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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Maite Murphy, Circuit Court Judge

DEVOURSHAY WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001458

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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ATTORNEYS FOR RESPONDENT

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INDICTMENTS59

1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF ORANGEBURG) 2011 GS 38 2017; 2018;
) 2019; 2020
 3

4 STATE OF SOUTH CAROLINA)
)
 5)
)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
)
 8 DEVOURSHAY ANTWAN WILLIAMS, JR.)
)
 9 Defendant)

10 Orangeburg, South Carolina
 11 January 22, 2013
 12

13 B E F O R E :

14 HONORABLE EDGAR DICKSON, Judge

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

16 For the State: D. SORENSON, Esq.
 17 Solicitor

18 For the Defendant: MELLARD, Esq.

19 Reporter Present: HARRY DOT WALKER
 20

21
 22 HARRIET P. BENNETT
 23 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 24 Summerville, S.C. 29485
 25

1 (The within matter came before the Court on January
2 22, 2013)

3 SOLICITOR: The State would call Devourshay Williams,
4 a guilty plea, Your Honor. He's represented by Mr.
5 Mellard.

6 There are four Indictments, 2011 GS 38 2017, 2018,
7 2019, 2020, Your Honor, charging him with four counts of
8 attempted murder.

9 THE COURT: All right.

10 (Whereupon, Mr. Williams, the Defendant, was sworn
11 by the Clerk for purposes of this proceeding)

12 THE COURT: You are Devourshay Williams?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. Mr. Mellard, you have been
15 representing Mr. Williams?

16 MR. MELLARD: Yes, sir.

17 THE COURT: And I have four Indictments he's pleading
18 guilty to?

19 MR. MELLARD: Yes.

20 THE COURT: You represent him on all of these matters?

21 MR. MELLARD: Yes.

22 THE COURT: Do you believe he's understood everything
23 you've told him?

24 MR. MELLARD: I do, Your Honor.

25 THE COURT: And you have gone over with him all of

1 these matters? You've met with him and gone over this?

2 MR. MELLARD: Yes.

3 THE COURT: All right, sir. I have four offenses he
4 is pleading guilty to, and you have gone over the offenses?

5 MR. MELLARD: Yes, sir.

6 THE COURT: And to your knowledge -- well, you have
7 gone over the law and the possible sentences?

8 MR. MELLARD: I have done that. I have advised him of
9 his right to a trial. We talked that over, and he tells
10 me he has made the decision to plead, Your Honor.

11 THE COURT: It's my understanding he is pleading guilty
12 to four counts of attempted murder?

13 MR. MELLARD: Yes, sir.

14 THE COURT: Okay, and you have advised him they are
15 violent and most serious offenses?

16 MR. MELLARD: Yes, sir.

17 THE COURT: You have gone over what that means to him?

18 MR. MELLARD: Yes.

19 THE COURT: Okay.

20 MR. MELLARD: To my knowledge, he has no record, so this
21 is not that severe, being a first.

22 THE COURT: Okay. You have mentioned that he wishes
23 to give up his right to have a jury trial on each one of
24 these offenses?

25 MR. MELLARD: Yes, sir. We've talked in detail about

1 that, Your Honor.

2 THE COURT: Okay, and after going over all of this
3 with him, he still wishes to plead guilty to all four of
4 these charges?

5 MR. MELLARD: Yes, sir.

6 THE COURT: And do you believe it's in his best inter-
7 ests to do so?

8 MR. MELLARD: Yes, sir.

9 THE COURT: And, Mr. Wise, you have been assisting in
10 this?

11 MR. WISE: I have, sir.

12 THE COURT: And do you agree with this decision?

13 MR. WISE: I do.

14 THE COURT: Mr. Williams, my sentencing sheet indicates
15 you are twenty-one years old?

16 DEFENDANT: Yes, sir.

17 THE COURT: Okay. Mr. Williams, I am told that you
18 are here to plead guilty to four counts of attempted murder,
19 is that correct?

20 DEFENDANT: Yes, sir.

21 THE COURT: You said you have advised him of the law
22 and the possible sentences?

23 MR. MELLARD: Yes, sir, I have done that. I have
24 advised him he has a right to a trial. We have talked that
25 over in detail, and he has made the decision to plead.

1 THE COURT: The maximum sentence on this charge is
2 thirty?

3 SOLICITOR: Yes, sir.

4 THE COURT: You are aware the maximum sentence on this
5 charge is up to thirty years?

6 DEFENDANT: Yes, sir.

7 THE COURT: Okay. Now, Mr. Williams, how far did you
8 go in school?

9 DEFENDANT: Eighth grade.

10 THE COURT: All right, sir. Why did you stop in the
11 eighth grade?

12 DEFENDANT: (Inaudible reply)

13 THE COURT: Did you ever get your GED?

14 DEFENDANT: No, sir.

15 THE COURT: Have you ever worked anywhere?

16 DEFENDANT: Yes, sir.

17 THE COURT: Where were you working at the time you were
18 arrested?

19 DEFENDANT: I wasn't working.

20 THE COURT: Okay. At the time you were arrested, you
21 hadn't worked in how long?

22 DEFENDANT: Let me see. I got laid off by Western
23 Auto -- sixteen months.

24 THE COURT: How long did you work for Western Auto?

25 DEFENDANT: Like seven or eight months.

1 THE COURT: All right, and then you were laid off when
2 this happened?

3 DEFENDANT: Yes, sir.

4 THE COURT: Now, Mr. Williams, have you ever been
5 treated for any mental illness? Any mental health issue?

6 DEFENDANT: No, sir. I mean, I got surgery when I got
7 shot.

8 THE COURT: Have you ever been given any evaluation
9 for a mental condition?

10 DEFENDANT: No, sir.

11 THE COURT: Okay. Are you taking any kind of medica-
12 tion today?

13 DEFENDANT: No, sir.

14 THE COURT: All right, are you under the influence of
15 alcohol or drugs?

16 DEFENDANT: No, sir.

17 THE COURT: Have you ever been given any medication
18 for a mental condition or anything like that?

19 DEFENDANT: No.

20 THE COURT: Are you thinking clearly today?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do you know exactly what you're doing?

23 DEFENDANT: Yes, sir.

24 THE COURT: All right, Mr. Williams, it's my under-
25 standing you are pleading guilty to four counts of attempted

1 murder.

2 I understand from the Solicitor's Office or the Solici-
3 tor tells me there is no recommendation as to sentence. Is
4 that correct?

5 DEFENDANT: Yes.

6 THE COURT: You are facing up to thirty years on each
7 charge?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right. Has anybody promised you any-
10 thing or forced you in any way to plead guilty to these
11 charges?

12 DEFENDANT: No, sir.

13 THE COURT: You are doing this freely and voluntarily?

14 DEFENDANT: Yes, sir.

15 THE COURT: All right. Mr. Williams, have you had an
16 opportunity to meet with Mr. Mellard and Mr. Wise to go over
17 the evidence in these cases?

18 DEFENDANT: Yes, sir.

19 THE COURT: Are you aware of the law, the possible
20 sentences, and your constitutional rights?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that under the Consti-
23 tution you have a right to remain silent?

24 DEFENDANT: Yes, sir.

25 THE COURT: You give up that right when you plead

1 guilty. Do you understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you understand you can have a jury
4 trial on any of these charges?

5 DEFENDANT: Yes.

6 THE COURT: Do you want a jury trial on any or all of
7 these charges?

8 DEFENDANT: No, sir.

9 THE COURT: Okay. Are you satisfied with the services
10 of your attorneys?

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you need more time to talk with them?

13 DEFENDANT: No, sir.

14 THE COURT: All right, sir. Mr. Williams, I have four
15 Indictments for attempted murder, and all of the Indict-
16 ments have been true billed by the Grand Jury on November 9
17 of 2011.

18 The first Indictment I have, 2011 GS 38 2017 -- the
19 allegations are that you did in Orangeburg County on or about
20 September 16, 2011, with intent to kill, with malice afore-
21 thought, Johnny Quarles, by means of shooting a gun at the
22 victim, in violation of the laws of South Carolina.

23 Do you understand and agree with these allegations?

24 DEFENDANT: Yes, sir.

25 THE COURT: How do you plead to this charge, as to

1 attempted murder?

2 DEFENDANT: Guilty, sir.

3 THE COURT: The next Indictment I have, Indictment
4 2011 GS 38 2018, alleges that you did in Orangeburg County
5 on or about September 16, 2011, with intent to kill Samuel
6 Morris with malice aforethought, express or implied, by
7 means of shooting a gun at this victim.

8 Do you understand and agree with these allegations?

9 DEFENDANT: Yes, sir.

10 THE COURT: How do you plead to this charge of attempted
11 murder?

12 DEFENDANT: I plead guilty.

13 THE COURT: All right. The next Indictment I have,
14 2011 GS 38 2019, alleges that you did in Orangeburg County
15 on or about September 16, 2011, with intent to kill Marvin
16 Seibert with malice aforethought, express or implied, by
17 means of shooting a gun at this victim.

18 Do you understand and agree with these allegations?

19 DEFENDANT: Yes, sir.

20 THE COURT: How do you plead to this charge of attempted
21 murder?

22 DEFENDANT: Guilty.

23 THE COURT: And the final one, 2011 GS 38 2020 -- the
24 allegations are that you did in Orangeburg County on or
25 about September 16, 2011, with intent to kill Johnny Summers

1 and with malice aforethought, either express or implied,
2 by means of shooting a gun at the victim.

3 Do you understand and agree with these allegations?

4 DEFENDANT: Yes, sir.

5 THE COURT: And how do you plead to this charge of at-
6 tempted murder?

7 DEFENDANT: Plead guilty.

8 THE COURT: Thank you, sir.

9 All right, Mr. Sorenson.

10 SOLICITOR: May it please the Court, Your Honor?

11 THE COURT: Yes, sir.

12 SOLICITOR: These offenses occurred on the afternoon
13 of September 16, 2011, over on (Inaudible) Road in Branch-
14 ville, South Carolina, in Orangeburg County.

15 It is kind of an involved story. In the area earlier
16 on that day there was an individual out in that area who
17 had a gun and there was an attempted burglary.

18 A vehicle ended up leaving that house and leaving three
19 individuals on foot and taking off into the wood. The Sher-
20 iff's Office was called out and several hours were spent by
21 them out there with the citizens. Word had gotten around
22 about what had happened, about a burglary in that area,
23 and they were kind of on edge a little bit.

24 Some individuals were out on the street and driving
25 around that house, and at about four o'clock that afternoon

1 two of the victims, Mr. Seibert and Mr. Morris, came upon
2 some individuals walking down the road where there weren't
3 but a couple of houses down there. They knew everybody
4 that lived down there and they didn't recognize the individ-
5 uals.

6 They started questioning the individuals or at least
7 one of them. This is kind of out in the country, and in
8 the process of that there were officers coming out in the
9 area.

10 At that point in time an Investigator pulled up, and I
11 believe he was in an unmarked vehicle. He pulled up and
12 was approaching the scene basically on the side of the road
13 there where people were standing.

14 As he pulls up and is getting ready to get out of his
15 vehicle to find out what is going on, an individual who was
16 later identified as Mr. Williams took a pistol out of his
17 waistband and fired -- he basically just started firing bul-
18 lets in the direction of Investigator Summers and the other
19 victims who were there.

20 They were able to get around him and another investi-
21 gator returned fire. He fired several rounds in the direc-
22 tion of Mr. Williams and the individuals he was with, and
23 they fled into the woods.

24 A short time after that, one of the Codefendants came
25 out of the woods and was taken into custody. He had a gun

1 on him and I don't believe it had any spent rounds in it.
2 He was not identified as the person who pulled the gun out.
3 He did give a statement indicating this Defendant being one
4 of them.

5 Mr. Williams, this Defendant, was ultimately found later
6 on that evening (portion inaudible).

7 He was taken into custody at that point in time and
8 he did not have the weapon on him. He had gotten rid of
9 his weapon, and it turned out that he had actually gotten
10 shot by one of the rounds the Investigator fired at them.

11 The third Defendant later gave a statement indicating
12 the Defendant was the individual who fired the shots, and
13 this Defendant, several days later, admitted to taking out
14 a gun and shooting at the victims.

15 He does not have a prior record.

16 Mr. Summers, Your Honor, is present in the Courtroom,
17 and I believe he wishes to address the Court. We have noti-
18 fied the other victims but Investigator Quarles got tied up
19 with another matter.

20 THE COURT: All right, Mr. Williams. You heard the
21 Solicitor and what he said. You have no prior record?

22 DEFENDANT: No, sir. That's correct.

23 THE COURT: Okay. Do you understand if I accept
24 your plea to these charges you are facing jail time, and
25 you will have four convictions that are violent and most

1 serious offenses?

2 DEFENDANT: Yes, sir.

3 THE COURT: Okay. Do you want me to accept your
4 guilty plea?

5 DEFENDANT: Yes, sir.

6 THE COURT: You understand you have ten days in which
7 to appeal any sentence I give you?

8 DEFENDANT: Yes, sir.

9 THE COURT: You understand that?

10 DEFENDANT: Yes.

11 THE COURT: All right, Mr. Williams. I will accept
12 your guilty pleas to these four Indictments. I find your
13 decision to plead guilty is freely, voluntarily and intel-
14 ligently made.

15 I find you have had the advice and counsel of two very
16 competent attorneys. I find you are satisfied with their
17 service.

18 I find there is a factual basis to accept your pleas of
19 guilty, so I am going to accept your guilty plea to these
20 four charges.

21 Mr. Mellard?

22 MR. MELLARD: Yes, sir, Your Honor. Mr. Williams also
23 wants to address the Court, but I will say that he's here
24 with his mom. I think she may want to say a few words on
25 his behalf.

1 I will say that he's been locked up for sixteen months
2 now.

3 (Portion not audible on cassette)

4 MOTHER OF DEFENDANT: He's the only child I have, and
5 he's been a good child. I don't know what happened that
6 day but he has been locked up sixteen months now. I've
7 been talking to him and I know he is apologizing for the
8 situation, and I apologize as his mother for the situation.

9 I ask you to consider the sixteen months he's been
10 locked up. I've been in a motorcycle accident, and he wasn't
11 able to come to the hospital. (Portion not audible)

12 I just ask that you give him the least sentence you
13 can give to him. I'm sorry but I don't have the words . .

14 THE COURT: You're fine.

15 MOTHER OF DEFENDANT: I'd like him to be with me to
16 help me. I love my son and I apologize as his mother for
17 what happened.

18 THE COURT: Thank you, maam.

19 Mr. Williams, is there anything you want to say?

20 DEFENDANT: (Portion not audible) I made a mistake
21 and I'm sorry it happened.

22 THE COURT: Mr. Williams; do you realize that you are
23 pleading guilty to firing a gun at other persons? Do you
24 understand that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that you could be stand-
2 ing here for killing somebody?

3 DEFENDANT: Yes, sir.

4 THE COURT: Mr. Sorenson, do you want to add anything?

5 SOLICITOR: No, sir.

6 THE COURT: It is the sentence of the Court on these
7 four charges that you are committed to the State Department
8 of Corrections for a period of fifteen years, the sen-
9 tences to run concurrent, and I will give you credit for
10 the time you have served.

11 Good luck to you.

12 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Harry Dot Walker to the best of my ability, having been heard in the Court of General Sessions for Orangeburg County on January 22, 2013.

I further certify that I am neither of kin nor counsel to any party to this matter, nor do I have any interest in the same.

April 8, 2014



FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Orangeburg)
)
Devourshay Antwan Williams, Jr.)
 Full name and prison number (if any) of Applicant)
 # 354051)
 v.)
)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-38-00222

FILED
MAY 17 2014
CLERK OF COURT

AM

APPLICATION FOR

POST-CONVICTION RELIEF

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 Lee Correctional Institution, 990 Wisacky Hwy, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Court of Common Pleas, First Judicial Circuit, Orangeburg County,
3. Name(s) of co-defendant(s) (if any) Kadeem Neals, Jeffrey Mincer
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-38-2017
 - (b) 2011-GS-38-2018

(c) 2011-GS-38-2019, 2011-GS-38-2020

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

(a) 1/22/13, 15 years - CONCURRENT (All counts)

(b) 1/22/13, 15 years - CONCURRENT

(c) 1/22/13, 15 years - CONCURRENT

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) did not know of the right to appeal

(b) Counsel did not ~~know~~ inform me of my right to appeal

- (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) ineffective assistance of Counsel
- (c) ineffective assistance of Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please See attached
- (b) Please See attached
- (c) Please See attached
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

11. (a)

(a) Counsel learned of the basic facts surrounding applicant's case from talking with applicant, but never personally investigated the case.

(b) Counsel was aware applicant had made a written confession, but never inquired as to the circumstances under which it was obtained.

(c) Counsel never informed applicant of the elements of the crime of attempted-murder or the fact that the State had the burden to prove those elements beyond a reasonable doubt.

(d) Counsel never discussed any possible defenses applicant might have had to the charges against him; ~~nor did~~ Counsel never discussed with applicant the circumstances surrounding his arrest.

(e) Counsel never advised applicant of all other facts essential to a broad understanding of the charges, consequently applicant did not freely and voluntarily waive his right to a jury trial.

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 COUNTY OF...
 JUDGE...

JAN 17 PM 11:28

PM

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) N/A
- (b) _____
- (c) _____

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 CLERK OF COURT
 DISTRICT COURT
 ORANGEBURG, SC

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. R. Douglas Mellaard, Esq.; Orangeburg County Public Defender, 190 Gibson St. RM. 110, Orangeburg, SC 29116-1112
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. ARRAIGNMENT, PLEA AND SENTENCING
 - ii. _____
 - iii. _____

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

Conviction vacated and set-aside; New trial on the merits

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

NO

JAN 17 PM 11:28
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CLERK OF COURT
COMMERCIAL DISTRICT

STATE OF SOUTH CAROLINA)

County of Greenville Lee)

VERIFICATION

I, Devourshay Antwan Williams, Jr., 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.

Devourshay Williams Jr

SWORN to and subscribed before me this 14 day of Jan., 2014.

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Devourshay Antwan Williams, Jr., 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.

Devourshay Williams Jr
Applicant

SWORN or affirmed to and subscribed before me this

14 day of Jan, 2014.

[Signature]
Notary Public

My Commission Expires: 11-4-2015

FILED FOR RECORD
CLERK OF COURT
ORANGETHURG, SC
JAN 17 AM 11:28

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	FOR THE FRST JUDICIAL CIRCUIT
)	
Devourshay A. Williams, Jr., #354051;)	Case No. 2014-CP-38-0222
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for post-conviction relief filed January 17, 2014, would respectfully show this Court:

I.

Applicant is presently incarcerated within South Carolina Department of Corrections pursuant to orders of commitment from the Orangeburg County Clerk of Court. Applicant was indicted during the November 7, 2011 term of the Orangeburg County Grand Jury for four counts of Attempted Murder (2011-GS-38-2017 through -2020). Applicant was represented by R. Douglas Mellard, Esquire. On January 22, 2013, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty as indicted. Judge Dickson sentenced Applicant to fifteen years imprisonment for each count of attempted murder, with all sentences to be served concurrently.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv). The Remittitur was sent on April 22, 2013.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records and the transcript from Applicant's

guilty plea proceeding. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel;
 - a. "Counsel learned of the basic facts surrounding Applicant's case from talking to Applicant, but never personally investigated the case;"
 - b. "Counsel was aware Applicant made a written confession, but never inquired as to the circumstances under which it was obtained;"
 - c. "Counsel never informed Applicant of the elements of the crime of attempted murder of the fact that the state had the burden to prove those elements beyond a reasonable doubt;"
 - d. "Counsel never discussed any possible defense Applicant might have had to the charges against him; Counsel never discussed with Applicant the circumstances surrounding his arrest;"
 - e. "Counsel never advised Applicant of all other facts essential to a broad understanding of the charges, consequently Applicant did not freely and voluntarily waive his right to a jury trial."

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper

functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

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

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that: (1) counsel was ineffective; and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that 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 which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

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

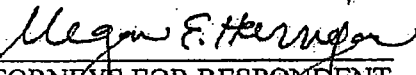
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

April 16, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
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)
 DEVOURSHAY WILLIAMS, JR., #354051)
)
 Applicant,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2014-CP-38-0222

AFFIDAVIT OF SERVICE BY MAIL

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

Jonathan Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street
Suite 104
Columbia, South Carolina 29201

DATED this 16th day of April, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF COMMON PLEAS
2014-CP-38-0222

DEVOURSHAY WILLIAMS)
VS.)
STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD
MAY 20, 2015
ST. GEORGE, SC

B E F O R E:

THE HONORABLE MAITÉ MURPHY

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

JONATHAN D. WALLER, ESQUIRE
Attorney for the Applicant

J. CLAYTON MITCHELL, ESQUIRE
Attorney for the Defendant

Ruth L. Mott, RPR, CRR
Certified Court Reporter

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 DEVOURSHAY WILLIAMS

MR. WALLER

4

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5 MR. MITCHELL

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6 ASHLEY CHISHOLM

MR. MITCHELL

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7 MR. WALLER

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8 ROBERT DOUGLAS MELLARD

MR. MITCHELL

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9 MR. WALLER

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10 CERTIFICATE OF REPORTER 21

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E X H I B I T S

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14 NO.

DESCRIPTION

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(NONE MARKED)

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1 MR. MITCHELL: Your Honor, may it please the Court.

2 THE COURT: Yes, sir.

3 MR. MITCHELL: Last matter of the day is Devourshay
4 Williams versus the State of South Carolina, 2014-CP-38-0222.
5 Mr. Williams was indicted in November of 2011 in Orangeburg
6 for four counts of attempted murder. He was represented on
7 these charges by Mr. Doug Mellard. He plead guilty before
8 Judge Dickson January 22nd of 2013. He was sentenced to 15
9 years' imprisonment on each count with those to be served
10 concurrently. A notice of appeal was filed on his behalf
11 which the Court of Appeals dismissed. Mr. Williams filed
12 this application for post-conviction relief January 17th,
13 2014, where he alleges various aspects of ineffective
14 assistance of counsel. Mr. Williams is present and
15 represented by Mr. Jonathan Waller, and I'd ask that they
16 articulate the grounds they're going forward on today.

17 THE COURT: Mr. Waller.

18 MR. WALLER: Thank you, Your Honor. Your Honor, we are
19 proceeding on grounds of ineffective assistance of counsel;
20 specifically, that Mr. Mellard, and Mr. Chisholm I guess was
21 representing Mr. Williams at the beginning of his criminal
22 charges, for failure to investigate.

23 THE COURT: All right. You may proceed.

24 MR. WALLER: Thank you, Your Honor. I would call
25 Devourshay Williams.

1 arrested?

2 A. Yes, sir.

3 Q. In that five months that he was appointed to represent
4 you, how many times do you think you met with him?

5 A. Once.

6 Q. Okay. And why did Mr. Mellard come to be your lawyer
7 instead of Mr. Chisholm?

8 A. You say Mr. Miller?

9 Q. Mellard.

10 A. Because like I think Ash Chisholm went to Dorchester
11 County.

12 Q. Okay. So it wasn't any -- no falling out or anything
13 like that?

14 A. Say that again.

15 Q. There wasn't any falling out between you and Mr.
16 Chisholm?

17 A. Oh, no, sir. He just, I think he had a situation with
18 his wife and his family, so he moved to Dorchester County,
19 closer to home.

20 Q. Okay. Now, in the incident that led to you being
21 charged, you were actually shot, is that right?

22 A. Yes, sir.

23 Q. Okay. And did you go to the hospital?

24 A. Yes, sir.

25 Q. And you had surgery?

1 A. Not right then and there. I had surgery like I want to
2 say a couple months later down in line, like six, seven
3 months later.

4 Q. Was a piece of bullet removed from you?

5 A. Yes, sir, out my throat.

6 Q. Out of your throat?

7 A. Yes, sir.

8 Q. Okay. Do you recall any, in your discovery, any testing
9 being done on that bullet?

10 A. No, sir.

11 Q. Okay. Do you know what happened to that bullet?

12 A. No, sir.

13 Q. Did either of your attorneys ever ask about the bullet?

14 A. No, sir.

15 Q. Okay. In meeting with your attorneys did they, either
16 of them, have an opportunity to talk to you about the charge
17 of attempted murder?

18 A. No, sir.

19 Q. Did you understand how much time that potentially
20 carried?

21 A. Yes, sir.

22 Q. Did you understand the elements of that crime and what
23 the State would have to show to prove you guilty?

24 A. No, sir.

25 Q. Did you and either of your attorneys talk about what

1 evidence the State actually had?

2 A. No, sir.

3 Q. There were several statements written in this case, is
4 that right?

5 A. Yes, sir.

6 Q. Did you and your attorneys have a chance to talk about
7 those statements?

8 A. Yes, sir.

9 Q. What did either of them say about the statements?

10 A. I mean, from Ash Chisholm we never did get the chance to
11 investigate my case, go over my case; so when I got to
12 Mellard, I mean, basically, when I first seen him, I was just
13 told that my codefendant wrote a statement on me and it was
14 best for me to plead instead of go to trial because if I
15 would go to trial and lose I would catch 30 years.

16 Q. Okay. Now you weren't arrested immediately, is that
17 right?

18 A. No, sir.

19 Q. How long from when this incident took place to when you
20 were arrested?

21 A. I want to say like -- like 12 hours later.

22 Q. Okay. Did you and your attorneys talk about that gap of
23 time?

24 A. No, sir.

25 Q. How did law enforcement to your understanding get your

1 name?

2 A. From my understanding, I mean, my uncle told them who I
3 was because, when he surrendered, he told them that I had got
4 shot and that I was still in the woods.

5 Q. Okay. And was that one of the statements that was made?

6 A. Yes, sir.

7 Q. Did you all talk about that statement?

8 A. No, sir.

9 Q. Mr. Williams, was the allegations that the State was
10 making, is that exactly the way the whole situation went
11 down?

12 A. No, sir.

13 Q. Okay. Did you and your attorneys talk about what you're
14 saying actually happened?

15 A. I mean, I had explained, like I explained what happened,
16 what really happened to them, I told them.

17 Q. Okay. So which attorney?

18 A. Doug Mellard.

19 Q. So he was aware that you had issues with the
20 circumstances as law enforcement said they were?

21 A. Yes, sir.

22 Q. What was his response when you told him that?

23 A. He really didn't give me no response. He just was like
24 basically my codefendant wrote a statement saying that I shot
25 four times and it would be best for me to plead instead of

1 going to trial with what I had known and basically just told
2 me to plea.

3 Q. What did you tell him was different than what law
4 enforcement said happened?

5 A. I basically just told him it ain't went like how they
6 said. They said that -- basically they made it seem like I
7 waited for the police to pull up and start shooting, but I
8 told him it was like I was threatened if I ran that I would
9 have got shot, I mean, and I didn't shoot four times.

10 Q. Okay. Now, ultimately you decide to plead guilty, is
11 that right?

12 A. Yes, sir.

13 Q. And during your plea hearing the solicitor's office
14 reads out their version of the facts, do you remember that?

15 A. No, sir.

16 Q. Okay. Do you remember having to agree with their facts
17 in order to plead guilty?

18 A. Yes, sir.

19 Q. What was said between you and Mr. Mellard to get you to
20 plead guilty?

21 A. I mean, at the time when I was going to Court and my
22 plea was 12 to 15, that's when they was telling me that the
23 judge was going to come to a debation about -- he just told
24 me that the best thing for me to do was to plead to the 12-15
25 instead of going to trial and losing and catching 30 years.

1 Q. Okay. Did you ever express to him that you wanted to go
2 to trial?

3 A. Yes, sir.

4 Q. Okay. What did he say about that?

5 A. He just told me he would go to trial with me and if I
6 lose I would get 30 years.

7 Q. Mr. Williams, I've asked all the questions that I have
8 for you. Is there anything that you think I've left out or
9 anything you want the Court to be aware of about Mr. Mellard
10 in particular's representation of you, anything you think he
11 didn't do correctly?

12 A. I mean, yes, sir, I feel like he could have an
13 investigator investigate my case a little more to see that I
14 really didn't shoot the amount of time they said I shot and
15 that I was threatened, and one of my codefendants statement
16 saying that before the police came that we was threatened if
17 we ran that we would be shot, I mean, I feel like he could
18 have investigated more to see that it didn't happen like all
19 the newspapers said, that I waited for the police officer to
20 pull up and I started shooting in a spin and a waving
21 direction. I mean, that's basically it.

22 Q. If he had done more investigation, do you think he would
23 have understood what happened like you're saying?

24 A. Yes, sir.

25 Q. If he had understood that, would you have plead guilty,

1 or would you have gone to trial?

2 A. I would have went to trial.

3 MR. WALLER: Mr. Williams, I have no further questions.

4 Please answer any questions Mr. Mitchell has.

5 THE COURT: Counsel.

6 CROSS-EXAMINATION BY MR. MITCHELL:

7 Q. Good afternoon, Mr. Williams.

8 A. Good afternoon.

9 Q. So you were facing four counts of attempted murder, is
10 that right?

11 A. Yes, sir.

12 Q. That would have carried 30 years on each one of those
13 counts, is that right?

14 A. Yes, sir.

15 Q. Okay. And you chose to plead guilty before Judge
16 Dickson, correct?

17 A. Yes, sir.

18 Q. And there you admitted that you were guilty, right?

19 A. Yes, sir.

20 Q. And that you didn't want a trial.

21 A. Yes, sir.

22 Q. Now in the plea negotiations you were able to get the
23 four attempted murder charges dropped down to voluntary
24 manslaughter; is that correct?

25 A. No, sir.

1 Q. That's not correct?

2 A. Yes, sir, that's not correct.

3 Q. Oh, yes, excuse me, sorry about that. You were able to
4 talk them down to a sentence of 15 years; is that correct?

5 A. Yes, sir.

6 Q. That's what ended up happening, though, that's what
7 Judge Dickson ended up sentencing you to, is that right?

8 A. Yes, sir.

9 Q. So you had some reservations about the solicitor's
10 facts, is that right, just some of the ways they phrased
11 things?

12 A. Yes, sir.

13 Q. But you agree with the events for the most part, right?

14 A. I mean, I believe because, I mean, I was, you know,
15 win-lose situation because I was told if I went to trial I
16 would have caught 30 years.

17 Q. Okay. So you pled because you hoped to get a little
18 less time?

19 A. Yes, sir.

20 Q. And you gave a statement that admitted some of your
21 involvement, is that right?

22 A. Yes, sir. And during my statement I wrote it saying
23 that I was in fear because I was threatened.

24 Q. Okay. Right. And at the end of the hearing you
25 apologized and admitted that you made a mistake, is that

1 right?

2 A. Yes, sir.

3 MR. MITCHELL: No further questions.

4 THE COURT: Anything further?

5 MR. WALLER: Just one question, Your Honor.

6 REDIRECT EXAMINATION BY MR. WALLER:

7 Q. Mr. Williams, did you agree with the facts as the
8 solicitor said it because you knew that's the only way your
9 plea would go forward?

10 A. I mean, yes, sir.

11 MR. WALLER: No further questions.

12 THE COURT: You may step down, sir. Thank you. You may
13 call your next witness.

14 MR. WALLER: No further witnesses, Your Honor.

15 THE COURT: State?

16 MR. MITCHELL: State calls Mr. Ash Chisholm.

17 ASHLEY CHISHOLM,

18 being first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. MITCHELL:

20 Q. Good afternoon, Mr. Chisholm. Thanks for being here
21 today.

22 A. Sure.

23 Q. Can you give us a quick rundown of your background for
24 the record?

25 A. I've been practicing I guess about seven years at this

1 point with the Public Defender's Office, from the beginning
2 originally in Orangeburg. I've been in Dorchester I think
3 about two or three years now.

4 Q. Were you appointed on this case here?

5 A. I was.

6 Q. Through your position with the Public Defender's Office?

7 A. That's correct.

8 Q. Okay. Do you recall meeting with Mr. Williams here?

9 A. I do. Would you like me to kind of outline the period
10 of my representation?

11 Q. Sure, what you would have advised him and then when you
12 would have handed off to Mr. Mellard.

13 A. Sure, it looks like our file was originally opened in
14 late September of 2011. Looks like I got a copy of the
15 discovery probably late October. I gave a copy of the
16 discovery to Mr. Williams I believe on October 27th. I met
17 with him and Mr. Mellard December 2nd and actually met with
18 his mother December 20th, and I believe the day after that,
19 December 21st, is when the case was officially transferred to
20 Mr. Mellard because, as Mr. Williams said, I transferred down
21 to Dorchester at that point. So I guess I had the case for
22 about three months. I had it with discovery for a little
23 under two months, so I did have a chance to go through the
24 discovery. I'm not sure if it was complete at the time
25 because I wasn't on it very long, but probably what my

1 discussions would have been limited to at that point would
2 have been discussion of the charges in general, what they
3 carry, the elements, that kind of thing; and, you know,
4 depending on the discovery I had at the time, like I said, I
5 can't remember if it was complete or not, would have gone
6 into it and how that may have applied to the charges.

7 Q. Did you enter into any plea negotiations?

8 A. I did not.

9 MR. MITCHELL: No further questions. Thank you. Please
10 answer anything Mr. Waller has.

11 CROSS-EXAMINATION BY MR. WALLER:

12 Q. Mr. Chisholm, do you recall whether Mr. Williams had
13 surgery while you were still representing him?

14 A. I do not recall when he had surgery, but I do recall he
15 had been shot. I don't remember if he had had the surgery
16 before I got the case, during, while I had it, I don't
17 recall.

18 MR. WALLER: Okay. No further questions. Thank you.

19 THE COURT: You may step down, sir, thank you.

20 THE WITNESS: May I be excused, Your Honor.

21 THE COURT: Yes, sir.

22 MR. MITCHELL: Your Honor, State calls Mr. Douglas
23 Mellard.

24 ROBERT DOUGLAS MELLARD,
25 being first duly sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. MITCHELL:

2 Q. Good afternoon, Mr. Mellard.

3 A. Good afternoon.

4 Q. Could you give us a brief rundown of your background and
5 employment?

6 A. All right. Passed the bar in '97, worked as I guess
7 what clients would call a real attorney for a while, then in
8 2005 became public defender.

9 Q. And you were appointed to represent Mr. Williams in this
10 case?

11 A. I took over from Ash Chisholm.

12 Q. So the case had already been going at that point and you
13 had already had a copy of discovery; is that correct?

14 A. Correct.

15 Q. And that discovery would have contained his statement
16 and the statement of his codefendants?

17 A. Correct.

18 Q. And the statement of his codefendants implicated him?

19 A. Correct.

20 Q. And his statement also implicated himself?

21 A. Right.

22 Q. It was a bit of a -- somewhat of a confession?

23 A. Right.

24 Q. How did plea negotiations go in this case?

25 A. I don't really -- I didn't really write down exactly how

1 we ended up at that number. I know the solicitor was
2 recommending nothing, so what we did was we went in, talked
3 it over with the Judge and at some point arrived at 12 to 15.

4 Q. So he was facing a lot more than that on the four
5 charges, is that right?

6 A. Correct.

7 Q. Did the fact that he didn't have a prior record help his
8 case with the solicitor do you think?

9 A. I know it didn't hurt. Whether it helped I don't know.

10 Q. He had a dispute about some of the facts that the
11 solicitor laid out. Did you have any concerns with that?

12 A. What do you mean concerns?

13 Q. Did he raise any of those concerns to you, I guess,
14 before that he didn't agree completely with the State's
15 version of what happened?

16 A. He didn't. What he was telling us is he was scared and
17 he fired because he was scared.

18 Q. So not that he was trying to hurt anyone, he was just
19 kind of panicked, is that it?

20 A. Yes, he was -- we got hold of some 911 tapes, and we sat
21 down and listened to all the 911 tapes, and these are not
22 normal 911 tapes. These are more like a football
23 play-by-play kind of thing because you've got numerous people
24 calling in, hey, we're chasing these people, these people
25 tried to break into a home, we've got them down this road,

1 we've got them down this road, and then you hear from the
2 police, we've got them cordoned off. So it was pretty much a
3 play-by-play of exactly what was going on at exactly the time
4 from the perspective of the people that were calling in.

5 Q. So and then police had showed up, and that's when some
6 of the shots got fired. Can you describe that a bit?

7 A. I believe that the -- they were being held. People had
8 allegedly seen them breaking into a house, so they chased
9 them around for a while, and they held them, waiting for the
10 cops. They called the cops. I believe it was Thrower, I
11 believe, was driving up, and at that point gunshots.

12 Q. What was your advice on whether the case should go to
13 trial or whether he should plead guilty?

14 A. My advice was he should try to plead guilty. I mean,
15 you had his statement, you had his codefendant's statement,
16 you had the play-by-play which pretty much set out everything
17 that was going on, and you had the statements of the police
18 who were there and the other people that were there.

19 MR. MITCHELL: I don't have any further questions.

20 Please answer any Mr. Waller has.

21 THE COURT: Mr. Waller.

22 MR. WALLER: Thank you, Your Honor, briefly.

23 CROSS-EXAMINATION BY MR. WALLER:

24 Q. Mr. Mellard, were you yet representing Mr. Williams when
25 he had surgery to remove a bullet fragment?

1 A. I don't think -- I started representing him -- well, I
2 met with him in December with Ash Chisholm. I don't have
3 anything in my notes from that point on that he had surgery.

4 Q. You just testified that it was your understanding that
5 some people were chasing them around, kind of cornering them,
6 waiting on law enforcement?

7 A. Correct.

8 Q. Then when Investigator Thrower showed up, that's when
9 shots were fired.

10 A. Right.

11 Q. How did Mr. Williams get shot, what was your
12 understanding of how that happened?

13 A. When he fired some shots, people fired back.

14 Q. When you say people, who are you talking about?

15 A. Thrower I believe said he fired and there were also some
16 I guess you'd call them just people who were in the
17 neighborhood who had been chasing him, I believe some of them
18 had guns, and they may have fired too.

19 Q. So not law enforcement.

20 A. Well, not excluding law enforcement. I believe law
21 enforcement and other people.

22 Q. Okay. Did you ever do any investigation to see who
23 those other people were?

24 A. I knew who they are, I just don't -- I can't tell you
25 off the top of my head who they are.

1 Q. Sure. Was there ever any indication that they may have
2 fired prior to law enforcement pulling up?

3 A. I didn't see anything in that.

4 Q. Okay. Did you ever speak with an investigator about
5 this case?

6 A. I don't think I did.

7 MR. WALLER: Beg the Court's indulgence one second.

8 No further questions.

9 THE COURT: Anything further?

10 MR. MITCHELL: Nothing further from the State, Your
11 Honor.

12 THE COURT: You may step down, Mr. Mellard. Thank you.
13 Any other witnesses?

14 MR. MITCHELL: No further witnesses.

15 THE COURT: All right. Again the Court will take the
16 matter under advisement and notify you of the ruling.

17 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF ORANGEBURG
4

5 I, the undersigned Ruth L. Mott, Certified Court
6 Reporter for the State of South Carolina, do hereby certify
7 that the foregoing is a true, accurate and complete
8 transcript of record of all the proceedings had and evidence
9 introduced in the matter of the above-captioned case,
10 relative to appeal, in the 1st Judicial Circuit Court for
11 Orangeburg County, South Carolina, on the 20th of May, 2015.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 October 3, 2016

16
17 *Ruth L. Mott*

18 Certified Court Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Devourshay A. Williams, Jr., #354051,

2014-CP-38-0222

ATTORNEY AT LAW
Applicant, FILE COPY

v.

Winyia B. Clark

ORDER OF DISMISSAL

State of South Carolina, CLERK OF COURT
ORANGEBURG COUNTY SOUTH CAROLINA

Respondent.

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2015 AUG 26 1 A 12: 02

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 17, 2014. Respondent made its Return on April 17, 2014, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire was appointed by the Orangeburg County Clerk of Court. An evidentiary hearing was held on May 20, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's plea counsel, R. Douglas Mellard, Esquire, and Ashley D. Chisholm, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently incarcerated within the South Carolina Department of Corrections pursuant to orders of commitment from the Orangeburg County Clerk of Court. Applicant was indicted during the November 2011 term of the Orangeburg County Grand Jury for four counts of attempted murder (2011-GS-38-2017 through -2020). Applicant was represented by Counsel

Chisholm and Counsel Mellard. On January 22, 2013, Applicant appeared before the Honorable Edgar W. Dickson, where he pleaded guilty as indicted. Judge Dickson sentenced Applicant to fifteen (15) years' imprisonment for each count of attempted murder, with all sentences to be served concurrently.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv). The Remittitur was sent on April 22, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in failing to investigate.

II. SUMMARY AND EVIDENCE PRESENTED AT THE PCR HEARING

Applicant's Testimony

Applicant testified he was represented by Ashley Chisholm who represented him for about five months. He was charged with four counts of attempted murder. He testified he was shot at the scene of the incident and had surgery to have a bullet removed from his throat. He did not believe any testing had been done on that bullet. He testified he was not advised of the charges he was facing or the elements of those charges. He alleged that his attorneys could have more thoroughly investigated his case. He testified he did not shoot as many times as was alleged and that he was threatened if he ran he would be shot. Applicant acknowledged giving a confession and admitting to the trial court that he made a mistake and apologizing to the court.

Counsel Ashley D. Chisholm's Testimony

Counsel Chisholm testified he has been practicing law for about seven (7) years. He recalled that he was appointed to represent Applicant in late September 2011. He testified he

received a copy of discovery in October 2011 and gave Applicant a copy to review himself. Counsel Chisholm met with Applicant on December 2, 2011, along with Counsel Mellard. He testified he reviewed the charges with Applicant. He explained that he transferred from the Orangeburg County Public Defender's Office to the Dorchester office and that Counsel Mellard took over his representation. He recalled that Applicant fired shots towards law enforcement who then returned fire and hit Applicant, requiring him to have surgery.

Counsel R. Douglas Mellard's Testimony

Counsel Mellard testified he was appointed to represent Applicant through his position with the Orangeburg County Public Defender's Office. He testified he took over representation of Applicant because Counsel Chisholm left the office. He testified he advised Applicant to plead guilty due to the weight of evidence the State was prepared to present if he were to go to trial. Specifically, Counsel Mellard noted that Applicant and his codefendant gave incriminating statements. He also noted that the 911 call provided a play by play of the shootings and events which also strongly implicated Applicant. He gave a brief summary of the facts: individuals were chasing Williams and his codefendant because the individuals believed them to be involved in an attempted burglary, an investigator arrived, and Applicant fired towards the investigator and other individuals. Applicant was shot in the return fire. Counsel Mellard testified he did not thoroughly investigate whether Applicant actually fired the shots towards the investigator and individuals.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that

"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department

of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failure to Investigate

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to investigate Applicant's claim that he did not fire at the investigator and individuals at the scene. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). In light of Counsel's credible testimony that he evaluated and apprised Applicant on the matter, Applicant has produced no reliable testimony that would diminish his culpability on the attempted murder charges. Regardless, the allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). Applicant failed to present any evidence that he was not the one who fired towards the investigator and individuals at the scene. This Court finds all the evidence before it supports the State's contention that Applicant was clearly the shooter including his statement, his codefendants' statement, and the 911 tape.

Additionally, the record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Thus, this allegation is readily denied and dismissed.

All Other Allegations

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

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 18 day of Aug, 2015.

St. Gary, South Carolina

Maité Murphy
MAITÉ MURPHY
Presiding Judge

ATTEST: TRUE COPY

Winnaja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

WITNESSES

Johnny Thrower

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M195806

Arrested: September 19, 2011

ACTION OF GRAND JURY
TRUE BILL

NOV 19 2011

Diane Bilcone

Date 11-9-11

Foreperson of Grand Jury

Date: November 9, 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS38-2017

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 7, 2011 TERM

THE STATE
vs.

Devourshay Antwan Williams

Indictment for

ATTEMPTED MURDER

ATTEST: TRUE COPY
Winnifia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
WINNIFIA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2011 NOV -9 AM 10:45

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

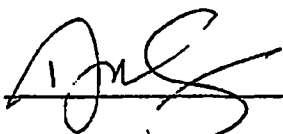
INDICTMENT
2011GS38-2017

At a Court of General Sessions, convened on November 7, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

That in Orangeburg County, South Carolina, on or about September 16, 2011, the Defendant, Devourshay Antwan Williams, did with intent to kill, attempt to kill Inv. Johnny Thrower, with malice aforethought, either express or implied, by means of shooting a gun at the victim, this offense in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

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


Donald N. Sorenson, Solicitor

WITNESSES

Johnny Thrower

Orangeburg County Sheriff

ARREST WARRANT NUMBER

M195807

Arrested: September 19, 2011

ACTION OF GRAND JURY
TRUE BILL
W. Jane Bloomer
 NOV 09 2011
 Date 11-9-11

Foreperson of Grand Jury
Date: November 9, 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-2018

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 7, 2011 TERM

THE STATE
vs.

Devourshay Antwan Williams

Indictment for

ATTEMPTED MURDER

ATTEST: TRUE COPY
Winnifia B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
 WINNIFIA B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC

2011 NOV - 9 AM 10: 44

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-2018

At a Court of General Sessions, convened on: November 7, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

That in Orangeburg County, South Carolina, on or about September 16, 2011, the Defendant, Devourshay Antwan Williams, did with intent to kill, attempt to kill Samuel Murray, with malice aforethought, either express or implied, by means of shooting a gun at the victim, this offense in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor

WITNESSES

Johnny Thrower

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M195808

Arrested: September 19, 2011

TRUE BILL
ACTION OF GRAND JURY
NOV 09 2011
<i>Deane B. Clark</i>
Date 11/9/11

Foreperson of Grand Jury
Date: November 9, 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-2019

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS
November 7, 2011 TERM

THE STATE
vs.

Devourshay Antwan Williams

Indictment for
ATTEMPTED MURDER

ATTEST: TRUE COPY
Winnifia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
WINNIFIA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2011 NOV -9 AM 10:44

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-2019

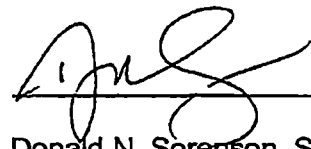
At a Court of General Sessions, convened on November 7, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

That in Orangeburg County, South Carolina, on or about September 16, 2011, the Defendant, Devourshay Antwan Williams, did with intent to kill, attempt to kill Morgan Sheider, with malice aforethought, either express or implied, by means of shooting a gun at the victim, this offense in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

ORANGEBURG COUNTY

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



Donald N. Sorenson, Solicitor

WITNESSES

Johnny Thrower

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M195815

Arrested: September 21, 2011
TRUE BILL
ACTION OF GRAND JURY
 NOV 09 2011
 (Signature)
 Date 11-9-11

Foreperson of Grand Jury
Date: November 9, 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-2020

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 7, 2011 TERM

THE STATE
vs.

Devourshay Antwan Williams

Indictment for

ATTEMPTED MURDER

ATTEST: TRUE COPY
Winnifia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
WINNIFIA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2011 NOV -9 AM 10: 44

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-2020

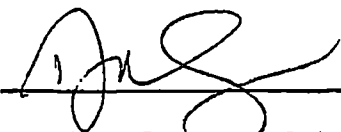
At a Court of General Sessions, convened on November 7, 2011 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

That in Orangeburg County, South Carolina, on or about September 16, 2011, the Defendant, Devourshay Antwan Williams, did with intent to kill, attempt to kill Johnny S. Summers, with malice aforethought, either express or implied, by means of shooting a gun at the victim, this offense in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

2011 SEP 16 10 20 AM
CLERK OF COURT
ORANGEBURG COUNTY

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



Donald N. Sorensen, Solicitor