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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County

Perry H. Gravely, Circuit Court Judge

WILLIAM DAVID BOONE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001743

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR PETITIONER

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Attorney General Office
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ATTORNEYS FOR RESPONDENT

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State of South Carolina
County of Lexington

Court of General Sessions

State)
)
) v.) Transcript of Record
) 14-GS-32-893
)
William David Boone)
)
)
Defendant.)

May 8, 2014
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

Shannon A. Davis, Assist. Solicitor
Attorney for the State

Elizabeth C. Fullwood, Assist. Public Defender
Attorney for the Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

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I N D E X

WITNESSES DIRECT CROSS REDIRECT RECROSS

(There were no witnesses.)

E X H I B I T S

NO. DESCRIPTION ID. EVD.

(There were no exhibits.)

1 (The following proceedings were held on May
2 8, 2014.)

3 **THE CLERK:** 2014-GS-32-893, State versus
4 William David Boone, indicted for criminal domestic
5 violence third or subsequent offense. He is
6 pleading as charged. The indictment has been true
7 billed. He is represented by Ms. Fullwood.

8 WILLIAM DAVID BOONE,
9 having been duly sworn, testified as follows:

10 **PROBATION AGENT:** Judge, Mr. Boone is also on
11 probation and here's a warrant that we served.

12 **THE COURT:** You're William David Boone?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** This indictment charges that in
15 Lexington County, on or about January 11, 2014, you
16 unlawfully caused physical harm or injury to a
17 member of your family or household. It's alleged
18 that you struck Elizabeth Pope Lewis, assaulted her,
19 scratched her, that you have four prior violations
20 for the same offense. It appears that you wish to
21 enter a plea of guilty to criminal domestic violence
22 third offense or greater; is that correct?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Ms. Fullwood, have you fully
25 explained to your client the nature and elements of

1 the offense, the possible punishment and his
2 constitutional rights, including trial by jury?

3 **MS. FULLWOOD:** Yes, Your Honor.

4 **THE COURT:** Are you satisfied there's a factual
5 basis for his plea?

6 **MS. FULLWOOD:** Yes, Your Honor.

7 **THE COURT:** Do you agree with his decision?

8 **MS. FULLWOOD:** I do, sir.

9 **THE COURT:** Mr. Boone, today are you under the
10 influence of any medicine, alcohol, drug or anything
11 affecting your thinking?

12 **DEFENDANT:** I've taken medicine, but it makes
13 me think better.

14 **THE COURT:** What kind of medicine do you take?

15 **DEFENDANT:** Neurontin and Zyprexa.

16 **THE COURT:** What's that for?

17 **DEFENDANT:** It's to do something or another. I
18 can't --

19 **MS. FULLWOOD:** He's got a mood disorder as a
20 result of traumatic brain injury.

21 **THE COURT:** Did you say it helps you think
22 clearly?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** You're clearheaded today, you know
25 what you're doing?

1 **DEFENDANT:** Yep.

2 **THE COURT:** Do you take the medicine like the
3 doctor tells you to?

4 **DEFENDANT:** Yep.

5 **THE COURT:** If I ask you anything or we say
6 anything you don't understand, you let us know, all
7 right?

8 **DEFENDANT:** Okay.

9 **THE COURT:** If you need to talk to your lawyer
10 at any time, you just let us know, we'll stop, all
11 right?

12 **DEFENDANT:** I'm not admitting I didn't do none
13 of it. I did all of it. And you got to tell the
14 truth, so that's what I'm doing, you know. And the
15 quicker I get this over with, the faster I can pay
16 some child support.

17 **THE COURT:** All right. Well, if you need to
18 stop at any time to talk to your lawyer, you let me
19 know, all right?

20 **DEFENDANT:** Okay.

21 **THE COURT:** Mr. Boone, when you plead guilty,
22 you give up important rights, including your right
23 to remain silent and your right to a jury trial. Do
24 you know that?

25 **DEFENDANT:** Yep.

1 scratch on her back, immediately assumed she was
2 being unfaithful. He began arguing with her,
3 followed her to the bedroom when she tried to get
4 away from him. He pushed her onto the bed and hit
5 her on the top of her head hard enough to cause her
6 to see stars. When she was able to gather herself,
7 she went to the bathroom and the defendant followed
8 her and began violently clawing her back. Officers
9 did observe severe scratches to her back.

10 Ms. Lewis informed the officers that the
11 defendant would not let her leave the house without
12 his permission, that she's in fear for her life and
13 her children's life. And she is currently pregnant
14 with his child at this time and was at the time of
15 the incident.

16 She said she was finally able to leave her
17 house the next morning when he went to go to work
18 and she called the police then. Her two children
19 were present during the incident.

20 Ms. Lewis is present, Your Honor. She's seated
21 in the gallery. She did not wish to address the
22 Court, but wanted me to tell you that she is in
23 fear. She does think that the defendant will look
24 for her when he gets out. She's requesting no
25 contact. She said that they do have a third party

1 neutral friend that can keep the defendant updated
2 with her pregnancy. And she will be going forward
3 with family court action in regard to the children.

4 And I do have his prior record when you like to
5 hear that.

6 **THE COURT:** Go ahead.

7 **MS. DAVIS:** In New York, he has a '93 assault
8 in the second degree in Arkansas, a 2010 possession
9 of controlled substance third offense. South
10 Carolina, a '91 public drunk, unlawful carrying,
11 malicious injury to property; '92, two simple
12 assault and batteries; '97, simple possession of
13 marijuana; '98, DUS second; '99, DUS third; 2000,
14 CDVHAN and ABHAN for which he got ten years
15 suspended to four years and five years probation;
16 2004, a CDV first and ill treatment to animals;
17 2005, CDVHAN for which he received five years;
18 2007, a CDV third for which he received five years
19 suspended to two years and three years probation;
20 and in 2011, CDVHAN which he received ten years
21 suspended to four years and five years probation,
22 which I believe he's still on probation for today,
23 Your Honor.

24 **THE COURT:** Okay. Mr. Boone, do you admit
25 you're guilty of the charge?

1 **DEFENDANT:** Yes, sir, yep.

2 **THE COURT:** Has anybody forced you in any way
3 to plead against your will?

4 **DEFENDANT:** No, they didn't.

5 **THE COURT:** Any plea bargains, any deals the
6 State might have made with you, they have to tell me
7 about on the record or you lose what they don't tell
8 me. You understand?

9 **DEFENDANT:** Yep.

10 **THE COURT:** Ms. Fullwood, anything else need to
11 be on the record about the plea agreements?

12 **MS. FULLWOOD:** No, sir.

13 **THE COURT:** So has anybody promised you
14 anything to get you to plead guilty, Mr. Boone?

15 **DEFENDANT:** No, just tell the truth.

16 **THE COURT:** Are you fully satisfied with your
17 lawyer?

18 **DEFENDANT:** Yes, sir. Ms. Fullwood is a good
19 lawyer.

20 **THE COURT:** Anything else you want her to do on
21 the case she hasn't done?

22 **DEFENDANT:** Huh-huh. She's good.

23 **THE COURT:** Do you have any complaint against
24 your attorney, law enforcement or anybody else in
25 your case?

1 **DEFENDANT:** No. Ms. Lyons is a real good woman
2 too.

3 **THE COURT:** All right. Mr. Boone's made a
4 free, knowing, voluntary and intelligent decision to
5 waive his rights -- oh, I hadn't told you the
6 penalty yet. I'm sorry.

7 You understand for criminal domestic violence
8 third offense, I have to put you in prison at least
9 a year and I can put you in prison up to five years?

10 **DEFENDANT:** Yep..

11 **THE COURT:** You know it's a graduated offense.
12 So if you do this again, you face higher punishment.
13 You understand?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Mr. Boone's made a free, knowing,
16 voluntary and intelligent decision to waive his
17 rights and plead guilty. He has done so upon the
18 advice of counsel with whom he's fully satisfied.
19 There's a factual basis for his plea.

20 They've handed me some papers saying you're on
21 probation and that they've cited you for getting
22 arrested on this criminal domestic violence charge.
23 They say it's probable cause to believe that you
24 committed this offense of criminal domestic
25 violence.

1 Tell me about his probation.

2 **PROBATION AGENT:** Judge, he was sentenced on
3 November the 16th of 2011. He pled in front of
4 Judge McMahon to CDVHAN. The sentence was ten
5 years, upon the service of four years with five
6 years probation. He was ordered to complete -- and
7 he's not charged with this -- but he was ordered to
8 complete substance abuse counseling and anger
9 management, and he did not complete either. And his
10 violation today would be the plea to this new
11 charge.

12 **DEFENDANT:** I was going to the Celebrate
13 Recovery for the anger management and drug rehab,
14 but I was still going to them when I got locked up.
15 So I was going, but I just didn't get to finish.

16 **THE COURT:** Ms. Fullwood.

17 **MS. FULLWOOD:** Thank you.

18 Your Honor, Mr. Boone is 46 years old. He's
19 got a GED and he lives with his parents over in
20 Gaston. This is sort of an unfortunate situation.
21 Some time in the 90s, he was in a motorcycle
22 accident and suffered a traumatic brain injury. And
23 part of the ongoing affects of that are that it has
24 affected his mood and his ability to regulate his
25 mood. I think it's apparent in his prior criminal

1 record.

2 He showed me, I guess, a sheet that he got from
3 the psychiatrist out at the jail. And, basically,
4 that doctor's impression of him was that he suffers
5 from pseudobulbar affect secondary to traumatic
6 brain injury with a mood disorder and explosive
7 disorder. And according to Wikipedia, what
8 pseudobulbar affect means is excessive,
9 inappropriate emotion. And I think that is a pretty
10 good way to describe what he's dealing with.

11 He lives, as I say, with his parents. He tells
12 me that since the accident, he's only been out on
13 his own living with himself or with somebody else
14 other than them for a couple of times. He's not
15 completely disabled. He can read, but he can only
16 cook with a microwave. He depends on his parents to
17 handle his finances and wash his clothes and things
18 like this. He says he used to get a check, but he
19 went to jail and it was discontinued and he never
20 sought to get it reinstated because he was hoping to
21 be able to earn money by working. He does sometimes
22 work as a roofer.

23 And, apparently, he's liked by some people in
24 the community. Representative Bales, Jimmy Bales,
25 called our office to let us know that he's a fine

1 fellow as far as he's concerned and that he
2 sometimes cuts his grass for him.

3 **DEFENDANT:** Cutting grass and clean the --

4 **MS. FULLWOOD:** You know, he's been resistant to
5 using medication for his problems claiming that they
6 made him sleepy, didn't feel right, and instead, I
7 think a lot of times, by his own admission, has
8 turned to using drugs to self-medicate.

9 You know, I understand that, in a sense, if you
10 know you've got the problem, you need to do
11 something correct about it, but on the other hand, I
12 think he does seem to have some emotional and maybe
13 even cognitive problems that make it more difficult
14 for him than somebody else to address these things
15 appropriately.

16 We're hoping that Your Honor will consider
17 giving him a one-year sentence and revoking a year
18 of his probation to run concurrent with that. I
19 think in large part, it is attributable to the
20 long-term affects of that brain injury. I think he
21 understands now that you've just got to take the
22 medication and abstain from deciding what kind of
23 substances you're going to put in yourself to
24 alleviate your symptoms to get right with
25 everything.

1 He's hoping, you know, he knows that he's got
2 to stay away from Ms. Lewis, that any contact with
3 their child is going to have to come through the
4 family court, but he would like to go out there and
5 work and contribute to his child's support. And
6 he's hoping that with a one-year sentence, he can be
7 out there as quickly as possible to be able to do
8 so. He has been in jail 112 days.

9 **THE COURT:** Do you want to say anything, sir?

10 **DEFENDANT:** Yeah. I kind of went off the deep
11 end. I had a friend, she died, OD'd, and I kind of
12 went off the deep end, you know. And I couldn't
13 quit after I got started. So if you put me in jail,
14 I'd kind of like to go to ATU too. I ain't never
15 been through a drug program before.

16 **THE COURT:** Anything else?

17 **DEFENDANT:** No, that's it. She told the truth,
18 I told the truth and now you know the truth, so
19 that's all.

20 **THE COURT:** Yes, sir.

21 **DEFENDANT:** Oh, and one more thing, I'd like to
22 know who the party is so I can keep in touch with
23 how my kid's going to be doing while I'm in jail.

24 **MS. DAVIS:** Your Honor, that will be his
25 cousin, David Warner.

1 **THE COURT:** So this is his fifth criminal
2 domestic violence case?

3 **DEFENDANT:** Since I got in that motorcycle
4 wreck, I --

5 **MS. DAVIS:** This will be his sixth, but his
6 fifth in the last ten years.

7 **DEFENDANT:** Judge Westbrook court ordered me to
8 mental health and that's kind of about the only way
9 you can get to seeing people. When you go there,
10 they want to make you wait six months to get to see
11 somebody. And it's hard -- it's hard to go
12 somewhere and you're asking for medicine and they
13 tell you no.

14 And ever since that ten-year court ordered
15 mental health stopped, they don't do nothing for me
16 really. I have to wait six or eight, ten months
17 before I get to see a psychiatrist to get some
18 medicine. Ain't like I didn't try to get some. I
19 tried, but then they just deterred me when they tell
20 me to come back and tell you to come back and tell
21 you to come back. You never can get no help.

22 You know, I've been over to Morris Village one
23 time and they kept me over there for about a week,
24 but I was so violent, they kicked me out. So I
25 ain't never really got a chance to go through

1 nothing like that neither. All they do is shoot me
2 in the butt with Geodon and Ativan.

3 Your Honor, I'm real sorry for what I done.
4 And I didn't want to do it, but after it's done,
5 it's finished, it's over, you can't take it back.

6 I'd like to be out there to see my young'un
7 turn a year old. I don't care if I got to pick up
8 beer cans off the side of the road, I'll pay my
9 child support. I only went to jail one time for --
10 when I paid child support, I only went to jail one
11 time for not paying it and they locked me up and
12 then I got out and I started paying again. And now
13 my young'uns is in their 20s now. Don't get to see
14 them because they live in Georgia, but sometimes
15 they'll call me.

16 And you can see on my record when I had the
17 wreck, that's when I started getting real bad.

18 **THE COURT:** Yes, sir. It's a difficult and sad
19 situation. I'm sitting here giving a lot of thought
20 to the fact of what's the best to do for you and for
21 society and for all these different interests I have
22 to try to balance.

23 **DEFENDANT:** I understand. Whatever is on your
24 heart, give me, go ahead, because I'm guilty. Like
25 I say, I can't take it back, but I told the truth.

1 **THE COURT:** I don't think you're going to like
2 what's on my heart.

3 **DEFENDANT:** Oh, Lord. Well, you might not
4 better take what's on your heart. Let's go a little
5 lower. Can we go a little lower?

6 **THE COURT:** I don't know, but I haven't
7 announced it yet. I haven't written it yet.

8 **DEFENDANT:** Well, I didn't lie about nothing.

9 **THE COURT:** I know you didn't lie about
10 anything, but you're dangerous.

11 **DEFENDANT:** I know. When I ain't taking my
12 medicine, I get dangerous.

13 **THE COURT:** Yes, sir. And I wish we had better
14 facilities to put folks for different kinds of
15 issues. And sometimes sentencing is a hard thing to
16 do and this is one of those times.

17 **DEFENDANT:** Well, I'd like to get out and get
18 some, you know, back to the psychiatrist people. I
19 went this last time and they told me I had to wait.
20 It was a long, long waiting list to see a
21 psychiatrist and you don't get no medicine.

22 **THE COURT:** Yes, sir.

23 **DEFENDANT:** So when I come to jail, that's when
24 they help me because you get to see him right away.

25 **THE COURT:** Yes, sir. Well, thinking about it

1 anymore is not going to change. It is what it is,
2 and another person's assessment might be different
3 than mine.

4 The Court accepts the plea. The sentence is
5 that you be committed to the South Carolina
6 Department of Corrections for five years plus pay
7 the costs and assessments. You're given credit for
8 jail time under section 24-13-40 to be calculated
9 and applied by the department of corrections. I'm
10 giving you credit for 112 days served. Pay your
11 court costs at the rate of \$10 a month beginning 180
12 days after you're released from prison.

13 On your probation violation, I find that you
14 violated your probation, there being probable cause
15 to believe and now you have actually been convicted
16 of criminal domestic violence third offense or
17 greater. I revoke five years of that sentence and
18 run it consecutively. Recommend the Addictions
19 Treatment Unit while he's incarcerated. I also
20 recommend mental health counseling and treatment.
21 Good luck, sir.

22 **DEFENDANT:** How much did I get?

23 **THE COURT:** You got ten years.

24 **MS. DAVIS:** Thank you, Your Honor.

25 **THE COURT:** Terminate him after that.

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PROBATION AGENT: Yes, sir.

END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 8th of May, 2014.

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

January 17, 2015

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

FORM 5
FILED 2014 CP 3204383

STATE OF SOUTH CAROLINA

COUNTY OF

2014 DEC -2 P 4: 31

IN THE COURT OF COMMON PLEAS

BETH A. CARRICO
CLERK OF COURT

Full name and prison number (if any) of Applicant

William David Boone 270459

v.

State of South Carolina

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 Evans C.I.
2. Name and location of Court which imposed sentence Lexington County Judicial Center
3. Name(s) of co-defendant(s) (if any) 0
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014 GS3200893 COV 3rd
 - (b) 2011 COV Probation Violation
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 5-8-14 Two 5 year Sentences back to back consecutive, ATU and recommend mental health treatment

A TRUE COPY

[Signature]

Lex. Co. C.C.C.P., G.S. & E.O.

Revised 3/2003

2014 CP 3204383

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

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

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) NO access to law library
- (b) _____
- (c) _____

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

custody unlawfully: *My lawyer did not tell me I would be having probation violation trials, My lawyer did not tell me the danger of a consecutive sentence being imposed for probation violation, and Ms Fullwood told me the defense was asking for only 1 year for probation*
Fullwood did not do her job

A TRUE COPY

2014 CP 3204383

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

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

- (a) I was given 2, 5 year sentences
- (b) I was given the 2 sentences consecutive
- (c) I should have been told by my lawyer the danger of a consecutive sentence

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? _____
- (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. _____

A TRUE COPY

[Signature]

Lex. Co. C.C.C.P., G.S. & E.C.,

- (a) your arraignment and plea? Yes 2014 CP 5204383
- (b) your trial, if any? ~~Yes~~
- (c) your sentencing? ~~Yes~~ Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
- i. Elizabeth Fullwood - lexington public defenders office
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. plea & sentencing
 - ii. _____
 - iii. _____

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

Run the 2.5 year sentencing concurrent or a new trial

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

NO

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)

County of *Lexington*)

2014 CP 3204383

VERIFICATION

William Boone 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.

William David Boone

SWORN to and subscribed before me this 15th
day of December, 2014.

J. Ouellet (L.S.)
Notary Public

My Commission Expires: 2/24

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & E.C.

2014 CP 5204383

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

William Bourner, 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.

William Bourner (handwritten signature)

Applicant

SWORN or affirmed to and subscribed before me this 1st day of December, 2014

S Ouellet (handwritten signature)

Notary Public

My Commission Expires: 2/24

BETH A. GARRISON CLERK OF COURT LEVINGS

2014 DEC - 2 P 4:37

FILED

A TRUE COPY

Lex. Co. C.C.O.P., G.S. & F.G.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
William David Boone,)	C.A. No. 2014-CP-32-4383
S.C.D.C. No. 270459,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(counsel has been appointed pursuant
State of South Carolina,)	to Rule 71.1(d), SCRCP) ¹
)	
Respondent.)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed December 2, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the Department of Corrections pursuant to orders from the Lexington County Clerk of Court. Applicant was indicted by the April 2014 Lexington County Grand Jury for criminal domestic violence, third-offense (2014-GS-32-0893). He was represented by Elizabeth A. Fullwood, Esq. On May 8, 2014, Applicant entered a guilty plea, as indicted and without negotiations or recommendations, before the Honorable William P. Keesley. Judge Keesley accepted his plea and sentenced Applicant to a term of five (5) years imprisonment. Applicant’s plea additionally resulted in Judge Keesley revoking Applicant’s probationary sentence on his 2011 conviction² for criminal domestic violence of a high and aggregated nature (CDVAHN) in full. The sentences were to be served consecutively.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction, the Applicant’s records from the South Carolina

¹ By order of Appointment of Counsel, Anna Good, Esq. was appointed on December 30, 2014.

² Applicant was serving a ten (10) year split sentence suspended upon four (4) years active service and five (5) years probation for his CDVHAN conviction (2011-GS-32-3514).

Department of Corrections, and Applicant's guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel:
 - a. failure to advise Applicant on the terms of the plea agreement: "Ms Fullwood told me the defense was offering 2 years and Ms. Lyons was asking for only 1 year for probation. Ms Fullwood did not do her job;"
 - b. failure to advise Applicant that the guilty plea hearing would also include a revocation hearing;
 - c. failure to advise Applicant on sentencing exposure: "My lawyer did not tell me the danger of a consecutive sentence being imposed for a probation violation."

III.

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry

v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Respondent intends to move to dismiss Applicant's action absent timely and sufficient amended pleadings.

VI.

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

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 17, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 WILLIAM DAVID BOONE, #270459)
)
 Applicant,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

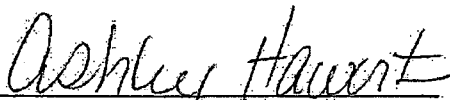
2014-CP-32-4383

AFFIDAVIT OF SERVICE BY MAIL

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

Mrs. Anna Rawl Good, Esquire
O'Neil, Good & Li, LLC
PO Box 7284
Columbia, SC 29202

DATED this 17th day of March, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	
William David Boone,)	
)	
Plaintiff,)	
v.)	Case No. 14-CP-32-4383
)	
State of South Carolina ,)	
)	
Defendant.)	

TRANSCRIPT OF PCR HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held April 21, 2016, before The Honorable Perry H. Gravely in the Court of Common Pleas for Lexington County, South Carolina; attended by counsel as follows:

APPEARANCES:

Anna R. Good, Attorney
 2127 Park Street
 Columbia, South Carolina 29201
 Appearing for Applicant

Johanna C. Valenzuela, Senior Assistant AG
 OFFICE OF ATTORNEY GENERAL
 P O Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29615
dgarrison@sccourts.org

William David Boone v State of South Carolina

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Case No. 14-CP-32-4383

Post-conviction Relief Hearing of April 21, 2016

Before The Honorable Perry H. Gravely

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(None Entered)

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Case No. 14-CP-32-4383

Post-conviction Relief Hearing of April 21, 2016

Before The Honorable Perry H. Gravely

1

2

(APPLICANT PRESENT)

3

THE COURT: All right. I'll be
glad to hear from you.

5

MS. VALENZUELA: Yes, Your Honor.

6

This is the case of William David Boone
versus the State of South Carolina, case
number 2014-CP-32-4383.

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The Applicant filed his post-
conviction relief application on December 2nd,
2014. This was after the Applicant was
indicted by the April 2014 Lexington County
Grand Jury for criminal domestic violence,
third offense.

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At the time, he was represented by
Elizabeth Fullwood. And on May 8th of 2014,
with Ms. Fullwood's representation, the
applicant entered a guilty plea as indicted
without negotiations or recommendations
before the Honorable William Keesley. Judge
Keesley accepted the Applicant's plea and
sentenced him to a term of five (5) years of
imprisonment. The plea additionally resulted
in Judge Keesley revoking the applicant's
probationary sentence on his 2011 conviction

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1 for criminal domestic violence of a high
2 and aggravated nature in full. The sentences
3 were to be served consecutively.

4 In the application that is currently
5 before the court makes allegations of failure
6 to advise Applicant on the terms of the plea
7 agreement; failure to advise Applicant that
8 the guilty plea hearing would also include
9 the revocation hearing; and, failure to
10 advise Applicant on sentencing exposure.

11 Counsel for the applicant, who is
12 present in the courtroom, is Anna Good. And
13 Ms. Good filed an amended application that
14 added the allegation of trial counsel failed
15 to present mitigating evidence at the plea
16 hearing.

17 We filed our return in this case,
18 Your Honor, on March 17th, 2015.

19 THE COURT: All right. Ms. Good,
20 I'll be glad to hear from you.

21 MS. GOOD: Thank you, Your Honor.
22 At this time I call William Boone.

23 (WITNESS TAKES STAND)

24 WILLIAM BOONE, having been duly sworn to
25 tell the truth, and nothing but the truth,

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5

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MS. GOOD:

4 Q. Mr. Boone, you're currently in-
5 carcerated on a CDV third offense which you
6 pled to on May 8th of 2014 and received five
7 years; correct?

8 A. Yes, ma'am.

9 Q. And in addition, you were revoked
10 for five years on a CDV high-and-aggravated
11 charge?

12 A. Yes, ma'am.

13 Q. Okay. And for purposes of your
14 charges that you pled to on May 8th of 2014,
15 who was your attorney?

16 A. Elizabeth Fullwood.

17 Q. Okay. And was she your attorney the
18 entire time?

19 A. Yeah. What little bit I seen her.

20 Q. Okay. And you were originally
21 arrested in January of 2014?

22 A. Yes, ma'am.

23 Q. And, again, your plea was in May
24 2014; correct?

25 A. Yes, ma'am.

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1 Q. Were you in jail the whole time or
2 were you on bond?

3 A. I was in jail.

4 Q. And from the time that you were
5 arrested in January of 2014 until your plea
6 on May 8th of 2014, those five months, how
7 many times did you meet or speak with Ms.
8 Fullwood?

9 A. One time.

10 Q. Okay. And do you remember when that
11 was?

12 A. I want to say she came to the jail-
13 house for about ten minutes, maybe. And that
14 was about it.

15 Q. Okay. When was that; do you
16 remember?

17 A. No, ma'am. I don't remember.

18 Q. Was it towards the beginning of your
19 incarceration or towards the end?

20 A. I want to say it was kind -- it
21 might be towards the middle, somewhere around
22 there.

23 Q. Okay. And in that ten-minute
24 conversation you had with her, what did you
25 discuss?

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Testimony of William David Boone - Direct Examination

1 A. Just discussed what had happened.

2 Q. Were there any plea negotiations
3 discussed with you?

4 A. Not right then, no.

5 Q. Okay. And did y'all discuss what
6 would happen if you were to plead during that
7 conversation?

8 A. No.

9 Q. And at any point during that
10 conversation did you discuss your potential
11 probation revocation?

12 A. No.

13 Q. Did you ever try to get in touch
14 with Ms. Fullwood?

15 A. Yes. Time and time again. I've
16 wrote her and called her on the phone. And
17 every time I tried to call her, they said
18 she'd be out of the office. She was in
19 court. She was always gone.

20 Q. Okay. About how many ---

21 A. And she'd never come out to the
22 jailhouse to see me.

23 Q. About how many times do you think
24 you've tried to call her?

25 A. Probably fifteen or twenty.

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1 Q. Okay. And when's the next time you
2 saw Ms. Fullwood?

3 A. In the courtroom.

4 Q. Okay. On May 8th of 2014?

5 A. The day I was sentenced. Yes,
6 ma'am.

7 Q. Okay. And the day of the plea, can
8 you take me through that day? What happened
9 that morning?

10 A. Well, she came in and she told me
11 that I was going for a one to five. And I
12 shouldn't be getting a two years where I'd do
13 a year. And then I'd get out after doing a
14 year. And she said that -- I don't know what
15 all went on but it didn't seem like it was
16 right.

17 Q. Okay. So that morning you discussed
18 the potential plea with her?

19 A. Yes, ma'am.

20 Q. And your understanding of the plea
21 was that you would receive two years?

22 A. Yes, ma'am. I was going for a one
23 to five and she said I'd be getting probably
24 two.

25 Q. Okay. And did you discuss the

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1 probation revocation at that time?

2 A. No, not at all.

3 Q. Were you aware she was even your
4 attorney on the probation revocation?

5 A. No.

6 Q. And when she told you about the two
7 years, what was your response to that?

8 A. I would take the two years.

9 Q. Okay. During the plea -- well, why
10 did you decide to take the two years? In
11 your mind?

12 A. Well, I knew if I had two years, I
13 had to do a year of it. And I'd already been
14 in for right at five months. So I'd go to
15 prison, do another six, seven months and get
16 out.

17 Q. Okay. And was it your understanding
18 that the probation revocation was going to
19 happen that day also?

20 A. I didn't know the probation was
21 happening that day.

22 Q. Okay. And when you got in front of
23 Judge Keesley for the plea, can you explain
24 to the Judge how the probation revocation
25 came about?

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Testimony of William David Boone - Direct Examination

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1 A. It was after he give me the five
2 years. Then it was kind of like a shock.
3 You know, I didn't know nothing about the
4 probation violation until he said five years,
5 you know.

6 Q. And you had been served the warrant
7 for that; correct?

8 A. Yes, ma'am.

9 Q. Okay. But you weren't aware that
10 that was happening that day?

11 A. Yeah, I didn't know it was happening
12 that day at all.

13 Q. Okay. And if you had known that was
14 going to happen that day, would you have pled
15 guilty that day or would you have waited?

16 A. No, I would have waited.

17 Q. And why would you have waited?

18 A. I'd have waited for -- that way my
19 lawyer could have told me what could have
20 happened instead of what did happen.

21 Q. Okay. So you had no idea what could
22 have happened as a result of your plea?

23 A. No. If anything I, you know, I
24 wouldn't have took the plea if I knew I was
25 going up to probation that day.

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Testimony of William David Boone - Cross Examination

1 Q. Okay.

2 MS. GOOD: No further questions,
3 Your Honor.

4 THE COURT: Any cross?

5 MS. VALENZUELA: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. VALENZUELA:

8 Q. Good morning. How are you?

9 A. How are you? I'm good. How about
10 you?

11 Q. Good. Now, Mr. Boone, you knew that
12 you were on probation before you went to the
13 guilty plea?

14 A. Yes, ma'am.

15 Q. Now, do you recall that when you
16 were in front of the judge that the judge
17 told you that there were no recommendations
18 or pleas in that case?

19 A. Yes. But there's been a time in the
20 past where it's also been when my lawyer said
21 something, I could believe him.

22 Q. But you do remember during the
23 transcript when the Court ask if there were
24 "any plea bargains or any deals that the
25 State might have made with you, that they

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Testimony of William David Boone - Cross Examination

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1 have to tell me about on the record or you
2 lose what they don't tell me about. Do you
3 understand?" And you answered "yeah" to the
4 Court. Do you remember doing that?

5 A. Yes, ma'am. I thought they had
6 already had some kind of an agreement, kind
7 of like a back door agreement or something.

8 Q. But the Judge explained to you that
9 it would have to be on the record or you
10 would lose it. And you said that you under-
11 stood that?

12 A. Yes.

13 Q. And then right after that, the Court
14 asked your attorney if there was anything
15 else that needed to be put on the record
16 about a plea agreement. And she answered in
17 front of you, "no."

18 A. I'm not -- say that one more time?

19 Q. Sure. So right after that -- and I
20 can get a copy ---

21 MS. VALENZUELA: Do you have a copy
22 of it. May I approach, Your Honor.

23 THE COURT: Yes, ma'am.

24 CROSS-EXAMINATION CONTINUED

25 BY MS. VALENZUELA:

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Testimony of William David Boone - Cross Examination

1 Q. (Tenders), focusing right here.

2 A. Okay. Right.

3 Q. Okay. So If you'll look on Page 9,
4 Line 5, that's when the court asks and
5 informs you that any plea bargain has to be
6 on the record. And then you say 'yes' at
7 Line 9.

8 A. Okay.

9 Q. And then will you look at Line 10,
10 right after that. The judge asked your
11 attorney is there anything else that needs to
12 be put on the record about a plea agreement.
13 And in front of you -- your attorney was
14 beside you during this time; correct?

15 A. Yes.

16 Q. She answers to the court, "No." And
17 then right after that -- that's correct; she
18 answers no?

19 A. She answers. Yes.

20 Q. And then right after the court asked
21 you "has anyone promised you anything to get
22 you to plead guilty, Mr. Boone?" And what
23 did you answer there?

24 A. Ain't nobody -- nobody. But I would
25 have never pled guilty knowing that my

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Testimony of William David Boone - Cross Examination

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1 probation was going to do that to me.

2 Q. Okay.

3 A. I mean, I can understand doing the
4 two and a half years, but what I didn't like
5 and didn't know anything about was the
6 consecutive sentence. I didn't know what
7 consecutive meant until I got it.

8 Q. But the two and half years that you
9 reference, you didn't tell the court about
10 the two and a half years; is that correct?

11 A. No, I did not.

12 Q. When he asked you specifically what
13 promises had been made, you didn't mention
14 that. In fact, you told him that there
15 hadn't been any promises, that you just
16 needed to tell the truth; correct?

17 A. That's right.

18 Q. Okay. You were asked if you had
19 been made any promises or threatened to take
20 this plea and you informed the court that you
21 had not?

22 A. Yes, ma'am.

23 Q. You also told the court that you
24 were making this plea freely and voluntarily?

25 A. Yes, ma'am.

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Testimony of William David Boone - Cross Examination

1 Q. You also had the court explain to
2 you that you were waiving Constitutional
3 rights, such as your right to a jury trial?

4 A. Yes.

5 Q. And you told the judge that you
6 understood that, and that you were waiving
7 those rights?

8 A. That's right.

9 Q. And this was after you knew that you
10 had been served with a warrant for the
11 probation violation?

12 A. Yes. But I did not know I was going
13 up in front of the same judge for the
14 probation violation. I was blindsided.

15 Q. Okay. And you were asked
16 specifically by the court, and it's on that
17 same page, if you were fully satisfied with
18 your attorney? And you answered the court,
19 "Yes. Ms. Fullwood is a good lawyer."

20 A. That's when I thought she had
21 already got me two years.

22 Q. Right. And then the court asked if
23 there was anything else that you want her to
24 do on your case? And you said "huh-uh, she's
25 good"; correct?

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Testimony of William David Boone - Cross Examination

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1 A. Yeah.

2 Q. Now, you were also asked if you had
3 any complaint against your attorney or, in
4 fact, law enforcement or anyone else in the
5 case. And you answered no, that you did not.
6 And you said "Ms. Lyons is a real good woman,
7 too"?

8 A. Yeah.

9 Q. And you heard the facts of these
10 cases of the criminal domestic violence third
11 offense laid out in front of the judge before
12 you accepted -- before you pled guilty?

13 A. Uh-huh, (affirmative nod).

14 Q. And you agreed with those facts?

15 A. Yes.

16 Q. And then, in fact, you told the
17 court at different times that you admitted
18 that you did all of it. And that you've got
19 to tell the truth and that that's what you
20 were there for. And, in fact, that the
21 quicker you got this over with, the faster
22 you could pay some child support?

23 A. That's right. I never denied
24 anything of that. What I'm saying is, is
25 about the probation. I never knew I was

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Testimony of William David Boone - Cross Examination

1 going up for a probation violation. I was
2 already served a warrant, I know. You know,
3 but I would have never went in front of the
4 same judge with two charges like that.

5 Q. Did your attorney ever tell you that
6 you get the option of picking which judge you
7 go in front of?

8 A. No.

9 Q. She did not ever tell you that?

10 A. No.

11 Q. Okay. And then I'm going to --

12 MS. VALENZUELA: May I approach
13 freely, Your Honor?

14 THE COURT: You may.

15 CROSS-EXAMINATION CONTINUED

16 BY MS. VALENZUELA:

17 Q. Okay. And, let's see. Okay. So
18 turning to Page 11, which is where I just
19 turned it for you. Do you hear that your
20 probation agent addresses the court?

21 A. Yeah. That was kind of a -- that
22 was a blindside on me too because I never
23 knew that was happening that day.

24 Q. And the probation agent said this to
25 the court while standing beside you. You

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Testimony of William David Boone - Cross Examination

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1 could hear everything that the probation
2 agent was saying?

3 A. Yes, ma'am.

4 Q. And then right after the probation
5 agent laid out everything that was happening,
6 you did not tell the court that you were
7 surprised by this?

8 A. No. Because I didn't know I was
9 going up for a probation violation charge.
10 You know, I knew I was violated. But I
11 didn't know they were sentencing me that day
12 on that either.

13 Q. But you did not tell the court that
14 at any time?

15 A. No. I was kind -- I was on Zyprexa.
16 You know, that's a mind-altering drug. It's
17 kind of, you know, I know what it's kind of
18 -- it slows your mind down.

19 Q. But you were actually asked if you
20 were under the influence of any drugs or had
21 any competency concerns at the beginning of
22 the plea. And you told the court "no," that
23 you were not on anything?

24 A. No. I said I was on Zyprexa and --
25 you're wrong.

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Testimony of William David Boone - Cross Examination

1 Q. You're right. Yes. No, I'm sorry.
2 I am incorrect. You informed the court that
3 you were on Neurontin and Zyprexa. Then the
4 court asked you what that was for. And then
5 your attorney did answer that. Then the
6 court asked you "do you say that it helps you
7 think clearly?" And what did you inform the
8 court?

9 A. It does. It slows my mind down.

10 Q. And so when the court asked you if
11 you were clearheaded on that day and knew
12 what you were doing, you informed the court
13 that, yes, in fact, you did?

14 A. Yes, I did. But ---

15 Q. And you were under oath when you
16 said that to the court?

17 A. Yes.

18 Q. Now, after the probation agent talks
19 to the court, your attorney had an
20 opportunity to speak to the court about all
21 the things that she thought the court should
22 take in mind in sentencing you; correct?

23 A. Yeah. I believe so.

24 Q. So right there. It's right there in
25 front of you. She starts addressing and

1 starts taking about how you had suffered from
2 a traumatic brain injury?

3 A. Yes.

4 Q. And how that affected your mood?

5 A. Yes.

6 Q. And she goes through and talks to
7 the court about how Representative Bales, in
8 fact, had reached out because you did some
9 work for him and he wanted to say good words
10 on your behalf?

11 A. Yes.

12 Q. And you heard her ask the court for
13 a one-year sentence and revoking a year of
14 your probation to run concurrent with that?

15 A. Yes. But that was new to me. She
16 never said anything about that to me while we
17 were sitting over there or at the jailhouse.

18 Q. And you did not inform the court at
19 any time that this was a surprise to you or
20 that you had never heard this before?

21 A. No. I thought she knew what she was
22 doing.

23 Q. And, in fact, right after your
24 attorney is finished telling the court that,
25 the court turned to you and said "do you want

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Case No. 14-CP-32-4383

Post-conviction Relief Hearing of April 21, 2016

Testimony of William David Boone - Cross Examination

1 to say anything, sir?" And you actually did
2 speak to the court at length; correct?

3 A. Yes.

4 Q. Okay. And you said, "Yes, I kind of
5 went off the deep end. I had a friend she
6 had died and OD'ed, went off the deep end and
7 I couldn't quit after I started. So if you
8 put me in jail, I'd like to go to ATU too. I
9 ain't never been for a drug program."

10 And then he asked you again, the court
11 did, if there was anything else that you
12 wanted to say. And you proceeded to say,
13 "No, that's it. She told the truth, I told
14 the truth and now you know the truth, so
15 that's all." Correct?

16 A. Yes. But I still never knew I was
17 getting sentenced for my probation violation.

18 Q. But again, when the court gave you
19 an opportunity to talk to the court, you did
20 not say that?

21 A. But I didn't know I was getting a
22 probation violation sentencing.

23 MS. VALENZUELA: Nothing further.

24 THE COURT: All right. Any
25 redirect?

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Testimony of William David Boone - Redirect Examination

1 MS. GOOD: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MS. GOOD:

4 Q. Just to clarify, you're not
5 contesting the CDV third sentence of five
6 years; correct?

7 A. Not at all. Not at all.

8 Q. And when you said two and a half
9 years earlier, that you were okay with two
10 and a half years. What you meant by that was
11 that if you got a full five years, so you
12 serve about two and a half of that?

13 A. Yes, ma'am.

14 Q. Okay. Your issue is that you
15 weren't aware of the probation revocation;
16 correct?

17 A. Correct.

18 Q. Okay. So you were aware you had
19 one?

20 A. Yes, ma'am.

21 Q. But you were not aware that you were
22 going to be sentenced that day for it?

23 A. Not at all.

24 Q. And the Attorney General just asked
25 you some questions about during the plea,

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Testimony of William David Boone - Redirect Examination

1 that you didn't say anything regarding the
2 probation revocation, that you only spoke as
3 to the CDV third. Why did you only speak as
4 to the CDV third and not the probation
5 revocation?

6 A. Because I never knew anything about
7 getting sentenced that day for the probation
8 violation.

9 Q. You knew it was a probation
10 revocation?

11 A. Yes, ma'am. Yes, ma'am. I knew I
12 was violated.

13 Q. It's just that you didn't know it
14 was going to be sentenced that day?

15 A. No, ma'am.

16 Q. Okay. And if you had known it was
17 going to be sentenced that day, would you
18 have spoken about the probation revocation?

19 A. I would have never taken the plea.

20 Q. Okay.

21 MS. VALENZUELA: No further
22 questions, Your Honor.

23 MS. GOOD: Your Honor, I have
24 brief redirect, very brief.

25 THE COURT: No. You've gone over

1 everything. Sorry.

2 All right. Any additional
3 witnesses?

4 MS. GOOD: No, sir. Your Honor.

5 THE COURT: All right.

6 WITNESS: Do I get down?

7 THE COURT: Yes. Please step
8 down.

9 (WITNESES STEPS DOWN)

10 THE COURT: All right. Does the
11 State have any witnesses?

12 MS. VALENZUELA: I'll call Ms.
13 Fullwood to the stand.

14 THE COURT: All right.

15 (WITNESS TAKES STAND)

16 ELIZABETH FULLWOOD, having been duly
17 sworn to tell the truth, and nothing but the
18 truth, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. VALENZUELA:

21 Q. Thank you, Ms. Fullwood. Could you
22 please tell the court how long you've been
23 doing criminal practice?

24 A. Almost forty years if not over forty
25 years.

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Testimony of Elizabeth Fullwood - Direct Examination

1 Q. And where have you been working in
2 those forty years?

3 A. Well, since 1991, I've been with the
4 Public Defender's office in Lexington.

5 Q. Doing criminal defense?

6 A. That's correct.

7 Q. Okay. And did you represent Mr.
8 Boone in his probation revocation and his
9 guilty plea?

10 A. I did.

11 Q. What were you originally appointed
12 to represent him on?

13 A. We were originally appointed to
14 represent Mr. Boone on his probation
15 violation. When our screener went to the
16 jail, he told her he had the pending CDV
17 third charge but the bond court magistrate
18 said he was not qualified for our services.
19 At that point, we picked up the CDV charge
20 also.

21 Q. So originally, when you were
22 representing the applicant, it was only for
23 the probation violation charge. And it was
24 only through your actions that you were able
25 to wrap up the CDV charge representation as

1 well?

2 A. That's right.

3 Q. And how many times did you meet with
4 your client at the time, the applicant?

5 A. Once.

6 Q. Okay. And how long was your
7 meeting?

8 A. Judging from the notes I took, it
9 looks like it was probably about a forty-five
10 minute to an hour meeting.

11 Q. Okay. And what did you discuss
12 during that meeting?

13 A. Well, first, he informed me that he
14 had, you know, this pending CDV charge. He
15 told me that his first appearance was going
16 to be in March. So we talked about that, the
17 nature and elements of the offense, possible
18 penalty, high and lows since it does carry a
19 mandatory minimum. He told me that he did
20 not contest that charge and basically said "I
21 did it."

22 Q. Okay. And did you advise him on how
23 this would affect him in relationship to his
24 probation revocation?

25 A. Well, yes. We talked about his

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Testimony of Elizabeth Fullwood - Direct Examination

1 probation revocation too. And he told me
2 about how he'd been doing on probation and
3 how he maybe hadn't been doing some of the
4 things he should have been doing. And, of
5 course, he would have been told that he faced
6 exposure. I think he got a split sentence.
7 I'm not sure on that particular offense. But
8 he ran the danger of getting the unserved
9 portion of the split sentence. And, of
10 course, I always tell my clients their total
11 exposure in years if they have multiple
12 charges.

13 Q. And when you explained this to the
14 Applicant, did he indicate to you that he
15 understood?

16 A. I don't have anything that indicates
17 otherwise.

18 Q. Okay. And did you explain to you
19 him concurrent versus consecutive sentencing?

20 A. I always explain that to my clients
21 who have multiple charges or would be going
22 to court on like a probation violation and a
23 plea. If they're probation and they've got a
24 new charge, I explain to them that when they
25 take care of a new charge that's

1 automatically in and of itself going to
2 trigger a probation violation, and that all
3 of it's taken care of at the same time.

4 You hardly ever -- if a person's on
5 probation in the county where they get a new
6 charge, almost always you take care of that
7 in one proceeding.

8 Q. And you explained all this to the
9 Applicant before you did the guilty plea?

10 A. That's right.

11 Q. And he still indicated to you that
12 he wanted to proceed forward with the guilty
13 plea?

14 A. He did.

15 Q. And then at the beginning of the
16 guilty plea hearing, did the probation agent
17 address the court in front of you and the
18 Applicant saying that 'Mr. Boone is also on
19 probation and here is a warrant that we
20 served'?

21 A. Right. He'd already been served
22 that warrant prior to my office even --
23 that's what triggered our appointment in the
24 first place.

25 Q. And then during the plea from the

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Testimony of Elizabeth Fullwood - Direct Examination

1 beginning on, the probation agent was
2 physically present in the courtroom and, in
3 fact, addressed the court before your client
4 entered his plea of guilty?

5 A. That's right.

6 Q. The Applicant mentioned his
7 medication. Did you have any indication that
8 he didn't understand the charges that he was
9 pleading to or the guilty plea hearing while
10 he was going through the hearing?

11 A. No, I didn't. We discussed at
12 length his physical and mental health
13 problems when I met with him. And I also got
14 his jail medical and mental health records
15 and took a look at them. And there's nothing
16 unusual in them. And he always seemed
17 coherent. He's a very verbal person and kind
18 of has difficulty focusing. But he certainly
19 didn't seem to have impairment that would
20 trigger me wanting to have him evaluated for
21 competency or anything of that nature. He's
22 just a person you have to kind of be patient
23 with to help him focus, to get all the
24 information you need.

25 Q. And then I notice that the

1 applicant is wearing thicker glasses.

2 When you were going through discovery with
3 him, did you ever have any indication that he
4 wasn't able to see or understand the material
5 that you were going through with him?

6 A. Now, we never went through discovery
7 together. He wanted to get to court quick.
8 And we sent it to him when we got it. And at
9 his second appearance -- he'd sent me a
10 letter saying 'I want to get into court.'
11 And so I set him a plea date.

12 Q. But he indicated to you that he had
13 done the domestic violence third, had
14 committed that third domestic violence
15 against ---

16 A. Yes, he did. Very emphatically.

17 Q. Okay. Thank you.

18 MS. VALENZUELA: No further
19 questions.

20 THE COURT: Cross-examination.

21 MS. GOOD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. GOOD:

24 Q. You said you met with him one time.

25 And based on your notes you think it was

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Testimony of Elizabeth Fullwood - Cross Examination

1 about forty-five minutes to an hour; correct?

2 A. Probably.

3 Q. And why do you say that based on
4 your notes? How long are your notes?

5 A. They cover about a full page and I'm
6 a pretty succinct note taker. So it makes me
7 believe that I was there longer than just a
8 perfunctory, you know ---

9 Q. Introductory meeting?

10 A. Yeah.

11 Q. When was this meeting?

12 A. February 24th.

13 Q. And during that meeting, did you
14 take notes regarding discussing the probation
15 violation with him?

16 A. A few. He told me what he was on
17 probation for, that it was the same victim.
18 And he told me, like I've testified earlier,
19 what he had done and what he hadn't done in
20 probation.

21 Q. And in your notes -- since you said
22 you were a very succinct note taker, did you
23 write down what you told him the potential
24 sentence would be?

25 A. No.

1 Q. Okay. So would you have written
2 that down as to everything that you told him
3 regarding the consequences of his plea?

4 A. No. Because that's something I tell
5 everybody.

6 Q. And during the -- when you were
7 discussing the plea on the day of May 8th, the
8 day of the plea and going over the sentencing
9 sheets with him, was there any discussion
10 regarding the probation violation?

11 A. Well, there would have to be because
12 he was going to court on that too.

13 Q. Do you remember if there was?

14 A. I don't have any independent
15 recollection that there was, but I know what
16 I always do when clients have a probation
17 violation that's going to tag onto their
18 plea.

19 Q. And just for purposes of procedure,
20 when somebody's doing a plea, obviously you
21 go over the sentencing sheet with them. Is
22 there any sheet similar to a sentencing sheet
23 that you go over with the defendant when it
24 comes to probation violations? There's not,
25 is there?

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Testimony of Elizabeth Fullwood - Cross Examination

1 A. There isn't. Right.

2 Q. So it's possible that since you
3 don't have any independent recollection, it
4 may not have been discussed, since there
5 isn't a separate sheet to go over?

6 A. Well, anything's possible, but it's
7 very unlikely in my opinion.

8 MS. GOOD: No further questions,
9 Your Honor.

10 THE COURT: All right. Any
11 redirect?

12 MS. VALENZUELA: No, Your Honor.

13 THE COURT: All right. Thank you.
14 You may step down.

15 WITNESS: Thank you, Your Honor.

16 (WITNESS STEPS DOWN)

17 THE COURT: Anything else from the
18 State?

19 MS. VALENZUELA: No, Your Honor.

20 THE COURT: All right. Any reply?

21 MS. GOOD: No, sir.

22 THE COURT: Any brief argument?

23 MS. VALENZUELA: Your Honor, the
24 inmate, the applicant has not shown any
25 failure to be advised on it. I know that he

1 testified, but counsel testified that she was
2 originally appointed on the probation
3 violation. And that she would have covered
4 that and did, in fact, cover that with all of
5 her clients. And that she did cover that
6 with this client. He indicated that he
7 wanted to plead. Additionally, from the very
8 beginning of the plea, the applicant saw that
9 the probation violation was -- probation
10 agent was present and was notified that that
11 was, that that had been put before the court.
12 And then finally, even when counsel asked the
13 applicant what would have happened
14 differently in this case if he had known
15 about it, he just said he wouldn't have pled
16 then. He would have pled at a different
17 time. So he hasn't established prejudice in
18 this case.

19 THE COURT: Ms. Good?

20 MS. GOOD: Thank you, Your Honor.

21 Mr. Boone testified that he knew it was a
22 probation violation by pleading that day.
23 However, he did not know or was not aware
24 that he was going to be sentenced that day.
25 And based on counsel's testimony, Your Honor,

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Summation & Ruling of The Court

1 she indicated she had no independent
2 recollection of whether she discussed the
3 probation violation sentencing occurring that
4 day or not. She says that's her normal
5 practice but she has no independent
6 recollection of it, Your Honor, nor is there
7 no sheet to go over as a sentencing sheet in
8 a regular plea, which would trigger that
9 conversation definitely with the defendant or
10 with the Applicant in this case, Your Honor.

11 We're asking that you grant the PCR
12 and allow him to go back to go back to get
13 resentenced, Your Honor, or allow concurrent
14 sentencing as he was not aware that he could
15 get consecutive sentences as a probation
16 violation.

17 THE COURT: All right. And I also
18 -- I noticed in your amended application, you
19 asked for something about failure to present
20 mitigating evidence. There's no information
21 on that.

22 MS. GOOD: Correct, we aren't
23 going forward on that.

24 THE COURT: And based on the
25 testimony of his attorney at the time of the

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Summation & Ruling of The Court

1 plea, in reviewing the transcript very
2 carefully as to the questions as stated -- as
3 made by the judge, made by the probation
4 agent at the time, and the ability to stop
5 and ask any questions of his attorney, I
6 think that he was properly notified of
7 everything and that the Applicant has failed
8 to meet his burden, so the application is
9 denied.

10 MS. VALENZUELA: Thank you, Your
11 Honor.

12 MS. GOOD: Thank you, Your Honor.

13 (TRANSCRIPT CONCLUDED)

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ORIGINAL

STATE OF SOUTH CAROLINA)
) FILED) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON) 2016 AUG 12 4 11 01) FOR THE ELEVENTH JUDICIAL CIRCUIT
)
 William David Boone,) BETH A. CARRIGG) C.A. No. 2014-CP-32-4383
 S.C.D.C. No. 270459,) CLERK OF COURT)
) LEXINGTON, SC)
)
 Applicant,)
)
 v.) **ORDER OF DISMISSAL**
)
 State of South Carolina,)
)
 Respondent.)
 _____)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 2, 2014. Respondent made its return on or about March 17, 2015. An evidentiary hearing was held on April 21, 2016, at the Lexington County Courthouse. Applicant was present and represented by Anna Good, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant and his plea counsel, Elizabeth Fullwood, Esquire, testified at the hearing. The Court had before it Applicant's guilty plea transcript, the Lexington County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to orders from the Lexington County Clerk of Court. Applicant was indicted by the April 2014 Lexington County Grand Jury for criminal domestic violence, third-offense (2014-GS-32-0893). He was represented by Elizabeth A. Fullwood, Esq. On May 8, 2014, Applicant entered a guilty plea, as

indicted and without negotiations or recommendations, before the Honorable William P. Keesley. Judge Keesley accepted his plea and sentenced Applicant to a term of five (5) years imprisonment. Applicant's plea additional resulted in Judge Keesley revoking Applicant's probationary sentence on his 2011 conviction¹ for criminal domestic violence of a high and aggregated nature (CDVAHN) in full. The sentences were to be served consecutively.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCP 71.1(e)).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective

¹ Applicant was serving a ten (10) year split sentence suspended upon four (4) years active service and five (5) years probation for his CDVHAN conviction (2011-GS-32-3514).



standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case."). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (internal citations omitted).

In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant alleged his plea counsel failed to present mitigating evidence at his plea hearing, claims he did not understand his probation revocation hearing would be done at the plea hearing or that the plea offer was a recommendation and that the sentence from his plea could be run consecutively to his probation violation. Applicant testified that he met with counsel one time before his plea hearing. He said he was offered two years and could expect to do one year and that he accepted that offer. Applicant alleged he was never told by counsel that he was facing a probation violation. Applicant admitted he had been served with the probation warrant; however, Applicant asserts that if he had known the probation revocation would be done with the plea, he would not have pleaded guilty. Applicant also claimed he was on "mind-altering"



medication during his plea.

Plea counsel testified she was originally appointed to Applicant to handle the probation violation. She explained she met with Applicant once for about forty-five minutes prior to his plea and provided him with his discovery. Plea counsel explained concurrent and consecutive sentencing to Applicant and that he was facing a probation violation. Applicant indicated to plea counsel that he was aware of the probation violation and that the probation and current charge involved the same victim. Plea counsel explained Applicant knew the plea would automatically be a probation violation and that it would happen at the same time and at the same proceeding. Applicant never indicated to plea counsel that he was interested in a trial and instead stated he wanted to plead guilty. Finally, plea counsel stated she had no trouble communicating with Applicant, did discuss medical issues with him, and had no indication of a need for a competency evaluation. Plea counsel also noted that the probation agent was present in the courtroom for Applicant's guilty plea.

Initially, this Court notes Applicant's guilty plea transcript begins with the probation agent notifying the Court that Applicant is on probation and presenting the warrant that had already been served on Applicant. (Plea Tr. p. 3, lines 10-11.) Thereafter, Applicant confirmed, while under oath, that he did wish to enter a guilty plea (Plea Tr., p. 8, l. 24 – p. 9, line 4), that there was no promise of any type of reward or benefit to him if he pleaded guilty (Plea Tr., p. 9, lines 13-15), and that no one had forced him in any way to plead against his will (Plea Tr., p. 9). Applicant also confirmed he was satisfied with his attorney and in fact stated she was "a good lawyer." (Plea Tr. p. 9.) When asked if there was anything he wanted counsel to do that she had not done, he answered "huh-huh. She's good." (Plea Tr., p. 9, lines 16-22). Applicant was also



asked if he was on medication and he answered that he was but that it helped him think clearly and that he was clearheaded that day of the plea, (Plea Tr. p. 4, line 9 – p. 5, line 4.)

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet his burden of proving plea counsel was ineffective or that he suffered any prejudice. This Court finds Applicant was properly notified of the probation violation, that the violation would be heard with the plea, and that he was facing the possibility of consecutive sentences.

No evidence of mitigation was presented at the hearing, and the Court treats that allegation as abandoned. Alternatively, without evidence of the mitigating evidence Applicant alleges should have been presented at the hearing, Applicant has not and cannot prove prejudice. To the extent Applicant alleges his medication prevented him from entering a knowing and voluntary plea of guilty, this Court finds Applicant failed to offer any evidence that he did not have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and offered no evidence of “whether he [lacked] . . . a rational, as well as a factual, understanding of the proceedings against him.” McLaughlin, 352 S.C at 481, 575 S.E.2d at 843 (citing State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998)).

This Court finds Applicant has failed to meet his burden of establishing plea counsel was ineffective or that the ineffectiveness caused him prejudice.

All Other Allegations

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



CONCLUSION

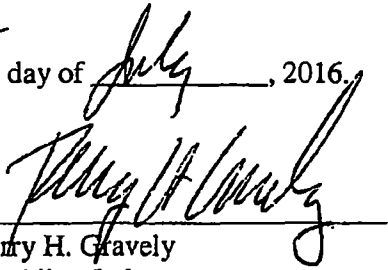
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea, revocation hearing, and sentencing proceedings. Counsel was not deficient in any manner, and Applicant was not prejudiced by counsel's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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 21st day of July, 2016.



 Perry H. Gravely
 Presiding Judge
 Eleventh Judicial Circuit

Pritchett, South Carolina.

FILED
 2016 AUG 12 A 11:01
 BETH A. CARRIGG
 CLERK OF COURT
 WINSTON, SC

WITNESSES

Lexington County Sheriffs Department

Cathy S. Etheredge

Law Enforcement Case #: 14000676

DOCKET NO. 2014GS3200893

The State of South Carolina

County of Lexington

SAD

ARREST WARRANT NUMBER

2014A3210200086

COURT OF GENERAL SESSIONS

APRIL TERM 2014

**THE STATE
vs.**

William David Boone

ACTION OF GRAND JURY

TRUE BILL

[Handwritten Signature]

Foreperson of Grand Jury

Date: 5/5/14

CDR #: 3055

Indictment for

**CRIMINAL DOMESTIC VIOLENCE 3RD
OR SUBSEQUENT OFFENSE**

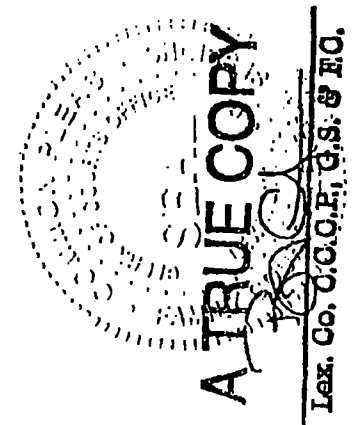
§ 16-25-0020(A)

VERDICT

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:



STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

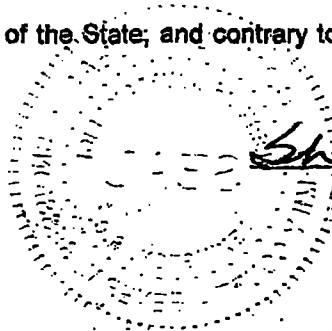
INDICTMENT FOR
 CRIMINAL DOMESTIC VIOLENCE 3RD OR
 SUBSEQUENT OFFENSE

§ 16-25-0020(A)

At a Court of General Sessions, convened on APRIL 2014, the Grand Jurors of Lexington County present upon their oath:

That **William David Boone** did Lexington County, South Carolina on or about January 11, 2014, unlawfully cause physical harm or injury to a family or household member; or offer or attempt to cause physical harm or injury to a family or household member with apparent present ability under circumstances reasonably creating fear of imminent peril, namely **Elizabeth Hope Lewis** by striking her and/or assaulting her and/or scratching her, and the defendant having four (4) prior convictions for the same offense or any combination of Sections 16-25-65 and 16-25-20 within 10 years, in violation of Section 16-25-20, and penalties provided under 16-25-20(D) 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.



[Handwritten Signature]
 ASSISTANT SOLICITOR