn't want to
6 make a decision under so much pressure at the last minute.

7 Q. All right. So then there's continuing conversation.
8 And on page 12 -- well, around line 21, first you had told
9 Mr. Mayer that he had lied to you. What did you think he had
10 lied to you about?

11 A. He lied, told me about everything that was promised
12 to me. He lied to me about the ten-year plea. You know, I
13 felt like that whole thing was a lie, because he was telling
14 me one thing, and when I got down here, he was telling me
15 something else. So that's why I said what I said.

16 Q. All right. And so they are going on and the Court
17 told you that they were ready to pick a jury and to enter a
18 plea of not guilty for you; is that right?

19 A. Yes.

20 Q. Then you were removed from the courtroom. Did
21 things get heated between you and Mr. Mayer in the
22 courtroom?

23 A. Yes, it did. I actually got a little upset with him
24 after I told him that he lied, that he lied to me and that he
25 was lying to the people. And, yet, I guess they felt like we

1 needed to be separated for a couple of minutes. So the judge
2 ordered that I be taken (sic) out of the courtroom.

3 Q. Okay. And so they sent the jury out for lunch. So
4 after you were pulled out of the courtroom, when did you come
5 back into the courtroom? Do you recall how long that was?

6 A. I don't even recall how long, but I think it
7 probably was like for a few minutes for me -- for me and
8 Mr. Aaron Mayer to speak inside of the interviewing chambers,
9 or whatever.

10 Q. So before you came back into the courtroom, you
11 spoke with Mr. Mayer?

12 A. Uh-huh.

13 Q. And what was your conversation about?

14 A. He kept on saying he was sorry, whatever. And he
15 kept on telling me I should take the 18 years, take the 18
16 years. And I kept telling him, well, you said 10 years. So
17 how do you want to pressure me to take 18 years. And then if
18 I don't take the 18 years, I'm being forced going into trial.
19 I told him basically -- I was telling him that I felt like I
20 was being trapped into taking a plea that I wasn't prepared
21 to take. I felt like he was going against everything that he
22 was telling me. So we was basically going back and forth.

23 Q. At that time, why did you just tell him, let's go
24 forward with the trial?

25 A. I actually didn't feel comfortable going forward

1 during trial because of the fact that he told me that he
2 wasn't ready to go to trial. So I felt like, well, you know,
3 if you are not ready to go to trial, why would I put my life
4 on the line and you not ready and you are representing me
5 legally. I just didn't feel like it made a lot of sense if
6 my legal counsel wasn't ready to take on a trial. I just
7 didn't feel comfortable putting my life in jeopardy.

8 Q. Did you tell Mr. Mayer to talk to Mr. Gathers?

9 A. I was telling Mr. Aaron Mayer to speak to my
10 co-defendant throughout the whole time he was my legal
11 counsel.

12 Q. And do you know if he ever did?

13 A. He never did. He never did.

14 Q. Did he ever explain why he didn't?

15 A. No. He just said whenever he gets some time or
16 whatever.

17 Q. I'm sorry. What was your answer?

18 A. He said whenever he got some time to do it. I don't
19 know if he had other clients or whatever, but he said
20 whenever I got some time to do it.

21 Q. So he didn't tell you he couldn't do it; is that
22 correct?

23 A. No, he never told me that. He just -- he just
24 didn't do it.

25 Q. And so then, I guess, you got back into the

1 courtroom after lunchtime. It was about two o'clock?

2 A. I believe so, because -- I believe so. Because I
3 think it all depends which time I was taken out, because I
4 think they took me out, like, two or three times.

5 Q. One of those times, did he ask you to sign
6 sentencing sheets?

7 A. I don't recall that. I don't recall. I don't think
8 I signed the sentencing sheet until I was actually being
9 sentenced, I think.

10 Q. Did he ever ask you to go over the sheets? I mean,
11 did he ever go over the sheets with you?

12 A. No, not that I recall.

13 Q. And so, after they come back in, I will just refer
14 to page 20 on the record, if you look at page 20 on the
15 transcript, Your Honor --

16 THE COURT: I've read the entire transcript. The
17 transcript speaks for itself. I don't need him to interpret
18 for me what the judge meant. I need you to really get to the
19 heart of what his claims are.

20 BY MR. FALK:

21 Q. So you had several conversations with Mr. Mayer
22 about whether or not you should plea?

23 A. Right, yes.

24 Q. And were there several times you went back and forth
25 in the courtroom talking about whether or not you were going

1 to plead guilty?

2 A. Yes, yes.

3 Q. At one time -- when did he talk to you about a plea
4 under *North Carolina vs. Alford*?

5 A. He spoke to me about *North Carolina vs. Alford* on
6 the third time that I was taken out.

7 Q. So that was on April 7th?

8 A. Uh-huh. Yes.

9 Q. And that wasn't -- sometime during this whole series
10 when you were pleading?

11 A. Yes.

12 Q. What did he explain to you about that?

13 A. He didn't explain what the *North Carolina vs. Alford*
14 law was. I actually learned more about it after I was
15 sentenced myself.

16 Q. Well, it's obviously a serious thing being
17 sentenced. What did you think it meant?

18 A. All -- actually, all I saw was the 18 years. All I
19 saw was the 10 go to 18 years. So that's all I saw. I
20 didn't really know too much about any *North Carolina vs.*
21 *Alford* law or whatever. Because on my plea sheet, they had
22 it as Alfred (sic), as Alfred (sic), so I didn't know too
23 much about it until I started looking it up for myself.

24 Q. And the Court asked you whether or not you wanted to
25 plead. And you didn't want to. And you told them on page

1 26, you told them: The only reason I'm doing this is because
2 I can't beat this at trial. Is that right?

3 A. Yes.

4 Q. And that was on Mr. Mayer's advice; is that correct?

5 A. Yes.

6 Q. But you didn't want to? It's your contention you
7 didn't feel it?

8 A. Yes.

9 Q. And the Court again said: Okay. I can't accept the
10 plea.

11 So there was more conversations with Mr. Mayer?

12 A. Well, the last conversation, the third time that I
13 was taken (sic) out was the last conversation that we had.

14 Q. Okay. And so the court finally asked you whether or
15 not you wanted to plead?

16 A. Yes.

17 Q. And then, ultimately, you said that you were going
18 to plea; is that correct?

19 A. Yes.

20 Q. And the judge asked you questions. And you knew at
21 that time you had the right to a trial; isn't that right?

22 A. Yes.

23 Q. And judge advised you you could call witnesses; is
24 that right?

25 A. Yes.

1 Q. Did you know if you had any witnesses to call?

2 A. At the time, no.

3 Q. So after being removed from the courtroom three or
4 four times, and after going back and forth between whether or
5 not the court would accept your guilty plea or not accept
6 your guilty plea, you finally came back in and pled guilty?

7 A. Yes.

8 Q. And what you are telling me is that you felt that
9 you had no other option?

10 A. Yes.

11 Q. Because, obviously, you could be facing more time at
12 trial?

13 A. Yes.

14 Q. How many conversations did you have -- were you out
15 of custody at the time?

16 A. No.

17 Q. I'm sorry. Were you in jail at the time, April 7th?

18 A. I was actually incarcerated.

19 Q. Okay. So you weren't out on bond?

20 A. No.

21 Q. How many conversations did you have with Mr. Mayer
22 in jail?

23 A. I want to say about at least 10.

24 Q. Okay. And the day before, on April 6th, did he talk
25 to you about saying we are going to plea the next day?

1 A. He did.

2 Q. And at that time, you still thought it was 10 years?

3 A. Yes.

4 Q. Okay. So then the solicitor read about the -- read
5 about the robbery at the Dollar General store on Highway 52.
6 The solicitor then explained the basis for the change; is
7 that correct?

8 A. Yes.

9 Q. And talked about the robbery on Highway 52?

10 A. Yes.

11 Q. And that's the one that Mr. Gathers said that he had
12 done. And he talked to you about the robbery at Holiday Inn
13 Express on Savannah Highway?

14 A. Yes.

15 Q. And you didn't participate in that one either?

16 A. No.

17 Q. And the robbery at the bowling alley, you didn't
18 participate in that either?

19 A. No.

20 Q. And the one on Folly, the one on Folly Road in James
21 Island, you didn't participate in that either; is that
22 correct?

23 A. Yes.

24 Q. Is there anything else you want to tell me about
25 Mr. Mayer?

1 A. Yes. I don't know if Mr. Aaron Mayer was -- I don't
2 know what kind of pressure he was under or whatever, you
3 know. I just feel like he could have represented me better.
4 I just feel he could have represented me better. I'm not,
5 you know -- I don't really want to, like I say -- I don't
6 know.

7 Q. There's a couple of times in here where the judge
8 said, all right, let's pick the jury and go to trial. Did
9 you feel like the judge was pressuring you?

10 A. Yes.

11 Q. And how is that?

12 A. Because I was in a situation where --

13 MR. JOHNSON: Objection. This is not what the judge
14 did, Your Honor. This is what counsel may or may not have
15 done.

16 THE COURT: Sustained. There's absolutely no
17 evidence in the record that the judge pressured him. He was
18 given an option. He could have gone to trial or pled. The
19 judge was very accommodating, quite frankly, very lenient and
20 very understanding. He took many breaks and accommodated his
21 behavior, quite frankly, in a commendable manner, and far
22 more accommodating than some of my colleagues would have
23 been.

24 MR. FALK: I have no more questions for my client.

25 THE COURT: Not that my colleagues would have been

1 rude. That is not my implication. But he, I think, just
2 bent over backwards. And most would have been very stern
3 from the -- just to eliminate the behavior. But I think it's
4 clear from this record he bent over backwards to let him
5 know, and even took many breaks, even down to inconveniencing
6 a panel and bringing them back to select a jury, to give him
7 an opportunity to compose himself. And even was very
8 concerned about his behavior prejudicing himself in the
9 selection of a panel, because he didn't want him acting out
10 in the presence of a panel.

11 And he recognized it was because he was upset. It
12 wasn't anything necessarily about his character. But he was
13 placed in an unenviable position. And wanted to make sure in
14 all regards that his rights were not compromised. And I
15 think that's very evident from the record.

16 And I know Judge Culbertson well. He's one of the
17 most easy going, affable, has a great temperament. On a cold
18 record, it's hard to really sort of know what words mean and
19 their context. But it's very abundantly clear from this
20 record that he bent over backwards to accommodate the
21 applicant.

22 MR. FALK: I was not accusing Judge Culbertson of
23 pressuring him. I just asked whether he felt like he was
24 being pressured.

25 THE COURT: You know when you are between a rock and

1 hard place, you always feel pressured. Again, he's in an
2 unenviable position with two bad choices.

3 MR. FALK: I wanted to make sure --

4 THE COURT: -- neither of which he wanted to make.

5 MR. FALK: I was making no allegation about judicial
6 misconduct.

7 THE COURT: I just want it to be clear. I just
8 wanted that -- and I didn't want my comment misinterpreted.
9 I just know Judge Culbertson. And he's just very affable,
10 very easy going. And I can tell from the record that he bent
11 over backwards and really acknowledged that Mr. Brown was
12 just upset in general about his situation.

13 All right. You want to question the witness?

14 MR. JOHNSON: Yes, ma'am.

15 THE COURT: And what we are going to do is, after he
16 questions the witness, we are going to take a brief recess of
17 these proceedings. I'm going to do my two withdrawals. And
18 we are going to take a quick lunch break. And then we are
19 going to resume. Because I've got to give my staff a break
20 before they divorce me before the holidays. My bailiffs in
21 Berkeley used to get a legal separation, but I think my staff
22 this week might want to divorce me.

23 Go ahead, Mr. Johnson.

24 MR. JOHNSON: May it please the Court, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q. Mr. Brown, will you turn to page 27 in your
3 transcript. The question stemming from that is that
4 Mr. Mayer never threatened you to plead guilty, did he? He
5 did not force to you plead guilty?

6 A. No.

7 Q. And you actually said that to the court, did you
8 not?

9 A. Yes.

10 Q. And you said that you felt like you couldn't beat it
11 at trial: He did not force me. My lawyer actually did not
12 force me. He's a great lawyer.

13 Is that not what you said?

14 A. That's what I said.

15 Q. Okay. And the judge asked you if he coerced you in
16 any way, to which you said: No, sir.

17 Is that correct?

18 A. Yes.

19 Q. And then he made you stand down again, right? Then
20 you started saying: I'm just nervous. I don't want to go to
21 trial. I want to plead guilty.

22 Correct?

23 A. Yes.

24 Q. And if you will turn to page 39. Judge asked you if
25 you were on any medications, to which you said no, correct?

1 A. Yes.

2 Q. Then he asked you about your right to a jury trial,
3 including the right to cross-examination, the right to
4 confront your witnesses and the right not to testify; is that
5 not correct?

6 A. Yes.

7 Q. And he asked you about giving up those rights,
8 and by plead guilty, you give up those rights, correct? And
9 that is what you wanted to do, right? That's what you told
10 him at the guilty plea; am I not correct?

11 A. That's what I told him at the guilty plea.

12 Q. You were under oath just like you are under oath
13 here today, correct?

14 A. Yes.

15 Q. Are you saying here today you wanted to go to trial?

16 A. That's not what I'm saying. I'm actually saying I
17 was promised 10 years.

18 Q. Okay. But during this plea colloquy, he states that
19 the only thing he can do is sentence you to 18 years, take it
20 or leave it; is that right?

21 A. Yes.

22 Q. It was a negotiated 18, correct?

23 A. Yes.

24 Q. He can't change the 18, right? You either take it
25 or you leave it?

1 A. Yes.

2 Q. And then you pled under *North Carolina vs. Alford* to
3 these crimes, correct?

4 A. Yes.

5 Q. And then you also stated you were satisfied with
6 your attorney, correct?

7 A. Yes.

8 Q. But now you are not satisfied; is that not correct?

9 A. Yes.

10 Q. So you are not satisfied with Mr. Mayer's
11 representation?

12 A. No.

13 Q. But under oath, you said you were; is that not
14 correct?

15 A. That is what I said.

16 Q. Okay. So did you lie at the guilty plea, is my next
17 question?

18 A. I don't know if coercion is a lie.

19 Q. Sir, you testified under oath that he did not coerce
20 you into anything, correct?

21 A. Yes.

22 Q. Now, you are saying he coerced you, correct?

23 A. Yes.

24 Q. So are you lying today or were you lying during the
25 guilty plea?

1 A. Well, sir, during the guilty plea was when I was
2 actually coerced. I was only going on my legal advice.

3 Q. This was a judge asking you if you were coerced,
4 sir. And you said no, right?

5 A. Yes.

6 Q. So you lied at the guilty plea under oath? Yes?

7 A. Yes.

8 MR. JOHNSON: No further questions, Your Honor.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION

11 BY MR. FALK:

12 Q. You felt pressured to take this plea, right?

13 A. Yes.

14 Q. So, I mean, Mr. Mayer wasn't threatening you; is
15 that right?

16 A. I don't understand what you are asking me.

17 Q. When you are saying Mr. Mayer wasn't -- you weren't
18 coerced by Mr. Mayer, what did you mean by that?

19 A. Well, once we moved back into chambers, he spoke
20 with me and he let me know. He was like, you know, I'm not
21 ready for trial. You know what I'm saying? So he told me it
22 would be best just go in there and to take a plea. And he
23 kind of guided me through. He kind of guided me through on
24 things on which to say.

25 And I was just worn out because the first few times

1 I said I didn't want to take a plea. The last time I took a
2 plea because I felt like I didn't have any other choice.

3 Q. And that is what you are saying why you felt
4 coerced?

5 A. Yes.

6 Q. And you felt pressured?

7 A. Yes.

8 Q. And you felt pressured and you weren't ready to go
9 to trial?

10 A. No.

11 Q. Was your lawyer ready to go to trial?

12 A. No.

13 MR. FALK: No further questions.

14 MR. JOHNSON: Two, Your Honor, if I may.

15 THE COURT: Uh-huh.

16 RE CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q. You pled guilty because you didn't want to face life
19 without parole?

20 A. I pled guilty because I felt I didn't have any other
21 choice.

22 Q. You never told the judge that, did you?

23 A. I can't recall.

24 Q. Sir, would you like to look through your transcript
25 and tell me where you told the judge you only pled guilty

1 because you felt like you had no other choice.

2 MR. FALK: If we could have a moment, Your Honor.
3 Because I thought I recalled something close to that.

4 THE COURT: Close to what now?

5 MR. FALK: That he pled guilty only because he
6 thought he didn't have another choice.

7 MR. JOHNSON: We will let the record speak for
8 itself whether he said it or not.

9 BY MR. JOHNSON:

10 Q. Please show me in the record where you told the
11 judge you felt like you pled guilty because you didn't have a
12 choice?

13 A. Well, at what point in time I said, on page 26, 14
14 and 15, I said: I don't want to, but I can't beat this at
15 trial.

16 Q. Yeah, but that's not saying I don't have another
17 choice, is it? Those words, you did not tell the judge, I
18 have no other choice but to plead guilty, right?

19 A. Well, in so many words, I did, because I said, I do
20 not want to, but I can't beat this at trial.

21 Q. After that, you still pled guilty; did you not?

22 A. Yes.

23 MR. JOHNSON: No further questions, Your Honor.

24 THE COURT: Any re-redirect?

25 MR. FALK: No, Your Honor.

1 THE COURT: What we are going to do then is --
2 Mr. Mayer, I appreciate your patience. We are going to
3 recess this hearing. I'm going to take the two withdrawals
4 and we will start back at this at 2:30. It's only going to
5 take me five-minute each to do the withdrawals.

6 (Whereupon, a luncheon recess is taken.)

7 (Whereupon, Mr. Brown is present.)

8 THE COURT: The State ready to proceed?

9 MR. JOHNSON: We are.

10 THE COURT: Applicant ready to proceed?

11 MR. FALK: We are.

12 THE COURT: We had concluded the applicant's
13 testimony. Does the applicant have any further witnesses?

14 MR. FALK: We would call Mr. Mayer to the stand.

15 THE COURT: Mr. Mayer, come to the stand and be
16 sworn.

17 AARON MAYER,
18 having been duly sworn, testifies as follows:

19 THE CLERK: State your first and last name.

20 THE WITNESS: Aaron Mayer, M-a-y-e-r.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MR. FALK:

24 Q. Mr. Mayer, you were representing my client on April
25 7th, 2014?

1 A. Yes, sir.

2 Q. And there was another lawyer involved in this, Brian
3 Burke?

4 A. Yes, sir.

5 Q. What was his role in this case?

6 A. He represented Joe on the Berkeley County charges.

7 Q. Okay. And were you all discussing this case
8 together, some type of wrap-up deal?

9 A. Yes.

10 Q. Do you know if Mr. Burke was retained or if he was a
11 public defender?

12 A. I don't know.

13 Q. You were retained?

14 A. I was.

15 Q. Can you go through what you did to investigate this
16 case?

17 A. Well, yes. I want to caveat my answer by saying
18 that this all began several years ago. And I have not
19 refreshed my memory until Mr. Brown began testifying earlier
20 today. So I'm going to answer to the best of my
21 recollection. All right?

22 In terms of determining what the State's case was,
23 we went through the entire police file, the State's file,
24 everything that was turned over to us. I went through it
25 with Mr. Brown, for the most part. I do not believe that we

1 hired an independent investigator or anything for his case.

2 Q. Okay. Do you know why you would not have?

3 MR. JOHNSON: I'm going to object to that question,
4 Your Honor. I don't think that's been raised in the
5 application. I don't think that's a point of contention in
6 this case. I think it's an irrelevant question.

7 THE COURT: Response.

8 MR. JOHNSON: Failure to investigate the case --

9 THE COURT: Failure to investigate is different than
10 needing an investigator. You don't just hire a private
11 investigator. You need -- they need to be doing something,
12 researching something, looking for something that you could
13 not otherwise have availed yourself to.

14 Indigent defense is not just going to rubber stamp
15 somebody to get a private investigator. So I need to know
16 why it's relevant to his representation.

17 BY MR. FALK:

18 Q. Did he talk to you about -- did he have you ask
19 any -- did he give you any names of people he wanted you to
20 talk to?

21 A. Did Mr. Brown give me names of people?

22 Q. Yeah.

23 A. I really don't remember. But to answer your earlier
24 question about what we did to investigate, it was my practice
25 at the time to question witnesses myself, to figure out what

1 may or may not be said at trial.

2 Q. Okay. Do you recall questioning any witnesses about
3 this case?

4 A. I know there were discussions with prospective
5 witnesses. I couldn't tell you their names.

6 Q. Do you remember any conversations about you speaking
7 with the co-defendant in this case?

8 A. I can't say I remember a specific conversation or
9 conversations. Of course, at the time I was well aware that
10 there was a co-defendant who had confessed and who was placed
11 to be with my client around the times that these things
12 happened. I wouldn't have had access to him. And I know
13 that the co-defendant's counsel and I talked about certain
14 cases and trying to figure out what was going on with him. I
15 don't recall if this was one or not. I can't say with
16 certainty.

17 Q. On April 7th, what was your trial strategy?

18 A. You know, I don't recall. I don't recall what that
19 trial strategy would have been. I haven't reviewed my notes
20 in preparation for that. Sorry.

21 Q. Do you recall whether or not you had anybody under
22 subpoena for that day?

23 A. I don't recall.

24 Q. Did you have -- when did you start having plea
25 discussions with the Solicitor's Office?

1 A. Well, so --

2 Q. If you can't recall specific dates, 30 days before,
3 60 days before?

4 A. I can't even get that specific, but what I can tell
5 you is, when I first got on Joe's case, he had Adam Young as
6 his solicitor. And this was one of the cases that Adam gave
7 up when he left the Solicitor's Office.

8 In terms of negotiations and things, you know, I
9 heard Mr. Brown's testimony about there was a ten-year plea
10 offer. I was searching my notes and my e-mails while he was
11 testifying to try to ascertain if I have any record of that.
12 I didn't find any record of that, but it's entirely possible
13 that Adam would have said, hey, you know, what about 10
14 years. And it's entirely possible that Joe and I discussed
15 that very early on in this case. I don't recall the
16 progression of the plea offers and how they changed and this
17 sort of thing.

18 I know that when Kelley got the case, Kelley Flynn,
19 now Kelley Young, she ended up marrying Adam. I don't recall
20 if that was before or after the case was handed off to her,
21 but I definitely felt like her position on the case was more
22 rigid than Mr. Young's had been.

23 Q. But do you recall there being a firm offer for 10
24 years?

25 A. I can't say with certainty either way. The ten-year

1 figure sounds familiar to me, but I can't say why. I don't
2 know. I don't recall why or who that would have come from or
3 if it was just a concept or if it was an actual firm offer.

4 Q. Did you review the discovery disk? There were some
5 videos. Do you recall if there were any videos in this case?

6 A. Yes, sir, there were. And we reviewed them.

7 Q. Do you recall a conversation with my client about
8 the videos?

9 A. Hearing him testify about it, I think I vaguely
10 recall it, yes.

11 Q. Do you recall telling him that you didn't think he
12 could be identified in one of the videos?

13 A. I don't specifically recall that. I recall, you
14 know, being surprised when I saw the videos that you could
15 see somebody's goatee. I can't say I specifically recall
16 that, no.

17 Q. At the beginning of the transcript, there's a
18 reference to an in-chambers conference. Have you had a
19 chance to look at the transcript?

20 A. I did, yes.

21 Q. And there's a reference to an in-chambers
22 conference.

23 A. Okay.

24 Q. Was the defendant present?

25 A. He was not in chambers.

1 Q. All right. Can you tell us what that conference was
2 about?

3 A. Well --

4 Q. Mr. Mayer, can I show you the transcript and you can
5 tell me specifically.

6 A. I saw where we took the break and went into
7 chambers.

8 Q. I'm talking about the beginning where you came out
9 and said: I want to speak with my client about what we
10 talked about in chambers.

11 That's the very first --

12 A. If you want to show it to me, I will look at it.
13 Sorry.

14 Q. I'm showing line 5 through 9 of page 2 of the
15 transcript.

16 A. Okay. Yeah, I was thinking of a different time.

17 Q. Having had a chance to look at the transcript, do
18 you recall what you were referring to? You said: I want
19 to -- you said: I want to talk to my client about what we
20 talked about in chambers.

21 A. It would have been whatever we talked about in
22 chambers at the time. I mean, I have no idea what that was.
23 I mean, obviously, it pertained to the case, but I don't
24 recall the details of what that conversation was.

25 Q. Okay. When did you learn that he was going to have

1 to plead to 18 years?

2 A. It wasn't the day that we came to court for the
3 plea. It would have been some time before that. I don't
4 know how long before that it would have been. I can't give
5 you a date. I don't know if it was 30 days or 60 days or six
6 months or a year before. I just don't know.

7 I know that trying to wrap up the charges in a
8 global way was a relatively -- I don't want to say new
9 development at that time, but it was something that had come
10 up, I would say, within the prior eight to ten months.

11 There was some question before about who his lawyer
12 for the Berkeley County stuff was or was going to be. And
13 then there was a waiting period to review the Berkeley County
14 police file and evidence that may be used against him in that
15 trial.

16 And then once Brian Burke came on for the Berkeley
17 County charge, he and I spent a fair amount of time, you
18 know, sharing our analysis of each of our respective cases
19 and trying to avoid an LWOP for Mr. Brown. And I don't
20 recall what the time frame was. I can say that I was
21 surprised to hear Mr. Brown say today that it felt like it
22 was an ambush that day. I certainly -- I certainly hope that
23 that is not really the case for him, but I do think that we
24 would have discussed it well ahead of time.

25 Q. But you said you had a chance to read the

1 transcript.

2 A. I did read the transcript.

3 Q. And in your reading of the transcript, doesn't it
4 read as though he was surprised, ambushed?

5 A. It reads as though he was reluctant.

6 Q. Did you ever tell him not to throw you under the
7 bus?

8 A. I don't recall that. That doesn't seem like
9 something that I would say. You know, I've been known to do
10 just the opposite. I've been known to throw myself under the
11 bus to avoid a guy, you know, going to trial unnecessarily or
12 getting a bad plea or something like this. And seeing
13 Mr. Brown get a bad sentence would have been the last thing
14 that I wanted.

15 Q. So Mr. Brown -- obviously, we know at some point,
16 the court adjourned through a lunch break, came back at two
17 o'clock. Did you have conversations with him during that
18 lunch break?

19 A. I don't recall.

20 Q. Do you recall any specific conversations you had
21 with him that day other than that are not recorded in the
22 transcript?

23 A. I mean, can you ask me like a specific detail about
24 that?

25 Q. I just said there was lunch break. Do you recall

1 speaking with your client during lunch?

2 A. It's possible. I mean, I don't specifically recall
3 when I talked to him that day.

4 Q. Okay. I wasn't trying to hold you to that.
5 Obviously, there were several times where it looked like
6 there would have been an opportunity to speak with him. And
7 if you can't remember which conversation fit when, I just
8 want to know if at any time during the day you had
9 conversation -- once the -- once he came up to the courtroom
10 and we were starting this --

11 A. It's my belief -- I think that's a question. It's
12 my belief that Mr. Brown and I had pretty extensive
13 conversations throughout that day, yeah.

14 Q. Okay. And what would they have been about?

15 A. They would have been about the plea, the trial, the
16 dynamics of what the trial would have been like or the
17 reasons to take the plea.

18 If he was under the impression at the time that
19 there was a ten-year plea beforehand, I would have expected
20 that we would have talked about that. You know, I've had --
21 I don't know if this is a case that this applies to, but I've
22 had cases where the State has made an offer that, you know,
23 I've talked to my client about, and they say, no, it's too
24 much. And then a year later, they really, really badly want
25 that offer back, and the State won't extend it again.

1 And I feel like this is probably one of those, where
2 I went to Kelley again and again and again and said, give us
3 that offer back, or something like that, if there had been an
4 offer. But I can't say with certainty that it was.

5 Q. You can't say with certainty? That last was just
6 speculation?

7 A. I mean, yeah, just based on --

8 Q. You don't know whether or not offers or trying to
9 get them back, if that applied to this case?

10 A. I don't know it applied to this case, yeah.

11 Q. Prior to any time April 7th, did you ever represent
12 to him that you weren't ready to go forward with the trial?

13 A. We may have had conversations about money, which is,
14 you know, different than whether we are prepared technically
15 to do a trial. But we certainly would have talked about
16 trial and what a trial would be like.

17 Q. What would a conversation about money relate to the
18 trial?

19 A. Well, ordinarily, I would like my fee to be paid
20 fully before we do a trial.

21 Q. Did that happen in this case?

22 A. I don't recall if that happened in this case.

23 Q. Is there a possibility that happened?

24 MR. JOHNSON: Objection to relevance about the fee
25 dispute, Your Honor.

1 MR. FALK: I think that's very relevant.

2 THE COURT: How?

3 MR. FALK: If the reason why he's telling his client
4 he's got to take the plea because you haven't paid me to go
5 to trial --

6 THE COURT: That don't happen. You know how many
7 people work for free because their clients haven't paid them?

8 MR. FALK: I appreciate that, but --

9 THE COURT: I don't think it has any relevance.

10 MR. FALK: If he's saying, I'm not going to trial --

11 THE COURT: You would have to lay some foundation.
12 Your client's testimony isn't predicated on that. He didn't
13 say he didn't pay him and that's why he was forced. He said
14 he was forced because he wasn't ready. So it isn't relevant
15 unless you can establish some foundation to make it relevant.

16 Just happens too often where folk pay an initial
17 retainer and never pay their attorney and they are not
18 relieved. And they go forward and do an exemplary job.

19 So I've had many trials with Mr. Mayer and I've
20 never known him to say, my client hadn't paid me and I'm not
21 going to go forward.

22 He doesn't have a choice. That is your job as a
23 lawyer to assess your client's responsibility to pay their
24 fee. And if they don't, that's on you, because you jumped
25 in. And you are bound ethically to do a good job. You

1 cannot not do a good job because somebody hadn't paid you.

2 So if you can make the question relevant, you can
3 ask it. But at this point, I haven't heard anything to tie
4 it to -- to bring it into the realm of what is relevant based
5 on your client's allegations of ineffective assistance. The
6 objection is sustained.

7 BY MR. FALK:

8 Q. So you don't recall a specific conversations about
9 you not being ready for trial?

10 A. No.

11 Q. Do you recall being ready for trial?

12 A. I don't recall specifically being ready for trial,
13 but in the transcript, if I told the judge I was ready for
14 trial, I'm sure I was.

15 Q. Do you remember what you did to get ready for the
16 trial?

17 A. I don't remember.

18 Q. At one point, he was going to plead and there was an
19 issue about the plea sheets. Do you recall reading the
20 transcript?

21 A. I recall the judge saying something about signing
22 plea sheets.

23 Q. Yes. And there was a side bar?

24 A. I don't recall.

25 Q. Okay. When did you get the plea sheets?

1 A. I don't know.

2 Q. Okay. Do you recall any other specific
3 conversations you had with him about -- because once we got
4 to the point in this plea hearing, about the plea sheets,
5 then again things broke down. Is that not correct?

6 A. I would have to refer to the transcript. If you are
7 saying that's what happened, then I trust you, yeah.

8 Q. Okay. Do you remember any conversations you had
9 with him about telling him he needed to plead?

10 A. I don't remember specifically. I remember I felt
11 like, you know, with the eyewitness against him and the
12 co-defendant against him and the other circumstantial
13 evidence and video, I remember I felt like it would have been
14 a difficult case to beat.

15 And I was also concerned about him being tried
16 multiples and getting LWOP'd. So even though he had no
17 record going into this series of charges, you know, Joe and I
18 had a good rapport. I liked Joe. And I didn't want to see
19 him get LWOP'd. And that was -- so that was a really big
20 concern for me. And I remember feeling very relieved for
21 that reason when he accepted the plea.

22 Q. You would admit that it's clear that Mr. Brown had
23 some concerns about accepting the plea that day; is that not
24 right?

25 A. I think that's clear, yeah.

1 Q. Do you think he felt -- it's clear as though he did
2 not really want to do it that day; is that right?

3 A. I don't know about -- I mean, you know, I don't
4 think anybody wants to accept 18 years in prison. And I
5 don't think he was an exception to that.

6 Q. And you said that the 18-year offer was conveyed to
7 you by the solicitor sometime prior to April 7th; is that
8 correct?

9 A. I'm sure it would have been. I mean, I can't
10 imagine that being the first time that offer was made.

11 Q. And -- but do you recall ever communicating that
12 offer to my client?

13 A. I don't recall specifically, but it would have been
14 my practice to do so.

15 Q. Can you tell me what conversations you had with him
16 about a plea under *North Carolina vs. Alford*?

17 A. I honestly don't recall.

18 Q. Do you recall when the ability to plea under *Alford*
19 became an offer from the State, that the State would agree to
20 it?

21 THE COURT: I'm sorry, I don't understand that
22 question.

23 BY MR. FALK:

24 Q. Did the State ever suggest that he plead under
25 *Alford*? Did you ever ask whether or not he could plead under

1 *Alford*?

2 THE COURT: That's a misleading question. The State
3 doesn't have any purview in that. They don't have to say
4 whether he pleads under *Alford* or not. That's a
5 constitutional right only he and his lawyer would discuss.

6 MR. FALK: The transcript relates to quid pro quo
7 about the trial judge asked, there's got to be something in
8 exchange for the *Alford* plea.

9 THE COURT: Not necessarily. LWOP is enough and the
10 dismissal of the other cases. But the State doesn't make a
11 decision about whether he's going to enter an *Alford* plea.
12 What he's basically asking is, as part of the negotiations,
13 what is he giving up in light of allocuting to that these
14 would be the facts that would be presented at trial.

15 But whether he enters a plea under *Alford*, the State
16 would have no vote on that. You can enter an *Alford* plea any
17 time you want to. The State doesn't have to consent to
18 entering an *Alford* plea.

19 THE WITNESS: I think that the *Alford* concept came
20 up that day.

21 THE COURT: But I need you to restate the question
22 in the context of how Mr. Mayer's knowledge would relate to
23 his client's plea.

24 BY MR. FALK:

25 Q. When did you first suggest that he plead under

1 *Alford* or explain to him he could plead under *Alford*?

2 A. I believe that it arose that day.

3 Q. Okay. And was that after discussions with the
4 solicitor?

5 A. I believe it was.

6 Q. And do you remember when during this you spoke with
7 my client about the *Alford* plea?

8 A. I think that the concept of *Alford* may have arisen
9 in a conversation with Brian Burke, so some time after he
10 arrived. And then I would have either -- Brian and I, or one
11 or the other of us, would have spoken with Mr. Brown about
12 it.

13 Q. It was your recommendation that he plead that day?

14 A. It was.

15 Q. And is it your testimony that you spoke with him
16 about pleading to 18 years the night before?

17 A. I don't know. I don't know if it was the night
18 before. I don't know when it was. It would shock me if the
19 first time we talked about 18 years was that day. It would
20 have been -- I mean, I have a vague recollection of,
21 essentially, at hand, begging Kelley Young or Kelley Flynn,
22 whatever she was at the time, to do better. And I don't know
23 if that was off of a higher figure or if that was off of the
24 18. I just don't recall. But it would shock me if that came
25 up, the 18 years, if that was the first time that it came up,

1 was that plea date.

2 Q. You had said earlier that you don't recall specific
3 trial strategy. Do you recall whether or not you were
4 planning to put on any evidence in his defense?

5 A. I don't recall. I don't recall.

6 MR. FALK: One moment, please.

7 THE COURT: Yes, sir.

8 MR. FALK: No further questions.

9 THE COURT: Any questions for the witness?

10 MR. JOHNSON: Briefly. May it please the Court.

11 CROSS-EXAMINATION

12 MR. JOHNSON:

13 Q. Mr. Mayer, had the solicitor offered 10 years, you
14 would have relayed that to your client, correct?

15 A. Yes.

16 Q. Whose decision would it be to accept or reject that
17 offer?

18 A. It's the client's decision.

19 Q. It was -- does the Solicitor's Office here usually
20 put a timeline on it as a drop-dead date, if you will?

21 A. Recently, in the last year, seems like they have
22 been doing that. At the time when Adam Young was still here,
23 I don't think that I recognized that as their common
24 practice.

25 Adam and I have had, you know, other cases together

1 where he proposed an initial figure. You know, we might be
2 able to chip them down lower.

3 Q. Ten would be the minimum on the armed robbery
4 charge?

5 A. Yes.

6 Q. And it was your recommendation that he plead
7 guilty --

8 A. It --

9 Q. -- in this case?

10 A. You know, if 10 was offered, I don't know when it
11 was offered. I don't know that it was offered. And I don't
12 know if we even had a chance at the time to go through even
13 the basic discovery provided by the Solicitor's Office. You
14 know, it could very well have been that Adam made a ten-year
15 offer and that Joe and I, you know, received that offer, but
16 hadn't had an opportunity to work through the discovery that
17 was provided. And it's entirely possible that during that
18 time frame, when we were working through the discovery and,
19 you know, seeing what the State had and talking it through,
20 it's entirely possible that that's when Adam left the
21 Solicitor's Office.

22 And, I mean, I just don't -- I don't know if we were
23 in a position to determine if 10 years was even good at the
24 time. I just don't know.

25 Q. But at some point, he was offered 18 years, and

1 that's what he accepted?

2 A. That's correct.

3 Q. And you advised him to accept that guilty plea?

4 A. I did.

5 Q. And that was to avoid possible life without parole
6 sentence?

7 A. Yes.

8 Q. Because the Solicitor's Office could have tried him
9 on all four cases separately, trying to get two major strikes
10 against him?

11 A. Yes.

12 Q. Which that would be a mandatory life without parole,
13 correct?

14 A. Yes.

15 MR. JOHNSON: That's all I have, Your Honor.

16 Thank you, Mr. Mayer.

17 THE COURT: Any redirect?

18 MR. FALK: No, Your Honor.

19 THE COURT: Any objection to Mr. Mayer being excused
20 from the applicant?

21 MR. FALK: No, Your Honor.

22 THE COURT: From the State?

23 MR. JOHNSON: No, ma'am.

24 THE COURT: Sir, you are excused.

25 You may proceed, Mr. Falk.

1 MR. FALK: We have no further witnesses.

2 THE COURT: The State have any witnesses?

3 MR. JOHNSON: No, ma'am.

4 THE COURT: Have either of you made attempt to
5 contact the Solicitor's Office?

6 MR. JOHNSON: Yes, ma'am. I just sent an e-mail and
7 they are trying to locate the file because it was Ms. Young's
8 case. And as Your Honor knows, she's no longer with the
9 Solicitor's Office.

10 THE COURT: It's all kept electronically.

11 MR. JOHNSON: I contacted Burns Wetmore.

12 THE COURT: It would have been his case as the chair
13 appointed in this transcript.

14 MR. JOHNSON: Right. Doesn't seem like he had any
15 interaction. But he's asked his assistant to locate the
16 file.

17 THE COURT: According to case management, all offers
18 are extended by a particular time. They are in writing.
19 They all have an expiration date. So it would be in the
20 file. And the results of the communication of that offer
21 would be in the file. That's why I'm asking the question.

22 MR. JOHNSON: I think the solicitor is trying to
23 locate the file at this time.

24 THE COURT: I guess I'm asking, do you plan to call
25 Mr. Wetmore as a witness?

1 MR. JOHNSON: If he can get the file, yes, ma'am.

2 THE COURT: What we will do then is, while we are
3 determining that, whether they can locate that file and
4 whether the State is going to call Mr. Wetmore, we will
5 recess this proceeding and wait on any closing argument until
6 he determines that. And then we will resume once we get
7 feedback from them as to whether that information is
8 available.

9 (Whereupon, the proceedings were adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

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

Witness my hand, I have hereunto affixed my official
seal this 27th day of September, 2016, at Charleston,
Charleston County, South Carolina.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2014-CP-10-05287
3)
JOE LOUIS BROWN,)
4)
Applicant,)
5)
vs.) Transcript of Record
6)
THE STATE OF SOUTH CAROLINA,)
7)
Respondent.) DATE: June 13, 2016
8)
9

10 B E F O R E:

11 THE HONORABLE DEADRA L. JEFFERSON

12
13 A P P E A R A N C E:

14 James Kristian Falk
Attorney for the Applicant

15 James Rutledge Johnson
Attorney for the Respondent

16
17 ALSO PRESENT:

18 Ashley Pennington
Attorney for Melvin Lawrence Gathers

19 Karen V. Andersen, RMR, CRR
20 Circuit Court Reporter
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1 THE COURT: For the record, we are accommodating the
2 Department of Corrections in making an inmate available to
3 testify by telephone.

4 This is Joe Louis Brown, 2014-5287. The applicant
5 is represented by Mr. Falk. And the State is represented by
6 Mr. Johnson.

7 If you can bear with us for a moment, this phone
8 apparently has to load before we can conference in the
9 applicant.

10 For the record, that inmate's name is Melvin
11 Lawrence Gathers, Inmate No. 315874. And for what purpose
12 did you want to call the witness, Mr. Falk?

13 MR. FALK: Your Honor, my purpose was that this
14 is -- my argument is that this is somebody who Mr. Mayer
15 should have spoken with or investigated.

16 THE COURT: How could he have spoken with somebody
17 who could have been implicated without having the consent of
18 his counsel?

19 MR. FALK: Well, he could have had --

20 THE COURT: Unlikely that would ever happen. Why
21 would you allow your client to talk to somebody to
22 incriminate themselves? Would you?

23 MR. FALK: If he was already pleading.

24 THE COURT: No, you wouldn't, not if you could
25 increase his culpability, not under the circumstances. You

1 would find yourself in a malpractice and grievance posture,
2 wouldn't you, unless you are getting something in exchange
3 for your client?

4 I'm just trying to figure out how you would have had
5 access to him. That has never been my experience. Was he a
6 co-defendant of your client?

7 MR. FALK: Yes.

8 THE COURT: Were they tried together or separately?

9 MR. FALK: Separately.

10 THE COURT: On the same charges or different
11 charges?

12 MR. FALK: Same charges.

13 THE COURT: Did Mr. Gathers file a PCR?

14 MR. JOHNSON: I don't believe so, Your Honor.

15 THE COURT: I need to get Mr. Gathers's file as
16 well.

17 MR. JOHNSON: His start date was 2012, Your Honor.

18 THE COURT: What was he convicted of?

19 MR. JOHNSON: Armed robbery on all of these, four
20 different armed robberies. There were a couple in Charleston
21 County and a couple in Berkeley County. The posture of this
22 case is that he pled under Alford and they dismissed the
23 Berkeley. There was a kidnapping charge as well they
24 dismissed.

25 THE COURT: So he pled to an armed robbery?

1 MR. JOHNSON: Yes.

2 THE COURT: We are talking about Mr. Gathers.

3 MR. JOHNSON: Mr. Gathers.

4 THE COURT: That's what I need to know about.

5 MR. JOHNSON: There are, one, two, three, four armed
6 robberies, and one, two, three, four firearm provisions,
7 attempted armed robbery, common law robbery, and threatening
8 the life of a public official.

9 THE COURT: And he pled to all of that?

10 MR. JOHNSON: Seems like it, yes, ma'am. I've got
11 one first May 12th --

12 THE COURT: He pled to four armed robberies, one
13 attempted armed robbery, one strong-arm robbery, and how many
14 possessions of a weapon?

15 MR. JOHNSON: Four.

16 THE COURT: And what else did he plead to?

17 MR. JOHNSON: Threatening the life of a family of a
18 public official.

19 THE COURT: What was the start date of the sentence?

20 MR. JOHNSON: May 1st, 2012, Your Honor.

21 THE COURT: And what was his sentence?

22 MR. JOHNSON: He got 22 years on all of the armed
23 robberies. I guess the rest of it runs concurrently, because
24 he gets out in 2032.

25 THE COURT: What exactly is it that you propose to

1 ask him?

2 MR. FALK: I propose to ask him whether or not he
3 spoke with Mr. Mayer or Mr. Mayer's investigator.

4 THE COURT: Why can't Mr. Mayer tell us whether that
5 happened? Do you need his testimony for that? Is that
6 really contested?

7 MR. FALK: It's this letter right here.

8 THE COURT: Uh-huh.

9 MR. FALK: And I guess --

10 THE COURT: Does he have a copy of that letter?

11 MR. JOHNSON: I have one now.

12 THE COURT: No, I'm talking about the person you
13 want to question about the letter; does he have a copy of
14 that letter?

15 MR. FALK: I'm not sure he does.

16 THE COURT: How are you going to question him about
17 something he doesn't have a copy of?

18 MR. FALK: Well, this is a pretty specific thing. I
19 can ask him if he ever signed it.

20 THE COURT: You've got to show it to him to ask him
21 if he signed it. You have to refresh someone's memory about
22 an extrinsic document.

23 Go make a copy of that and see if Chanda has a way
24 to fax that to them. Go ahead and call.

25 THE CLERK: Yes, ma'am.

1 THE COURT: And was that letter written before or
2 after he pled guilty?

3 MR. FALK: After, Your Honor, notarized October 3rd
4 of 2014.

5 THE COURT: What does it say?

6 MR. FALK: That Mr. Brown had no knowledge of the
7 crimes that Mr. Gathers committed.

8 THE COURT: Yeah, that's so broad.

9 MR. FALK: And it's an Alford plea.

10 THE COURT: He pled guilty?

11 MR. FALK: But he pled guilty to the Arby's robbery
12 and the Dollar General.

13 MR. JOHNSON: Mr. Brown pled under Alford.

14 THE COURT: Which makes another -- yes, that's a
15 whole another thing.

16 THE CLERK: Sir, if you can speak up just a little
17 bit, please.

18 MR. GATHERS: Yes, ma'am.

19 THE COURT: Okay. Mr. Gathers? Mr. Gathers?

20 MR. GATHERS: Yes, ma'am.

21 THE COURT: Can you hear me clearly?

22 MR. GATHERS: Yes, ma'am.

23 THE COURT: Sir, we are here on a post-conviction
24 relief case with Mr. Joe Louis Brown. And his lawyer has
25 asked that you be available to testify. Do you understand

1 that?

2 MR. GATHERS: Yes, ma'am.

3 THE COURT: Okay. Sir, I need to advise you of your
4 right against self-incrimination. Do you understand what
5 that means?

6 MR. GATHERS: Say it again.

7 THE COURT: I need to advise you of your rights
8 against self-incrimination. Do you understand that?

9 MR. GATHERS: Yes, ma'am.

10 THE COURT: Mr. Grimes represented you previously,
11 correct?

12 MR. GATHERS: Yes, ma'am.

13 THE COURT: And you understand that he is --
14 unfortunately, he's passed away?

15 MR. GATHERS: No, ma'am.

16 THE COURT: Yeah. He passed away earlier this year.
17 I'm sorry to have to tell you under these circumstances.

18 Is there someone else that is representing you at
19 this time?

20 MR. GATHERS: No, ma'am. The last time that I had
21 my case, Grimes was the last person I had. And he went to
22 court with me and that was that.

23 THE COURT: Okay. Now, Mr. Falk wants to question
24 you -- that is Mr. Brown's attorney -- about some matters
25 involved -- you know what a PCR is, don't you?

1 MR. GATHERS: A post-conviction return?

2 THE COURT: Yes, sir. You understand what that is?

3 MR. GATHERS: Where he could go back up or something
4 like that?

5 THE COURT: Yes, sir. And Mr. Falk is his attorney
6 and he wants to ask you some questions on Mr. Brown's case.
7 Do you understand that?

8 MR. GATHERS: Yes, ma'am.

9 THE COURT: Sir, I need to advise you that you
10 cannot be compelled to say anything that would be against
11 your own interest. Do you understand that?

12 MR. GATHERS: Meaning that I don't have to say
13 anything?

14 THE COURT: That will implicate you in any crimes or
15 be against your best interest; do you understand that?

16 MR. GATHERS: Yes, ma'am.

17 THE COURT: And do you understand that if you need
18 an attorney, that I can appoint one to speak with you?

19 MR. GATHERS: Yes, ma'am.

20 THE COURT: Okay. Now, I need to know, do you want
21 to go forward and testify without an attorney, or do you need
22 me to appoint someone to talk to you before you testify?

23 MR. GATHERS: I would rather somebody talk to me
24 first.

25 THE COURT: Okay. I will tell you what I'm going to

1 do. I need you to stay on the line for me. Okay? Are you
2 listening?

3 MR. GATHERS: Yes, ma'am.

4 THE COURT: I need you to stay on the line for me.
5 And I will see if I can rustle up somebody to talk to you.
6 Okay?

7 MR. GATHERS: Yes, ma'am.

8 THE COURT: All right. I'm going to put you on hold
9 for a moment. All right?

10 MR. GATHERS: Yes, ma'am.

11 THE COURT: Thank you. All right.

12 We are going to recess this hearing. I'm going to
13 find somebody in the public defender's office to talk to him
14 right quick. And then at that time, he can let us know
15 whether he wants to testify or not.

16 MR. JOHNSON: Thank you.

17 THE COURT: Give me one moment.

18 (Whereupon, a recess transpired.)

19 THE COURT: Mr. Pennington is the chief public
20 defender's counseling with Mr. Gathers. When they are done
21 talking, he's going to let me know. And then I'm going to
22 determine at that point whether he wants to testify or not.
23 So we will be in recess while Mr. Pennington does that.

24 We are going to have to ignore -- that phone will
25 ring back sometimes. And we've already sent a copy of the

1 letter to Mr. Pennington so he can discuss it with him.

2 (Whereupon, recess transpired.)

3 THE COURT: We are resuming Joe Louis Brown vs. The
4 State, 2014-5287.

5 Mr. Lawrence -- I mean, Mr. Gathers, I apologize,
6 Mr. Gathers?

7 MR. GATHERS: Yes, ma'am.

8 THE COURT: Can you hear me, sir?

9 MR. GATHERS: Yes, ma'am.

10 THE COURT: I need you to raise your right hand for
11 me, sir, to be sworn.

12 MR. GATHERS: Yes, ma'am.

13 MELVIN LAWRENCE GATHERS,

14 having been duly sworn, testifies as follows:

15 THE COURT: State your full name for the record.

16 Did you hear me, sir?

17 MR. GATHERS: No.

18 THE COURT: Say your full name for the record.

19 MR. GATHERS: Melvin Lawrence Gathers.

20 THE COURT: And, Mr. Gathers, we spoke earlier,
21 correct?

22 MR. GATHERS: Yes, ma'am.

23 THE COURT: And did you have a full opportunity to
24 speak with Mr. Ashley Pennington?

25 MR. GATHERS: Yes, ma'am.

1 THE COURT: Did he answer all of your questions?

2 MR. GATHERS: Yes, ma'am.

3 THE COURT: And he explained to you your right
4 against self-incrimination and your Fifth Amendment rights to
5 the US Constitution and the State Constitution?

6 MR. GATHERS: Yes, ma'am.

7 THE COURT: And he went over the statement you wrote
8 with you?

9 MR. GATHERS: Yes, ma'am.

10 THE COURT: Sir, do you wish to testify or do you
11 not wish to testify?

12 MR. GATHERS: I wish to testify.

13 THE COURT: Okay. And are you doing that freely and
14 voluntarily and of your own will?

15 MR. GATHERS: Freely and voluntarily.

16 THE COURT: Do you feel that you've been forced in
17 any way?

18 MR. GATHERS: No, ma'am.

19 THE COURT: Are you suffering from any mental
20 disabilities or under the influence of any drugs or alcohol?

21 MR. GATHERS: No, ma'am.

22 THE COURT: Okay. Now, Mr. Falk is going to ask you
23 some questions. That's Mr. Brown's attorney. And then the
24 State's attorney, Mr. Johnson, is going to ask you some
25 questions. Okay?

1 MR. GATHERS: Yes, ma'am.

2 THE COURT: If at any time you have any concerns
3 about your constitutional rights, please make me aware of it.
4 All right? Can you hear me?

5 MR. GATHERS: Yes, ma'am.

6 THE COURT: Okay. I need you to speak loud and
7 clear into the telephone. Okay? Because the court reporter
8 has to take down everything that you say.

9 MR. GATHERS: Yes, ma'am.

10 THE COURT: Thank you, sir. You may proceed,
11 Mr. Falk.

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q. Mr. Gathers?

15 A. Yes, sir.

16 THE COURT: Did he say he wanted to be on the line?
17 Mr. Gathers, hold on for us so we can get
18 Mr. Pennington on the line with you.

19 (Whereupon, Ashley Pennington is present via
20 telephone.)

21 THE COURT: Mr. Falk is going to be questioning
22 Mr. Gathers and I've already sworn him.

23 BY MR. FALK:

24 Q. Mr. Gathers, can you still hear me?

25 A. Yes, ma'am.

1 THE COURT: Tell him who you are.

2 BY MR. FALK:

3 Q. My name is James Falk and I represent Joe Louis
4 Brown.

5 A. Okay.

6 Q. And do you know who Joe Louis Brown is?

7 A. Yes, sir.

8 Q. All right. Now, you are currently incarcerated; is
9 that correct, obviously?

10 A. Yes.

11 Q. And are you -- you are incarcerated for armed
12 robberies?

13 A. Yes, sir.

14 Q. And did that armed robbery include one at the Dollar
15 General store on Highway 52?

16 A. As far as -- yes, sir.

17 Q. And did that armed robbery -- do you recall what the
18 other locations were?

19 A. They said that one -- I believe it was a convenience
20 store.

21 Q. Was one of them a bowling alley?

22 A. Yes, that one too.

23 Q. Was one of them a fast-food store?

24 A. No, I don't remember that.

25 Q. Like a McDonald's or an Arby's?

1 A. Oh, yeah.

2 Q. Which one?

3 A. Arby's.

4 Q. Okay. And you pled guilty to those charges?

5 A. Yes.

6 Q. And, okay, and you pled guilty to those charges.

7 Did you ever speak with Mr. Brown's attorney?

8 A. I spoke to him. Well, I didn't really speak to him.

9 I spoke to him first time today, but I wrote a statement on
10 behalf that had something dealing with Joe Brown, Joe Louis
11 Brown, and him not being a participant of those crimes, that
12 they didn't -- that he was guilty of.

13 Q. Okay. But prior to you being sentenced, did you
14 ever have a conversation with Mr. Mayer?

15 A. With Mr. Who?

16 Q. Mr. Brown's lawyer.

17 A. No.

18 Q. If you would have talked to him, what would you have
19 told him? If he were to come talk to you, what would you
20 have told him?

21 A. I would have told him that I've already been
22 convicted of 22 years of my life behind prison walls. And
23 they know everything. The night that they had arrested five
24 people, they arrested five people, and when I stated -- I
25 stated -- what I stated, they let everybody else go that --

1 when I made the confession that the crime -- that the robbery
2 that was committed was my action, but they said that they was
3 going to let them go, but they never let Joe go. But they
4 put both of us in county. And I would have told them -- I
5 would have told -- I would have told him that -- I would have
6 told them plainly that they got the wrong man.

7 Q. Okay. Did you get a chance to look at the
8 surveillance videos? Before you pled guilty, did Mr. Grimes
9 show you the discovery in this case?

10 A. I didn't receive my discovery, but I received the
11 six-photo lineup.

12 Q. Okay. So you admitted to being involved in these
13 robberies. Was there anyone else who helped you?

14 A. I mean, yes, but it wasn't -- it wasn't Joe. It
15 wasn't Joe. I know that for a fact. It wasn't Joe.

16 Q. Okay. You had referred to a letter that you had
17 sent to Mr. Mayer or that you had sent?

18 A. Yeah, a statement that I had notarized here in
19 Lieber.

20 Q. It looks like the signature is different. It looks
21 like the handwriting of the signature on this letter is
22 different from the rest of the letter. Did somebody else
23 write it for you?

24 A. I mean, I had help. I had assistance writing the
25 letter. I had assistance writing the letter, so I signed it.

1 I signed it. That's my signature. If anybody have any case
2 papers of anything that I signed, they would see it, that's
3 my signature. It's just that I had a jailhouse lawyer. And
4 I got -- it was sent to me. I agreed. And that is what
5 happened. I went to the mailroom up here at Lieber and got
6 it notarized and I returned it. I returned the statement.

7 Q. And have you had an opportunity to see that letter
8 today?

9 A. Have I had an opportunity?

10 Q. There was some talk about -- when was the last time
11 you saw that letter?

12 A. The last time that I signed it, sent it to the
13 mailroom and mailroom returned it to Brown.

14 Q. Do you remember about what month it was?

15 A. No.

16 Q. Was it before Thanksgiving?

17 A. Was it before Thanksgiving?

18 Q. Yeah.

19 A. 2015 Thanksgiving?

20 Q. 2014 Thanksgiving.

21 A. 2014 Thanksgiving?

22 Q. Yes.

23 A. It could have been, because I was inside the
24 dormitory here. I'm in lockup right now.

25 Q. Okay.

1 MR. FALK: Your Honor, I ask at this time to enter
2 the letter into evidence. He's identified the date. He's
3 identified who the notary was. He identified the contents of
4 it, or I can wait to have Mr. Brown --

5 MR. JOHNSON: He has not identified the actual
6 document. It is somebody else's handwriting. He says he
7 signed it, but he doesn't have a --

8 THE COURT: Excuse me, but why would you admit it?
9 It's cumulative. You can ask him to testify to the substance
10 of it. It's no real import whether he made the statement or
11 not and what the substance of that testimony would be.

12 MR. GATHERS: I can't hear what's being said.

13 THE COURT: But you may continue questioning him
14 regarding the statement.

15 BY MR. FALK:

16 Q. Did you ever -- did that letter -- in your letter,
17 do you recall stating that Joe Louis Brown did not have any
18 knowledge of the crimes?

19 A. Yes.

20 Q. And what crimes were you referring to?

21 A. The crimes that I was charged, being pled guilty, I
22 took a plea for.

23 Q. Do you recall saying in that letter that, in fact,
24 he was nowhere around at the time?

25 A. Yes.

1 Q. Do you recall saying in that letter -- including
2 that his attorney never questioned you?

3 A. No one never questioned me about that, about
4 nothing. I was at Lockwood and they asked me, Detective Tom
5 RJ -- Detective RJ Thomas and somebody, another detective,
6 questioned me about it when I was in county jail. And at the
7 moment, I had a female lawyer, a public defender. She
8 questioned me about it. But other than that, the case was
9 too far -- the case was too far in motion and nobody never
10 questioned me about it.

11 I know that they said that he was caught with some
12 handguns. But as far as him, they saying that he robbed
13 somebody or he robbed a store --

14 MR. JOHNSON: Objection to hearsay and lacks
15 personal knowledge.

16 MR. FALK: That's enough. Thank you, Mr. Gathers.
17 I have no further questions.

18 THE COURT: You may proceed.

19 CROSS-EXAMINATION

20 BY MR. JOHNSON:

21 Q. Mr. Gathers? Mr. Gathers?

22 A. Yes.

23 Q. This is Mr. Johnson of the Attorney General's
24 Office. How are you doing? Can you hear me?

25 A. Yes, I'm doing fine.

1 Q. Okay. So you wrote this letter. Would you agree
2 with me that it's notarized October 3rd of 2014?

3 A. That sounds about right.

4 Q. And you had already pled guilty to these charges,
5 correct?

6 A. Right.

7 Q. And Mr. Brown had already pled guilty under Alford
8 to these charges, correct?

9 MR. FALK: Objection.

10 THE COURT: Basis?

11 MR. FALK: I'm not sure if he would know whether it
12 was an Alford plea.

13 THE COURT: I think they had an ongoing relationship
14 and he's probably qualified to answer that question.

15 Q. So you know Mr. Brown pretty well; do you not?

16 A. I mean, he is my relative. I mean, so we have
17 had -- I've seen him. I mean, it's inevitable for me not to
18 see him, since he is my family.

19 Q. Are you all in the same gang?

20 A. Is he in the same -- I never known him to be a part
21 of a gang.

22 Q. But you are, are you not?

23 A. On I mean, yes. I mean, I have ties and
24 affiliations.

25 Q. And, sir, you've been convicted of numerous things

1 since 2008; have you not?

2 A. Say again.

3 Q. You've been convicted of numerous things since 2008,
4 have you not?

5 A. Yes.

6 Q. Shoplifting?

7 A. Yes.

8 Q. Armed robbery?

9 A. I mean, yes.

10 Q. Four of them?

11 A. Yes.

12 Q. Do you know when Mr. Brown pled guilty?

13 A. Say it again.

14 Q. Do you know when Mr. Brown pled guilty?

15 A. That's like -- like, the date?

16 Q. Yes. Do you have any knowledge of that?

17 A. No.

18 MR. JOHNSON: No further questions, Your Honor.

19 THE COURT: Any redirect?

20 MR. FALK: No, Your Honor.

21 THE COURT: Okay. Mr. Pennington, thank you for
22 accommodating us. And, Mr. Gathers, that concludes your
23 testimony. So we are going to disconnect now. Okay? Can
24 you both hear me?

25 MR. GATHERS: Yes.

1 THE COURT: Okay. Thank you.

2 (Whereupon, the phone conference ended.)

3 THE COURT: All right.. We will recess this hearing
4 and then we will resume with Mr. Flowers and then we will
5 resume Mr. Brown's case.

6 (Whereupon, a recess takes place.)

7 THE COURT: Bring in Mr. Brown.

8 (Whereupon, Mr. Brown is present.)

9 THE COURT: We are resuming the case of Joe Louis
10 Brown vs. The State. And you may proceed, Mr. Johnson.

11 MR. JOHNSON: Yes, ma'am. I have the four paper
12 files of Mr. Brown with the four indictments for armed
13 robbery. As an officer of the Court, I have looked through
14 all these files and there's nothing that mentions anything
15 about a ten-year offer. I've asked Ms. Purcell to check the
16 electronic filing system. And she is currently doing that as
17 we speak, Your Honor. But as far as paper, there's no
18 evidence of any ten-year offer.

19 THE COURT: Have you given Mr. Falk a chance to look
20 through it?

21 MR. FALK: Yeah. And I also note that there's
22 nothing in here about an 18-year offer either.

23 MR. JOHNSON: That's also true, Your Honor. I'm
24 sorry I didn't say that.

25 THE COURT: Did you talk to Mr. Wetmore to see if he

1 had any independent recollection of the case?

2 MR. JOHNSON: I have not asked him that, but I can
3 certainly e-mail him for that.

4 THE COURT: He's in the building, isn't he? He can
5 come over here.

6 MR. JOHNSON: Okay.

7 THE COURT: Mr. Falk, you can take your time and go
8 through -- or have you gone through it already?

9 MR. FALK: No, this is my first pass.

10 THE COURT: Take your time.

11 MR. JOHNSON: Mr. Wetmore said he's on the way, Your
12 Honor.

13 THE COURT: Okay.

14 MR. WETMORE: I don't have any independent record,
15 but I did look through our files.

16 THE COURT: They are going to call you to testify
17 then. That's --

18 MR. JOHNSON: The State would call Burns Wetmore to
19 the stand.

20 THE COURT: The Court is not an advocate. I don't
21 have any witnesses to call. Call your witness.

22 BURNS WETMORE,

23 having been duly sworn, testifies as follows:.

24 THE CLERK: State your first and last name and spell
25 your last name, please.

1 MR. GATHERS: Burns Wetmore, W-e-t-m-o-r-e.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. JOHNSON:

5 Q. Appreciate you being here on such short notice.

6 A. No problem.

7 Q. Your name seems to be on the transcript. Did you
8 have any involvement with this?

9 A. I did not, to my knowledge.

10 Q. I do understand that Mr. Adam Young was first on
11 this case and he has since left the office, as well as Kelley
12 Young was also on the case, and was the one that pled
13 Mr. Brown out. And she has since left the office; is that
14 correct?

15 A. That's correct.

16 Q. And have you reviewed Mr. Brown's files in this
17 case?

18 A. I have. I've reviewed the four files that were
19 found in our office.

20 Q. And did you find anything in there concerning a
21 ten-year offer?

22 A. I did not. I see it was scheduled on the plea
23 docket, but I see no written offer or no notes about an offer
24 in the file. It appears that 10 years would be the minimum
25 on some of these charges. So that would be not typical with

1 the number of charges, but I don't see anything to any effect
2 about an offer.

3 MR. JOHNSON: That's all I have, Your Honor. Thank
4 you.

5 THE COURT: Any questions of the witness?

6 CROSS-EXAMINATION

7 BY MR. FALK:

8 Q. There's nothing in there about an 18-year offer, is
9 there?

10 A. Only thing that mentions 18 years is the copy of the
11 sentencing sheet.

12 Q. Right.

13 A. That's the only correspondence. There's no mention
14 of a sentence whatsoever in here. I don't see any
15 correspondence other than, like, notice, like, scheduling
16 notice. I don't see any correspondences, offers, anything
17 like that. And I've looked through all these four files.

18 Q. Would it be the practice to put information about
19 offers in the files?

20 A. Typically, that's the best practice, but like I
21 said, I don't see where it was done. Could have been a
22 situation where they discussed it on the telephone or in
23 person, any number of things, maybe by e-mail. But there's
24 no written offer in the files that I could see.

25 Q. When you look at the outside of those folders, are

1 there notations indicating that he was on the plea docket
2 several times?

3 A. I see a notice where he was scheduled on the plea
4 docket. It looks like February 17th of 2014. Evidently, he
5 did not plead guilty because the next notation I see is one
6 asking for subpoenas and notice for a trial docket in April 7
7 of 2014, which, evidently, is when he decided to, in fact,
8 plead guilty. So plead guilty off the trial docket,
9 obviously, at that point, the officers usually aren't there.
10 But I cannot see anything about an offer previous to being on
11 either docket. And they've also printed out the notes from
12 our computerized case management system. And there's no
13 mention of an offer in here.

14 Q. Either 10 years or 18 years?

15 A. That's correct.

16 MR. FALK: No further questions.

17 THE COURT: Any redirect?

18 MR. JOHNSON: None, Your Honor.

19 THE COURT: Any objection the witness being excused
20 from the State.

21 MR. JOHNSON: No, ma'am.

22 THE COURT: From the applicant?

23 MR. FALK: No, ma'am.

24 THE COURT: Sir, you are excused.

25 (Whereupon the witness is excused.)

1 MR. JOHNSON: The State has no further witnesses,
2 Your Honor.

3 THE COURT: Any rebuttal testimony?

4 MR. FALK: No, Your Honor.

5 THE COURT: All right. I'll hear your argument.

6 MR. FALK: Your Honor, I think a reading of the
7 transcript would make it clear that when Mr. Brown showed up
8 to court on the 7th, he thought that there was a ten-year
9 deal. It's not a situation here where he's coming back later
10 trying to say that there was a ten-year deal. I'm not sure.
11 There's no evidence that we've had that there was ever an
12 offer and an acceptance of a ten-year deal. But it is clear
13 he thought he was going forward on a ten-year deal. And the
14 reason I think that's important is because Mr. Mayer
15 testified that he got an 18-year offer sometime in advance.
16 And he would have told -- and Mr. Mayer's testimony was that
17 he would have said something about that 60 or 90 days. And I
18 think this trial transcript makes it abundantly clear that if
19 that was conveyed to him, if that was conveyed to Mr. Brown,
20 it certainly wasn't -- there's no indication from the trial
21 transcript that Mr. Brown thought that the offer had changed
22 to 18 years. So I think at that point, Mr. Mayer's testimony
23 regarding what he was -- regarding his handling of the case
24 on April 7th, is some reason to doubt the accuracy of that
25 testimony.

1 He said that he was ready to go to trial that day.
2 But then again, he had no recollection of what his trial
3 strategy would be. He had no recollection of whether or not
4 he had subpoenaed any witnesses. And he didn't even have a
5 recollection of, you know, what his theory of the case was,
6 whether this was going to be an alibi case or a third-party
7 guilt case or I wasn't there case or reasonable doubt case.

8 I think a reading of the transcript can show that my
9 client did feel pressured into making this plea deal because
10 he felt -- my client felt that he had -- his two choices were
11 either to go forward and go to trial with a lawyer who was
12 not prepared or to take the plea deal. I mean, there is -- a
13 reading of the trial transcript certainly shows that.
14 Whatever my client -- when my client did ultimately take the
15 deal, it was after very much consternation and concerns.
16 Even the Court had concerns on several occasions that he
17 couldn't accept the deal because Mr. Brown could not -- was
18 saying he didn't do it. He was never accepting guilt. He
19 was never accepting the -- saying that he was responsible for
20 it. He didn't want to sign the plea sheets, again, because
21 he was concerned. There's abundant evidence in the trial
22 transcript that my client only felt that the reason why he
23 had to go to trial that day -- I mean, had to take the plea
24 that day is because all of a sudden, he showed up to court,
25 found out he was going to trial, and his lawyer never told

1 him.

2 And my client testified that, you know, he hadn't
3 been prepared for trial, hadn't interviewed any witnesses.
4 And my client testified that when they looked at the video,
5 that my client testified that Mr. Mayer at that time said
6 that it doesn't look like you are -- you can't be identified
7 from the video.

8 So, again, my client is asking this Court to allow
9 him to withdraw his plea because it was not entered
10 voluntarily.

11 THE COURT: Have you explained to him that if he
12 does that, he goes back to life without possibility of parole
13 posture and that all the cases that have been dismissed will
14 be reinstated, including the ones in Berkeley County?

15 MR. FALK: Your Honor, I have explained that to
16 him.

17 THE COURT: Okay. I just wanted to make sure. I
18 don't think I asked that earlier.

19 MR. FALK: No, I think we went through that at the
20 beginning. That LWOP would be back.

21 THE COURT: Did I? I can't remember. It's been
22 such a long day.

23 MR. FALK: It's my understanding we talked about
24 that.

25 THE COURT: I just wanted to make sure. Doesn't

1 hurt to say it twice.

2 MR. FALK: I agree, Your Honor, and this may be a
3 situation where --

4 THE COURT: I just don't recall doing it, because we
5 took your witness out of order and then came back. And so I
6 don't remember doing it.

7 MR. FALK: May I have a moment, Your Honor?

8 THE COURT: Uh-huh. You might want to explain that
9 to him. And he won't get any time for the time he spent in
10 jail too.

11 (A recess transpired.)

12 MR. FALK: Your Honor, we've had this conversation
13 before, Mr. Brown and I, and we've renewed this conversation.
14 And I went over a couple of things with him. I'm not sure if
15 there's been a case that's decided whether or not you get
16 credit for time served on a come-back on a PCR. I've talked
17 to other people and so I see --

18 THE COURT: Worst-case scenario, I don't calculate
19 time. And I don't like making assurances to people about
20 anything, because I don't know what the Department of
21 Corrections is going to do. And by regulation, that is
22 solely their prerogative.

23 MR. FALK: Exactly, Your Honor.

24 THE COURT: So I do worst-case.

25 MR. FALK: You'd have to assume he would get day for

1 day.

2 THE COURT: Exactly, worst-case. You give somebody
3 worst-case, they can't ever say they didn't know. If it
4 turns out to be wonderful, they don't have to complain about
5 it.

6 MR. FALK: Absolutely. So my client would like to
7 go forward.

8 THE COURT: That's fine. I just wanted to make sure
9 he was aware that if he went forward, and the relief he
10 requested was granted, that he starts from square one. And
11 all the case that were dismissed will be reinstated by
12 Berkeley County and by Charleston County. And that he then
13 again faces the possibility -- not possibility, I can pretty
14 much tell you that if he gets what he wants and the State
15 doesn't appeal it, that the Solicitor's Office is going to
16 try them one at a time until they get life without parole.
17 And they are going to serve him with life notice. That's
18 been my experience. They are not going to handle it the way
19 they handled it before. I want him to know worst-case
20 scenario that's what he's facing. And they are not going to
21 offer 10 years to him, even if they offered it before. In
22 fact, they are going to take a significantly harder posture
23 on it.

24 MR. FALK: And that was my -- I told him my
25 impression what would happen as well.

1 THE COURT: It's not like retribution or anything.
2 That's just the way they are going to do it. Because in
3 their minds, it goes back to square one too. So it's like
4 none of this ever happened. And they are going to treat it
5 like they did originally. And then you don't know what
6 solicitor you are going to get on it. You don't know --
7 well, all of the evidence will still be available. You don't
8 know how adamant witnesses may become. They tend to become
9 more adamant once somebody has pled guilty and then wants to
10 have their plea vacated. They get very adamant about
11 convictions. So a lot of things change in the posture of the
12 case. So I don't want him to be surprised if he gets the
13 relief he's requesting, that the State then reinstates those
14 and serves him with life without parole.

15 MR. FALK: I advised him if the Court grants the
16 relief he's requesting, he goes back to where he was on April
17 6th.

18 THE COURT: They indicated they were going to serve
19 him with life without parole notice. That was one of the
20 concessions for him to plead guilty, that they were going to
21 take that off the table.

22 MR. FALK: What I'm saying, he would be where he was
23 legally on April 6th, the day before the plea.

24 THE COURT: Is there anything further you would like
25 to share with the Court?

1 MR. FALK: May I ask my client one last time?

2 THE COURT: Sure.

3 MR. FALK: Did you change your mind? Yeah, we are
4 still sticking with our position.

5 THE COURT: That's fine. I just want to make sure.

6 Mr. Johnson, you may proceed. Because I didn't
7 recall us having that conversation. And normally I make
8 sure -- because a lot of times, especially when I read
9 applications that say, I want my old deal back, they don't
10 recognize that this Court cannot resentence. And that this
11 Court does not have any prerogative to offer sentences or
12 negotiate sentences, and that the only thing you can get in a
13 post-conviction relief action is a new proceeding where you
14 start from the beginning. And so I just always want to make
15 sure people are clear about that.

16 MR. JOHNSON: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. JOHNSON: The State's position is, first off,
19 that Mr. Gathers is not credible in this case. Yes, he
20 signed a letter saying that Mr. Brown was not involved.
21 However, this letter was signed and notarized October 14th --
22 no, October 3rd of 2014. Mr. Brown pled guilty on April 7th,
23 2014. So this letter came about well after he pled guilty.

24 Furthermore, any knowledge who committed the crimes
25 would have been available when the crimes were committed.

1 This is not newly discovered evidence. And this note, this
2 letter, should be discarded by the Court.

3 Further, while Mr. Brown states there's a ten-year
4 offer, Mr. Wetmore went through the file and said there was
5 no notation of a ten-year offer. And it is not typical of
6 the Solicitor's Office to offer a minimum sentence,
7 especially considering there were four armed robberies
8 involved in Mr. Brown's case.

9 Mr. Mayer testified that he did not have independent
10 recollection and that he was ready for trial, opposite of
11 what opposing counsel had stated. Actually, in the
12 transcript, as an offer of the court, Mr. Mayer told Judge
13 Culbertson that he was, in fact, prepared for trial
14 regardless of what Mr. Brown has testified to.

15 The real crux of this case boils down to the fact
16 that Mr. Brown, even after going through this whole, I was
17 offered 10, I should get 10, please give me the 10, still
18 agrees to plead to 18 years negotiated under North Carolina
19 vs. Alford. As Your Honor knows, North Carolina vs. Alford
20 states that you don't have to admit your guilt, but you are
21 willing to take the State's deal so that you don't have to go
22 to trial.

23 THE COURT: But it's still a guilty plea.

24 MR. JOHNSON: Certainly is.

25 THE COURT: And still a guilty plea for enhancement

1 purposes. And you are still agreeing that the evidence, as
2 to what you believe the State would produce against you, and
3 you believe the State can prove your guilt beyond a
4 reasonable doubt.

5 MR. JOHNSON: Yes, ma'am.

6 THE COURT: And that you make certain concessions
7 sometimes to take a beneficial offer.

8 MR. JOHNSON: Correct. It also goes back to the
9 whole Mr. Gathers's testimony as being not credible. But I
10 asked Mr. Brown, he pled guilty because he wanted to avoid
11 the LWOP sentence, and he responded in the affirmative. So
12 got the benefit of his bargain, Your Honor. And now this is
13 buyer's remorse, going back saying, I should have gotten my
14 10 when I got the 18. He's lucky he's not sitting in jail
15 with life without parole. There's no ineffective assistance
16 of counsel. And based on Mr. Mayer and Mr. Wetmore's
17 testimony, this is just a simple case of buyer's remorse. We
18 ask that you deny the application.

19 And one more point, Your Honor. It's his burden of
20 proof. He has failed to produce any evidence that ten-year
21 offer existed. Thank you.

22 THE COURT: You're welcome.

23 I find that the applicant has failed to meet his
24 burden of proof in this case. There is significant evidence
25 in this record that he was between what is called proverbial

1 rock and hard place with decision -- I guess I'm trying to be
2 as articulate as I can in what I'm trying to say. He didn't
3 like either of his options.

4 I do not find it credible that a ten-year offer was
5 ever extended by the State, not with the string of robberies
6 that took place in this case. It just -- based on my
7 experience with the Ninth Circuit, I just find that
8 incredibly unlikely. I believe, however, Mr. Mayer's
9 testimony that probably early on, they tried to prevail upon
10 the State to offer that, because of -- and I would find that
11 credible for several factors, one would be a lack of criminal
12 history, one would be his age, and some other factors that
13 certainly any defense lawyer would have tried to prevail upon
14 the State's sentence of -- I don't want to say mercy because
15 that's really not the word I'm looking for. But they
16 certainly would have tried to advocated for that and tried to
17 get him a lesser sort of a sentence, the minimum sentence.

18 And, again, it has been my experience with this
19 solicitor's office if a gun is involved, they are not going
20 to offer you the minimum sentence on an armed robbery, even
21 if it's just one armed robbery. Sometimes they will plead it
22 down to a strong-arm. But usually if they plead it down to a
23 strong-arm, they are going to negotiate the maximum penalty
24 on it because it's going to be served at 65 percent. There's
25 a lot of variables that go into this equation that would make

1 it, in my estimation, based on experience, incredibly
2 unlikely that a ten-year offer would have ever been extended
3 to him under the circumstances with significant and really
4 what amounted to a string of armed robberies that took place
5 between Charleston and Berkeley County, two of which in
6 Charleston took place at businesses on Savannah Highway, that
7 being the Holiday Inn Express and AMF Bowling Lanes being
8 robbed. And then that really ties to the evidence they found
9 pursuant to a search warrant in his home. He really was
10 between the proverbial and hard place with bad -- with his
11 unfortunate decision he had to face. He was either going to
12 go to trial and face the possibility of life without parole
13 or plead guilty and have to take a substantial amount of
14 time. And I think in his mind, 10 years or 18 years, either
15 way, it's substantial to a young person. And it is. Five
16 minutes would be substantial to me.

17 So, you know, any amount of time would seem
18 substantial, especially to a person who's never been to
19 prison, never been in the system. And I think he was just in
20 a very tough spot. He was represented by counsel. I have a
21 lot of experience with both Mr. Burke and Mr. Mayer. I've
22 tried probably in the last year at least four or five cases
23 with Mr. Mayer. I've always known him to be prepared.
24 Always known him to be zealous in his advocacy of his
25 clients. And rarely -- well, I can't say rarely, because

1 I've had some guilty pleas with him in the last two weeks.
2 But I've had several jury trials with him that were lengthy,
3 probably a week in length, and not just in Charleston but
4 also in Berkeley County in the last year. And I've always
5 found him to be prepared for trial.

6 But what I find most persuasive is in the record
7 where he very clearly tells the Court, I'm ready for trial.
8 And he tells the Court, I've never told my client I wasn't
9 prepared for trial. And that's at page 11 and page 14 of the
10 transcript. And, clearly, the defendant requested a
11 continuance because he says he feels, you know, that he
12 hadn't had adequate time to discuss this and he wants more
13 time to talk about it. And the Court, within its discretion,
14 denied any request for continuance. And that's at page 12.
15 And I really can't discern any basis in the record to have
16 continued this.

17 I don't find any evidence in the record that he was
18 pressured, that he was under any duress. And the Court very
19 clearly articulates and gives him like three or four
20 occasions where he could go to trial. And he insists and is
21 adamant he wants to plead guilty. And the Court very clearly
22 articulates for him what the North Carolina vs. Alford
23 doctrine is. And then he's making the concession of the
24 withdrawal of the life without possibility of parole notice
25 as some concession, but the Court very clearly articulates to

1 him it's a guilty plea. And that's what we consider it to
2 be, a guilty plea and that he's allocuting to his guilt. And
3 this would be the evidence presented against him in these
4 robberies. And that's at page 41 and 42, as well as page 47.

5 I don't think any young person is ever prepared to
6 go to jail. It's a tough pill to swallow. It's a tough pill
7 to swallow when you've made a very poor course of decisions
8 that have such drastic consequences. Everybody makes
9 mistakes, but his mistake was a drastic series of mistakes
10 that really sort of -- not sort of, really created a very
11 difficult situation for his future. And I believe, and I do
12 believe it's credible, that Mr. Mayer probably discussed with
13 him, we are going to do the best we can to try to get you a
14 ten-year offer, but I am not convinced of anything in this
15 record, I'm not convinced by his testimony, I do not find it
16 credible or persuasive that a ten-year offer was ever
17 extended in this case or that one was -- or that it was
18 necessary for one to be communicated. And that is his burden
19 of proof. Anybody can come to Court and assert, I was
20 offered something and I didn't -- I want it back. Just, you
21 know, if that were the scintilla of proof that were required,
22 almost every PCR would be granted on a guilty plea, but it's
23 by preponderance of the evidence. And it is his burden to
24 prove that the deal was offered and that he -- that it was
25 not communicated to him and that he suffered to his detriment

1 as a result of it.

2 The other thing that I find interesting is that he
3 was on the plea docket. And that could mean several things.
4 That could mean that he was offered a straight-up plea, which
5 he didn't want to do. It could mean there may well have been
6 some lesser offer. But the bottom line is, if he was on that
7 plea docket and there was a lesser offer and didn't go
8 forward, that means he rejected it. So that, in and of
9 itself, is contrary to what he's testified to here today
10 because if he had a lesser offer, then he would have taken it
11 and he would have pled guilty when it was put on the plea
12 docket, because that is how the Solicitor's Office works.

13 If they put you on the plea docket, you plead. And
14 if you don't, they either schedule it for another plea,
15 because sometimes things come up. We run over other things,
16 for whatever reasons, victims can't be here, reasons that
17 things get continued. But they don't put it on the trial
18 docket. If it goes from plea docket to trial docket, that
19 means you rejected the possibility of pleading guilty and you
20 want a trial. The Court made it very clear to him he could
21 go to trial. And he was prepared and ready to go to trial,
22 pick a jury. And, quite frankly, in the transcript, several
23 times the Court says: We've got a jury downstairs, and your
24 body language is telling me you don't want to plead, and I'm
25 not going to do it because I have to be clear that this is

1 your free and voluntary decision. And even in two pages of
2 that transcript, really four pages, then tries to convince
3 the Court, no, I really don't want a trial, I really do want
4 to plead guilty, I'm just nervous, I think Mr. Mayer is a
5 great lawyer. And that's at page 27, 28, 29 and 30. And he
6 tells the Court, I'm just nervous, that's all, and I want to
7 plead guilty.

8 The difficulty in this case, and while I do not
9 believe that a deal was not communicated, not for the
10 minimum, not under the circumstances, is the search warrant
11 that was executed at his residence, which was at 250 Nassau
12 Street, and that's at page 52 of the transcript, where there
13 are things, items that were seized that inculpated him so
14 completely in these robberies, including the testimony of the
15 statement of his child's mother, that basically inculpates
16 him and Mr. Gathers, that being the wigs where it is alleged
17 they went into the bowling alley dressed as women, and the
18 other clothing seized from 250 Nassau Street. That's a hard
19 one to overcome, in combination with the video I believe that
20 they had of the surveillance of that. And it says: Search
21 was conducted at 250 Nassau Street, which is where this
22 defendant was living at the time. Detectives were able to
23 locate wigs and clothing worn during that robbery.
24 Additionally, Jolita Gathers, who was the defendant's
25 girlfriend at the time, positively identified co-defendant

1 from press release photographs and stated that she believed
2 the second subject was this defendant. So she inculpated not
3 only her cousin, but her child's father in this event, if I
4 believe his testimony, which is that he had a child with Ms.
5 Gathers. That's a hard -- as prepared as Mr. Mayer would
6 have been, facts are facts. Lawyers don't create facts.
7 They just try to make facts look the best way they can. And
8 that's a hard one to overcome, because that's independent
9 corroboration of evidence of these robberies. And those are
10 the Charleston robberies, not the Berkeley robberies. And
11 that is at the Holiday Inn Express and the AMF Bowling
12 facility.

13 And then there's another armed robbery that took
14 place on Folly Road on James Island, which was the Arby's.
15 And the allegation is that, again, they would go in, they
16 would talk to the person, and then they would pull a gun and
17 tell them to provide the money, and then they would flee.
18 And then in general, the Berkeley County robbery, it's
19 alleged that he's a lookout. And it's on video. And there's
20 also an eyewitness who was kept out of the store during this
21 robbery. So then you have independent eyewitness who
22 identified both the defendant and the co-defendant -- well,
23 this applicant and inculpated him in that offense.

24 So you have a lot of evidentiary hurdles to
25 overcome. And then regards the gun charges, which most

1 people don't know, almost all of downtown Charleston is
2 videoed, and those videos are clear as us standing here right
3 now, and especially in the area of Nassau Street. And so
4 they were patrolling that area. And they were doing
5 surveillance down there about some armed robberies. And then
6 they observed the defendant walking towards black BMW. He
7 removed an unknown object. Then he watched the rear of the
8 apartment. Then he's observed walking towards the vehicle.
9 When he's approached, he had a loaded 9-millimeter on him.

10 So, clearly, there was sufficient evidence of that
11 charge to have convicted him. So he was in a real tough
12 spot. And I don't know -- going to trial clearly was not in
13 his best interest. And I don't believe for a moment he would
14 have insisted on going to trial. I think he really wanted a
15 ten-year offer. I don't think that was ever viable. I don't
16 think -- there's nothing in this record that bears out it was
17 ever offered or that Mr. Mayer failed to communicate it.

18 It was a year ago. Some lawyers keep better records
19 than others. But I have no reason to believe, other than
20 what is in this record, and I'm referring to the transcript
21 that was taken at the time of these incidents, that Mr. Mayer
22 was not prepared for trial. I have no evidence that a
23 ten-year offer was ever communicated to Mr. Mayer or that he
24 failed to communicate it to the applicant such that he was
25 prejudiced in not accepting it. And the record in this case

1 merely reflects to me that he was hopeful that the State was
2 going to make that offer to him, that that's what he believed
3 when he was talking to his lawyers, that that's what he was
4 convinced of. But the judge is very clear in the transcript,
5 says to him, I can't make the State offer you anything. You
6 know, you have two options here today. It's either plead
7 guilty or to have a trial. And he made the choice to plead
8 guilty.

9 And, actually, the plea is stopped. The judge then
10 has a conference and comes back and starts the plea all over
11 again from the very beginning, at his request. Not
12 necessarily his request, but to make sure there's a clear
13 record. But he's insistent that he wants a trial.

14 Now, dealing with the testimony of Mr. Gathers, the
15 objective evidence in this case flies in the face of any
16 statement by him that Mr. Brown wasn't involved. You've got
17 an eyewitness in Moncks Corner. It wouldn't have mattered if
18 he came to court and testified to. Nobody would believe him.
19 And on top of that, he had so many credibility issues where
20 he could have been impeached. His testimony wouldn't have
21 been persuasive. And it does not convince me that Mr. Brown
22 would have insisted to go to trial. And I knew Andrew Grimes
23 very well. It is unlikely, if at all, he would have ever
24 allowed his client to come to court to testify to exonerate
25 somebody else. I feel certain of that.

1 So Mr. Gathers would not have been present at trial
2 to testify that Mr. Brown was not involved, because that
3 means that he would inculpated himself. And I know Andrew
4 Grimes would not have allowed him to do that. And the
5 statement that he made after pleading guilty is incredibly
6 self-serving. And I think, you know, he wanted to help out
7 his friend. But the evidence that was found from the search
8 warrant, it just would have flown in the face. And then you
9 have an eyewitness that says -- identified him. It wouldn't
10 have made a bit of a difference in the trial.

11 And the Solicitor's Office has the sole
12 prosecutorial prerogative who they are going to prosecute.
13 And they don't have to take a statement from somebody to not
14 prosecute someone. Co-defendants throw themselves on swords
15 all the time and say somebody didn't do something. Then they
16 go to trial and flip on each other and testify against each
17 other, and say, yeah, I said that last time, but I'm not
18 saying that this time. So you really don't know how it would
19 have played out.

20 But I pulled Mr. Gathers's file and it's quite
21 extensive. He has a myriad of issues that would have
22 affected the credibility of his testimony, notwithstanding
23 the extensive report that was done by Dr. Mulbry that really
24 questions, to a large extent, his credibility and his mental
25 stability. So I just find it very difficult that -- and I'm

1 not basing my decision on any of that. I just wanted to see
2 what his criminal history was so I could see exactly --
3 actually, before he testified, I wanted to know what he had
4 done, pled to, what he was convicted of. And I wanted to
5 make sure he wasn't going to inculcate himself on something
6 still hanging out there that would have been dismissed or
7 otherwise, so that I could adequately advise him of his
8 rights against self-incrimination.

9 But it is unlikely -- and this is usually unlikely,
10 the testimony of the co-defendant who has already pled
11 guilty, comes to court and says the person wasn't involved is
12 going to be persuasive to a jury. So it's unlikely that that
13 would have made any difference in the trial of this case in
14 light of the independent evidence that existed to inculcate
15 Mr. Brown. So the motion for -- the application for
16 post-conviction relief is denied.

17 MR. FALK: Your Honor, can we hold the record open
18 briefly on this case?

19 THE COURT: For?

20 MR. FALK: Well, in part of your decision, you sort
21 of went beyond the record here as to --

22 THE COURT: I told you I didn't consider his record
23 or any of that.

24 MR. FALK: No, I'm talking about your experience
25 with Mr. Mayer and always being prepared for trial because

1 there are orders --

2 THE COURT: I'm not going to base my decision on
3 that. I base my decision on his transcript because he told
4 the judge he was prepared.

5 MR. FALK: Because there are orders from this Court
6 where he was sanctioned by this Court --

7 THE COURT: That is not in this case. And that was
8 a cursory observation based on my experience. But that isn't
9 the basis of my decision. My decision is him telling a
10 judge, pursuant to his ethical obligation, that he was
11 prepared to go to trial. But even more importantly than
12 that, let's say for argument's sake he was totally
13 unprepared, there's no way in the world he would have
14 demanded to go to trial, not with the evidence that was
15 against him. And he wouldn't have taken four pages to
16 persuade a judge if he didn't want to go to trial. Because
17 the judge said, I'm going to give you a trial. And he said
18 no, no, no, no, Mr. Mayer is a great lawyer, I don't want a
19 trial.

20 Hindsight is always 20/20. What's most persuasive
21 to me is the contemporaneous record the transcript of these
22 proceedings. So the cursory comments that I made, they would
23 not find their way into an order because they really didn't
24 affect my decision. This is what the crux of my -- what I
25 base my decision on, is that transcript. I hope that

1 provides you with the clarity that you need.

2 MR. FALK: Thank you.

3 THE COURT: You're welcome.

4 (Whereupon, the proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

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

Witness my hand, I have hereunto affixed my official
seal this 15th day of June, 2016, at Charleston, Charleston
County, South Carolina.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Joe Louis Brown, #359475,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2014-CP-10-5287

ORDER OF DISMISSAL

FILED
2016 MAY 18 PM 2:25
JULIE A. JEFFERSON
CLERK OF COURT

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Trial Counsel:

Date of Hearing:

Court Reporter:

Hon. Deadra L. Jefferson

James K. Falk, Esquire

J. Rutledge Johnson, Esquire

Aaron C. Mayer, Esquire

December 17, 2015

Karen Anderson

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 28, 2014. Respondent made its Return on May 29, 2015 and filed on June 1, 2015. An evidentiary hearing into the matter was convened on December 17, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by James K. Falk, Esquire, and J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Applicant testified on his own behalf. Melvin Gathers, Aaron Mayer, Esquire and Burns Wetmore, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the Applicant's PCR application, the State's Return and the guilty plea transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the July 2012, term of the Charleston County Grand Jury for two (2) counts of Unlawful Carry of a Pistol¹ (2012-GS-10-4149; -4150). The Applicant was also indicted at the August 2012, term of the Charleston County Grand Jury for Armed Robbery² (2012-GS-10-4413), two (2) counts of Possession of a Firearm or Knife during Commission of a Violent Crime³ (2012-GS-10-4414; -4417), Attempted Strong Arm Robbery⁴ (2012-GS-10-4420), and Attempted Armed Robbery⁵ (2012-GS-10-4416). Aaron Mayer, Esquire, represented the Applicant. On April 7, 2014, the Applicant appeared before the Honorable Benjamin H. Culbertson and entered a negotiated plea under Alford⁶ to all charges in exchange for the State's agreement not to seek life without parole (LWOP) and to *nolle pros* a kidnapping charge in Berkeley County. The Honorable Benjamin H.

¹ "It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law. . . ." S.C. CODE ANN. § 16-23-20 (2012). "A person violating the provisions of Section 16-23-20 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both." S.C. CODE ANN. § 16-23-50(A)(2) (2012).

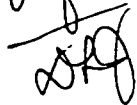
² Armed Robbery is a violent, most serious felony punishable by imprisonment for a "mandatory minimum term of not less than ten [(10)] years or more than thirty [(30)] years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven [(7)] years of the sentence." See S.C. CODE ANN. § 16-11-330 (A) (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

³ "If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five [(5)] years, in addition to the punishment provided for the principal crime. This five-year [(5)] sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime." Further, "[s]ervice of the five-year [(5)] sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year [(5)] sentence to run consecutively or concurrently." S.C. CODE ANN. § 16-23-490 (2010).

⁴ "The common law offense of robbery is a felony. Upon conviction, a person must be imprisoned not more than fifteen years." See S.C. CODE ANN. § 16-11-325 (2012).

⁵ Attempted Armed Robbery is a violent, most serious felony punishable by twenty (20) years' imprisonment. See S.C. CODE ANN. § 16-11-330(B) (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

⁶ North Carolina v. Alford, 400 U.S. 25 (1970).

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Culbertson sentenced the Applicant to imprisonment for eighteen (18) years. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

- a. "Ineffective Assistance of Counsel"
 - i. "[Counsel] told me to take the plea because rather [sic] I was innocent or not he couldn't beat it in trial"
2. Involuntary Guilty Plea

SUMMARY OF TESTIMONY

At the evidentiary hearing, Melvin Gathers testified via telephone from Lieber Correctional Institution. His testimony by telephone was with the consent of the parties. Public Defender Ashley Pennington consulted with Mr. Gathers prior to his testimony and was present via telephone during his testimony. Mr. Gathers stated he pled guilty to four (4) armed robberies and wrote a letter on Applicant's behalf. Mr. Gathers testified he did not meet with Applicant's Counsel but would have informed Counsel that Applicant had no involvement in these crimes. Mr. Gathers then stated he got the letter notarized at the prison sometime before Thanksgiving. Mr. Gathers further testified that he was never questioned about the incident and the Applicant had no knowledge of the robbery.

On cross-examination, Mr. Gathers admitted the letter was notarized in October of 2014. He testified that he is a gang member and "other affiliations" but denies that Applicant is a member of any gangs. He further testified that he wrote this letter after he pled guilty to four (4) armed robberies. He further testified that he and the Applicant are relatives and that "he is my family."

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Applicant testified another inmate introduced him to Counsel and that he retained Counsel in April 2014. Applicant claimed he thought he was only receiving ten (10) years for the plea, and he pled because Counsel was not prepared to go to trial. Applicant stated Counsel told him he did not think he could win a trial, even though he had no criminal record. Applicant testified that he reviewed discovery with Counsel from time to time and asked Counsel to conduct a more thorough investigation. Applicant said he reviewed two (2) videos with Counsel, but could not tell by the footage who was who. Applicant claimed Counsel stated to him that things have changed and that he was promised a ten (10) year plea; however, he admitted that Counsel stated the minimum on this plea would be ten (10) years. Applicant expressed that he was not responsible for these crimes and that he did not discuss the letter with his codefendant. However, he further testified that he has fathered a son with Melvin Gather's cousin.

Once again, Applicant testified that based on Counsel's advice, he thought there was a ten (10) year plea offer. Applicant testified that Counsel "guaranteed" he would receive a ten (10) year sentence. Applicant stated he learned from the assistant solicitor that there was not a ten (10) year plea offer on April 7, 2014. Applicant admitted counsel fully discussed with him his potential for a life without parole sentence and he knew that if convicted at trial there was a chance of LWOP. Applicant stated he was not prepared to serve eighteen (18) years but was prepared to serve ten (10) years in prison. Applicant claimed that Counsel told him not to "throw him under the bus" because Counsel promised him ten (10) years. Applicant testified Counsel did not discuss hiring a private investigator for his case. Applicant testified that he had no confidence in Counsel based on what Counsel had said. On page 11 line 14 of the transcript, Counsel stated he was ready to proceed to trial; however, Applicant wanted a continuance because he did not know the plea offer was for

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eighteen (18) years. Applicant testified he was upset with counsel and felt trapped into pleading. Applicant told Counsel to speak with his codefendant, but this never occurred, and Counsel never explained why he did not speak to codefendant. Applicant then stated he did not discuss the sentencing sheets with Counsel and was taken out of the courtroom two (2) to three (3) times due to his disruptive behavior. During the last time he was taken out, Counsel explained a NC v. Alford⁷ plea to him. Applicant finally admitted that he pled guilty because he is facing more time of trial; however, he claimed he did not participate in the armed robberies.

On cross-examination, Applicant admitted there were no threats or coercion to get him to plead guilty. Applicant also admitted that the plea judge explained to him his constitutional rights to a jury. He stated at the plea that he was satisfied with his attorney and said he was a "great lawyer." He testified that during the plea colloquy he denied any mental or emotional impairment. He further admitted that the Court clarified with him that it was a negotiated plea of eighteen (18) years. Applicant finally admitted he lied under oath in stating that he was satisfied with his attorney at the plea.

Counsel testified that he worked with Brian Burke, Esquire as Applicant had armed robbery charges in both Berkeley and Charleston Counties. Counsel attempted to wrap all the charges into one plea. Counsel stated he went through Rule 5 and discovery materials with Applicant. Counsel admitted he did not hire an independent investigator, but had the opportunity to question witnesses himself. Counsel then testified he discussed potential witnesses with Applicant, but does not recall specific conversations. Counsel stated this was a case in which Applicant's codefendant confessed,

⁷ 400 U.S. 25, 91 S.Ct. 160 (1970).

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but Counsel did not have access to the codefendant as he was represented by another attorney. Counsel testified he spoke with codefendant's attorney about the case. Counsel stated he could not recall the exact trial strategy he had, nor could he recall if he subpoenaed any witnesses.

Counsel testified he first had plea discussions with then Assistant Solicitor Adam Young, but could not find any record of a ten (10) year plea offer. He testified it is entirely possible that he and Mr. Young discussed a ten (10) year plea offer but that would have been very early on in the case. He further testified that he could not say any discussions were ever a "solid or firm" offer. However, Counsel stated it was possible that he discussed a ten (10) year offer with Applicant. He further testified that Kelly Young, Assistant Solicitor, took over the case when Mr. Young left the office, and she took a more rigid position on the case; thus, Counsel could not recall a ten (10) year offer. Counsel stated he reviewed the videos with Applicant and was surprised that one could see a goatee on the video. Concerning the in chambers conference he had with the Judge and the Assistant Solicitor, he could not recall the details of the conference but knew that Applicant was not present for the conference. Counsel stated he knew about the eighteen (18) year offer prior to the plea date. Counsel stated his strategy was to try and avoid a life without parole sentence for Applicant and was surprised to hear that Applicant stated he felt ambushed. He testified he would have discussed any offers or negotiations with the Applicant well ahead of any court appearance. He further testified that he and Mr. Burke spent a fair amount of time analyzing respective theories and positions available to the Applicant to avoid LWOP. Counsel also stated Applicant was reluctant to plead guilty, but did not recall saying "Don't throw me under the bus" to Applicant. He testified this is not something he would say to a client as his position would be just the opposite.

Counsel testified that he recalled having extensive conversations with Applicant about a plea, a trial, and the details of both. Counsel stated if there was a 10 year offer, he would have conveyed the offer to the Applicant before the plea. Counsel stated he tried to get negotiate the ten (10) year offer, but the State would not agree. Counsel stated he does not recall a conversation about not being ready for trial. Counsel also stated that if he told the Judge he was prepared for trial, then he was prepared for trial. Counsel testified he did not recall when he received the plea sheets. Counsel then stated with an eyewitness and a codefendant who confessed, combined with the evidence against Applicant, it would be a difficult case to beat. Counsel's main concern for Applicant was to avoid a life without parole sentence. Counsel admitted that the Applicant was apprehensive and had concerns about pleading guilty, because no one wants to serve eighteen (18) years in prison. Counsel then stated that he would have relayed the eighteen (18) year offer to Applicant prior to the plea.

Counsel then testified he did not recall the specific conversation in which he explained North Carolina v. Alford to Applicant; but that would have been brought up the day of the plea, after discussions with the Assistant Solicitor, and sometime after Mr. Burke arrived. Counsel stated it was his recommendation for Applicant to plead guilty and would be shocked if the first time he discussed the eighteen (18) year offer was on the day of the plea. Counsel stated he begged the Assistant Solicitor for a better offer, but the State would not offer anything less than eighteen (18) years. Counsel stated he did not recall if he is going to put up evidence on Applicant's behalf.

On cross-examination, Counsel stated that he would have relayed any offers to Applicant. Counsel testified it was Applicant's decision to accept or reject the offer. Counsel then stated it is possible that Assistant Solicitor Adam Young made a 10 year offer, but then left before the offer was accepted. His main concern was attempting to avoid a life without parole sentence for Applicant.

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Assistant Solicitor Burns Wetmore testified he did not have any involvement with this case specifically. Mr. Wetmore stated he reviewed the four (4) files in their electronic system and did not find any notation or written offers for ten (10) years. Mr. Wetmore then explained that because ten (10) years was the minimum sentence, it was not typical of the Solicitor's Office to offer the minimum considering the number and nature of the Applicant's charges. On cross-examination, Mr. Wetmore stated that eighteen (18) years was only written on the sentencing sheet. He also stated that a better practice would be to put notations in the file. Mr. Wetmore then testified there were no written offers in the file but there were notations on the outside of the folder that Applicant had been on the February 17, 2014 plea docket and did not plea. He was then placed on trial dockets beginning with the April 7, 2014 term prior to him pleading guilty. He further testified that any offers coming from his office would have increased due to the case pleading from the trial docket.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove

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that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

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

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds the Applicant's and Mr. Gathers' testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. The Court further finds Mr. Wetmore's testimony persuasive and credible.

This Court finds Counsel provided effective assistance of counsel in this case. Applicant testified he pled because Counsel was not ready to proceed to trial; this Court does not find this credible as Applicant certainly could have pursued a trial and had Counsel challenged the State's evidence. Counsel was prepared to go forward to trial. (Tr. 11: 11-15; 14: 3-16). The Applicant's request for a continuance was denied and the Court entered a plea of not guilty for the Applicant, although the Court granted Counsel's request to continue after a lunch break. (Tr. 12: 1-17; 14: 13-25; 15: 1-2). After the lunch recess the Applicant had decided to go forward with the negotiated plea agreement under Alford for eighteen (18) years for all of his charges pending in Berkeley and Charleston County, including *nolle prosequing* a kidnapping charge in relation to the Berkeley armed robbery. (Tr. 18: 5-16).

Aaron Mayer, Esquire was present to represent the Applicant on Charleston charges and Brian Burke, Esquire was present to represent the Applicant on the Berkeley charges. (Tr. 23: 10-25). This Court finds that both Mr. Mayer and Mr. Burke advised the Applicant of all of the charges, his rights, and the sentences the charges carried (Tr. 24: 1-14; 36: 14-25; 37:11). Furthermore, both Mr. Mayer and Mr. Burke agreed with the Applicant's decision to plead guilty, and believed the State could prove the Applicant's guilt beyond a reasonable doubt. (Tr. 24: 24-25; 25: 10). This Court further finds Counsel made a strategic decision to negotiate the Berkeley and Charleston cases together to avoid a life without parole sentence (Tr. 47: 19-25; 48: 1-9).

This Court finds it was the Applicant's desire to plead guilty and not risk a trial. (Tr. 26: 7-25; 47: 12-25; 48: 1-9). This Court also finds the Applicant was not threatened, forced or coerced in any way to plead guilty. (Tr. 28 1-25; 29-32; 39: 14-25; 40-47; 48: 1-9). This Court is not convinced

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that a ten (10) year plea offer was ever extended to Applicant and the Applicant understood the State was under no obligation to give him a lesser offer. (Tr. 4: 12-25; 5-9; 10: 1-144). This Court finds the Applicant was satisfied with the services of his lawyer. (Tr. 47: 9-11). This Court finds the Applicant understood his right to a jury trial and waived his constitutional rights in order to proceed with the plea. (Tr. 40: 2-22). The Applicant was informed there is no legal distinction between an Alford plea and an admission of guilt. (Tr. 40: 23-25; 41: 1-25; 42: 1-6). The Applicant was also informed that the Court could only accept or reject the negotiated plea, and if he did not accept it the Applicant could withdraw his plea. (Tr. 42: 7-16). This Court finds the Applicant knew of the potential charges and penalties if he were to go to trial. (Tr. 42: 17-25; 43: 1-25). The Applicant wished to plead guilty to the charges. (Tr. 46: 7-23). The Applicant allocuted to the facts of the offenses as they were presented by the Assistant Solicitor. (Tr. 53: 23-25; 54: 1-8). Furthermore, the Applicant was informed of the violent and most serious nature of his offenses and that those offenses would count as strikes. (Tr. 44: 1-23). Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else (Tr. 46: 24-25; 47: 1-8).

This Court notes that Applicant pled under N.C. v. Alford which states that while Applicant does not necessarily admit his guilt, he was willing to accept the State's offer in lieu of a trial. Therefore, the letter from Mr. Gathers has no bearing on this Court's decision. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing

11 of 13
[Signature]

professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

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

IT IS THEREFORE ORDERED:

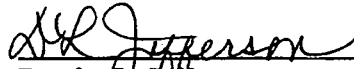
1. That the Application for Post-Conviction Relief must be denied and

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dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

May 16, 2016
Charleston, South Carolina

ADM20120503340

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1207107

ARREST WARRANT NUMBER

M997825

DATE OF ARREST

May 3, 2012

ACTION ORDER BY JURY

TRUE BILL

Foreperson of Grand Jury
Date:

AUG 08 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004413

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

JOE LOUIS BROWN

DOB: 1988-

B/M

Indictment for

Armed Robbery

FILED

8/22/2012 8:32:58 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about April 30, 2012, in Charleston County, South Carolina, at 341 Folly Road, Charleston, South Carolina by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, JOE LOUIS BROWN, did take and carry away goods and/or monies from the person or immediate presence of Robin Gibbs with the intent to permanently deprive her of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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



ADAM D. YOUNG
ASSISTANT SOLICITOR

ADM20120503340

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1207107

ARREST WARRANT NUMBER

M997826

DATE OF ARREST

May 3, 2012

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

AUG 06 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004414

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

JOE LOUIS BROWN

DOB: 1988- [REDACTED]

B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime**FILED**8/22/2012 8:32:58 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about April 30, 2012, the Defendant, JOE LOUIS BROWN, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of armed robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws (1976)-as amended.

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



ADAM D. YOUNG
ASSISTANT SOLICITOR

ADM20120503350

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1206929

ARREST WARRANT NUMBER

M641014

DATE OF ARREST

May 2, 2012

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

AUG 00 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004416

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

JOE LOUIS BROWN

DOB: 1988

B/M

Indictment for

Attempted Armed Robbery

FILED

8/22/2012 8:32:58 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

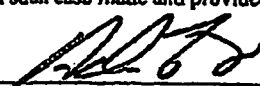
INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Armed Robbery

That on or about April 27, 2012, in Charleston County, South Carolina, at 1943 Savannah Highway, Charleston, South Carolina, the Defendant, JOE LOUIS BROWN, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: semi-automatic handgun, did attempt to take and carry away goods and/or monies from the person or immediate presence of Gary Stennett with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(B) of the South Carolina Code of Laws (1976) as amended.

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



ADAM D. YOUNG
ASSISTANT SOLICITOR

ADM20120503350

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1206929

ARREST WARRANT NUMBER

M641015

DATE OF ARREST

May 2, 2012

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

AUG 08 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004417

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

JOE LOUIS BROWN
DOB: 1988-
B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime**FILED**8/22/2012 8:32:58 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about April 27, 2012, the Defendant, JOE LOUIS BROWN, did possess a semi-automatic handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of attempted armed robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws (1976) as amended:

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



ADAM D. YOUNG
ASSISTANT SOLICITOR

ADM20120503347

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1207164

ARREST WARRANT NUMBER

M997807

DATE OF ARREST

May 1, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUL 1 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004149

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

July Term 2012

THE STATE

vs.

JOE LOUIS BROWN

DOB: 1988

B/M

Indictment for
Unlawful Carrying of Pistol

FILED

7/26/2012 8:44:55 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

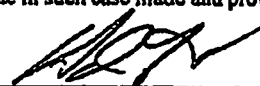
INDICTMENT

At a Court of General Sessions, convened on July 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Unlawful Carrying of Pistol

That in Charleston County, South Carolina, on or about May 1, 2012, the Defendant, JOE LOUIS BROWN, unlawfully did carry about his person a handgun, described as follows: a Hi-Point 9mm handgun; in violation of Section 16-23-20 of the South Carolina Code of Laws (1976) as amended.

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



ADAM D. YOUNG
ASSISTANT SOLICITOR

ADM20120503347

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1207164

ARREST WARRANT NUMBER

M997808

DATE OF ARREST

May 1, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUL 1 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004150

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2012

THE STATE

vs.

JOE LOUIS BROWN

DOB: 1988- [REDACTED]

B/M

Indictment for

Unlawful Carrying of Pistol

FILED

7/26/2012 8:44:55 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on July 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Unlawful Carrying of Pistol

That in Charleston County, South Carolina, on or about May 1, 2012, the Defendant, JOE LOUIS BROWN, unlawfully did carry about his person a handgun, described as follows: a Hi-Point 9mm handgun; in violation of Section 16-23-20 of the South Carolina Code of Laws (1976) as amended.

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



ADAM D. YOUNG
ASSISTANT SOLICITOR

ADM20120503351

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1206931

ARREST WARRANT NUMBER

M641013

DATE OF ARREST

May 2, 2012

ACTION OF PETIT JURY

TRUE BILL

Foreperson of Grand Jury
Date:

AUG 16 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1004420

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

JOE LOUIS BROWN

DOB: 1988-01-01

B/M

Indictment for

Attempted Strong Arm Robbery

FILED

8/22/2012 8:32:58 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Strong Arm Robbery

That in Charleston County, South Carolina, on or about April 27, 2012, the Defendant, JOE LOUIS BROWN, did attempt to take and carry away personal property from the person or presence of Jamie Furtick, by means of force, threats or intimidation and with the intent to deprive Jamie Furtick permanently of such property. Such property is described as: money. This is in violation of the Common Law of South Carolina and Section 16-11-325 of the South Carolina Code of Laws (1976) as amended.

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


 ADAM D. YOUNG
 ASSISTANT SOLICITOR