

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

DYESHAWN FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002357

APPENDIX

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Lancaster	)	2013-GS-29-00048
	)	
State of South Carolina,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Dyeshawn Foster.	)	
	)	
	)	
	)	

December 9, 2013  
Lancaster, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

RANDALL NEWMAN, ASSISTANT SOLICITOR  
Attorney for the State

MARK GRIER, ASSISTANT PUBLIC DEFENDER  
Attorney for the Defendant

AMINAH R. HARDY, RPR, CVR-CM  
Official Court Reporter

EXHIBITS

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(No exhibits were marked.)

P R O C E E D I N G S

1  
2 MR. NEWMAN: May it please the Court. Your Honor,  
3 this is Dyeshawn Foster represented by attorney Mark Grier  
4 here on case number 2013-GS-29-48, attempted murder. It's  
5 my understanding he's pleading under North Carolina versus  
6 Alford to assault and battery high and aggravated nature.  
7 Also case number 2013-GS-29-52, possession of a firearm  
8 during the commission of a violent crime. Also  
9 2013-GS-29-51, unlawful carrying of a pistol. He's  
10 pleading straight up without recommendation from the  
11 state.

12 THE COURT: Okay. Mr. Foster, you doing all right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Here's how things shape up. When you  
15 plead guilty under North Carolina versus Alford, for  
16 sentencing purposes it's just like you're pleading guilty  
17 straight up. Basically what you're saying is you've gone  
18 over with Mr. Grier all that you think the state could put  
19 up, all the motions you could make, and what you could do  
20 to testify and putting up witnesses, and you reached the  
21 conclusion that irrespective of what transpired in a  
22 trial, there's a very good likelihood you'd be found  
23 guilty. So you're pleading guilty under North Carolina  
24 versus Alford, but you get sentenced just like you were  
25 pleading guilty straight up. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, I don't actually have it all written  
3 down because I didn't know what you were going to plead  
4 to, but I believe assault and battery high and aggravated  
5 or whatever he's pleading guilty to carries what, 20  
6 years?

7 MR. GRIER: Up to 20.

8 MR. NEWMAN: That's correct.

9 MR. GRIER: The possession of a firearm during the  
10 commission of a violent crime carries five, and possession  
11 of a pistol carries one. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You weren't charged with assault and  
14 battery high and aggravated nature. You were charged with  
15 attempted murder, but assault and battery of a high and  
16 aggravated nature is a lesser-included offense, so the  
17 state does not have to resubmit the charge to the grand  
18 jury. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: We have selected a jury. Jury has not  
21 been sworn, but they're back there ready to go. If you  
22 wanted to proceed with trial, you just say, "I want a  
23 trial." But if you go forward, you don't get a trial.  
24 You waive all your trial rights. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You heard me tell the jury you're  
2 presumed innocent, didn't have to prove you were not  
3 guilty. Of course, you can exercise all the rights during  
4 the trial listed on this advisement of rights form.  
5 You've already participated in the selection process.  
6 Your attorney has made certain motions that if the trial  
7 proceeded you could, through him, make motions throughout  
8 the trial to exclude evidence, exclude testimony and so  
9 forth. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Of course, during a trial while you don't  
12 have to prove that you're not guilty, you could present a  
13 defense. Defense is simply I did not commit the crime.  
14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: That's one potential. But if you plead  
17 under North Carolina versus Alford, you waive your right  
18 to put up a defense. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, you went over this advisement of  
21 rights form with your attorney, right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. Grier explained everything to you.  
24 Are all your answers correct on here?

25 THE DEFENDANT: (The witness nods his head.)

1 THE COURT: On the sheet that you went over with him?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: In other words, you're not taking any  
4 medications today or anything like that?

5 THE DEFENDANT: No, sir.

6 THE COURT: And you're not on probation or parole --  
7 or are you? I don't know.

8 MR. GRIER: He's not. No criminal record.

9 THE COURT: You checked? If you're on probation or  
10 parole, do you know this plea could result in a  
11 revocation? You checked yes. But if you're not, you  
12 should have put just "not applicable." But anyway, do you  
13 understand that you could have testified during a trial,  
14 but you don't have to?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: State can't make you testify, but they  
17 can't keep you from testifying if you wanted to. Do you  
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Of course, a good many people were listed  
21 as potential witnesses. You can call witnesses to testify  
22 on your behalf. You get to question everybody that the  
23 state puts up anyway. Do you understand all that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Talking about during the trial. If you

1 enter the plea, you don't get a trial.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Any questions about anything?

4 THE DEFENDANT: No, sir.

5 THE COURT: Okay, solicitor.

6 MR. NEWMAN: Thank you, Your Honor.

7 Your Honor, this event occurred September 30th --

8 THE COURT: Let me ask you this one other thing  
9 before you go forward. More indictments were handed up to  
10 me than he's pleading guilty to. Are they going to be  
11 disposed of?

12 MR. NEWMAN: They are, Your Honor.

13 MR. GRIER: I was going to mention that.

14 THE COURT: Just make sure --

15 MR. NEWMAN: I didn't realize I handed them up.

16 THE COURT: You didn't. But I'm talking about when I  
17 qualified the jury this morning, I had more indictments  
18 than this.

19 MR. NEWMAN: Yes, sir.

20 MR. GRIER: They are, as well as another case.

21 THE COURT: Okay.

22 MR. NEWMAN: Thank you, Your Honor.

23 This occurred on September 30th, 2012. Officers  
24 responded to a shooting. You heard Ms. Hood testify as to  
25 making the call. She said she saw Mr. Foster with a gun,

1 saw him approach the vehicle, saw him shooting -- in her  
2 words, shooting at the car.

3 Officers responded. First officer saw the victim's  
4 vehicle at the road leaving the scene attempting to make  
5 it to the hospital. Mr. Segars was in the front passenger  
6 side. He had been shot. Was Tangie Craig was driving  
7 that vehicle and in the backseat was Fredrickeon Twitty.

8 THE COURT: All right. I neglected -- I just brushed  
9 over something I need to make sure Mr. Foster understands.  
10 I told him about possession of a weapon while committing a  
11 violent crime and assault and battery high and aggravated  
12 was a violent crime, but Mr. Grier, you discussed with him  
13 the consequences, I guess, of violent crimes?

14 MR. GRIER: Yes, sir. That would be 85 percent and  
15 nonparolable, strike.

16 THE COURT: Yeah, 85 percent, nonparolable. If you  
17 make it, Mr. Foster before you get out after 85 percent of  
18 whatever sentence imposed, you're on supervised released,  
19 pretty strenuous for a while. And it also constitutes a  
20 strike. You heard that "one strike, you're out; two  
21 strikes, you're out; three strikes, you're out." Well,  
22 this is a strike. So if in the future you commit a  
23 violent crime or most serious crime, you put yourself in  
24 jeopardy for the state asking for more time than you could  
25 normally get. In some circumstances, they can ask for

1 life without parole, even though the sentence for the  
2 crime like drug trafficking might just carry three to  
3 seven years. They can ask for life without parole because  
4 the legislature says that's a violent crime, talking about  
5 drug trafficking. Not that you've done that; just giving  
6 that as an illustration.

7 MR. GRIER: Yes, Your Honor, he understands that any  
8 future criminal behavior, not this, could expose him to  
9 the LWOP.

10 THE COURT: Okay.

11 MR. NEWMAN: Thank you, Your Honor. Officer Bobby  
12 Hiller (phonetic) of the city police department was  
13 responding to the scene. He noticed the victims leaving  
14 the scene, did stop that vehicle, noticed they were in  
15 dire straits, let them go on the hospital and followed  
16 them. Other officers responded to the scene while some  
17 officers responded to the hospital.

18 Your Honor, Fredrickeon Twitty, I have the medical  
19 records. Both doctors were scheduled to be here and  
20 testify. Fredrickeon Twitty had three gunshot wounds.  
21 Marquevious Segars had seven. Marquevious was shot seven  
22 times, three times in the chest and abdomen area of his  
23 side, once in the arm, had a graze shot to his chin, also  
24 to his eye, and a shot in the shoulder as well. His  
25 doctor told me --

1 MR. GRIER: I don't mean to interrupt you, but to the  
2 eyebrow.

3 MR. NEWMAN: Right. I have pictures, Your Honor.  
4 I'll pass up pictures of the injuries.

5 MR. GRIER: He did not -- I just want to clarify he  
6 didn't lose an eye as a result of it, fortunately.

7 MR. NEWMAN: And he miraculously is here in the  
8 courtroom.

9 Your Honor, I spoke with his doctor. They said  
10 Mr. Segars was the worst of the two injured and was, in  
11 fact, in dire straits at the hospital. And, in fact, he  
12 told me he actually -- his life expired at the hospital.  
13 He was revived and flown out to Charlotte to Carolina  
14 Medical Center. So pretty extensive injuries there.

15 Your Honor, Ms. Craig was not hit. However, she was  
16 in the car. She was the driver. Vehicle was hit multiple  
17 times, rear window was shot out. That shot exited through  
18 the front window. There's a bullet hole in the left rear  
19 B-post. The bullet hole grazed the rear dash speaker,  
20 then went through the driver's seat and into the front  
21 dash beside the radio. Another bullet hole in the rear  
22 passenger area went through the right rear passenger seat  
23 and into the right passenger seat and then into the glove  
24 box. Bullets were recovered. Bullet casings were  
25 recovered. I believe we recovered nine casings from the

1 scene, also a few bullets from inside the car.

2 Your Honor, both of these families are intertwined  
3 and related. Segars and Ms. Craig have a child in common,  
4 and Ms. Craig is cousins with Mr. Foster, and I believe  
5 the entire family is connected and will need some healing  
6 after this.

7 Your Honor, as far as a record, he has no adult  
8 record. He does have a juvenile record back in 2006 of  
9 malicious injury to personal property and assault and  
10 battery.

11 Your Honor, victims are here, the family is here.  
12 Detective Hartley, city police department was the lead  
13 investigator. Ask you to hear from these people at the  
14 appropriate time.

15 THE COURT: Now is as good a time as any.

16 DETECTIVE HARTLEY: Yes, sir. I'm Detective Hartley,  
17 city police department. I was lead investigator on this  
18 case. Just awful situation. Awful, awful situation.  
19 Could have very easily been avoided; however, it wasn't,  
20 and the city police department takes the stand that  
21 Mr. Foster gets as much time out of this deal as he can  
22 possibly get. We can't have this mess going on the  
23 streets, and that's just -- it sounds like harsh words,  
24 but truth of the matter is, it's not. There's way too  
25 many innocent people out here dying over nonsense.

1 THE COURT: Okay.

2 MR. NEWMAN: Anybody from the family? They indicate  
3 they don't want to speak, Your Honor.

4 MR. GRIER: Thank you, Your Honor. Your Honor,  
5 Dyeshawn has been in jail for 427 days.

6 THE COURT: Goodness.

7 MR. GRIER: And we ask obviously that you give him  
8 credit for his -- credit for time served. At the time  
9 this happened, Your Honor, Dyeshawn was working at Tyson  
10 plant, and he had really not been in any kind of trouble  
11 for a long, long time. Aside from malicious injury of  
12 property, he doesn't have any history of this type of  
13 violent behavior. And it's totally inconsistent with  
14 Dyeshawn Foster when you meet the man and you talk to him,  
15 how it could get that is hard to imagine.

16 Tell you a little bit more about the situation than  
17 the solicitor revealed, because I think it goes to the  
18 mitigation. But Your Honor, I've been working with  
19 Dyeshawn for -- since I think the end of last year. And  
20 he's very respectful. His family has got -- well,  
21 everybody out there is really close family or tied in  
22 somehow. And I -- they all -- I think even the folks that  
23 may be here against him today love him and expect -- think  
24 this was not consistent with the Dyeshawn Foster that  
25 everybody knows. He doesn't have the reputation for going

1 around. There are lot of people in this town with  
2 reputations that do a lot of bad stuff.

3 Judge, a little bit of background how this -- and, of  
4 course, he's pleading no contest under Alford. Quite  
5 frankly, our pretrial with Ms. Hood kind of clinched this.  
6 I mean, she -- based on and having listened to the 911  
7 call and looking at all the evidence and lot of  
8 contradictions, which are still there, but know they're  
9 always there. We would really believe that Ms. Hood was  
10 speaking from hearsay based on the circumstances there. I  
11 think she was a compelling witness, and the family -- she  
12 had even spoken to the family because they're neighbors  
13 and trying to not to let everything blow up. Even the  
14 family after speaking with her was very concerned, his  
15 direct family, that she was going to be a difficult  
16 witness to overcome were we to go to trial in this matter.  
17 And certainly having heard her testimony on the stand, I'd  
18 concur with what the family members had spoke with me  
19 earlier this morning believed about this case.

20 We were prepared. We worked hard. We met a lot of  
21 times, and we were -- we were certainly ready to go to  
22 trial, Your Honor. Judge, if you recall, he wanted to get  
23 out and spend some time with his family. That's not going  
24 to happen. I understand you're going to give him some  
25 kind of active sentence, Your Honor, but what -- the facts

1 that transpired prior to the shooting are important to  
2 this case mitigation-wise, Your Honor.

3 And I don't believe the victim in the case could  
4 possibly be proud and I don't want to slam him. This  
5 was -- lot of anger out there. He was very mad at  
6 Dyeshawn. And came -- he's close to Dyeshawn's  
7 grandmother who Dyeshawn was living with. And he had  
8 accused Dyeshawn of -- and taking a gun from I believe one  
9 of his friends, and I'm sure they'll correct me if I'm  
10 wrong. But it got -- he got really angry, and our  
11 witnesses -- and I believe all the evidence -- I don't  
12 believe anybody, the solicitor, Lancaster Police  
13 Department disputes that the victim that was most  
14 seriously injured in this case pulled a gun out and  
15 started waving it and threatening and cussing everybody  
16 out that was out there. They were having a cook-out type  
17 thing, and attempted to shoot Dyeshawn, in fact, fired a  
18 bullet and it struck another guy. That's the reason they  
19 were going to the hospital. So another -- Dyeshawn's  
20 cousin got struck by a bullet that was fired by the victim  
21 in this case that was most seriously injured.

22 So he's pleading under Alford but the -- you know,  
23 the state's theory was Dyeshawn having been shot at was so  
24 angry that he retaliated. So it didn't just happen out of  
25 thin air. It didn't happen out of meanness. It didn't

1 happen -- it happened under very -- whatever happened  
2 happened under very, very heated and angry and passionate  
3 circumstances that are not consistent with everything that  
4 I've observed from Mr. Twitty (sic). Was it a serious  
5 crime? Yes, it was. Is he going to get probation? No  
6 he's not, and he knows that.

7       What is the right thing to do? Your Honor, I ask for  
8 mercy. I do not believe that Dyeshawn is a hardened  
9 person at all. He's -- he's got family, a loving family  
10 that embraces him. He just didn't have any hardness or  
11 bitterness or angry about him. And, Your Honor, I think  
12 that a relatively short sentence with some probation  
13 behind it -- I know he's going to come out on community  
14 service would be -- would serve justice in the matter. It  
15 isn't going to -- it's not going happen again. Most  
16 certainly Dyeshawn is going to keep his distance from  
17 anything like this happening again, and to ensure he would  
18 follow through on -- I think he -- you know whatever  
19 assurances he's given me and his family and everybody that  
20 he's going to get a job and get back out in -- when he's  
21 finished with his sentence, and I think probation would be  
22 an appropriate way to follow-up on a relatively short  
23 sentence, Your Honor. He's got a lot of exposure. I know  
24 we got people injured in this and there's no excuse for  
25 that.

1           Your Honor, that's really all I got to say. He --  
2 Dyeshawn has indicated he doesn't wish to speak. He is  
3 just -- believes that the Court would take into account  
4 the fact that he hasn't been any trouble before, that it's  
5 inconsistent with what it was, and that there were  
6 provoking circumstances that day that were important to  
7 what happened out there.

8           I think he's got some family members that would like  
9 to speak.

10          THE COURT: They, can sure.

11          MS. WELLS: I am Dyeshawn's grandmother. I thank you  
12 for this opportunity, Your Honor, but this accident  
13 happened at my house. Dyeshawn was at home. Quevious  
14 come to the house. They had been fussing that day. I  
15 understand that. Quevious come to my house. I asked  
16 Quevious not to come -- I asked my grandbaby, I said,  
17 "Don't bring him up here." He come anyway.

18          Okay, so when he came, I was in the house cooking.  
19 And they said, "Quevious out there, grandma." I said  
20 okay. I said, "I asked him not to come." Come to the  
21 door, they start fussing. Him and Dyeshawn was fussing.  
22 And I came outside on the porch. I said, "Quevious, I'm  
23 not going to have this in my yard. Now, I want you to  
24 stop." He was calling me mom before all this happened.  
25 He said, "Mama, everything okay." I said okay.

1           So I goes back in the house to fry Dyeshawn a piece  
2 of fish. All this cussing. I heard it again, heard it  
3 again. I said, "Quevious, did I tell you" -- I was going  
4 to call the police. He said, "I ain't -- we ain't  
5 doing -- we got it, we got it." I said, "Quevious, come  
6 in the house. I brought Quevious in my house so they can  
7 cut down all the fussing, and then I called my  
8 granddaughter and I said, "Come get Quevious. Him and  
9 Dyeshawn done start back fussing again." She said,  
10 "Grandma, I'm on my way."

11           So I told Quevious. I said, "Quevious, now I'm being  
12 nice and let you come in my house and you out here doing  
13 all this cussing and saying all this stuff." I said,  
14 "When you get outside just get on in the car. Don't say  
15 nothing to nobody." Quevious goes outside. He goes and  
16 cussing and all this. Told Dyeshawn right in front of  
17 me -- Lord forgive me. I ain't got no reason to lie, but  
18 I don't like to say this. He said, "I will kill you right  
19 in front of your motherfucking grandma." I said, "Oh, no.  
20 Tangie, put him in the car."

21           So Tangie get -- they getting ready to get in the  
22 car. Quevious still out there, they just fussing,  
23 fussing. So somebody -- I don't know who it was, this boy  
24 had on a black hoodie over his head, and him and Quevious  
25 was tussling. I saw the gun in Quevious pocket. Quevious

1 grabbed his pocket like that and he shot. So when he  
2 shot, I ran in the house. "Grandma, I'm shot." So I  
3 turned around. When I turned around, pow, pow, pow, pow,  
4 pow, pow, pow. So I ran in the house. And that is the  
5 truth.

6 So whatever happened before then, I don't know. Now,  
7 they say Dyeshawn had a gun, but I never did see a gun.  
8 That's the truth of what happened at my house. That's  
9 what I saw. And I thank you for this opportunity. I  
10 asked to you please have mercy on Dyeshawn. Dyeshawn is a  
11 humble child. Dyeshawn was staying with me. He was going  
12 to church every Sunday, working, all hell just broke lose.  
13 I don't have no hard feeling between this family. Because  
14 Quevious was just like my son. I bring him in my house  
15 and his grandbaby was in my house, which was my  
16 grandbaby -- his baby was my grandbaby. We was all like  
17 one family. But that day, all hell broke loose because of  
18 somebody else's stuff. And I thank you.

19 MS. CRAIG: I'm Dyeshawn's mother, and my son is not  
20 the person they trying to say he is. And I want you to  
21 know that I really don't know what happened there. I was  
22 not there. But I want you to know he would no longer be  
23 in Lancaster, South Carolina. I have moved away for my  
24 son can be protected. Because like they say, it's a lot  
25 of stuff going on, and it's a lot of stuff they said they

1 going to do to my son. But I'm not worried about what  
2 they said they going to do with my son. I just want my  
3 son home with me. He spent his birthday in there, spent  
4 my birthday in there, and Dyeshawn did work steady until  
5 this thing happened. And he always looked out for his  
6 mama and he always helped take care of his sister and  
7 brother, since I been a single parent since I had  
8 Dyeshawn. And all else I wanted to let you know, Your  
9 Honor, please have mercy on my son..

10 MR. GRIER: Thank you.

11 THE COURT: Okay. Mr. Foster. Your lawyer says you  
12 didn't want to say anything, but you have the absolute  
13 right to say something if you'd like.

14 THE DEFENDANT: Just say I love my family.

15 THE COURT: Well, good people do bad things, you  
16 know. There are consequences. I probably sentence more  
17 homicides or shootings than anybody around. All of them  
18 are different and I don't know what transpired before. I  
19 don't know anything about the family relationships. All I  
20 know is that you are entering a plea to shooting and  
21 hitting someone seven times, as I understand it. So  
22 that's bad consequence. You do have to serve 85 percent  
23 of it. I'll give you some slack for pleading guilty, but  
24 that's basically it.

25 I sentence you for possession of a firearm just to

1 time served. For the assault and battery high and  
2 aggravated nature, 18 years. You get credit for the time  
3 you've already been incarcerated, and then just five years  
4 on the other charge. That is concurrent. You get credit  
5 for time served on that.

6 Now, I don't need the families to leave together.  
7 They need to leave by family group. One of them leave.  
8 Try not to get any trouble outside because there will be  
9 consequences. We're not vigilante people here. You know,  
10 you hurt somebody, you got to go to jail. All right. One  
11 family leaves. Next one can leave after about ten  
12 minutes.

13 (Whereupon, the proceedings were concluded.)  
14  
15  
16  
17  
18  
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20  
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22  
23  
24  
25



**WITNESSES**

Hartley - LPD #12-15033

*[Handwritten signature]*

**ARREST WARRANT NUMBER/DOA**

2012A2920300279 (DOA-10-9-12)

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Handwritten signature]*

Foreperson of Grand Jury

Date: JAN 10 2013

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-29-48

**The State of South Carolina**

**County of Lancaster**

**COURT OF GENERAL SESSIONS**

**JANUARY TERM 2013**

**THE STATE**

**vs.**

**Dyeshawn Dyaquette Foster 44-52**

**ATTEMPTED MURDER**

SC Code: §16-3-29

CDR Code: 3410

Class: Felony A

FILED  
OFFICE OF CLERK  
OF COURT

2013 JAN 10 PM 12:38

CLERK OF COURT  
LANCASTER, SC

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF LANCASTER )

INDICTMENT

At a Court of General Sessions, convened on January 10, 2013, the Grand Jurors of Lancaster County present upon their oath:

**ATTEMPTED MURDER**

That Dyeshawn Dyaquette Foster did in Lancaster County on or about September 30, 2012, with intent to kill, attempt to kill Marqwevius Seegars with malice aforethought, either expressed or implied, by shooting him, in violation of Section 16-3-29 of the *Code of Laws of South Carolina, (1976), as amended*.

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

  
\_\_\_\_\_  
Douglas A. Barfield, Jr., SOLICITOR

D. ask

DOCKET NO. 2013-GS-29-51

The State of South Carolina  
County of Lancaster

FILED  
OFFICE OF CLERK  
OF COURT  
2013 JAN 10 PM 12:38  
CLERK OF COURT  
LANCASTER, SC

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

THE STATE  
vs.

Dyeshawn Dyaquette Foster 44.52

WITNESSES

Hartley - LPD #12-15033

*Hilget*

ARREST WARRANT NUMBER/DOA

2012A2920300283 (DOA-10-9-12)

ACTION OF GRAND JURY

TRUE BILL

*Shonda L. ...*  
Foreperson of Grand Jury  
Date: JAN 10 2013

VERDICT

Foreperson of Petit Jury  
Date:

Indictment for

Unlawful Carrying of Pistol

SC Code: § 16-23-20, § 16-23-50(A)(2)  
CDR Code: 0044  
Class: Misdemeanor, C

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER. )

INDICTMENT

At a Court of General Sessions, convened on January 10, 2013, the Grand Jurors of Lancaster County present upon their oath:

**UNLAWFUL CARRYING OF PISTOL**

That Dyeshawn Dyaquette Foster did in Lancaster County on or about September 30, 2012, carry about his person a pistol, the defendant not being authorized by law to do so pursuant to any of the enumerated exceptions set forth in § 16-23-20 of the Code of Laws of South Carolina and in violation of § 16-23-20, *Code of Laws of South Carolina, (1976), as amended.*

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



\_\_\_\_\_  
Douglas A. Barfield, Jr., SOLICITOR

*D Cash*

DOCKET NO. 2013-GS-29-52

FILED  
OFFICE OF CLERK  
OF COURT  
2013 JAN 10 PM 12:38  
CLERK OF COURT  
LANCASTER, SC

**WITNESSES**

Hartley - LPD #12-15033

*3.3.11*

**The State of South Carolina  
County of Lancaster**

**COURT OF GENERAL SESSIONS**

**JANUARY TERM 2013**

**ARREST WARRANT NUMBER/DOA**

2012A2920300282 (DOA-10-9-12)

**THE STATE  
vs.**

**Dyshawn Dyaquette Foster 44-52**

**ACTION OF GRAND JURY**

**TRUE BILL**

*Brenda L. [Signature]*  
Foreperson of Grand Jury  
Date: **JAN 10 2013**

**VERDICT**

**Indictment for**

**Possession or Display of Firearm or  
Knife During Commission of a Violent  
Crime**

SC Code: § 16-23-490  
CDR Code: 0549  
Class: Felony, F

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
COUNTY OF LANCASTER )

INDICTMENT

At a Court of General Sessions, convened on January 10, 2013, the Grand Jurors of Lancaster County present upon their oath:

**POSSESSION OR DISPLAY OF FIREARM OR KNIFE DURING COMMISSION OF A VIOLENT CRIME**

That Dyeshawn Dyaquette Foster did in Lancaster County on or about September 30, 2012, possess or visibly display a firearm or knife, to wit: a pistol during his/her commission of a violent crime, to wit: Attempted Murder of Marqwevius Seegars, Tangie Craig, and Fredrickeon Twitty, in violation of §16-23-490, *Code of Laws of South Carolina, (1976), as amended.*

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

  
\_\_\_\_\_  
Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF LANCASTER )  
 STATE LANCASTER )  
 VS. )  
Dyorkhan Foster )  
 AKA: )  
 Race: R Sex: M Ann: 19 )  
 DOB: SS# )  
 Address: [REDACTED] )  
 City, Sta: [REDACTED] )  
 DL# [REDACTED] SID# 29720 )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-79-48  
 A/W#: 2012 A29203 00279  
 Date of Offense: 7-30-12  
 S.C. Code §: 16-3-29  
 CDR Code #: 2410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: Assault + Battery High and Aggravated  
 In violation of § 16-3-600 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 2911  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45  
 (CSC w/minor 1<sup>st</sup> or Lowd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury. (def.'s Initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] 78607 Dyorkhan Foster 15145  
 Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,  
 for a determinate term of 18 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_  
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are  
 incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
 Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.  
 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve WE beginning  
 Substance Abuse Counseling

\*Fine: \_\_\_\_\_ \$ \_\_\_\_\_ Random Drug/Alcohol Testing   
 §14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Fines may be pd. in equal consecutive weekly/monthly  
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_  
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_ \$ \_\_\_\_\_ Paid to Public Defender Fund  
 §56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
 §56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_  
 §14-1-212 (Law Enforce. Funding) \$25 \$ \_\_\_\_\_  
 §14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_  
 §50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ \_\_\_\_\_  
 3% to County (if paid in installments) \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 TOTAL \$ 1371 \$ \_\_\_\_\_

Clerk of Court/Deputy Clerk [Signature] Presiding Judge [Signature]  
 Court Reporter: [Signature] Judge Code: 2011  
 Sentence Date: 12-9-13

ALFORD

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER

STATE LANCASTER

INDICTMENT/CASE#: 2013-GS-29-51

vs. Dyeshawn Foster

AW#: 261242620300283

AKA: \_\_\_\_\_

Date of Offense: 9-30-12

Race: R Sex: M Age: 19

S.C. Code §: 16-23-20

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 44

Address: \_\_\_\_\_

City, State, Zip: LANCASTER SC 29220

SENTENCE SHEET

DL# \_\_\_\_\_ SID# \_\_\_\_\_

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Outpatient Ctry

In violation of § 16-23-20 of the S.C. Code of Laws, bearing CDR Code # 44

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  §17-25-45

(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury, (def.'s initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: \_\_\_\_\_ 15145

Solicitor SC Bar # \_\_\_\_\_ Defendant Attorney for Defendant SC Bar # \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center,

for a determinate term of 180 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_ Obtain GED

Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_ May serve W/E beginning

\*Fine: \_\_\_\_\_ Random Drug/Alcohol Testing

§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_ Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \_\_\_\_\_ \$ \_\_\_\_\_ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§56-1-288 (DUI Breath Test) \$25 \$ \_\_\_\_\_

Proviso 47.9 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§14-1-212 (Law Enforce. Funding) \$25 \$ \_\_\_\_\_

§14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_

§50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

Proviso 90.5 (SCCJA Surcharge) \$5 \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_ \$133.90

Clerk of Court/Deputy Clerk \_\_\_\_\_ Presiding Judge \_\_\_\_\_

Court Reporter: Am. Linda D. Dwyer Judge Code: \_\_\_\_\_ 2017

Sentence Date 12-9-13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lancaster

STATE Lancaster

INDICTMENT/CASE#: 2013GS-29-52

vs.

AW#: 2012A2920300282

Dyeshawn Foster

Date of Offense: 9-30-12

Race: R Sex: M Age: 19

S.C. Code §: 16-23-490

DOB: 7/ SS#:

CDR Code #: 547

Address: Lancaster SC 29220

SENTENCE SHEET

DL#  SID#

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Poss. Fire Arm device commission of violent crime

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 547

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury,  (def.'s initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State

ATTEST:

Solicitor

SC Bar # 28667

Defendant DYESHAWN FOSTER

Attorney for Defendant [Signature]

SC Bar # 15145

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 5 ~~months~~ months/years or  under the Youthful Offender Act not to exceed  years and/or to pay a fine of \$ ; provided that upon the service of  days/months/years and or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for  months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

PTUP

Total: \$  plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED

Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve WE beginning Substance Abuse Counseling

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ <u>13390</u>

Random Drug/Alcohol Testing   
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$  Beginning   
\$  Paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk [Signature]  
Court Reporter: [Signature]

Presiding Judge [Signature]  
Judge Code: 2017  
Sentence Date: 12-9-13

FORM 5

STATE OF SOUTH CAROLINA )

COUNTY OF LANCASTER )

DYLANA FOSTER 358161 )  
Full name and prison number (if any) of Applicant. )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS

2015 CP 29 01199

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 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 McMeride Corr. Inst
2. Name and location of Court which imposed sentence LANCASTER CO
3. Name(s) of co-defendant(s) (if any) H/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) # 2013-24-50
  - (b) 2013-24-11
  - (c) 2013-24-11
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) \_\_\_\_\_
  - (b) \_\_\_\_\_

FILED  
OFFICE OF CLERK  
OF COURT  
2015 AUG 26 PM 2:04  
CLERK OF COURT  
LANCASTER, SC

(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. N / \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_ A

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

i. N / \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_ A

(c) the date of each such result:

i. N / \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_ A

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

i. N / \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_ A

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

(a) N / \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_ A

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? 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
  - ii. /
  - iii. /
  - iv. A
- (b) the name and location of the Court in which each was filed:
  - i. N
  - ii. /
  - iii. /
  - iv. A
- (c) the disposition thereof:
  - i. N
  - ii. /
  - iii. A

iv. \_\_\_\_\_ N/A

(d) the date of each such disposition:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_ A

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

i. \_\_\_\_\_ N

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_ A

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?

\_\_\_\_\_ N/A

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

(a) which grounds have been presented:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_ A

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

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_ A

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) See 10 (a) Applicant first time presenting ground

(b) See 10 (b) " " " " " "

(c) \_\_\_\_\_

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





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

*Dyeshawn Foster*

I,           , 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.

*Dyeshawn Foster*  
*Applicant*

SWORN or affirmed to and subscribed before me this 15 day of August, 2015

*J. Franklin*  
*Notary Public*

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA )  
 COUNTY OF LANCASTER )  
 )  
 Dyeshawn Foster, #358161, )  
 )  
                                   Applicant, )  
 )  
                                   v. )  
 )  
 State of South Carolina, )  
 )  
                                   Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTH JUDICIAL CIRCUIT

2015-CP-29-1199

**RETURN**

In response to the post-conviction relief application filed on August 26, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court’s orders of commitment. The Applicant was indicted at the January 2013 term of the Lancaster County Grand Jury for attempted murder (2013-GS-29-0048) and at the February 2012 term of the Lancaster County Grand Jury for committing a lewd act upon a child (2012-GS-29-0206), unlawful carry of a pistol (2013-GS-29-0051) and possession of a firearm or knife during the commission of a violent crime (2013-GS-29-0052). Mark Grier, Esquire, represented him. On December 9, 2013, the Applicant pled to the lesser included of assault and battery of a high and aggravated nature (ABHAN) and as indicted to the remaining charges. The Honorable J. Ernest Kinard, Jr. sentenced the Applicant to concurrent terms of eighteen years imprisonment for ABHAN and five years imprisonment for the possession of a firearm. Applicant received time served for the unlawful carry.

A notice of appeal was filed on Applicant’s behalf and an appeal was perfected by Benjamin J. Tripp, Esquire. The South Carolina Court of Appeals dismissed the Applicant’s

appeal pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Foster. 2015-UP-143 (filed March 18, 2015). The Remittitur was issued on April 3, 2015.

## II.

In his application for post-conviction relief the Applicant does not allege that he is being held in custody unlawfully, but rather leaves his application incomplete.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the Record on Appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## III.

The Respondent submits that this Application for Post-Conviction Relief should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Pursuant to Rule 12(b)(6), SCRPC, this Court should dismiss this allegation because it does not state a claim for which relief may be granted.

V.

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

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. CROOM HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

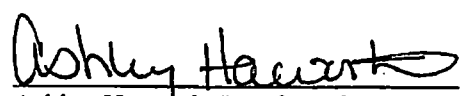
\_\_\_\_\_, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
	)	
	)	2015-CP-29-1199
DYSEHAWN FOSTER, #358161	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

**Mr. Nathan James Sheldon, Esquire**  
**Shaw Law Firm**  
**PO Box 36250**  
**Rock Hill, SC 29732**

DATED this 7<sup>TH</sup> day of December, 2015.

  
 Ashley Haworth, Legal Assistant  
 For Respondent

1 STATE OF SOUTH CAROLINA  
2 COURT OF GENERAL SESSIONS  
3 COUNTY OF LANCASTER  
4 2015-CP-29-1199

5 Dyeshawn Foster

6 vs.

7 State of South Carolina

8

9 Lancaster, South Carolina

10 January 12, 2016

11 Before the Honorable Brian M. Gibbons

12

13 APPEARANCES

14 For the Applicant: Nathan Sheldon

15 For the State: Croom Hunter

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

19

20

21

22

23

24

25

1	Gloria Craig:	4
2	Mark Grier:	10
3	Dyeshawn Foster:	29
4	Certificate:	43

5

6

NO EXHIBITS

7

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## GLORIA CRAIG - DIRECT

1 BY MR. SHELDON:

2 Q Ms. Craig, please state your name for the record.

3 A Gloria Craig.

4 Q And Ms. Craig, do you live in Lancaster County?

5 A Yes.

6 Q And were you -- did this incident that Mr. Foster is  
7 here for today on PCR, this actually happened at your  
8 house, didn't it, or outside of your house?

9 A Yes.

10 Q This is a little bit of a strange fact pattern so I  
11 want to give the Judge a little background as to what Mr.  
12 Foster was accused of doing. What exactly happened on  
13 September 30th of 2012?

14 A Well, I was having a fish fry that day and everybody  
15 was there, there was a lot of people out there in the  
16 yard and Quevis (phonetically) --

17 Q Is Quevis the victim in this case?

18 A Yes, he goes with my granddaughter. And him and  
19 Dyeshawn had had some words and I told them not to come up  
20 there, and then he called back and said they had squashed  
21 whatever was going on --

22 MR. HUNTER: Objection to hearsay, Your Honor.

23 THE COURT: Sustained.

24 Q Let me just ask you this: Is Dyeshawn your grandson?

25 A Yes.

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1 Q And was he eventually accused of shooting Quevis that  
2 day?

3 A Yes.

4 Q And did you -- and he shot him -- he was accused of  
5 shooting him seven times; is that right?

6 A Now I can't remember how many times they said now.

7 Q Okay. But you were present while all of this was  
8 going on but didn't see what actually happened; is that  
9 right?

10 A Yes, sir.

11 Q Was someone else also shot that day?

12 A Yes, more than one person.

13 Q And who else was shoot?

14 A My other grandson, Lamont Twitty.

15 Q And was -- but Mr. Foster wasn't accused of shooting  
16 him, was he, Mr. Twitty?

17 A No.

18 Q Only of shooting the victim; is that right?

19 A Right.

20 Q And do we know who shot Mr. Twitty?

21 A Yes.

22 Q Who shot him?

23 A Quevis.

24 Q Did you have the opportunity to have any kind of  
25 conversations with Mr. Grier in this case?

## GLORIA CRAIG - DIRECT

1 A Yes. But like I said, I'm a diabetic and high blood  
2 pressure and I be sick a lot, I done forgot -- I don't  
3 want to sit up here and tell no lie, a lot of stuff I done  
4 forgot it's been so long.

5 Q You weren't an actual fact witness in this case,  
6 right? You weren't just in the courtroom for mitigation,  
7 you were going to testify as to what you observed on the  
8 day that this all happened; is that right?

9 A Yes.

10 Q And Mr. Foster was actually set to go to trial on this  
11 case, wasn't he?

12 A Yes.

13 Q And the jury was waiting in the back to get sworn?

14 A Right.

15 Q And Mr. Foster ended up pleading, though, or pleading  
16 guilty under North Carolina versus Alford, right?

17 A Yes.

18 Q When you were -- were you in the courtroom when he  
19 pled guilty?

20 A I think I was.

21 Q And did you hear Mr. Grier say anything to Mr. Foster  
22 that day about potential sentencing?

23 A Well, he came -- he said something to us outside.

24 Q What did he say to you?

25 A He said that Dyeshawn have a better chance of

## GLORIA CRAIG - DIRECT

1 pleading guilty because of a 911 tape, and I guess that's  
2 why he pleaded guilty.

3 Q Did Mr. Grier say anything to y'all about potential  
4 sentencing?

5 A What that?

6 Q About what the crime carries if he goes to trial.

7 A Yes.

8 Q What did he say?

9 A He said 20 or 30 to life, that's what he could get if  
10 he didn't plead guilty.

11 Q If he didn't plead guilty --

12 A Right.

13 Q -- he said that he could get 20 to 30 to life.

14 A Right.

15 Q Was Dyeshawn present when he said that to you? Did he  
16 say that to you or did he say that to Dyeshawn?

17 A He said it to the family outside. Now, what he told  
18 Dyeshawn when he was talking to Dyeshawn I didn't hear  
19 that.

20 Q So that's what he was telling you, though.

21 A Outside, yeah.

22 Q So all of the witnesses were here ready to go to  
23 trial; is that right?

24 A Right.

25 Q And we got a jury waiting, and then all the sudden Mr.

## GLORIA CRAIG - DIRECT

1 Foster decides to plead; is that right?

2 A Right.

3 Q And you're saying that Mr. Grier related to you that  
4 it was -- that the charge carries -- that charge -- if at  
5 trial he would get somewhere between 20 to 30 to life; is  
6 that right?

7 A Right.

8 Q And you remember him saying something to life.

9 A Yeah, I remember that, yeah. But I wasn't the only  
10 one out there saying he said that.

11 MR. SHELDON: Thank you, I don't have anymore  
12 questions.

13 THE COURT: All right, thank you. Mr. Hunter?

14 CROSS EXAMINATION

15 BY MR. HUNTER:

16 Q Mrs. Craig, did you actually see the shooting take  
17 place?

18 A Only thing I saw is when they was holding -- they was  
19 fussing, all of them was out there fussing, it was  
20 about -- at least 20 -- there was a lot of dudes out there  
21 and they was out there fussing back and forth. So I told  
22 Quevis, you know, to come on in the house, I said, because  
23 I don't want no trouble. And he said, "Well, like he  
24 said, we got it down pat, we got it squashed, okay?" Then  
25 again I heard bam, boom, bam, bam you know, like they were

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1 cussing, somebody was cussing outside. And then I called  
2 my granddaughter and I told my granddaughter, I said,  
3 "Come and get Quevis because they come out there fussing  
4 and stuff, Dyeshawn and a bunch more people, so she said  
5 she was on her way. And I went outside and I grabbed  
6 Quevis and I said, "Come on in the house," I said, "I  
7 don't want no trouble." And he was just a fussing and  
8 cussing, just fussing and cussing. So when I grabbed him  
9 like this to take him in my house Quevis told Dyeshawn, he  
10 said, "I'll shoot you in front of your mother fucking  
11 grandmama." I said, "Quevis, no," I said, "Come on in the  
12 house." I brought him on in the house, he stayed in the  
13 house, my granddaughter came to pick him up. I said,  
14 "When you go back outside please don't say nothing else.  
15 All them boys out there to get you." Because one of the  
16 boys with a black T-shirt was fixin' to hit him in the  
17 back of the head with the gun. And he went on back  
18 outside, so when he went on back outside everything just  
19 broke loose.

20 Q Ms. Craig, did you testify at your grandson's plea, do  
21 you recall testifying?

22 A No. All I said is what I saw about when he said I  
23 would bring him in the house, what I just told you.

24 Q But you testified to that at his plea as well,  
25 correct?

## GLORIA CRAIG - CROSS

1 A I don't understand what you're saying now.

2 Q When your grandson pled guilty didn't you get up in  
3 front of the Judge and pretty much tell them the same thing  
4 you're telling us today.

5 A Right, I said I said that.

6 THE COURT: Any redirect.

7 MR. SHELDON: No, sir, Your Honor.

8 THE COURT: Thank you, ma'am, you can step down. You  
9 can call your next witness.

10 MR. SHELDON: Thank you, Your Honor. We call Mark  
11 Grier to the stand.

12 THE COURT: All right, Mr. Grier.

13 The witness, MARK GRIER, was first duly sworn and  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHELDON:

17 Q Mr. Grier, please state your name for the record.

18 A My name is Marion Grier, Mark is a nickname.

19 Q And Mr. Grier, how long have you been practicing law?

20 A I've been practicing law since 1990.

21 Q And work for the Lancaster County Public Defender's  
22 office?

23 A I do.

24 Q Do you remember representing Mr. Foster?

25 A Yes, I do.

## MARK GRIER - DIRECT

1 Q You heard what Ms. Craig just had to say, I want to  
2 just start kind of at the end of this case. Did you tell  
3 him this charge carried up to life?

4 A No. I think what got lost in this is he actually was  
5 facing an attempted murder on another charge that kind of  
6 precipitated this whole episode. There was a Matthew  
7 Reese which I also represented him on, and he was charged  
8 with attempted murder in the Matthew Reese case, which I  
9 believe had happened earlier on in the morning, which my  
10 understanding from all concerned and from the State was  
11 that was the reason that the victim in the case that Mr.  
12 Foster pled to had come over and retaliation for  
13 supposedly Mr. Foster taking a gun and shooting at Mr.  
14 Reese. So my point being I had a conversation saying with  
15 him about LWOP, and I believe we had a conversation with  
16 the family and with Mr. Foster, my recollection is, that  
17 were he to be convicted on one and then, you know, he  
18 could potentially be LWOP'd on a second violent crime.

19 Q What were y'all there to try that day?

20 A We were there -- the case of Mingo is the victim in  
21 this case.

22 Q So basically we have two different crimes that  
23 happened on the same date; is that right?

24 A Either on the same day or on consecutive days, I  
25 believe.

## MARK GRIER - DIRECT

1 Q But you were there to try the crime that happened --  
2 the shooting at Ms. Craig's house; is that right?

3 A Correct.

4 Q Did the State -- he wasn't -- Mr. Foster wasn't LWOP  
5 eligible at that time, right?

6 A No.

7 Q And so did the State communicate to you that they had  
8 intended to seek life without parole if they got a  
9 conviction on the first one?

10 A That conversation had -- yes. They didn't say that  
11 they were and they had not filed -- obviously they  
12 couldn't file, but there had been a conversation about  
13 that, yes.

14 Q Let's talk about the representation of Mr. Foster  
15 leading up. Do you agree with what Ms. Craig said, that  
16 this case was essentially on the doorstep of trial?

17 A Yes.

18 Q So y'all had picked a jury, I think even, the jury  
19 just had not been sworn; is that right?

20 A Correct.

21 Q So you were there that day to try this case.

22 A I was, yes.

23 Q And did you fully investigate the case?

24 A Yes, I did.

25 Q Did you have a stand your ground hearing in this case?

## MARK GRIER - DIRECT

1 A No, I did not.

2 Q Well, let's talk about the facts of this case a little  
3 bit. Because basically it's my understanding -- and now --  
4 there's -- the transcript isn't clear because it's a plea  
5 of the facts, but we have a victim essentially, correct me  
6 if I'm wrong, that comes over to Ms. Craig's house that day  
7 with Mr. Foster; is that right?

8 A That's correct.

9 Q And there's arguing, right?

10 A Yes.

11 Q And I think pursuant to your own testimony, he says --  
12 pursuant to your own testimony that he was there to  
13 essentially seek vengeance or revenge for a crime that  
14 happened earlier in the day; is that right?

15 A Yes.

16 Q So we have a victim who was at Mr. Foster's  
17 grandmother's house, there to seek revenge on Mr. Foster;  
18 is that right?

19 A Yes, that's true.

20 Q And there's no indication -- you obviously met with  
21 Ms. Craig in this case, didn't you?

22 A Oh yes.

23 Q And she was pretty consistent in what she was telling  
24 you she observed.

25 A That she didn't observe the shooting, yes.

## MARK GRIER - DIRECT

1 Q She did not observe the actual shooting, but she  
2 observed what led up to the shooting; is that right?

3 A Yes.

4 Q And, in fact, the victim ends up shooting another  
5 person at the house prior to him getting shot.

6 A He does in an apparent attempt to shoot Mr. Foster.

7 Q Okay. So we have a victim in this case who is at Mr.  
8 Foster's grandmother's house to seek revenge on Mr. Foster,  
9 right?

10 A Right.

11 Q We have another person that gets shot by the victim.

12 A Correct.

13 Q And then ultimately we have a victim who ends up  
14 getting shot; is that right?

15 A That's correct.

16 Q So was there any question that Mr. Foster had a legal  
17 right to be at his grandmother's house?

18 A No.

19 Q Was there any question that the victim had shot Mr.  
20 Foster's cousin?

21 A Not in my mind. He wasn't charged but I think that  
22 was -- my recollection is that it was undisputed evidence.

23 Q And was there any question based on what Ms. Craig was  
24 telling you that all this happens -- all of these gunshots  
25 happen in the span of very quickly in time?

## MARK GRIER - DIRECT

1 A Yeah. Apparently, yes.

2 Q So why is a defense attorney that's been practicing  
3 for so long would you not have a stand your ground hearing  
4 on this case prior to trial when it's clear that you have  
5 someone seeking revenge on a place that he is lawfully  
6 entitled to be and the victim is shooting someone else at  
7 the scene? I mean, wouldn't it seem like that is a perfect  
8 stand your ground type argument?

9 A Not a perfect one, but certainly there's plausibility  
10 to that argument. The problem was that the victim was  
11 leaving at the time of the shooting by all accounts.

12 Q Well, let's talk about that. The victim couldn't have  
13 been leaving, right? The victim was in the back seat of a  
14 car by all accounts.

15 A Correct.

16 Q How many cars are driven in the back seat? None,  
17 right? You can't leave if you're in the back seat of a  
18 car, right, unless somebody else is driving it?

19 A Correct.

20 Q And the victim was not -- and the victim of this  
21 attempted murder is not only in the back seat but he's in  
22 the back seat with the man that he just shot.

23 A I'm not sure whether the man he'd just shot was in  
24 the back seat or not, I can't recall, but my recollection  
25 is the victim was in the back seat.

## MARK GRIER - DIRECT

1 Q So even if it's not a perfect stand your ground  
2 argument, wouldn't it be plausible to have a stand your  
3 ground type hearing in this case, wouldn't that be  
4 reasonable to expect?

5 A You know, that's going to have to be something that  
6 somebody else is going to have to decide based on the  
7 evidence. I did not believe that it was appropriate to do  
8 at the time.

9 Q Okay. But you said that you had prepared for trial;  
10 is that right?

11 A I had.

12 Q And what was going to be your argument to the jury at  
13 trial?

14 A Well, certainly he denied doing it. The victim said  
15 that a white truck rode by and shot. No one else besides  
16 Ms. Hood implicated my client. And so the only evidence  
17 that implicated my client was the nextdoor neighbor who  
18 made the 911 call and said Dyeshawn is out there with a  
19 gun, and then you hear shots and you hear her say Dyeshawn  
20 was shooting.

21 Q So you had -- in no way were you going to argue  
22 that -- sort of in an alternative setting that this was a  
23 self-defense case.

24 A I certainly, you know -- I didn't feel like a  
25 self-defense case was appropriate, my client said he

## MARK GRIER - DIRECT

1 didn't shoot. Yeah.

2 Q Okay. Would you have gotten -- was there any  
3 discussion with the State about potential pleas?

4 A Prior to -- I had an offer, yeah.

5 Q Do you feel that had you argued stand your ground --  
6 was there any communication with the State that if you  
7 attempted to argue some sort of stand your ground hearing  
8 that the offer would be revoked?

9 A Not that I recall.

10 Q So there would really -- so help me understand, what's  
11 the penalty for having essentially a stand your ground  
12 hearing to the defendant and getting that crack at getting  
13 this case thrown out prior to trial? I mean, what's the  
14 penalty?

15 A I don't see that there is one.

16 Q And it's not such that this would be an impossible  
17 stand your ground argument, right? I mean, the facts in  
18 this case are a little bit strange, wouldn't you agree?

19 A Well, the only -- my client said he didn't shoot so  
20 I -- to argue stand your ground when your client denies  
21 shooting just seemed to be a problem with that for me, you  
22 know?

23 Q But certainly a stand your ground hearing isn't going  
24 to be before a jury, right?

25 A No.

## MARK GRIER - DIRECT

1 Q Your client said he didn't shoot but the State said he  
2 did, right?

3 A Correct.

4 Q And there was no dispute that somebody else got shot  
5 prior to the victim getting shot, right?

6 A No dispute about that.

7 Q All within the same area, all within the same amount  
8 of time?

9 A Right.

10 Q So how many opportunities did you have to meet with  
11 Mr. Foster in this case?

12 A I met with him fairly often, I would say six or seven  
13 times.

14 Q Did you meet with him regarding the 911 tape prior to  
15 the day of trial?

16 A I'm not positive about that. I believe I may have  
17 played that for him, but I had met with the family  
18 including Ms. Craig, and actually I was approached by  
19 them. They had talked with Ms. Hood about the case.

20 Q How soon prior to trial did you come into possession  
21 of the 911 tape?

22 A I'm not sure, I just don't recall.

23 Q Was it days, weeks, months?

24 A I think months.

25 Q Okay. And is it fair to say that that 911 tape is

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1 essentially what you believed to be -- is it fair to say  
2 that was the only evidence that directly implicated him  
3 other than the victim himself?

4 A Well, the original police report, of course, had Ms.  
5 Hood saying that she saw Dyeshawn shoot, but -- I'm not  
6 being responsive, but I think that's fair, is that the  
7 only testimony and the only evidence was Ms. Hood.

8 Q And you made that clear to Mr. Foster that -- or did  
9 you make it clear to Mr. Foster that this is essentially  
10 the only significant evidence the State has in this case?

11 A I did.

12 Q Was there any -- did you hire any investigators to go  
13 and investigate this case, or did your office have  
14 investigators that go out and investigate?

15 A We can hire one. I investigated the case, I went out  
16 to the crime scene, I went to Ms. Craig's house at least  
17 once. I went out there and looked at it by myself, went  
18 out there and talked to a couple of folks in the  
19 neighborhood myself. I just got out and started knocking  
20 on doors one day and talked to other people in the  
21 neighborhood. I went out and looked at the scene. Really  
22 I couldn't get any names of anybody that was there from  
23 anyone other than what was identified in the police  
24 report, and I talked to all of those people.

25 Q Did you speak with Ms. Hood?

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1 A I did, yeah.

2 Q And were you able to obtain essentially her vantage  
3 point in relation to where the shooting actually occurred?

4 A Yeah.

5 Q And do you believe that she would have been able to  
6 see the shooting based upon what you saw?

7 A Originally I thought there were two problems with her  
8 version of it. I thought that there was some trees, I got  
9 Google Maps, I went out and looked, got Google Maps,  
10 compared her version of she was, you know, looking out the  
11 window and then went to the door and looked out the door,  
12 and I thought there were trees. There was some argument  
13 to be made that there were potentially some trees blocking  
14 her view. Secondly, my initial impression was that in the  
15 911 type you can hear other people saying stuff, you know,  
16 and I can't recall exactly, but I believe someone else  
17 says Dyeshawn has a gun. At any rate my initial  
18 impression was that she may have been saying what she was  
19 told by someone else, and that person had -- but after  
20 speaking with her and -- I don't believe we had any kind  
21 of -- I can't remember if we had a pretrial hearing where  
22 she testified, or we may have. At any rate I thought  
23 those might be two deficiencies with the case. But it was  
24 clear that she was -- it was not hearsay. I met with  
25 Dyeshawn's family the morning prior to drawing a jury, I

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1 believe it was the morning of, it may have been the day  
2 before, some time right before in proximity to the trial,  
3 they had talked with Ms. Hood and I went over the 911 tape  
4 with them as well.

5 Q Was that -- let me say -- I apologize for stopping  
6 you, is that the first time that you went over the 911 tape  
7 with them?

8 A It may have been.

9 Q And you are saying this is the day of or the day  
10 before trial?

11 A It's close, yeah.

12 Q And I believe you testified earlier that you don't  
13 remember whether or not you actually played the 911 tape  
14 for Mr. Foster prior to that day either, right?

15 A I can't say in all honesty that I recall playing that  
16 for him. I typically would take my computer out and play  
17 a tape for someone is what I would normally do, but I  
18 honesty can't remember that.

19 Q Even if Mr. Foster says, "I want you to just  
20 communicate with my family," let's assume that that's the  
21 relationship that you had with your client, shouldn't this  
22 all be happening prior to the day of or the day before  
23 trial?

24 Q And is there anything in your notes that would suggest  
25 that you played this tape for Mr. Foster prior to his

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1 family hearing it the day of or the day before?

2 A I would have to go through and look if you want me to  
3 do that, I may have notes on that when I was preparing.

4 Q But you don't have any recollection of doing it or not  
5 doing it. I guess that's what I'm asking.

6 A I honestly don't.

7 MR. SHELDON: Your Honor, I don't have anymore  
8 questions.

9 THE COURT: Mr. Hunter?

10 CROSS EXAMINATION

11 BY MR. HUNTER:

12 Q Good morning, Mr. Grier.

13 A Good morning.

14 Q How long have you been practicing law?

15 A Since 1990, 25 years.

16 Q Okay. So at the time of this trial you'd been  
17 practicing law for 23 years?

18 A Yeah.

19 Q And what percentage of your practice has been devoted  
20 to criminal cases?

21 A Well, I was in private practice exclusively until  
22 2006, and at that time probably 20 percent wise. And I  
23 got the contract in 2006 for the public defender and  
24 maintained my private practice at that time, that shifted  
25 to probably 60 to 70 percent being criminal. And then

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1 since 2009 I became full-time criminal.

2 Q Okay. So you have tried a lot of criminal cases?

3 A I have.

4 Q A lot of shootings.

5 A Quite a few unfortunately.

6 Q And so I believe you touched on this, but you were  
7 appointed on this case as part of your public defender  
8 duties.

9 A I was.

10 Q Did you file a Rule 5 and Brady motion?

11 A I did.

12 Q Did you have any trouble getting that from the State?

13 A I don't recall having trouble, anything in  
14 particular. I just don't recall when I got that 911 tape,  
15 it seems like that came in maybe later.

16 Q But you would have gone overall of the discovery.

17 A Yes.

18 Q Okay. And at some point you went over it with the  
19 applicant.

20 A Yes.

21 Q Is it your normal practice to review the discovery  
22 prior to going over it with the applicant, or with the  
23 defendant at that point?

24 A Certainly, yeah.

25 Q Do you recall how many times you met with Mr. Foster?

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1 A I don't specifically, I don't. I met with him -- he  
2 was in jail the whole time so I met with him fairly  
3 regularly.

4 Q Do you feel like you met with him enough?

5 A I met with him enough to know everything that he can  
6 tell me to help me assist with preparation for the case.

7 Q And you discussed his version of events where he said  
8 he didn't pull a trigger, he wasn't the shooter?

9 A That's true.

10 Q And so you felt that you would have had a problem  
11 going ahead and having a stand your ground hearing where  
12 your client was telling you that he didn't shoot the gun.

13 A I believe that if you deny having complicity in the  
14 death or the injury to another it didn't seem to be  
15 applicable to a stand your ground when you deny any  
16 culpability.

17 Q And you certainly wouldn't have been able to present  
18 any evidence at the stand your ground hearing that your  
19 client had been the trigger man and then walk that back at  
20 trial and say, "Wait, he wasn't the trigger man." That  
21 wouldn't been contra --

22 A I suppose I could have. I haven't been confronted  
23 with -- I haven't done the research quite frankly to  
24 determine whether that would have been the appropriate way  
25 to handle that or not. If I understand you correctly,

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1 you're saying at a stand your ground hearing --

2 Q Well, let me rephrase it. Would you agree that you  
3 would have had potentially an ethical conflict by  
4 presenting evidence at one hearing in front of a judge that  
5 directly conflicted with the evidence you were going to  
6 present at another one?

7 A Quite honestly I don't know that I necessarily would  
8 have, you know, I'm not quite sure whether I can present  
9 contrary evidence under the circumstances or not without  
10 researching it.

11 Q But if your client told you he wasn't the shooter and  
12 he never shot the gun, you wouldn't be able to then present  
13 evidence that he was the shooter.

14 A Well, I wouldn't be able to have him certainly  
15 presenting evidence and then to say that he didn't, no,  
16 certainly that would be unethical. As far as my client --  
17 if there was collateral evidence that he was the shooter  
18 perhaps it could be presented that way at a stand your  
19 ground motion.

20 Q But would you agree that if you would have had a stand  
21 your ground hearing it would likely have been necessary for  
22 Mr. Foster to testify?

23 A Honestly I don't know. The stand your ground and  
24 Castle Doctrine stuff is in such flux whether or not I  
25 could have presented collateral evidence that suggested he

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1 was the shooter for the purpose of the stand your ground  
2 motion, I don't know whether that would have been -- I  
3 don't know I would have to research the ethics of that.  
4 But certainly I couldn't have presented him saying, "I did  
5 shoot in self-defense," and then have him at trial say, "I  
6 didn't." Of course he wouldn't have to testify at trial.  
7 So it's kind of fuzzier than I can just respond to in a  
8 way -- I wouldn't pretend to have the answers to that  
9 issue.

10 Q That's fair enough. Did you discuss self-defense with  
11 Mr. Foster? Did he say --

12 A I don't recall discussing it necessarily with him  
13 because he just adamantly denied having shot. So I may  
14 have -- it may have come up in conversation, but --

15 Q But it was never really an issue.

16 A It never seemed to be an issue in the case when the  
17 client is adamant that they didn't shoot.

18 Q So based on what Mr. Foster told you self-defense was  
19 not an issue in this case.

20 A Correct.

21 Q Okay. Prior to Mr. Foster's plea, did you explain the  
22 difference between a regular guilty plea and an Alford  
23 plea?

24 A I did.

25 Q And did you explain to him that by pleading guilty he

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1 would be waiving his right to challenge the evidence?

2 A Yes.

3 Q Okay. And in this case, and I believe in all Judge  
4 Kinard's cases, he had that defendants go over a plea  
5 affidavit; is that correct?

6 A We did. We went through the plea affidavit, yeah.

7 Q So it's fair to say Mr. Foster knew what he was doing  
8 by pleading guilty.

9 A Yes.

10 Q And it was his choice to plead guilty.

11 A It was. I mean, the family encouraged it as well  
12 based on their conversations with Ms. Hood.

13 Q And I believe you touched on this earlier, but the car  
14 that the victim was in was driving away from the scene when  
15 the victim was shot, correct?

16 A That is my reading of the police report is that it  
17 actually was pulling off as the shots were being fired,  
18 and from every account that's my recollection of it.

19 Q And you were prepared to go to trial in this case?

20 A We were absolutely prepared.

21 MR. HUNTER: Beg the Court's indulgence.

22 THE COURT: All right.

23 (Break in proceedings.)

24 Q In your professional opinion you didn't think you  
25 needed to hire an investigator in this case?

## MARK GRIER - REDIRECT

1 A You know, I talked to everybody. I went to the site.  
2 Yeah, in my professional opinion I didn't feel like I  
3 needed an investigator in this case. They were all -- as  
4 Mr. Craig said, there were other people out there but  
5 there were no leads and nobody that -- no information that  
6 I felt like an investigator could develop. If I would  
7 have been able to get some feeling for that I probably  
8 would have gotten an investigator.

9 MR. HUNTER: I believe that's all I have, thank you.

10 THE COURT: Any redirect?

11 MR. SHELDON: Just very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SHELDON:

14 Q Mr. Croom asked about your normal practice to go over  
15 discovery with defendants, and that is your normal  
16 practice, isn't it?

17 A It is.

18 Q Is it also your normal practice to take relatively  
19 detailed dictations of when and where you meet with clients  
20 and what you discuss and all?

21 A Typically, yes.

22 Q And do you have any dictations discussing meeting Mr.  
23 Foster with that 911 tape prior to trial?

24 A I would have to look and see, I don't know. It  
25 shouldn't take too long.

## DYESHAWN FOSTER - DIRECT

1 (Break in proceedings.)

2 A I don't see where I have any dictation to that.

3 MR. SHELDON: Thank you. I don't have anymore  
4 questions.

5 THE COURT: All right. Thank you, sir, you can step  
6 down. Mr. Sheldon, you can call your next witness.

7 MR. SHELDON: Your Honor, we call Dyeshawn Foster.

8 THE COURT: All right.

9 The witness, DYESHAWN FOSTER, was first duly sworn and  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SHELDON:

13 Q Mr. Foster, please state your name for the record.

14 A Dyeshawn Foster.

15 Q Are you currently -- where are you currently an inmate  
16 at?

17 A McCormick.

18 Q And how long have you been there?

19 A Three years.

20 Q And did you receive a sentence of 18 years to ABHAN?

21 A Yes, sir.

22 Q Is that the big sentence that you're serving?

23 A Yes, sir.

24 Q Were you represented by Mr. Grier at your trial, or  
25 your plea?

## DYESHAWN FOSTER - DIRECT

1 A Yes, sir.

2 Q And you actually pled guilty to this case pursuant to  
3 North Carolina versus Alford, didn't you?

4 A Yes, sir.

5 Q How long did Mr. Grier represent you?

6 A About three months.

7 Q Three or four months, would that be fair? But you had  
8 a lawyer prior to that, didn't you?

9 A Yes, sir.

10 Q Who was your first lawyer?

11 A David Cook.

12 Q So Mr. Grier essentially inherited this case from Mr.  
13 Cook; is that right?

14 A Yes, sir.

15 Q Did you have an ample opportunity to discuss your case  
16 with Mr. Grier?

17 A No, sir.

18 Q There's been a lot of talk about a 911 tape. When is  
19 the first time you heard that tape?

20 A I never heard that tape. He just showed me the tape,  
21 I ain't never heard it.

22 Q What types of conversations did you have with Mr.  
23 Grier about the case?

24 A Basically he told me -- asked me do I want to go to  
25 trial or not, and I was like "Yeah, I want to go." When

## DYESHAWN FOSTER - DIRECT

1 Ms. Hood got up there to testify he told me to cop out so  
2 I copped out.

3 Q So did he discuss the plea offers in this case with  
4 you?

5 A The plea offer was zero to 20.

6 Q Okay. And that's what you ended up taking, isn't it?  
7 How much time did he say you were facing in this case if  
8 you went to trial?

9 A Thirty to life.

10 Q So he mentioned you would potentially be facing a life  
11 sentence if you went to trial?

12 A Yes, sir.

13 Q Did you understand what he was talking about, that the  
14 State could come back and try you for separate offenses or  
15 anything? Did you understand what he was saying to you  
16 when he said that?

17 A No, sir.

18 Q Did your potential sentence in this case, or the  
19 potential sentence of 30 to life if you went to trial play  
20 a factor in your decision to plead guilty?

21 A Yes, sir.

22 Q If you knew that this case, in fact, did not carry  
23 life, would you have still pled guilty?

24 A No, sir.

25 Q Are you asking the Court today for a new trial?

## DYESHAWN FOSTER - DIRECT

1 A Yes, sir.

2 Q Did Mr. Grier go over all legal defenses that you  
3 could potentially have to this charge?

4 A No, sir.

5 Q What did you and Mr. Grier talk about?

6 A We talked about -- he asked me did I do the crime and  
7 I was like, "No, I didn't do nothing. I'm an innocent  
8 bystander, I didn't have nothing to do with it." I was in  
9 my grandmother's house at the time, she was cooking and I  
10 was getting me a plate of fish.

11 Q What else could Mr. Grier have done for you to assist  
12 in your legal defense?

13 A I don't know what he could have done.

14 Q Did you have all of your witnesses lined up ready for  
15 trial?

16 A Yes, sir, I had like 25 witnesses.

17 Q So you're on the eve of trial about to try a case that  
18 afternoon, right?

19 A Yes, sir.

20 Q Why did you decide to plead guilty?

21 A Because Mr. Mark Grier was telling me, Mr. (sic)  
22 Hood, she ain't folding so he looked at me and said that I  
23 need to cop out, and I said, "All right, I'll cop out."

24 Q Did you have ample time to discuss that testimony with  
25 him or was that -- did it feel rushed?

## DYESHAWN FOSTER - DIRECT

- 1 A It felt rushed.
- 2 Q When was the first time you were having these  
3 conversations about copping out and taking a plea with Mr.  
4 Grier?
- 5 A During the trial.
- 6 Q During the day of trial?
- 7 A Yes, sir.
- 8 Q Where were you at when this was going on?
- 9 A Sitting right beside him.
- 10 Q In the courtroom?
- 11 A In the courtroom sitting right beside him.
- 12 Q So these conversations were happening actually in the  
13 courtroom.
- 14 A Yes, sir.
- 15 Q Did he say anything other than you could get zero to  
16 20? Did he give you a recommendation as to what he felt  
17 you were going to get or anything like that?
- 18 A No, sir.
- 19 Q Okay. So you understood that the Judge could sentence  
20 you up to 20 years.
- 21 A Yes, sir.
- 22 Q Okay. But it's your testimony here today that if you  
23 would have known this charge did not, in fact, carry 30 to  
24 life, that you would have done something differently.
- 25 A Yes, sir.

## DYESHAWN FOSTER - CROSS

1 Q And you would have taken this case to trial. Okay.

2 MR. SHELDON: Your Honor, I don't have anymore  
3 questions for Mr. Foster.

4 THE COURT: All right. Mr. Hunter, your witness.

5 CROSS EXAMINATION

6 BY MR. HUNTER:

7 Q Good morning, Mr. Foster.

8 A Good morning.

9 Q Now Mr. Foster, prior to -- on the morning of your  
10 guilty plea but before you decided to plead guilty Mr.  
11 Grier had a hearing to try and suppress the tape of -- that  
12 Ms. Hood -- let me rephrase that.

13 MR. HUNTER: Beg the Court's indulgence.

14 (Break in proceedings.)

15 Q Prior to the morning of your plea but prior to your  
16 plea there was a suppression motion to try to get the 911  
17 tape kicked out, right?

18 A No, sir, I don't remember that.

19 Q You don't remember that?

20 A No, I don't remember that.

21 Q So you don't remember hearing Ms. Hood's voice on the  
22 911 tape?

23 A I ain't never heard the 911 tape.

24 Q Okay. Now, prior to your plea did Mr. Grier go over  
25 with you the fact that you would be waiving your right to

## DYESHAWN FOSTER - CROSS

1 challenge the evidence against you by pleading guilty?

2 A Yeah.

3 Q He did? Okay. And at your plea Judge Kinard told you  
4 that the charge you were pleading to carried up to 20  
5 years, correct?

6 A Say what now?

7 Q The judge at your plea told you you could get up to 20  
8 years for pleading guilty.

9 MR. SHELDON: Judge, I'm going to object as to the --

10 A I mean --

11 THE COURT: Hang on.

12 MR. SHELDON: I think not only is that -- let's assume  
13 that that's relevant at the hearing, I think that's  
14 completely confusing. The charges he pled to is not the  
15 charge he was going to trial on, so the relevance as to  
16 what Judge Kinard told him the charge he pled to carried I  
17 don't think is relevant to what the charge he was about to  
18 go to trial on carried.

19 MR. HUNTER: I think it's relevant because he pled  
20 guilty and he didn't go to trial.

21 THE COURT: All right. Objection overruled.

22 Q You were aware that you could get up to 20 years by  
23 pleading guilty, correct?

24 A No.

25 Q No? You don't recall Judge Kinard telling you that?

## DYESHAWN FOSTER - CROSS

1 MR. HUNTER: Judge, that's on page four of the  
2 transcript.

3 THE COURT: What page?

4 MR. HUNTER: Page four.

5 THE COURT: Okay.

6 Q You don't recall Judge Kinard telling you that?

7 A I don't remember that.

8 Q And Judge Kinard, do you recall him telling you that  
9 you waived your right to put up a defense by pleading  
10 guilty?

11 A Yeah.

12 Q Okay. And you filled out a plea affidavit prior to  
13 pleading guilty, didn't you?

14 A I don't remember.

15 Q You don't remember that? Okay. The Judge told you  
16 that you could call witnesses and you didn't have to plead  
17 guilty, and if you went to trial you could call witnesses  
18 in your defense, correct?

19 A Yeah.

20 Q Judge asked you if you had any questions, you didn't.

21 A No.

22 Q Okay. And, in fact, as part of your plea you had some  
23 other indictments dismissed as well, didn't you?

24 A Don't remember.

25 Q You don't remember?

## DYESHAWN FOSTER - REDIRECT

1 MR. HUNTER: Judge, that's on page seven, I believe.

2 Q And throughout the time you met with Mr. Grier you  
3 maintained you didn't shoot the gun, correct?

4 A Right.

5 Q You didn't shoot the victim.

6 A Right.

7 Q Your story the whole time was you were just an  
8 innocent bystander.

9 A Yes, sir.

10 MR. HUNTER: No further questions. Thank you.

11 THE COURT: All right. Any redirect?

12 MR. SHELDON: Just very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SHELDON:

15 Q You knew the plea offer was zero to 20 years, didn't  
16 you? Answer out loud so the court reporter can understand  
17 you.

18 A Yeah. Yeah.

19 Q So you did know the charges you were pleading to  
20 carried 20, right?

21 A Right.

22 Q Because you knew that you could be sentenced up to 20.

23 A Yes, sir.

24 Q But you weren't going to trial on the ABHAN that you  
25 pled to, were you?

## DYESHAWN FOSTER - REDIRECT

1 A No, sir.

2 Q What were you going to trial on?

3 A The Marquivous Segars (phonetically.)

4 Q On attempted murder, right?

5 A On attempted murder.

6 Q And as to the attempted murder you were under the  
7 impression from your lawyer that that charge carried 30 to  
8 life, weren't you?

9 A Right.

10 MR. SHELDON: No more questions, Your Honor.

11 THE COURT: All right. Thank you, sir, you can step  
12 down. You can call your next witness.

13 MR. SHELDON: Your Honor, the applicant rests.

14 THE COURT: Applicant rests. Mr. Hunter?

15 MR. HUNTER: State doesn't have any witnesses, Your  
16 Honor.

17 THE COURT: State doesn't have any witnesses, the  
18 State rests. All right, let's hear arguments, gentlemen.

19 MR. SHELDON: Thank you, Your Honor. May it please  
20 the Court?

21 THE COURT: Yes, sir.

22 MR. SHELDON: Your Honor, we would argue that Mr.  
23 Foster is entitled to have his conviction vacated. This is  
24 certainly a guilty plea, which I concede is difficult to  
25 overcome. However, in this case there's been testimony

1 that Mr. Grier failed to argue a stand your ground hearing  
2 that could have been argued at essentially no penalty to  
3 the defendant whatsoever. There could have been collateral  
4 evidence presented at that hearing. He testified that the  
5 defendant -- not only did the defendant not have to testify  
6 at trial regarding his position on whether or not he did or  
7 did not fire the gun, but he also would not have had to  
8 testify at the stand your ground hearing, Your Honor. The  
9 facts of this case are very strange, it's one that lends  
10 itself that if Mr. Foster were the shooter would lend  
11 itself to some sort of a self-defense claim or a stand your  
12 ground claim. He was certainly invited to be at the place  
13 of the shooting. The victim in this case fired first and  
14 actually shot Mr. Foster's cousin, it was not until then  
15 that the victim gets shot. There was testimony that this  
16 all happened in a very, very short time span, and that Ms.  
17 Craig didn't see the shooting but did hear it all and that  
18 it was very quick, Your Honor. The other thing is, Your  
19 Honor, anytime somebody is entering into a plea of guilty  
20 on the doorstep at trial at the courthouse, there's a sense  
21 of rushed, it is by nature a rushed guilty plea, which  
22 doesn't negate the fact that it's a guilty plea, but it  
23 does negate it when you're telling the defendant that he is  
24 facing a sentence that he is not facing. Attempted murder  
25 under no statute carries life, nothing he is charged with

1 carries life, a jury or a judge could not have sentenced  
2 him to life, or maybe a life equivalent if all charges are  
3 stacked on top, but in this case you really only have the  
4 attempted murder and then the firearms charge. So at no  
5 point even if a Court were to max him out is he even facing  
6 a life equivalent. So to say you need to plead because you  
7 are facing a life sentence is simply not true, and is by  
8 definition so coercive that you take any voluntariness out  
9 of the plea that could have happened. Because when you're  
10 at the courthouse ready to go to trial -- it's clear that  
11 all he wanted to do was go to trial, they had picked a jury  
12 on this case -- and then say, "Well, this 911 tape that we  
13 just played or is just being played that your family heard  
14 is going to convict you and you're going to get life," it  
15 is so ineffective to say that when it is not true that the  
16 plea becomes so tainted and coercive at that point that I  
17 believe the Court has no choice but to grant a new trial  
18 for him.

19 THE COURT: I understand, Mr. Sheldon. Mr. Hunter?

20 MR. HUNTER: Judge, I would just -- the State's  
21 position is that Mr. Foster's plea based on the evidence  
22 before the Court was knowingly, voluntarily and  
23 intelligently entered. He gave up the right to challenge  
24 the evidence against him by pleading guilty, he knew that,  
25 he did a plea affidavit. Judge Kinard went over that with

1 him as well, Mr. Grier went over it with him. So as far as  
2 the stand your ground, Mr. Foster even testified that all  
3 he ever told Mr. Grier was that he was not the shooter. I  
4 don't think it really makes sense that Mr. Grier should be  
5 expected to raise a self-defense or stand your ground claim  
6 when his client is telling him he didn't even shoot the  
7 victim, I think it's pretty farfetched. As far as the life  
8 sentence issue, I don't believe Mr. Grier's testimony was  
9 that he told Mr. Foster that he could get life on that  
10 charge. I think Mr. Grier's testimony was that if he went  
11 to trial, was convicted that would be a strike, a most  
12 serious, and then the State had these other attempted  
13 murder charges that they were hanging over him and they  
14 could take him back to trial on those and then they could  
15 strike him out and LWOP him, I think that's the context in  
16 which the talk of the life sentence was conveyed.  
17 Furthermore, as part of Mr. Foster's plea, those other  
18 attempted murder charges were dismissed by the State. I  
19 think that just further points to the fact that Mr. Foster  
20 was kind of stuck between a rock and a hard place and  
21 decided to take the plea, and I don't think there has been  
22 any credible evidence presented today that he didn't know  
23 what he was doing and that his plea should be overturned.  
24 And that's the State's case -- the State's argument.

25 THE COURT: All right, thank you. Any further

1 argument?

2 MR. SHELDON: No, sir, Your Honor.

3 THE COURT: Well, based upon the testimony and  
4 evidence presented I find the applicant's testimony is not  
5 credible, I find Mr. Grier's testimony is more credible and  
6 that his representation of the applicant was adequate and  
7 as such the first prong of the Strickland test cannot be  
8 met by the applicant, as such his petition for post  
9 conviction relief is denied. Mr. Hunter, please prepare an  
10 order incorporating your arguments into a proposed order  
11 for my review copying Mr. Sheldon first. All right. Thank  
12 you very much, that concludes this hearing.

13 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,  
2 Official Court Reporter for the Sixth Judicial  
3 Circuit of the State of South Carolina, do hereby  
4 certify that the foregoing is a true, accurate and  
5 complete transcript of the proceedings had and  
6 evidence introduced in the trial of the captioned  
7 case relative to appeal in the Court of Common Pleas  
8 for Lancaster County, South Carolina, on the 12th  
9 day of January, 2016.

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

12

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January 20, 2017

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA )  
 COUNTY OF LANCASTER )  
 )  
 Dyeshawn Foster, #358161, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTH JUDICIAL CIRCUIT

Case No. 2015-CP-29-1199

ORDER OF DISMISSAL

FILED  
 OFFICE OF CLERK  
 OF COURT  
 2016 FEB 22 PM 1:23  
 CLERK OF COURT  
 LANCASTER, SC

This matter comes before this Court by way of a post-conviction relief (PCR) application filed on August 26, 2015. Respondent made its return on December 7, 2015. An evidentiary hearing into the matter was convened on January 12, 2015, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by Nathan Sheldon, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. The Applicant was indicted at the January 2013 term of the Lancaster County Grand Jury for attempted murder (2013-GS-29-0048), unlawful carry of a pistol (2013-GS-29-0051) and possession of a firearm or knife during the commission of a violent crime (2013-GS-29-0052). Mark Grier, Esquire, represented him. On December 9, 2013, the Applicant entered an Alford plea to the lesser included of assault and battery of a high and aggravated nature (ABHAN) and as indicted to the remaining charges. The Honorable J. Ernest Kinard, Jr. sentenced the Applicant

to concurrent terms of eighteen years imprisonment for ABHAN and five years imprisonment for the possession of a firearm. Applicant received time served for the unlawful carry.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected by Benjamin J. Tripp, Esquire. The South Carolina Court of Appeals dismissed the Applicant's appeal pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Foster, 2015-UP-143 (filed March 18, 2015). The Remittitur was issued on April 3, 2015.

**ALLEGATIONS**

At the post-conviction relief hearing, Applicant argued his confinement is unlawful based upon the following grounds:

- 1. Ineffective assistance of counsel.
  - a. Plea counsel failed to adequately prepare Applicant's case for trial.
  - b. Plea counsel failed to retain an investigator.
  - c. Plea counsel failed to request a Stand Your Ground hearing.
- 2. Involuntary guilty plea.

**SUMMARY OF TESTIMONY PRESENTED**

At the evidentiary hearing, Applicant testified on his own behalf. This Court also heard testimony from plea counsel, Mark Grier, Esquire (Counsel), as well as Applicant's grandmother, Gloria Craig. This Court also had before it a copy of the plea transcript, the Lancaster County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

**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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible. This Court finds Ms. Craig's



testimony irrelevant to the issues presented in this PCR action.

#### **1. Failure to Prepare**

Applicant alleges Counsel did not thoroughly prepare his case for trial, nor did Counsel review the evidence with Applicant. The Court finds this allegation is without merit. At the PCR hearing, Counsel testified he has been practicing law since 1990, with the great majority of his work devoted to criminal defense. Counsel testified he filed the appropriate Rule 5 and Brady motions, received discovery materials from the State, and went over the evidence with Applicant. Counsel testified he reviewed the 911 tape prior to Applicant's plea. Although Counsel could not recall with specificity how many times he met with Applicant, he testified he met with Applicant regularly. Counsel testified he met with Ms. Craig, and he did not believe her testimony would help Applicant because she did not witness the shooting. Counsel testified he went to the scene of the shooting and spoke to neighbors during his preparation of the case. Additionally, Counsel testified he was prepared to try Applicant's case, and that a jury had already been picked when Applicant decided to plead guilty.

Counsel met with Applicant an adequate number of times prior to the guilty plea. Counsel also obtained discovery from the solicitor and went over it with Applicant. Counsel interviewed witnesses and reviewed the evidence against Applicant. Finally, Counsel testified he was prepared to go to trial. Accordingly, this Court finds Counsel thoroughly investigated and prepared Applicant's case.

#### **2. Failure to Retain an Investigator**

Applicant argues Counsel was ineffective for failing to retain a private investigator. This allegation is without merit. Counsel explained at the PCR hearing that based upon the evidence against Applicant, he did not believe it was necessary to hire an investigator. Counsel's belief

A handwritten signature in black ink, appearing to be 'J. R. H.', located at the bottom right of the page.

was confirmed at the PCR hearing, where the expert testimony presented by Applicant added little either factually or theoretically. As such, Applicant has not shown a reasonable probability that the outcome would be different had Counsel retained an investigator. "Counsel has a duty . . . to make a reasonable decision that makes particular investigations unnecessary" Strickland, 466 U.S. at 691. Finally, the record is clear that Applicant was well aware that by pleading guilty, he waived any right to challenge the evidence against him. Accordingly, this Court finds no deficiency in Counsel's decision not to retain an investigator.

### 3. Failure to Request a Stand Your Ground Hearing

Applicant argues that Counsel was ineffective for failing to request a Stand Your Ground hearing. This argument is without merit. Counsel testified that although some facts would possibly corroborate a self-defense claim, Applicant maintained to Counsel throughout his representation that Applicant did not shoot the victim. Furthermore, Counsel testified the evidence indicated the victim was fleeing when he was shot. Counsel testified his strategy based on Applicant's representations of the facts to him was to argue that Applicant was not the shooter. Counsel testified he did not think about holding a Stand Your Ground hearing where his client insisted he did not shoot the victim. This Court finds Counsel's decision not to request a Stand Your Ground hearing perfectly reasonable under the circumstances. Counsel could not reasonably be expected to request a Stand Your Ground hearing when his client insisted he did not shoot the victim.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has failed to make any showing that, but for Counsel's alleged deficiencies, the result of Applicant's case would have been any



different.

### INVOLUNTARY GUILTY PLEA

The voluntariness of a guilty plea is determined in light of the entire record before the court. Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012) (citing Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000)). "To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him." Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991)). Furthermore, a defendant must only be informed of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Roddy, 339 S.C. at 33, 528 S.E.2d at 421 (citing Boykin v. Alabama, 395 U.S. 238 (1969)). "When attempting to determine the voluntary and intelligent nature of a plea, the plea colloquy ordinarily serves as confirmation that a criminal defendant is waiving the right to raise certain constitutional claims by pleading guilty." Hyman, 397 S.C. at 44, 723 S.E.2d at 379 (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97, 98 (1975)). However, the plea judge need not provide an "enumeration of specific rights waived ... where the record otherwise reveals affirmative awareness of the consequences of a guilty plea." State v. Lambert, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976) (citing Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973)). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th

Cir. 1976)). Pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970); Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992).

The record before this Court clearly shows that Applicant was fully informed of the consequences of entering his guilty plea. The record shows Applicant's plea was not coerced, and it was Applicant's decision to plead guilty. Additionally, this Court finds Applicant's testimony not credible. Applicant was advised that by pleading guilty he gave up his right to challenge the evidence the State had against him, as well as his right to put up any affirmative defenses. Applicant has failed to present any valid reasons why he should be allowed to depart from his valid plea of guilty. Accordingly, this Court finds Applicant's plea was knowingly, intelligently, and voluntarily entered.

#### 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, this Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

#### CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This 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

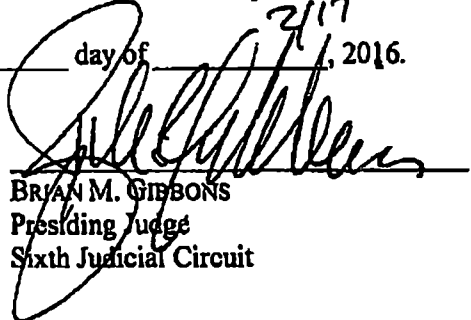


appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, 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:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

  
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 BRYAN M. GIBBONS  
 Presiding Judge  
 Sixth Judicial Circuit

\_\_\_\_\_, South Carolina