

RECEIVED

APR 12 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

John C. Hayes, Circuit Court Judge

BRANDON BARKSDALE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002429

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED AUGUST 12, 2015	1
APPLICATION FOR POST-CONVICTION RELIEF	23
RETURN.....	30
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED OCTOBER 27, 2016	37
ORDER OF DISMISSAL.....	78
INDICTMENTS	84

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA,)

vs.)

BRANDON RASHARD BARKSDALE,)
DEFENDANT.)

COURT OF GENERAL SESSIONS

2013-GS-23-09806

2013-GS-23-09811

2013-GS-23-09812

2013-GS-23-09813

2013-GS-23-09814

2013-GS-23-09815

2013-GS-23-09816

2013-GS-23-09817

2014-GS-23-03804

2014-GS-23-03814

TRANSCRIPT OF RECORD

August 12, 2015

Greenville, South Carolina

ORIGINAL

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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

KATRYNA SALISBURY, ESQ.
Assistant Solicitor

IVAN TONEY, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE CLERK: Your Honor, this is indictment
3 2013-GS-23-09806, Brandon Rashard Barksdale indicted
4 for conspiracy, pleading to the same. It is a true
5 bill.

6 2013-GS-23-09811, indicted for attempted murder,
7 pleading to the same. It is a true bill.

8 2013-GS-23-09812, indicted for attempted murder,
9 pleading to the same. It is a true bill.

10 2013-GS-23-09813, indicted for attempted murder,
11 pleading to the same. It is true bill.

12 2013-GS-23-09814, indicted for attempted murder,
13 pleading to the same. It is a true bill.

14 2013-GS-23-09815, indicted for attempted murder,
15 pleading to the same. It is a true bill.

16 2013-GS-23-09816, indicted for attempted murder,
17 pleading to the same. It is a true bill.

18 2013-GS-23-09817, indicted for armed robbery and
19 possession of a weapon during the commission of a violent
20 crime, pleading to the same. It is a true bill.

21 2014-GS-23-03804, indicted for carjacking, pleading
22 to the same. It is a true bill.

23 And 2014-GS-23-03814, indicted for armed robbery.
24 And it is a true bill.

25 Please raise your right hand.

1 WHEREUPON,

2 BRANDON RASHARD BARKSDALE,
3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 THE COURT: Okay. Good morning.

6 You're Brandon Rashard Barksdale?

7 DEFENDANT BARKSDALE: Yes, sir.

8 THE COURT: And you're 23 years old; is that right?

9 DEFENDANT BARKSDALE: Yes, sir.

10 THE COURT: How far did you go in school, sir?

11 DEFENDANT BARKSDALE: To the eleventh grade.

12 THE COURT: And what kind of work do you do?

13 DEFENDANT BARKSDALE: I wasn't currently working.

14 THE COURT: And are you under the influence of any
15 alcohol, drugs, or medication, sir?

16 DEFENDANT BARKSDALE: No, sir.

17 THE COURT: Do you have any physical, mental, or
18 emotional condition that might keep you from understanding
19 what's happening here today?

20 DEFENDANT BARKSDALE: No, sir.

21 THE COURT: Have you had enough time to talk to
22 Mr. Toney about your case?

23 DEFENDANT BARKSDALE: Yes, sir.

24 THE COURT: And do you understand the maximum
25 sentence for each one of these charges, and the elements

1 of the crime for each offense you're pleading guilty to?

2 DEFENDANT BARKSDALE: Yes, sir.

3 THE COURT: And are you pleading guilty because you
4 are guilty, Mr. Barksdale?

5 DEFENDANT BARKSDALE: Yes, sir.

6 THE COURT: Do you understand, sir, that the armed
7 robbery charges, of which there are two, and the attempted
8 murder charges, of which there are six, and the carjacking
9 charge, which is case 2014-GS-23-03804, all of those are
10 classified as violent offenses and most serious offenses
11 under state law?

12 Do you understand that?

13 DEFENDANT BARKSDALE: Yes, sir.

14 THE COURT: Do you understand the consequences of
15 pleading to a violent and most serious offense?

16 DEFENDANT BARKSDALE: Yes, sir.

17 THE COURT: Have you fully discussed with your lawyer
18 and do you fully understand the two strikes and three
19 strikes law?

20 DEFENDANT BARKSDALE: Yes, sir.

21 THE COURT: And do you understand that if you were
22 ever convicted in the future of another serious or most
23 serious offense, you could be subject to a life sentence
24 without any possibility or hope of parole?

25 DEFENDANT BARKSDALE: Yes, sir.

1 THE COURT: And, knowing that, do you still wish to
2 plead guilty?

3 DEFENDANT BARKSDALE: Yes, sir.

4 THE COURT: Has anyone promised you when you might be
5 paroled or eligible for parole, sir?

6 DEFENDANT BARKSDALE: No, sir.

7 THE COURT: Do you understand that you have the right
8 to a jury trial, Mr. Barksdale?

9 DEFENDANT BARKSDALE: Yes, sir.

10 THE COURT: Do you understand that at a jury trial,
11 you'd be presumed innocent? You wouldn't have to prove
12 yourself innocent or prove yourself not guilty?

13 DEFENDANT BARKSDALE: Yes, sir.

14 THE COURT: Do you understand that at a jury trial,
15 you could have your lawyer assist you in confronting the
16 evidence against you, cross-examining the witnesses, and
17 presenting any evidence you may have or defenses you may
18 have?

19 Do you understand that, sir?

20 DEFENDANT BARKSDALE: Yes, sir.

21 THE COURT: And you could use the subpoena power of
22 this Court to bring witnesses in to testify on your
23 behalf. And you could challenge or contest any of the
24 evidence in the case, including any statements you may
25 have given or searches that might have been made, or

1 testing that was done or should have been done.

2 Do you understand that?

3 DEFENDANT BARKSDALE: Yes, sir.

4 THE COURT: You could, also, testify at your trial,
5 or you could choose not to testify and remain silent. And
6 nobody could make you testify or say or do anything during
7 your trial.

8 And if you chose to remain silent, the Court would
9 tell the jury you have the absolute right guaranteed by
10 the Constitution to remain silent, and they could not hold
11 that against you in any way or take it into account in
12 determining the verdict.

13 Do you understand that, sir?

14 DEFENDANT BARKSDALE: Yes, sir.

15 THE COURT: You may be entitled to separate trials on
16 some of these charges. I don't know. But the jury would
17 be told in order to convict you, they would have to be
18 convinced that the Prosecution had proven each and every
19 element of each crime beyond a reasonable doubt. And they
20 would have to assess that on each charge individually and
21 separately.

22 Do you understand that?

23 DEFENDANT BARKSDALE: Yes, sir.

24 THE COURT: And understanding all those rights you
25 would have at a jury trial and understanding further you

1 must give them up here today in order to plead guilty, do
2 you still wish to plead guilty, Mr. Barksdale?

3 DEFENDANT BARKSDALE: Yes, sir.

4 THE COURT: Have you understood all my questions?

5 DEFENDANT BARKSDALE: Yes, sir.

6 THE COURT: Do you have any questions of me?

7 DEFENDANT BARKSDALE: I mean, yes, sir. I just
8 really want you to show a little mercy on my life. I
9 just -- I apologize for what I did. And I apologize to
10 the victims as well. I just want to get out there and be
11 a father to my child.

12 THE COURT: All right. Well, I'll give you another
13 opportunity to tell me whatever you wish to. At this
14 point, I'm going to ask you to listen carefully to the
15 State's version of what they say happened. And I'm going
16 to ask you if you agree with them.

17 MS. SALISBURY: May it please the Court, Your Honor.

18 With respect to the allegations. On June 28th of
19 2013, just before 11:00 p.m., officers with the sheriff's
20 office responded to a reported armed robbery at the Mahi
21 Food Mart on Anderson Road in Greenville County.

22 The victims were able to describe to police that two
23 black males entered the stores wielding handguns and
24 disguised with coverings over their faces. The attackers
25 forced the four victims to the ground behind the counter

1 while they took cash from the register, cigarettes, and
2 lottery tickets. The attackers, also, took one of the
3 victim's purse and car keys.

4 At some point during the attack, they fired shots
5 inside the store. The two gunmen then fled the store on
6 foot. Two witnesses who were driving on Anderson Road saw
7 the gunmen fleeing and slowed down to determine what was
8 happening. One of the attacker fired shots at that
9 witnesses car striking it once. The gunmen then fled to a
10 waiting car parked nearby.

11 During the investigation, police determined that this
12 Defendant was one of the actual gunmen that entered the
13 store and participated in the robbery. Specifically,
14 surveillance video suggests that this Defendant was
15 wielding two handguns during the robbery.

16 Two of the co-defendants, ultimately, gave statements
17 to police admitting to having participated in the robbery
18 and implicated this Defendant. One of those defendants
19 described that this robbery was a gang initiation and that
20 his membership in the Bloods street gang required that he
21 commit a robbery. Others affiliated with that gang
22 confirmed to police this information.

23 Then, Your Honor, a few months later on February 12th
24 of 2014, officers with the sheriff's office responded
25 again to an armed robbery this time near Welcome Road in

1 Greenville County. The victim told police that he was
2 traveling home at approximately 9:00 in the morning and
3 observed this Defendant on the side of Anderson Road, and
4 appeared to be stranded with an inoperable black Cadillac.
5 Given the weather conditions that day, which involved very
6 heavy snow, the victim offered the Defendant a ride.

7 The Defendant instructed the victim to travel to East
8 Welcome Road and Arden Court. When the victim got near
9 the area, the Defendant produced a handgun and demanded
10 money from the victim. The victim gave the Defendant his
11 wallet and the Defendant instructed the victim to leave
12 the car and run. The Defendant left in the victim's
13 silver Acura.

14 Hours later, officers observed that Acura on
15 Pleasantburg Drive and pursued the car to the intersection
16 of Rutherford Road before boxing the car in and initiating
17 a traffic stop. The Defendant was the driver of that car
18 and attempted to flee from officers and drove into one of
19 those patrol cars.

20 Officers were able to, finally, get the Defendant out
21 of the car. And the Defendant refused to comply with
22 officers commands, specifically, he would not give them
23 his hands. Only with the effort of multiple officers was
24 the Defendant, ultimately, restrained. The Defendant was
25 wearing the same clothes described by the victim. And

1 officers located a handgun in the car.

2 Officers learned that the black Cadillac at which the
3 Defendant was, initially, standing had, also, been stolen
4 in a similar incident several days prior.

5 Those are the facts as the State would present them
6 at their respective trials.

7 THE COURT: Okay. Thank you, ma'am.

8 Is that what happened, sir?

9 DEFENDANT BARKSDALE: I mean, I didn't carjack him.
10 But the police did catch me in the car.

11 MR. TONEY: If I could have just a moment.

12 THE COURT: Sure.

13 (Pause.)

14 MR. TONEY: Your Honor, my client will stipulate to
15 the fact that he was in the car. The guy gave him a ride.
16 He did have a gun with him. But he -- the guy -- the man
17 saw the gun. And the man left the vehicle. And he then
18 drove off.

19 So he's not necessarily disputing the charge. What
20 he's -- you know, but these are facts which we stipulate,
21 clearly, show carjacking. And we do admit guilt based on
22 those facts, yes.

23 THE COURT: All right. Is that right, sir?

24 DEFENDANT BARKSDALE: Yes, sir.

25 MR. TONEY: But those are the elements of carjacking,

1 Judge. And that would be -- those absolutely would be the
2 elements.

3 It -- I think the confusion comes because -- I don't
4 think he got in the car and then said get out of the car.
5 The guy did give him a ride. He entered voluntarily. But
6 he displayed a gun and the guy left. And then he drove
7 off in the car.

8 So, perhaps, it's not what traditionally is seen as a
9 carjacking in the vernacular. But it, certainly,
10 absolutely meets the standards of carjacking and the
11 elements.

12 So we are -- we agree with that, sir. And I
13 apologize. Just a bit of momentary confusion there, which
14 we have cleared up.

15 THE COURT: Okay. Well, he's indicated he wishes to
16 plead guilty to all the charges knowing the elements.

17 Based on the State's version and the Defendant's
18 statements, I find there's sufficient evidence to support
19 the plea on all of these charges. I find that the plea
20 was entered into freely and voluntarily.

21 Mr. Barksdale, do you understand that some of these
22 charges, the armed robbery charges, specifically, carry
23 minimum mandatory sentences of 10 years?

24 Do you understand that?

25 DEFENDANT BARKSDALE: Yes, sir.

1 THE COURT: Is that the only one that has a minimum
2 mandatory --

3 MS. SALISBURY: Yes, sir, Your Honor.

4 THE COURT: Okay. And there is no plea agreement, or
5 if there is, would y'all tell me the terms of it?

6 MS. SALISBURY: Yes, sir, Your Honor.

7 As I mentioned in chambers, if these cases were tried
8 separately, the Defendant may prospectively be eligible
9 for a sentence of life without the possibility of parole.
10 In an effort to resolve all these charges and give the
11 Defendant the opportunity to get some benefit for
12 accepting responsibility for his guilt, the State has
13 agreed to not seek life without parole and recommend to
14 this Court a sentence of 20 years.

15 If it's of relevant consequence, at this point, I
16 will tell the Court that the other gunman involved in the
17 robbery that is the subject of today's trial, Mr. Elgin
18 Zachery, pled guilty in December of 2014. He received a
19 15-year sentence.

20 Police identified an additional person as the driver
21 of what I would characterize as the get-away vehicle,
22 Mr. Alfonzo Pyles. Mr. Pyles was killed several weeks ago
23 and is, obviously, no longer being prosecuted.

24 And, of course, you heard earlier from Ms. Worley.

25 THE COURT: The other gunman that pled in December

1 was not part of these other offenses, though; correct?

2 MS. SALISBURY: That's correct.

3 THE COURT: Okay.

4 MS. SALISBURY: He did not participate in that
5 carjacking offense. His only connection to this case was
6 that armed robbery.

7 THE COURT: Thank you.

8 Yes, sir, Mr. Toney.

9 MR. TONEY: Well, Your Honor, obviously, this is very
10 serious. And the Court's well aware of this. And we
11 accept full responsibility for this.

12 And my client is extremely sorry for this. We've had
13 great, great discussions, long discussions, many of them.

14 But my job as a defense lawyer is, also, to bring to
15 the Court certain factors the Court should consider, I
16 believe. And then the Court, obviously, takes both sides
17 and weighs them out, and does what it feels is best.

18 Obviously, my client has very little education. He
19 has an eleventh-grade education. One of the major factors
20 I believe the Court should be focussing on is his lack of
21 criminal record.

22 Now, I understand you can make the argument, well,
23 you know, he sure got off to a start, you know. But the
24 fact is, in South Carolina, courts make decisions based on
25 prior records. Every judge in every case looks at the

1 prior record and factors that into their decisions. In
2 this case, we have almost no prior record.

3 And, obviously, he's not entitled to probation, or a
4 YOA, or anything. But it is a fact that for people his
5 age -- and age is a factor. Age is always a factor.
6 South Carolina law has even different penalty schemes for
7 people his age in certain circumstances, not in this case,
8 not with these charges with violent offenses. But that's
9 just an example of how the Court and the law recognizes
10 that age is a factor. My client is 23, I believe. He
11 would have been 20 or 21 when some of these things
12 happened, 20, I believe.

13 I've come to know Brandon. Brandon is good hearted.
14 I think Brandon is very smart, very bright. He's not at
15 all below average in any way. I think he's got a good IQ.
16 And he's clever. I do feel in some ways, he's immature.
17 There's no question about it.

18 The Solicitor has eluded to some of the factors which
19 caused him to come into this situation. I know it's sort
20 of a canard to say he got with the wrong people. I don't
21 often say that because it sounds like I'm trying to overly
22 minimize things. But, in this case, there's no question
23 about it. Brandon got with some bad people. And he had
24 no prior record. And Brandon made some terrible
25 decisions. I have to bring this up.

1 We are so sorry for these victims. I think their
2 lives are irrevocably altered. And there's nothing we can
3 do to solve that, other than express apologies.

4 Thank God nobody was physically injured. As far as
5 emotionally or in other ways, I'm sure they're injured.
6 But thank God nobody was hurt. And I would ask the Court
7 to take note of that fact.

8 Brandon has a young girl, a daughter. I think she's
9 three years old. She's in the courtroom in the back -- or
10 two.

11 DEFENDANT BARKSDALE: Three.

12 MR. TONEY: Three. I'm sorry.

13 He loves her very much. Every time I speak to
14 Brandon, his concern is for his child. He says, my child
15 needs me, my daughter needs me. Actually, he says my
16 daughter. That is the primary focus of his decision
17 making and keeping that in mind today. That's been what
18 he talked about the whole time is I need to be there for
19 my daughter.

20 I will tell you he is extremely remorseful. He
21 cannot believe he was this stupid. He made some terrible
22 mistakes. I understand they were intentional acts. But
23 they were terrible things that he did as a young man.

24 And I'd ask the Court to show him some mercy.

25 His mom would like to say a couple of things, if

1 Ms. Barksdale --

2 THE COURT: Yes, ma'am.

3 MR. TONEY: -- if she could be recognized.

4 MS. BARKSDALE: Judge, I just want you to have mercy
5 on my child. I know he made a bad mistake. And I need
6 him. His daughter needs him. Please just have mercy on
7 him.

8 THE COURT: All right. Thank you, Ms. Barksdale.

9 MR. TONEY: His mom is a wonderful mom. And she
10 calls me every day several times a day. Often I speak to
11 her. I've come to know her. He's got family that loves
12 him, extensive family.

13 Brandon would like to say something. He wanted to
14 say he was sorry and explain his --

15 THE COURT: Yes, sir, Mr. Barksdale.

16 DEFENDANT BARKSDALE: Yes. I just really want to
17 apologize to everybody, including the Court, for my
18 actions I made in my life.

19 I really do want you to show mercy on my life just so
20 I can have a chance to, actually, be a father to my child.

21 Because I really -- I understand what I did was
22 wrong. And I have learned from my mistake of being locked
23 up. It's a long time I've been in here. And I've really
24 growed [sic] up and matured my mind. And I feel like I'm
25 ready for society.

1 I know I'm going to have to accept responsibility for
2 punishment. But I just want to, at least, have a -- at
3 least, the end of the punishment before I can get back out
4 there and raise my child.

5 And before anything -- I was wondering before it's
6 all said and done, can I, at least, hug my child before
7 it's over with?

8 MR. TONEY: I have told him he could. But that's
9 really not for the Court. We're going to...

10 THE COURT: Okay.

11 MR. TONEY: So respectfully based on his --
12 especially his lack of criminal history and his age, we
13 would ask for a 10-year sentence.

14 I thank you very much for listening to us, Your
15 Honor.

16 THE COURT: Thank you.

17 How long has he been in jail?

18 MR. TONEY: It's over two years if you give him
19 credit for --

20 MS. SALISBURY: Your Honor, he was -- he's been
21 incarcerated since that arrest on the carjacking. So
22 since that time, plus the time that he spent in on this
23 robbery before posting bond. I have 631 days.

24 MR. TONEY: He was on some house arrest, too. I
25 don't know if that's included, but --

1 MS. SALISBURY: It does not include the calculation
2 for the time he was on house arrest. It's the State's
3 position that given his violation of the terms of his
4 bond, he's -- he should not receive credit for that. But
5 if you'd like to order it -- order that he receive credit
6 for it, I have that calculation.

7 THE COURT: What is that?

8 MS. SALISBURY: 95 days on house arrest.

9 THE COURT: So that's 726. Am I right about that?

10 MS. SALISBURY: I trust your math. I'm certain it's
11 better than mine.

12 THE COURT: That's risky.

13 MR. TONEY: We accept that figure, Your Honor, 726.

14 THE COURT: You said there was not much of a prior
15 record. Did he have a record?

16 MS. SALISBURY: He does, Your Honor. He has a 2009
17 conviction for possession of marijuana, and, in 2011,
18 unlawful carrying of a firearm.

19 THE COURT: The co-defendant, Mr. Pyles, was -- he
20 was killed?

21 MS. SALISBURY: Yes, sir, Your Honor. There's an
22 active homicide investigation related to that case.

23 THE COURT: Okay. So he was on bond, or something?

24 MS. SALISBURY: Yes, sir.

25 MR. TONEY: My client was in jail. And Mr. Pyles was

1 killed in Westside Park, I think. It was on the news a
2 few weeks ago. And I understand that case is under
3 investigation.

4 THE COURT: I'm just curious. It doesn't have
5 anything to do with the sentence.

6 MR. TONEY: Yes, sir.

7 Thank you.

8 THE COURT: I'm just curious about that.

9 Okay. Thank you very much for your presentations.

10 And I listened very carefully and intently to the
11 statements that were made by Ms. Salisbury, and Mr. Toney,
12 and Ms. Barksdale, and Mr. Barksdale, and to the
13 recitation of the facts.

14 I would say, sir, that you're very fortunate to be
15 here today given, apparently, what has occurred with
16 Mr. Pyles. And I'm taking into account your age and the
17 prior record you do have, which doesn't contain anything
18 violent, and your mother's statement, and what you told
19 me, and your remorse, which I think is sincere.

20 I can't overlook the fact, though, that this involves
21 criminal activity on more than one occasion of an
22 intensely violent nature. And you're getting by virtue of
23 the plea agreement already consideration that is really
24 merciful under the circumstance for this type of conduct,
25 this number of victims, and all the circumstances.

1 So the sentence is on case 2013-GS-23-09811 that you
2 be committed to the Department of Corrections for a period
3 of 20 years for the attempted murder. I'm going to give
4 you the credit of 726 days. So you'll have that.

5 And, as to the other charges, the other attempted
6 murders of which there are five, those sentences are
7 20 years concurrent.

8 The armed robberies are 20 years concurrent.

9 Conspiracy is five years concurrent.

10 And the carjacking is 20 years concurrent.

11 Now, I understand you are rightfully concerned about
12 your family. But I hope you'll use this time wisely to
13 make yourself a better father once you get out so you can
14 provide for your daughter at a time when she's going to
15 need it. And you won't end up in a position like
16 Mr. Pyles, who doesn't have that opportunity.

17 Thank you.

18 *****END OF TRANSCRIPT OF RECORD*****

19

20

21

22

23

24

25

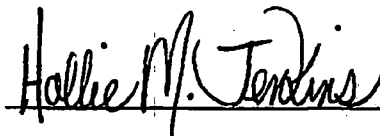
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 12th day of March, 2015.

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

April 8, 2016



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

FORM 5

STATE OF SOUTH CAROLINA

County of Greenville

Brandon Barksdale
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2016-CP-23-01296

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. JACKSON, CLERK
FEB 29 PM 2 00

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correction Institution
4460 Broad River Rd Col S.C 29210
2. Name and location of Court which imposed sentence Thirteen Judicial
Circuit Court, 305 E. North St. Greenville S.C 29601
3. Name(s) of co-defendant(s) (if any) Elgin Zachery, Alfonso
Piles, Kentriana Worley
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013-GS-2309806-2309812, 2309813-2309814-2309817
(b) 2309815-2309811-2303824-2303814

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Carjacking, without G/ bodily Injury 8/4/15 - 8/12/15
- (b) Conspiracy 5 yrs - attempted Murder 30 yrs 8/12/15
- (c) Armed Robbery 10-30 yrs Possession of w/d Commission of V Crime
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty _____
- (b) ☐ after a plea of not guilty _____
- (c) ☐ after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Prosecutorial Misconduct
 - (c) Denial of Due-Process
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Fail to object to Prosecution Misconduct
 - (b) Violated petitioner's Due-Process Right
 - (c) Too state Deliberate of Court Presentation of Know False Evidence
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - (d) any other petitions, motions or applications in this or any other Court? _____
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. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

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

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. Ivan Toney
600 East Washington Street Suite 616
Greenville S.C 29601
864-298-0071
- ii. _____
- iii. _____

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

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

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

Vacate

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

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Brandon Backs Dale # 365114, 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.

Brandon Backs Dale # 365114

SWORN to and subscribed before me this 9th
day of February, 2016.

Tennille L. Masterpiece (L.S.)
Notary Public

My Commission Expires: 6/12/2018

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

J. Brandon Banks-Pate, 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.

J. Brandon Banks-Pate
Applicant

SWORN or affirmed to and subscribed before me this
9th day of February, 2016.
Theresa L. Montgomery
Notary Public

My Commission Expires: 6/10/2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Brandon R. Barksdale,	)	C.A. No. 2016-CP-23-1296
S.C.D.C. No. 365114	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed February 29, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted at the August 2014 term of the Greenville County Grand Jury for conspiracy (2013-GS-23-9806); attempted murder (2013-GS-23-9811; -9812; -9813; -9814; -9815; -9816); armed robbery and possession of a weapon during the commission of a violent crime (2013-GS-23-9817; 2014-GS-23-3814); and carjacking (2014-GS-23-3804). He was represented by Ivan Toney, Esquire. On August 12, 2015, Applicant pled guilty as indicted. The Honorable D. Garrison Hill sentenced him to twenty (20) years for each attempted murder; twenty (20) years for each armed robbery; twenty (20) years for carjacking; and five (5) years for conspiracy. Applicant did not appeal.

¹ Respondent requests counsel be appointed.

II.

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

1. Ineffective assistance of counsel.
 - a. Failure to object to prosecutorial misconduct.
2. Prosecutorial misconduct.
 - a. Violated Applicant's Due Process Rights.
3. Denial of Due-Process
 - a. State Deliberate of Court Presentation of known false evidence.

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. S.C. Code § 17-27-50 (2016) ("The application shall . . . **specifically** set forth the grounds upon which the application is based. . . ."). All amendments should be made well in advance of the hearing and should be filed in compliance with Rule 11, SCRPC.

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

III.

Respondent submits that Applicant's claim that his guilty plea counsel was ineffective is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so

undermined the proper functioning of the adversarial process” that the plea proceedings “cannot be relied upon as having produced a just result.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

Respondent also interprets Applicant's allegations to be that his guilty plea was involuntary. This allegation is also without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant

entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Because Applicant could have raised this issue on appeal and failed to do so, he has waived this allegation as a ground for

relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Respondent submits the Applicant will be unable to meet his burden.

VI.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

[Signature follows]

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2016-CP-23-1296

BRANDON BARKSDALE, #365114,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

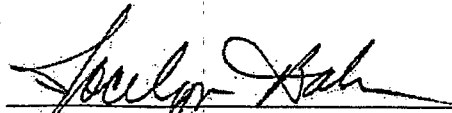
STATE OF SOUTH CAROLINA,

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:

Brandon Barksdale, #365114
 Broad River Correctional Institution
 4460 Broad River Rd
 Columbia, SC 29210-4012

DATED this 10th day of June, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SPARTANBURG)
 3
 4 Brandon Barksdale,)
) TRANSCRIPT OF RECORD
 Applicant,) 2016-CP-23-1296
 5 -vs-)
)
 6 The State,)
) October 27, 2016
 7 Respondent.) Spartanburg, South Carolina

8

9

10

11 B E F O R E:

12 HONORABLE J. MARK HAYES, II, JUDGE

13

14

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

16 R. MILLS ARIAIL, JR., ESQUIRE
 Attorney for the Applicant

17

18 VALERIE GARCIA GIOVANOLI, ESQUIRE
 Attorney for the Respondent

19

20

21

22

23

Margaret A. Woods
Circuit Court Reporter

24

25

1	<u>INDEX</u>	
2		<u>PAGE</u>
3	BRANDON RASHARD BARKSDALE	
4	Direct examination by Mr. Ariail	5
5	Cross examination by Ms. Giovanoli	18
6	IVAN JAMES TONEY	
7	Direct examination by Ms. Giovanoli	21
8	Cross-examination by Mr. Ariail	30
9	Redirect examination by Ms. Giovanoli	38
10	Certificate of reporter	41

11

12

13

14 NO EXHIBITS INTRODUCED

15

16

17

18

19

20

21

22

23

24

25

MOTIONS AND MATTERS

1 MS. GIOVANOLI: I apologize, Honor, ---

2 THE COURT: That's okay.

3 MS. GIOVANOLI: --- may it please the Court. This is the
4 case of, uh, Brandon Barksdale vs. the State of South
5 Carolina, Case Number 2016-CP-23-1296, um, we're in fronta the
6 Court today on application for post-conviction relief that was
7 filed February 29th 2016. The applicant is presently confined
8 in South Carolina Department of Corrections pursuant to orders
9 of commitment of the Greenville County Clerk of Court. The
10 applicant was indicted at the August 2014 term of the
11 Greenville County Grand Jury for conspiracy, six counts of
12 attempted murder, two counts of armed robbery and a weapon
13 during the commission of a violent crime and carjacking, he
14 was represented by Ivan Toney. On August 12th 2015 the
15 applicant pled guilty as indicted and the Honorable D.
16 Garrison Hill sentenced him to 20 years for each attempted
17 murder, 20 years for each armed robbery and 20 years for
18 carjacking as well as 5 years for conspiracy all to run
19 concurrently and the applicant did not appeal. Um, the
20 applicant is present and, uh, represented by Mr. Mills Ariail
21 and the State is also present, ready to proceed.

22 THE COURT: All right, Mr. Ariail, ---

23 MR. ARIAIL: Good morn ---

24 THE COURT: --- well you tell me what the issues are in
25 this.

MOTIONS AND MATTERS

1 MR. ARIAIL: Uh, Your Honor, we have, um, the issue is
2 and I wanna make sure I summarize it, um, and and I, there
3 might be other things that he raises that I'm, uh, unaware of
4 right now but we discussed a little bit. Um, he he is raising
5 an i -- his attorney was ineffective, um, they discussed while
6 they were back there and he was told he was going to get 10
7 years, um, and no more than 10 years, um, did not discuss the
8 evidence with him or investigate, there was apparently a
9 co-defendant who was going to say that, um, he didn't have any
10 involvement with it, um, and we don't believe that that was
11 investigated or he looked into that, um, to see if that was
12 correct or not. Um, those ---

13 THE COURT: Just ---

14 MR. ARIAIL: --- are the main ---

15 THE COURT: --- did not investigate, what was the second
16 part a that?

17 MR. ARIAIL: Uh, failure to investig [sic] in the
18 discussion with the ---

19 THE COURT: No ---

20 MR. ARIAIL: --- co-defendant, ---

21 THE COURT: --- discussion with the ---

22 MR. ARIAIL: --- that was it. Those are the issues ---

23 THE COURT: Is, uh, ---

24 MR. ARIAIL: --- that I think he has raised and I wanna
25 make sure if I go back and look at his PCR application that

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 there were no additional items. Um, I I, he's listed a couple
2 other items but I have discussed with him and I I I don't know
3 if these are issues but I'll, uh, he's alleged prosecutorial
4 misconduct, I'm not sure and I can inquire as to him as to how
5 that applies, uh, his due process rights were violated and the
6 State, uh, the State delivered of court representation of a
7 known false evidence, I'm not really sure what that is but I
8 can inquire as to what he, if if on the stand but the main
9 ones I've discussed with him are the ones I've previously
10 cited to You Honor.

11 THE COURT: All right, you can call your first witness.

12 MR. ARIAIL: Yes, Your Honor, I call, uh, the client to
13 the stand, Mr. Barksdale.

14 (Whereupon, the applicant came forward.)

15 THE CLERK: Mr. Barksdale, please place your left hand on
16 the Bible and raise your right hand.

17 BRANDON RASHARD BARKSDALE, having
18 been first duly sworn, testified as follows:

19 THE CLERK: Thank you, you may be seated. Please state
20 your full name for the record.

21 THE APPLICANT: I'm Brandon Rashard Barksdale.

22 DIRECT EXAMINATION BY MR. ARIAIL:

23 Q. Mr. Barksdale, how you doin' today?

24 A. I'm doin' all right.

25 Q. Okay, you're and just you might wanna get a little bit

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 closer to that, I can't really, I couldn't hear ya right
2 there.

3 A. I said I'm doin' all right.

4 Q. Good, perfect. Um, uh, now I wanna go back through a
5 little bit a the background in regard to your case, uh, you
6 were represented by Mr. Ivan Toney, is that correct?

7 A. Yes, sir.

8 Q. Okay. When you were, um, I guess charged with the
9 charges that you heard recited by the Court when when you're
10 arrested for those, did you get out on bond at any time?

11 A. Yes, sir.

12 Q. Okay, so how long after you were arrested did you get out
13 on bond?

14 A. It was like three months later.

15 Q. How long?

16 A. Like three months later.

17 Q. Three months later? Okay, so at that time when did you,
18 did you hire Mr. Toney?

19 A. I had hired Ivan Toney like after I had got back arrested
20 for the charges.

21 Q. Okay, that so he wasn't appointed for you, correct?

22 A. No, Rodney ---

23 Q. Okay.

24 A. --- Richey was my appointed lawyer.

25 Q. So Rodney was appointed to ya in the beginning, how long

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 d'you have him as your attorney?

2 A. I had him till like the beginning a a 2015.

3 Q. Okay, so this -- it -- tell me when you were arrested for
4 these charges.

5 A. I was arrested like June, July, uh, uh, 2013.

6 Q. Okay, so you were, June, July 2013 you were in jail let's
7 say August, September, 2013?

8 A. I was released that total period on house arrest.

9 Q. Okay, you're on house arrest durin' that time. Rodney
10 Richey represented you from that period a time up until 2015?

11 A. (Nodded in the affirmative.)

12 Q. Okay, and durin' the time -- that you haven't alleged
13 anything in regards to Mr. Richey, correct?

14 A. Say that again.

15 Q. You haven't -- okay, from what I've seen there's been no
16 allegations in regards to Mr. Richey, is that correct?

17 A. He he was, he was dismissed as my attorney, he couldn't
18 pay -- he wasn't tryin' to represent me at all. He told me
19 back there before I came in fronta the judge that he actually
20 spoke with my mother and told her that he didn't feel
21 comfortable representin' me.

22 Q. Okay, but when he was representin' you, did you get
23 discovery from him?

24 A. And he gave me a motion of discovery.

25 Q. Okay, did you go through it with him?

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 A. He never came and talked with me.

2 Q. Mr. Richey didn't?

3 A. Besides one time he offered me take, he asked me would I
4 take 10 years and I agreed but I never went to court.

5 MS. GIOVANOLI: Then I, ---

6 A. I ---

7 MS. GIOVANOLI: --- uh, object at this point, Your Honor.
8 Um, there has been no mention of Mr. Richey on this case, the,
9 all of the claims are against Mr. Toney, um, and ---

10 THE COURT: I'll ---

11 MS. GIOVANOLI: --- so this is not ---

12 THE COURT: --- I'll let him go in -- I, that, uh, let,
13 just to make a complete record, I I I'm gonna let him go into
14 it, I understand that's not at issue though and . . .

15 MR. ARIAIL: Okay. Thank you.

16 THE COURT: Um-hum.

17 BY MR. ARIAIL:

18 Q. Mr. Barksdale, just -- so Mr. Richey brought ya a plea
19 offer sometime for 10 years or or said, asked you if you would
20 accept 10 years, is that correct?

21 A. Yes, sir.

22 Q. Okay, did he give you a plea offer for 10 years?

23 A. I was was going to court December 4th 2015 to actually
24 accept the 10 years but I never was brought to court.

25 Q. Okay, well let me just maybe say a different way. Did

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 did did did the solicitor's office send you any documentation
2 sayin' they were willing to recommend 10 years?

3 A. I never spoke with the solicitor at all.

4 Q. Okay, and I'm sayin' it wrong way. Did you get any
5 documentation from Mr. Richey, from the solicitor's office or
6 from anybody sayin', Hey, you're gonna get 10 years or 10-year
7 recommendation?

8 A. No, sir.

9 Q. Okay. Did Mr. Richey tell you that he was gonna try to
10 get you 10 years or how how'd that conversation ---

11 A. He ---

12 Q. --- go?

13 A. --- he came to Greenville County Tention [sic] Center
14 actually asked me about will you take 10 years, I was like ---

15 MS. GIOVANOLI: Objection, ---

16 A. --- yeah.

17 MS. GIOVANOLI: --- hearsay.

18 THE COURT: I, I'll let him go into it, we we kinda gotta
19 move on, I mean, ---

20 MR. ARIAIL: Yeah.

21 THE COURT: --- he's got, he didn't file any complaints
22 on Mr. Richey.

23 BY MR. ARIAIL:

24 Q. So at at that point in time after Mr. Richey you you got
25 Mr. Toney, is that correct?

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

- 1 A. Yes, sir.
- 2 Q. Did you -- and that woulda been in 2015.
- 3 A. Yes, sir.
- 4 Q. Okay. You hired him?
- 5 A. Yes, sir.
- 6 Q. Okay. When was the first time you met with Mr. Toney?
- 7 A. I don't exact remember the exact date that we first
- 8 actually met.
- 9 Q. Okay. Was it at his office? where was it?
- 10 A. Oh, he came to Greenville County Tention Center to see
- 11 me.
- 12 Q. Okay, so at some point in time durin' this you got placed
- 13 back into Greenville County Detention Center.
- 14 A. Yeah.
- 15 Q. So what happened? Why'd you get placed back into
- 16 Greenville County ---
- 17 A. I was arrested for carjackin' and stuff like that.
- 18 Q. The the other charges?
- 19 A. Yes, sir.
- 20 Q. Okay. Did he represent you on those or that's separate
- 21 from all these, correct?
- 22 A. It's separate from those but it, but I was charged
- 23 with ---
- 24 Q. Okay.
- 25 A. --- pleaing, plea agreement was all charges.

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 Q. Okay, so what I wanna go through is the charges that he
2 represented you on were the ones we, and you filed the ones
3 we, that were laid out for the Court, correct?

4 A. Yes, sir.

5 Q. Okay, so when you got, when you hired him, did ya'll go
6 through the discovery that you'd been given?

7 A. Yes, sir.

8 Q. Okay. Did ya'll go through what the the charge you were
9 facin'?

10 A. Yes, sir.

11 Q. Did he tell you what the State had to prove to show that
12 you or or to convict you a those?

13 A. Yes, sir.

14 Q. Okay. Did he tell you what the evidence was that was
15 against you?

16 A. He told me there really was no evidence, it was hearsay.

17 Q. Okay, so when when, let's go into that a little bit.
18 What was the, what was he saying was hearsay?

19 A. That one of, my both my co-defendants placed me at the
20 crime, that was only thing they had against me.

21 Q. Okay, so he said it was gonna based on co-defendant
22 testimony pretty much.

23 A. Yes, sir.

24 Q. Okay. Did ya'll discuss, ya know, what a jury could do
25 if they believe that testimony?

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 A. Yeah, he told me that if the jury agreed with what my
2 co-defendant was saying I could possibly get a life sentence
3 without parole, he told me that but then he told me not to
4 worry about doin' any jail time and if I do any jail time it
5 would not be no more than 10 years because my motion of
6 discovery really did not speakin' on my behalf.

7 Q. Okay, let's go back. So, first of all, you were aware,
8 did he explain to you that there's a potential for life
9 without parole with this?

10 A. Yeah, he told me that before.

11 Q. Okay. Were you served with any notice of life without
12 parole?

13 A. No, sir.

14 Q. Okay. Did ya'll have any discussions about what that
15 meant, I mean, you know what ---

16 A. No, sir, he never explained really too much about nothin'
17 but he was just always sayin' that I was innocent, that's all
18 he ever spoke to me about until the day of court.

19 Q. Okay, so at at some point ya'll discussed 10 years.

20 A. Yes, sir.

21 Q. What he have to say with you in regards to whether the
22 sentence ---

23 A. He came to the back when I was here, he had gave me a
24 plea papers and he was sayin' that we gonna go on ahead and
25 get 10 years so I signed the plea but if I woulda known I was

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIALL

1 gonna get 20 outta the 'greement, I woulda never took that
2 plea.

3 Q. Okay, that, so y -- you're saying you thought that you
4 were going have a a definite 10-year sentence.

5 A. Yes, sir.

6 Q. Did he tell that you're, 'cause I'm tryin' to figure out
7 you went, you pled guilty and the judge explained to you a
8 lotta things about this and you're saying you weren't aware
9 that, you know, 10 years could be 10 years, it could be 20
10 years, you thought it was gonna be 10.

11 A. I mean, he told me that it was a plea from 10 to 30 but
12 he never told me that I was gonna get any time and then he
13 always told me that you was gonna do no more than 10 if you
14 was found guilty.

15 Q. Okay, did he, I mean, did he discuss with you at any
16 time, ya know, the maximum, I mean, I guess he told you you'd
17 get 30 years.

18 A. He never just, he just said that was what the solicitor
19 wanted, he he never just said like you gonna get 30 years, he
20 never said that.

21 Q. Okay. Did you tell him, when he tells you that, did you
22 say, Well I want, I mean, I wanna make sure I'm gettin' 10
23 years?

24 A. He actually, that his 'xact words was, When you go in the
25 courtroom, don't say nothin', let me talk, and when he came

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 here he really never spoke on my behalf, he always just said I
2 hung around the wrong crowd, he never just tried to prove my
3 innocence at all.

4 Q. Okay. Did you have, that there's certain things before
5 you went in, did you ask him to do things for ya like
6 investigate your case?

7 A. I had asked him to go speak with my co-defendant ---

8 Q. Who was ---

9 A. --- on my behalf.

10 Q. -- that?

11 A. Elton (phonetic) Zachary.

12 Q. Okay, wha'd ya ask him to speak with him in regards to?

13 A. Because Elon (phonetic) Zachary was gonna represent on my
14 behalf that I wasn't even involved in the crime with him.

15 Q. Okay, and did Mr. Zachary, well did he plead guilty
16 at some point in time?

17 A. Yeah, he pled guilty.

18 Q. Okay, but you had asked him to go and to speak with him
19 about your involvement in this ---

20 A. Yes, sir.

21 Q. --- or lack of involvement, that's what you wanted.

22 A. Yes, sir.

23 Q. Did you know if he went and spoke with him?

24 A. Nah, he never said nuttin' else about it.

25 Q. Okay. Did you ask him, Hey, before I plead, have you

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 talked with him?

2 A. Yeah, he told me that he ain't gonna talk to ---

3 MS. GIOVANOLI: Objection, ---

4 A. --- nobody about nuttin'.

5 MS. GIOVANOLI: --- hearsay.

6 THE COURT: Well well this is from his attorney?

7 MR. ARIAIL: Correct.

8 MS. GIOVANOLI: Oh, okay.

9 THE COURT: I'll I'll allow it.

10 MR. ARIAIL: Yeah.

11 MS. GIOVANOLI: My apologies, ---

12 MR. ARIAIL: Oh.

13 THE COURT: That's okay.

14 MS. GIOVANOLI: --- withdraw the objection.

15 MR. ARIAIL: Okay.

16 BY MR. ARIAIL:

17 Q. Um, but in in regards to your conversation with

18 Mr. Toney, did he ever tell you he went and spoke

19 Mr. Zachary?

20 A. No, sir.

21 Q. Okay. I mean, I guess what I'm sayin' is before you pled

22 guilty why didn't you say, Hold on a second, I'm not gonna

23 plead guilty until you talk with Mr. Zachary?

24 A. 'cause he -- when I wa -- he came and spoke with me, he

25 brought the plea in there, first I wasn't willin' to agree

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 with the plea at all, ---

2 Q. Okay.

3 A. --- he said then just to sign the plea, we'll go on ahead
4 get these 10 years.

5 Q. Okay. I went through, initially, me and you have talked
6 in regards to your case and I wanna make sure, uh, say it,
7 it -- ya'll didn't have, one a the other things too and I
8 think you said was you didn't have sufficient time talk with
9 him about your case?

10 A. Correct.

11 Q. How how many meetings did ya'll have together in regards
12 to your case?

13 A. He, every time he came and saw me we never really spoke
14 on my case.

15 Q. Well may I, uh, when when he came to see -- how many
16 times did he come and see you?

17 A. He came and saw me like three or four times.

18 Q. All right. Did y -- wha -- wha'd ya'll talk about when
19 you came down?

20 A. He just kept sayin', Don't worry about nuttin', I'm goin'
21 home is all he kept sayin'.

22 Q. He told you were goin' home, what do ya mean by that?

23 A. Like every time he came and saw me he always said like
24 that I was not guilty a the crime, like every time.

25 Q. Okay, but at some point in time you decide to plead

BRANDON RASHARD BARKSDALE - DIRECT EXAMINATION BY MR. ARIAIL

1 guilty, right?

2 A. When he told me to.

3 Q. Okay, uh, uh, so you're, I I guess did you wanna go to
4 trial or d'you, I mean, you pled guilty, ---

5 A. I w -- I was gonna go to trial because I knew I didn't
6 have any involvement in this crime but when he tell me that
7 you gonna go to plead guilty, we're gonna go ahead and go in
8 here and get these 10 years, when I came in here, it was
9 obvious other way around.

10 Q. Okay. I've gone through a lotta different things me and
11 you discussed, are there other things you want the Court to be
12 aware of as part a your PCR so we can con, that the Court can
13 consider that?

14 A. I mean, yes, sir. Like it in my whole, like that the
15 reason why I'm really tryin' to come back here on my concern
16 'cause like if if you actually went through my motion of
17 discovery, investigator on my case state that I don't have,
18 that I don't fit description of neither suspect and when he
19 stated that I didn't fit description of neither suspect, I was
20 just still wanna know like how could I still get found guilty
21 when the man who put the case together stated that I don't
22 even fit description a the suspects.

23 Q. Okay, so let me make sure I understood. So if he, if he
24 inve -- if he investigated your case, you're sayin' he woulda
25 found out that you didn't match up with the alleged suspect,

BARNDON RASHARD BARKSDALE - CROSS-EXAMINATION BY MS. GIOVANOLI

1 as a result you woulda said there's no reason plead guilty or
2 go forward with a guilty ---

3 A. Yes, sir.

4 Q. --- plea and so you're thinkin' he failed to do that for
5 you and you wouldn't a pled guilty had he done that, is that
6 what you're sayin'?

7 A. Yes, sir.

8 Q. Anything else you want this court to consider?

9 A. I mean, honestly I was just blind to the fact that my
10 case was not properly investigated by my attorney.

11 Q. Okay. All right, answer any questions the attorney
12 general's office has for ya, thank ya.

13 CROSS-EXAMINATION BY MS. GIOVANOLI:

14 Q. Good afternoon. Let's let's see, um, okay, uh, earlier
15 in your testimony I believe that you said, uh, Mr. Toney had
16 told you that you were gonna receive 10 years if you pled
17 guilty?

18 A. Yes, ma'am.

19 Q. Okay. Did he ever guarantee that you were going to
20 receive 10 years or did he say that was a possibility?

21 A. Uh, he never stated it was a possibility, he said I was
22 goin' in here to get 10 years.

23 Q. Okay, and you also stated early earlier in your
24 testimony, um, that Mr. Toney told you you could receive 10 to
25 30 years?

BARNDON RASHARD BARKSDALE - CROSS-EXAMINATION BY MS. GIOVANOLI

1 A. He sayin' that's what the plea was for.

2 Q. Okay, but later on you also said that he told you that
3 you may not serve any time.

4 A. Yeah, he told me that too.

5 Q. Okay, so he told you both.

6 A. Yeah.

7 Q. Um, was there any time that Mr. Toney told you that the
8 judge could sentence you to more than 10 years?

9 A. No, ma'am.

10 Q. Did he ever tell you that he had a deal with the
11 solicitor?

12 A. No, ma'am.

13 Q. Um, and you also said that whenever you came to the
14 hearing, plea hearing that you didn't want to plead guilty,
15 you wanted ---

16 A. Correct.

17 Q. --- to proceed to trial?

18 A. Correct.

19 Q. 'kay. Did Mr. Toney force you to plead guilty?

20 A. Yes, ma'am.

21 Q. And how did he do that?

22 A. I mean, really like he, when he came back there to spoke
23 with me his exact words was, Take this plea or you gonna get
24 life without parole.

25 Q. Um, but you were willing to plead for 10 years.

BARNDON RASHARD BARKSDALE - CROSS-EXAMINATION BY MS. GIOVANOLI

1 A. Yes, ma'am.

2 Q. So did you file this, uh, post-conviction relief
3 application because you got 20 years?

4 A. I filed post-conviction relief 'cause I I'm innocent.

5 Q. Um, you also made some reference to a co-defendant that
6 was supposed to testify on your behalf?

7 A. Yes, ma'am.

8 Q. Um, is he the one that was killed?

9 A. No, ma'am.

10 Q. That was the other co-defendant?

11 A. Yes, ma'am.

12 Q. Okay. That's that's it, no no further questions, thank
13 you.

14 THE COURT: Redirect?

15 MR. ARIAIL: No redirect, Your Honor.

16 THE COURT: You step down, have a seat by counsel.

17 (Whereupon, the applicant left the stand.)

18 THE COURT: Mr. Ariail, do you have any further
19 witnesses?

20 MR. ARIAIL: Uh, no, Your Honor, that is our case.

21 THE COURT: All right. State.

22 MS. GIOVANOLI: Um, yes, Your Honor, um, we call Ivan
23 Toney to the stand.

24 (Whereupon, the witness came forward.)

25 THE CLERK: Mr. Toney, please place your left hand on the

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Bible and raise your right hand.

2 IVAN JAMES TONEY, having
3 first been duly sworn, testified as follows:

4 THE CLERK: Thank you. Please be seated and state your
5 full name for the record.

6 THE WITNESS: My name's Ivan Toney, Ivan James Toney.

7 DIRECT EXAMINATION BY MS. GIOVANOLI:

8 Q. Good afternoon, Mr. Toney.

9 A. Afternoon, ma'am.

10 Q. Um, how long have you been practicing criminal law?

11 A. Maybe twenty years.

12 Q. Okay, and h -- how did you become involved with this
13 case?

14 A. I think his mom Concetta (phonetic) called me maybe a
15 year before I got hired. I talked with her a few times, she's
16 very nice lady, extremely nice as a matter a fact, wonderful
17 lady.

18 Q. So you were retained, ---

19 A. Yes.

20 Q. --- hired. And did you -- were -- you were retained
21 before or after the a -- applicant was arrested?

22 A. After after he, uh, I think he maybe dismissed Rodney
23 Richey or they'd made arrangements that he didn't want Rodney
24 Richey as his lawyer.

25 Q. Okay. At that time that you were hired, uh, what charges

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 was he facing?

2 A. I think there were like six attempted murders, several
3 kidnappings, there's a carjacking, a lotta charges: resisting
4 arrest, other other offenses and ---

5 Q. Okay, and was he incarcerated when you came to represent
6 him?

7 A. Yes, ma'am.

8 Q. Um, and where do you recall your first time meeting with
9 him?

10 A. I met him several times, uh, before I was hired, maybe
11 once or twice, but I did meet him on May the 5th and I
12 subsequently had eight to ten meetings with.

13 Q. Okay, um, so eight to ten meetings.

14 A. At least, yes.

15 Q. Um, in those meetings did you discuss the indictments,
16 the charges against him?

17 A. Um, he has stated, uh, under oath that, uh, I discussed
18 the case with him and the indictments and the charges and, uh,
19 he he says that I have gone over his discovery and I have
20 copies of the letters I sent to him with the discovery
21 attached which I sent to him, uh, actually hand-delivered to
22 make sure he got it.

23 Q. So you actually sent his entire discovery to him ---

24 A. Yes.

25 Q. --- in paper.

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. Yes.

2 Q. Okay. Um, did you, also during those meetings, let's go
3 back to the meetings, did you discuss all the elements of the
4 offenses ---

5 A. Yes.

6 Q. --- for which he had been charged?

7 A. Everything but not just in a formulated way, we discussed
8 the guts of the case which was these two witnesses against him
9 and, you know, other aspects.

10 Q. Okay, run -- so you were aware of the other co-defendants
11 or witnesses in the ---

12 A. A ---

13 Q. --- case.

14 A. --- as the solicitor says, uh, on page 9 of the plea
15 colloquy, plea transcript, I'm sorry, line 16, two of the
16 co-defendants ultimately gave statements to police admitting
17 to having participated in the robbery and implicating this
18 defendant so they independently gave statements saying they
19 did it and said, And he was there.

20 Q. So, um, you were aware of those witnesses.

21 A. Yes, very much so.

22 Q. Did you have the opportunity to speak with them?

23 A. Um, they were represented by other attorneys and, uh, it
24 was, there was no way I was gonna be able to speak to them.

25 Q. Did you speak with their attorneys?

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. Uh, I I don't think so but, I mean, there was no way I
2 was gonna be able to speak to them.

3 Q. What was your understanding, um, of their, uh, position
4 in in your case?

5 A. Well in the one case the defendant actually pled before I
6 went to court so his involvement was clear, the other
7 defendant, uh, uh, this is exactly how it went down: I went to
8 Brandon and I said, This is, second witness is a problem
9 because this witness, and I wish I had, uh, uh, I, I said, This
10 witness is gonna get up here and testify against you, I came
11 back to see him about a week or ten days later and he said,
12 Oh, that witness has been killed, and I said, I looked at him
13 and I said, What do you mean, he said, Well I'll have -- he's
14 been killed, I said how do you know, he said, I saw it on TV
15 in the, in the, in the, uh, in the jail, so he he was gone by
16 that time.

17 Q. Okay, and so at that time, um, did that change your
18 opinion on the case as far as whether he should plead guilty
19 or go to trial?

20 A. No, he's still a ---

21 Q. No ---

22 A. --- a witness and and just, you know, their statements
23 and and the statements are against interest, I mean, why would
24 someone implicate him while they're doing a plea and while
25 they're or while they're, ya know, implicating themselves?

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Okay, and did you have the opportunity or let me rephrase
2 that. One witness is dead, the other witness did you have any
3 knowledge that he had changed his story?

4 A. No, there was, there was no evidence of of that
5 whatsoever.

6 Q. Okay. Okay. A, whenever, uh, I, once again I I forgot,
7 how many times did you meet with the applicant?

8 A. Two or three at the start and ---

9 Q. At ---

10 A. --- then in ---

11 Q. --- the start, by "at the start" do you mean, um, it ---

12 A. At the start a the case before I was hired and then I met
13 with him on May 28th. I met with him, I I kept billing notes
14 but I didn't, they're not a -- they're not complete 'cause, I
15 mean, ya do your best with billing but you don't, you don't
16 write down everything all the time. I met with him on August
17 the 5th also in the jail 'bout plea negotiations, I met with
18 him on August the 11th, August the 12th, August the 12th a
19 second time. I met with him three times one day, August the
20 12th, and then I actually brought by some documents on another
21 occasion and, uh, I just didn't, I didn't keep, uh, good notes
22 the way I'm su -- I'm su -- I probly should but I I try to
23 keep up with times that I met with him but I know I met with
24 him about eight or ten times at least.

25 Q. Okay, and your advice to him was to take a guilty plea.

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. Well he he he -- it, you know, that is the way I look at
2 it. I try to go through all the evidence, I try to figure out
3 what the chances are and, you know, and negotiations are are
4 foremost.

5 Q. Okay, when you say go through the evidence, what exactly
6 was the evidence that you were goin' through in this case?

7 A. Well, he had two motions of discovery and, ya know, there
8 was a lotta evidence, statements, witnesses, I mean, there's a
9 lot, lotta evidence. I got all of Rodney's discovery and
10 there's there's just so much: the search warrants, there's
11 everything: drug analysis, warrants, and I may have sent him
12 some overlapping discovery or the same discovery again but I
13 sent him everything Rodney gave to me and I filed my own
14 motion and then sent him everything they gave me, so I sent
15 him the same discovery twice just to be on the safe side.

16 Q. Okay. Was the, were you aware of anything, any
17 statements made by anybody, um, regarding not putting the
18 description of the suspect?

19 A. Nothing.

20 Q. Um, what did the solicitor have as far as, um, discovery,
21 uh, regarding identification of the applicant?

22 A. Um, I mean, the statements were, I mean, I guess they
23 were wearin' maybe bandanas but his s -- co-defendants were
24 implicating him ---

25 Q. Do you recall ---

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. --- but ---

2 Q. --- any video, um, evidence from the convenience ---

3 A. No, ---

4 Q. --- store?

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

6 Q. Okay, um, okay, um, on the day of the, um, the plea, the
7 guilty plea hearing, um, do you recall your discussions with
8 the applicant?

9 A. Um, the offer was for 20.

10 Q. Oh, there was an offer?

11 A. I mean, I think the, was the offer for 20? I mean it
12 certainly it wasn't 10, his co-defendant had gotten 15. I
13 said there's, I I would have said, I can't recall the exact
14 discussion, but there was no way the one who pled first and
15 sort of cooperated was gonna get less, he had more charges
16 than his co-defendant.

17 Q. So so you don't recall an offer of 10 years from the
18 solicitor?

19 A. There was no offer and I think the solicitor states that
20 in the transcript so . . .

21 Q. So you received no verbal or written offers.

22 A. No, she, uh, Katryna would have done a written offer and
23 there was no offer.

24 Q. Okay. Um, that do you recall any discussions at a guilty
25 plea hearing with your applicant, with the applicant?

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. Yeah, I do but well I I I remember 10 years was not, 10
2 years may have been, he may have wanted 10 years but that
3 wasn't, I mean, it was like six attempted murders,
4 kidnappings, carjackings, I didn't think he was gonna get, uh,
5 I I mean, I don't know where the 10 years comes from.

6 Q. Did you give him an estimate of what he could possibly
7 get?

8 A. Seems like I may have said, You could get all the way up
9 to 30, but this stuff about life without parole I didn't think
10 that was gonna happen ---

11 Q. What ---

12 (Indiscernible cross-talk.)

13 A. --- because he he was young and I thought he was 21 and
14 even if there was a lotta charges, which there are, you could
15 technically look at it and you could lump it altogether and
16 say this is one incident but there were other charges too but
17 if if it was all looked at together stacked up, he was facing,
18 I mean, if you go to trial all bets are off, you don't know
19 what a judge is gonna do.

20 Q. Is that what you told the applicant?

21 A. I mean, I woulda said the judge can give you the maximum
22 and and and ---

23 Q. Did you inform him of the maximum?

24 A. I would have counted up each evindual -- individual
25 sentence on the kidnappings and the, I wouldn't have, I I I

IVAN JAMES TONEY - DIRECT EXAMINATION BY MS. GIOVANOLI

1 would have said, you know, this is 30, this is 30, this, said
2 it's unlikely that you would get consecutive if you were, if
3 you're found guilty at trial but but you would, they would
4 certainly consider a lengthy sentence.

5 Q. Just to clarify, although your advice to the applicant
6 was to plead guilty in this case, um, you did inform him, did
7 you inform him of his right to a jury trial?

8 A. Yes.

9 Q. 'kay, and did you inform him of his right to confront
10 witnesses against him?

11 A. Not only did I inform him of his right to confront
12 witnesses, the witness testimony, uh, as he states is
13 something he was concerned about and is something I talked
14 about him with quite a bit and he himself states that he was
15 concerned about witnesses, now he claims now that one a the
16 witnesses was gonna testify for him but I don't know how he
17 would say that.

18 Q. Um, did you force him to plead guilty?

19 A. No, he was very strong-minded. Uh, I'm not saying he was
20 hard to deal with, Brandon's very very nice, I like him, and,
21 uh, he's not, uh, but he's a strong individual, he
22 strong-minded.

23 Q. Nothing further, Your Honor. Please answer any questions
24 that Mr. Ariail may have.

25 MR. ARIAIL: Do -- may it please the Court, Your Honor.

IVAN JAMES TONEY - CROSS-EXAMINATION BY MR. ARIAIL

1 THE COURT: (No audible response.)

2 CROSS-EXAMINATION BY MR. ARIAIL:

3 Q. Mr. Toney, how ya doin' today?

4 A. Fine, sir.

5 Q. Okay. Um, at some point durin' the plea if I'm not
6 mistaken you asked for a sentence of 10 years, is that
7 correct?

8 A. I don't know. Uh, ---

9 Q. Let me see, I saw it earlier, um, all right, was on, uh,
10 was on page 18, uh, you remember asking for a 10-year
11 sentence?

12 A. I would have asked for as little as I could, that I
13 thought I could get get for him, yeah, ---

14 Q. Go ---

15 A. --- because ---

16 Q. Okay. Go ahead, sorry.

17 A. --- of his lack of criminal history and his age.

18 Q. Okay, and it says on page, I'm just tryin' to back and
19 recreate this, um, and it appears Ms. Salvsva, excuse me,
20 Salisbury recommended the Court a sentence of 20 years on page
21 13 line 14?

22 A. Yes.

23 Q. Okay, it, and I guess my question, uh, is what -- was he
24 aware of the recommendation was gonna be made by the State of
25 20 years?

IVAN JAMES TONEY - CROSS-EXAMINATION BY MR. ARIAIL

1 A. Very much so.

2 Q. Okay, and was -- what discussions did you have with him
3 about and I guess you were gonna ask for 10 and the State was
4 askin' for 20.

5 A. I woulda said something like: This is their
6 recommendation, this is all they're willin' to do, I'm gonna
7 ask for less and I'm gonna bring up your age and your lack
8 criminal history and I woulda said I don't think you're gonna
9 get 10 years, I know I woulda said that ---

10 Q. Okay ---

11 A. --- but but, you know, we -- but I believe you should ask
12 for whatever you can and you should try to, try to present
13 your side.

14 Q. Yeah, and as part a this record too I think it it
15 indicates on page, I'm not mistaken, it would be, oh, there it
16 is, it's the same page, 13 line 19, 18 and 19 that his
17 co-defendant received a 15-year sentence ---

18 A. Yeah.

19 Q. --- so, I mean, did ya'll have a discussion about well
20 your co-defendant's got 15, I'm just tryin' to figure out how
21 he believes he coulda gotten 10 if there was a co-defendant
22 who had gotten 15, did ya'll ---

23 A. I mean, I knew, ---

24 Q. --- have ---

25 A. --- I knew about the 15 years but I think people should

IVAN JAMES TONEY - CROSS-EXAMINATION BY MR. ARIAIL

1 try to ask and and not get too bound up in what everybody else
2 got, mean, you've gotta make your arguments regardless of what
3 someone else got ---

4 Q. Did you ---

5 A. --- so ---

6 Q. Go ahead.

7 A. --- even though, even though I was aware a that, I was
8 gonna do what I could, yeah, to help him, that ---

9 Q. Okay.

10 A. --- doesn't mean that anyone promised him 10 years, s'no
11 way that happened.

12 Q. Okay, and there was no written plea offer for ---

13 A. That's right.

14 Q. --- 10 years.

15 A. That's right ---

16 Q. Okay.

17 A. --- and ---

18 Q. Um, ---

19 A. --- and and if if she had a made one she would've done it
20 in writing ---

21 Q. Right.

22 A. --- and as a matter a fact, this is something that hasn't
23 really been emphasized but that's where it broke down with
24 Rodney Richey that they didn't have any kinda written plea
25 offer, I think that was the the beef there. I'm not sayin'

IVAN JAMES TONEY - CROSS-EXAMINATION BY MR. ARIAIL

1 they were beefin' but they didn't get along 'cause a that
2 issue.

3 Q. Um-hum.

4 A. There was no written offer it was just, you know, for 15,
5 for 10 years or anything like that.

6 Q. I mean, and normally, correct me if I'm wrong, but when
7 they recommend, the solicitors, I was here, will send you a
8 letter saying I'm gonna recommend this for these charges.

9 A. They don't have to do that, they can maybe just e-mail it
10 or say it ---

11 Q. Say it, okay. In this case ---

12 A. --- but usually it, you'd think there'd be a written
13 offer, I mean, ---

14 Q. Right.

15 A. --- that's the general policy, yeah, ---

16 Q. Okay.

17 A. --- but sometimes it just happens: they text it or
18 whatever.

19 Q. All right, but in this case, I mean, at some point she
20 recommends 20 years ---

21 A. Yeah.

22 Q. --- so you knew I guess going into this she was gonna
23 recommend 20 years.

24 A. Yeah.

25 Q. Okay. Was he aware of that?

IVAN JAMES TONEY - CROSS-EXAMINATION BY MR. ARIAIL

1 A. Yeah, ---

2 Q. Okay.

3 A. --- and did not, ---

4 Q. And do ya'll have ---

5 A. --- and did not ---

6 Q. --- s ---

7 A. --- like it.

8 Q. Do you have any documentation or anything you sent to him
9 sayin', Hey, they're gonna recommend 20 years or is it just
10 discussion?

11 A. No, but she put that on the record and, uh, I I bet you
12 the judge would have even let him withdraw the plea if he
13 objected at that point, I mean, he -- that was right ---

14 Q. Yeah.

15 A. --- there, you know.

16 Q. And at no point, I I don't see it in here, do you
17 remember him sayin', Hold on a second, let me talk to ---

18 A. He didn't.

19 Q. --- you about this?

20 A. He did not.

21 Q. Okay. Um, the issue in regards to, um, co-defendant, I I
22 mean, you've heard him testify now that his co-defendant was
23 basically gonna change his story or say that he wasn't
24 implicated or have some exculpatory evidence, did you know
25 anything about that or . . .

IVAN JAMES TONEY - CROSS-EXAMINATION BY MR. ARIAIL

1 A. That's very convenient after one a the co-defendants has
2 been shot in the park. As far as the other one, he testified,
3 uh, and pled guilty but both of them gave statements but after
4 one of them gets shot, it's very convenient to say, Oh, yeah,
5 he was gonna testify on my behalf, ---

6 Q. Okay.

7 A. --- that's just absurd I think, ---

8 Q. I guess my ---

9 A. --- sorry.

10 Q. --- question is, I mean, that one of 'em Mr. Files was
11 dead, ---

12 A. Yes.

13 Q. --- di -- was it Mr. Te -- he just said it was
14 Mr. Zachary who is the one that was going to change his, you
15 know, basically say he didn't have anything to do with it,
16 were you aware of that?

17 A. No.

18 Q. Okay. A -- and you you say there was a statement that
19 Mr. Zachary gave which implicated Mr. Barksdale ---

20 A. I remember it and I I don't, I'd have to dig or something
21 but they totally implicated him but the, uh, I know Katryna
22 mentions it too, seems like I've seen it or something.

23 Q. Yeah, there was a, I think the reference to it in here is
24 on page ---

25 A. Seems like it's in the transcript too, yeah.

IVAN JAMES TONEY - CROSS-EXAMINATION BY MR. ARIAIL

1 Q. It's right here to -- it's on page 9 of the transcript
2 page and line 16.

3 A. They all said, This is what happened, they all met with
4 the police and said, Yeah, we were doin' this and and, uh, and
5 here's who was with us, ---

6 Q. Okay, so ---

7 A. --- they just spilled the beans right away.

8 Q. --- there was nothin' you saw after that, any exculpatory
9 evidence sayin' he changed his statement or anything a that
10 nature.

11 A. No, they all said, We went down there to the Mighty Food
12 Mart, we robbed it, it was a gang initiation ---

13 Q. Okay.

14 A. --- for the Bloods and this what happened, Brandon was
15 there.

16 Q. Okay. Now, um, when it it -- that any other things that
17 he asked you to do like investigate witnesses or talk to other
18 people that you recall?

19 A. Um, not really, not offhand unless you can be more
20 specific, I don't really recall ---

21 Q. No?

22 A. --- anything else, I don't think there was.

23 Q. Uh, uh, his mindset in this was he, I mean, were ya'll
24 talkin' plea or was this, I mean, did he wanna go to trial at
25 some point in time?

IVAN JAMES TONEY - CROSS-EXAMINATION BY MR. ARIAIL

1 A. I always discussed both every time I talked to him, ---

2 Q. Okay.

3 A. --- every time like and and I do that with everybody. I
4 always say, ya know, this is the plea options and and then
5 they bring up the evidence and then you discuss the evidence.

6 Q. Oh, okay. After you discussed it was his reaction, I
7 wanna go to trial, or, I wanna go take a plea to get what I
8 can?

9 A. He was a, uh, very strong negotiator, he's very
10 strong-minded and he was, uh, I don't wanna do this, I don't
11 wanna do that, he's very elusive but he wanted as less time as
12 he could get and that's what everybody wants really but I I
13 can't blame him for that, ---

14 Q. Did you ---

15 A. --- so ---

16 Q. (Indiscernible cross-talk.)

17 A. --- he was very elusive, no he didn't wanna plead to
18 that, didn't want this, he wanted, ya know, he thought it, ya
19 know, maybe should sometimes was, should be dismissed but he
20 was concerned about the witnesses, yes.

21 Q. Okay. Was it it -- and from my reviewing of the record
22 there was not, I mean, other than the co-defendants there
23 wasn't much tying him to this, was there other evidence that
24 was there that you saw?

25 A. I can't recall anything but that's enough two ---

IVAN JAMES TONEY - REDIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Okay.

2 A. --- co-defendants.

3 Q. And you explained that to him that if they, jury believed
4 that then he was gonna be convicted of all these?

5 A. Well, I would have just put it this way: I would've said,
6 you know, at that point he'd be stuck with an appeal, I
7 wouldn't just, I wouldn't just say, Well if the jury says it
8 then it's so, I woulda said, This is the evidence and and I
9 would've explained he would have had the right to a, the judge
10 to consider the sufficiency of the evidence, et cetera. I
11 wouldn't have just said and if they think it then it's so, I
12 would've said, I would've said it and explained that this is
13 what's against you, they're gonna bring this case, these
14 people are gonna testify and the jury's gonna look at it and
15 if they conclude that you're guilty or that you're the one
16 that was there then then they're gonna make, you know, they're
17 gonna make their their finding and the judge is gonna make
18 their sentence, his sentence, his or her sentence.

19 Q. All right, I have no further questions.

20 MS. GIOVANOLI: Just briefly, Your Honor.

21 THE COURT: All right.

22 REDIRECT EXAMINATION BY MS. GIOVANOLI:

23 Q. Um, I just wanna call your attention to the guilty plea
24 transcript on page 9 line ---

25 A. Yes.

IVAN JAMES TONEY - REDIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. --- 11, ---

2 A. Yes, ma'am.

3 Q. --- I'll just read it to you, During the investigation
4 police determined this defendant was one of the actual gunmen
5 that entered the store, participated in the robbery,
6 specifically surveillance video suggested the defendant was
7 wielding two handguns during the robbery, does that refresh
8 your recollection as far as what, uh, what was in the
9 discovery as far as identification?

10 A. That's right, there was surveillance video but they were
11 wearing bandanas I think.

12 Q. Okay, bandanas on their head or over their faces?

13 A. Over their face, something like that.

14 Q. So you do remember surveillance video.

15 A. Yes, that's right but it was sort of, it was a little bit
16 vague, it was not a positive ID alone.

17 Q. Um, and also, do you know if the co-defendant that got
18 the 15-year sentences -- sentence when he pled guilty was that
19 the result of a deal with the solicitor for cooperating?

20 A. I think that was part, they they recognized the fact that
21 he had implicated Brandon.

22 Q. Okay, but you're not familiar with any deal that they
23 had?

24 A. I think the fact that he had, uh, there's no specific
25 quid pro quo but the fact that he had cooperated was a

IVAN JAMES TONEY - REDIRECT EXAMINATION BY MS. GIOVANOLI

1 factor ---

2 Q. Okay.

3 A. --- is my understanding, ---

4 Q. Okay.

5 A. --- yeah.

6 Q. Um, nothing further from the State.

7 THE COURT: Mr. Ariail?

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

9 THE COURT: You can step down, be excused, we appreciate
10 your time.

11 THE WITNESS: Yes, sir, thank you.

12 (Whereupon, the witness left the stand.)

13 THE COURT: Anything else from the State?

14 MS. GIOVANOLI: Um, uh, no argument, Your Honor, I
15 believe the record ---

16 THE COURT: All right.

17 MS. GIOVANOLI: --- speaks for itself.

18 THE COURT: All right, well I'll ---

19 MR. ARIAIL: No, Your Honor.

20 THE COURT: --- I'll take this one under advisement, ---

21 MR. ARIAIL: Thank Your Honor.

22 THE COURT: --- thank you.

23 MS. GIOVANOLI: All right.

24

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 27, 2016 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 40, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

February 5, 2017

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Brandon R. Barksdale,
#365114,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-23-1296

ORDER

ENTERED COMPUTER

FILED
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2016 NOV 18 AM 11 33

Applicant filed this application for Post-Conviction Relief February 29, 2016. This matter was heard October 27, 2016. Applicant was represented by Mills Arial, Esquire. The State was represented by Valerie Giovanoli, Esquire.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. Applicant was indicted at the August 2014 term of the Greenville County Grand Jury for conspiracy (2013-GS-23-9806); attempted murder (2013-GS-23-9811; -9812; -9813; -9814; -9815; -9816); armed robbery and possession of a weapon during the commission of a violent crime (2013-GS-23-9817; 2014-GS-23-3814); and carjacking (2014-GS-23-3804). Applicant was represented by Ivan Toney, Esquire.

On August 12, 2015, Applicant pled guilty as indicted. The Honorable D. Garrison Hill sentenced Applicant to twenty (20) years for each attempted murder; twenty (20) years for each armed robbery; twenty (20) years for carjacking; and five (5) years for conspiracy. Applicant did not appeal.

In his current application, Applicant alleged he is being held in custody unlawfully for several reasons. Below, the Court will address the issues presented at the hearing. All allegations not presented at the hearing are deemed abandoned.

Applicant alleges his trial counsel was ineffective. In a PCR action, the applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." *Id* (citing *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2066 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id* (citing *Strickland*, 466 U.S. at 687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id* (citing *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-prong test in evaluating ineffective assistance of counsel. *Id* at 117, 386 S.E.2d at 625. First, the Applicant must prove counsel's performance was deficient. *Id*. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Id* (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. 2066). 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." *Id* 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 pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S. Ct. 366 (1985).

Applicant alleges that his guilty plea was involuntary. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *See Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing *Drayton v. Ewalt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); *Bennett v. State*, 371 S.E. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. *See Boykin v. Alabama* 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In *Boykin*, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id* at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. *Id*. Moreover, a criminal defendant entering a guilty plea "must

get 7

be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived," *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

Applicant's testimony, while couched as two claims hereinabove, actually boils down to one claim. That claim is that he was to receive a sentence of ten years at his plea.

Pertinent to his claim, Applicant testified to his interaction with trial counsel. He acknowledged he was visited three or four times by trial counsel while in jail and was provided discovery. Applicant testified he was told what the State had to prove as to the charges against him and what evidence the State had to support the charges. Applicant testified he believed he would receive a sentence of ten years and that he would not have pled to twenty years. He further testified that trial counsel told him he would get no more than ten years if found guilty.

Applicant testified, in essence, that trial counsel forced him to plead guilty by telling him he would receive life without parole if he did not. He admitted that he was never told by trial counsel that there was any deal regarding the plea with the solicitor.

Applicant testified that he wanted trial counsel to talk to his co-defendant, Zachary.

Trial counsel testified that he met with Applicant two or three times prior to being retained and eight to ten times after he was retained. Trial counsel testified he gave hard copies of all discovery material to Applicant. He testified that he discussed the elements of the charges with Applicant and the evidence the State had to support these elements. The latter was his co-defendant's incriminating statements.¹ He also testified he told Applicant the maximum and minimum penalties Applicant was facing.

Trial counsel testified that he could not talk with the co-defendants as Applicant requested as they were represented by counsel. Trial counsel testified that Applicant's belief that the surviving co-defendant had changed his story had no evidentiary support. Trial counsel testified he knew of no witness who would testify that Applicant did not match the description of the suspect.

Trial counsel testified that there was no video, but corrected himself when shown that there was (Plea Trial Record p. 9, ll. 13-15). Upon recall, trial counsel testified that the video was not definite as to the robbers as they had their faces covered with bandanas.

Trial counsel testified there was no plea offer from the State and he does not know where Applicant's idea he would only get a ten year sentence comes from. Trial counsel did argue for a ten year sentence (Plea Trial Record p. 18, ll. 11-13).

Trial counsel testified that he advised Applicant of his right to trial and his right to confront the witnesses against him. He further testified that prior to the entry of the plea, Applicant was aware that the State was going to ask for a twenty year sentence, which it did (Plea Trial Record p. 13, ll. 10-14).

¹ One of the co-defendants was killed prior to Applicant's plea.

I find trial counsel's testimony credible. I find Applicant's testimony regarding his being told he would receive a ten year sentence lacking in credibility.

I find trial counsel's representation of Applicant was well above any objective standard of reasonableness and was well within the range of competence demanded of attorneys in criminal cases.

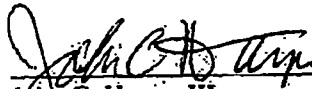
Wherefore, Applicant has failed to carry his burden of proof and has failed to prove he received ineffective assistance of counsel as to the plea which is the subject of the Post-Conviction Relief Application.

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

November 9th, 2016
Greenville, South Carolina


John C. Hayes, III
Presiding Judge. #6

WITNESSES

Thomas Motes *(M)*
Greenville County Sheriffs Office

2/13/2014

ARREST WARRANT NUMBER
2014A2330201212

ACTION OF GRAND JURY
TRUE BILL

Ruby T. Clark
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-
KBS

003804

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2014

THE STATE

vs.

BRANDON RASHARD BARKSDALE

Indictment for

2599

CARJACKING

VIOLATION §16-03-1075

FILED

MAY - 1 2014

Clerk of Court
Greenville County

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CARJACKING

At a Court of General Sessions, convened on **AUG 19 2014** the Grand Jurors of Greenville
County present upon their oath:

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 12th day of February, 2014, take or attempt to take a motor vehicle, to wit: 2007 Acura RDX SUV from TIMOTHY LEE by force, and violence or by intimidation while TIMOTHY LEE, was operating and/or was in the said vehicle. This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSESThomas Motes *MF*

Greenville County Sheriffs Office

2/13/2014

ARREST WARRANT NUMBER

2014A2330201213

2014A2330201214

**ACTION OF GRAND JURY
TRUE BILL***Ruby T. Neal*
FOREMAN GRAND JURY*Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury*

Date:

DOCKET NO. 2014-GS-23-
KBS

003814

The State of South Carolina**County of Greenville****COURT OF GENERAL SESSIONS****August TERM 2014****THE STATE**

vs.

BRANDON RASHARD BARKSDALE☒ **Indictment for**
0139 and 0549**ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
CRIME****VIOLATION §16-11-0330 AND §16-23-0490****FILED****MAY - 1 2014**Clerk of Court
Greenville County**ENTERED
ACCT****ENTERED
ACCT.**
187

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

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

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

AUG 19 2014

the Grand Jurors of Greenville

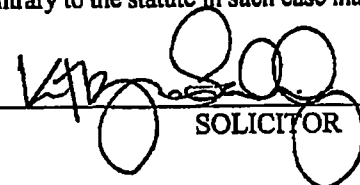
COUNT I:

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 12th day of February, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: wallet and 2007 Acura RDX SUV from the person or presence of TIMOTHY LEE. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II:

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 12th day of February, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY AND/OR CARJACKING. 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.


 SOLICITOR

WITNESSESMatthew Owens *MD*

Greenville County Sheriffs Office

7/23/2013

ARREST WARRANT NUMBER
2013A2330206140**ACTION OF GRAND JURY
TRUE BILL***Ruby T. Neal*
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICTForeperson of Petit Jury
Date:**DOCKET NO. 2013-GS-23-**
KBS

009806

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS**August**TERM 2013 *2014***THE STATE**

vs.

BRANDON RASHARD BARKSDALE

0049

Indictment for

CONSPIRACY

VIOLATION § 16-17-0410

JUL 31 2013

Clerk of Court
Greenville County**ENTERED
ACCT** *104*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

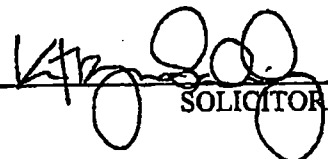
INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on **AUG 19 2014** the Grand Jurors of Greenville

County present upon their oath:

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June 2013, willfully and unlawfully combine with ELGIN ZACHERY, and/or KENTRIANA WORLEY, and/or ALFONZO PYLES for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: ARMED ROBBERY, and/or ATTEMPTED MURDER, and/or KIDNAPPING. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSESMatthew Owens *MP*

Greenville County Sheriffs Office

7/23/2013

ARREST WARRANT NUMBER
2013A2330206134**ACTION OF GRAND JURY**
TRUE BILL*Ruby T. Hall*
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICTForeperson of Petit Jury
Date:**DOCKET NO. 2013-GS-23-**
KBS
The State of South Carolina
County of Greenville

009811

COURT OF GENERAL SESSIONS

August

2014
TERM 2013**THE STATE**

vs.

BRANDON RASHARD BARKSDALE

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

FILED**OCT 31 2013**Clerk of Court
Greenville County**ENTERED**
ACCT.

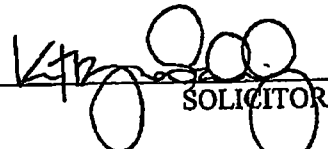
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
ATTEMPTED MURDER**

At a Court of General Sessions, convened on **AUG 19 2014** the Grand Jurors of Greenville
County present upon their oath:

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June
2013, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill K.J. This is in
violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSESMatthew Owens *MA*

Greenville County Sheriffs Office

7/23/2013

ARREST WARRANT NUMBER
2013A2330206133ACTION OF GRAND JURY
TRUE BILL*Ruby T. Hall*
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICTForeperson of Petit Jury
Date:DOCKET NO. 2013-GS-23-
KBS

009812

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

2014
TERM 2013

THE STATE

vs.

BRANDON RASHARD BARKSDALE

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

FILED

OCT 31 2013

Clerk of Court
Greenville CountyENTERED
ACCT. *LDH*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

AUG 19 2014

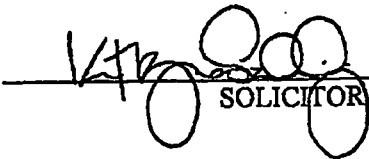
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June 2013, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill J.S. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Matthew Owens *MP*
Greenville County Sheriffs Office
7/23/2013

ARREST WARRANT NUMBER
2013A2330206132

ACTION OF GRAND JURY
TRUE BILL

Rudolph T. Clark
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
KBS
The State of South Carolina
County of Greenville

009813

COURT OF GENERAL SESSIONS**August****TERM 2013** *2014***THE STATE****VS.****BRANDON RASHARD BARKSDALE****Indictment for**

3410

ATTEMPTED MURDER**VIOLATION § 16-03-0029****FILED****OCT 31 2013****Clerk of Court**
Greenville County**ENTERED**
ACCT *12/1*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on **AUG 19 2014** the Grand Jurors of Greenville
County present upon their oath:

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June
2013, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill A.P. This is in
violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSESMatthew Owens *MP*

Greenville County Sheriffs Office

7/23/2013

ARREST WARRANT NUMBER
2013A2330206131**ACTION OF GRAND JURY
TRUE BILL***Ruby T. Hall*
FOREMAN GRAND JURY*Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury*
Date:**DOCKET NO. 2013-GS-23-**
KBS

009814

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
AugustTERM 2013 *2014***THE STATE**

vs.

BRANDON RASHARD BARKSDALE✓
3410

Indictment for

ATTEMPTED MURDER

VIOLATION § 16-03-0029

**ENTERED
ACCT.****FILED****OCT 31 2013**Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on **AUG 19 2014** the Grand Jurors of Greenville

County present upon their oath:

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June 2013, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill L.P. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSESMatthew Owens *MP*

Greenville County Sheriffs Office

7/23/2013

ARREST WARRANT NUMBER
2013A2330206130**ACTION OF GRAND JURY
TRUE BILL***Ricky T. Hall*
FOREMAN GRAND JURY*Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury*
Date:**DOCKET NO. 2013-GS-23-**
KBS
The State of South Carolina
County of Greenville

009815

COURT OF GENERAL SESSIONS**August**TERM 2013 *2014***THE STATE**

vs.

BRANDON RASHARD BARKSDALE✓
3410

Indictment for

ATTEMPTED MURDER

VIOLATION § 16-03-0029

FILED**OCT 31 2013**Clerk of Court
Greenville County**ENTERED
ACCT**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
ATTEMPTED MURDER**

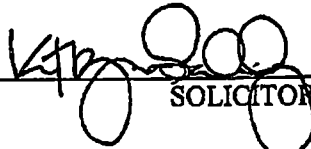
At a Court of General Sessions, convened on
County present upon their oath:

AUG 19 2014

the Grand Jurors of Greenville

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June 2013, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill P.P. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Matthew Owens *My*
Greenville County Sheriffs Office

7/23/2013

ARREST WARRANT NUMBER
2013A2330206129

ACTION OF GRAND JURY
TRUE BILL

Rudolph T. Neal
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-23-
KBS

009816

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2013 *2014*

THE STATE

VS.

BRANDON RASHARD BARKSDALE

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

ENTERED
ACCT. *10*

FILED

OCT 31 2013

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE).

**INDICTMENT FOR
ATTEMPTED MURDER**

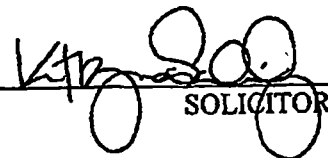
At a Court of General Sessions, convened on
County present upon their oath:

AUG 19 2014

the Grand Jurors of Greenville

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June 2013, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill N.P. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSESMatthew Owens *MO*

Greenville County Sheriffs Office

7/23/2013

ARREST WARRANT NUMBER
COUNT I - 2013A2330206128

COUNT II - 2013A2330206141

ACTION OF GRAND JURY
TRUE BILL*Ricky T. Hall*
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICTForeperson of Petit Jury
Date:DOCKET NO. 2013-GS-23-
KBS

009817

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

2014
TERM 2013

THE STATE

VS.

BRANDON RASHARD BARKSDALE

Indictment for
0139 and 0549ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

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

ENTERED
ACCT. *LBH***FILED**

OCT 31 2013

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

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

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

AUG 19 2014

the Grand Jurors of Greenville

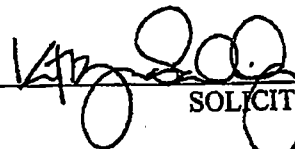
COUNT I

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June 2013, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. currency and/or cigarettes, and/or a wallet, and/or keys from the persons or presences of four victims inside the Mahi Food Mart. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II

That BRANDON RASHARD BARKSDALE did in Greenville County, on or about the 28th day of June 2013, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: ARMED ROBBERY. This is in violation of §16-23-490 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.


SOLICITOR