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AUG 30 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
Jocelyn J. Newman, Circuit Court Judge

RECEIVED

AUG 30 2017

S.C. SUPREME COURT

TIMOTHY JAMAL WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000072

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)	2013-GS-43-0744
)	
)	
)	
State Of South Carolina))
)	
vs.)	TRANSCRIPT OF RECORD
)	
.Timothy Jamal Wilson))
<u>DEFENDANT</u>)	June 17, 2015
)	Sumter, SC

B E F O R E:

THE HONORABLE W. JEFFREY YOUNG, JUDGE.

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

EDGAR R. DONNARD, JR., ASSISTANT SOLICITOR
Attorney for the State

ELAINE COOKE, ASSISTANT PUBLIC DEFENDER
Attorney for the State

KESHIA REED
Official Court Reporter

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(WHEREUPON, no witnesses were called.)

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	Interview Form		19
C-2	Suspect Statement		19
C-3	Photograph		19

1 MR. DONNALD: Your Honor, please the Court.

2 THE COURT: Yes, sir.

3 MR. DONNALD: Whenever you're ready.

4 THE COURT: I'm ready.

5 MR. DONNALD: Your Honor, on the indictment
6 that's already before the Court on 2013-GS-43-0744 the
7 case of Timothy Jamal Wilson, which is a case that the
8 jury has been selected but not yet sworn, Your Honor.
9 Pretrial motions have been heard and testimony was just
10 about to begin. The State anticipates been approached by
11 his defense attorney for who has done an excellent job for
12 him, Ms. Elaine Cooke with the Sumter County Public
13 Defender's Office and informed that he wishes to plead
14 guilty to the charge of attempted murder in exchange for a
15 negotiated sentence -- negotiation between her and I, Your
16 Honor, of 12 years.

17 THE COURT: All right. Are you all dismissing
18 all the other ones?

19 MR. DONNALD: All remaining charges will be
20 dismissed, Your Honor.

21 THE COURT: Okay. So it's just the attempted
22 murder.

23 MR. DONNALD: Just the attempted murder.

24 THE COURT: Please place him under oath.

25 BAILIFF: Raise your right hand please. State

1 your name.

2 THE DEFENDANT: Timothy Wilson.

3 BAILIFF: I didn't hear you, sir.

4 THE COURT: Come up to the podium.

5 BAILIFF: State your name.

6 THE DEFENDANT: Timothy Wilson.

7 BAILIFF: Do you solemnly swear or affirm your
8 testimony to the Court will be the truth, the whole truth,
9 and nothing but the truth so help you God?

10 THE DEFENDANT: Yes, sir.

11 BAILIFF: Thank you.

12 THE COURT: All right. You are Timothy Jamal
13 Wilson?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Mr. Wilson -- Ms. Cooke,
16 you represent Mr. Wilson; is that correct?

17 MS. COOKE: Yes, sir.

18 THE COURT: Have you had an opportunity to
19 explain to him the charges contained in the indictment,
20 the possible punishment he faces and his Constitutional
21 Rights?

22 MS. COOKE: Yes, sir.

23 THE COURT: You think he's understood what
24 you've told him?

25 MS. COOKE: Yes, sir.

1 THE COURT: And does he intend to plead guilty
2 or not guilty?

3 MS. COOKE: Guilty.

4 THE COURT: And do you agree with his decision?

5 MS. COOKE: I do.

6 THE COURT: And we've had pretrial motions and
7 we've selected a jury. And do you think that if this case
8 were to go to trial there be a substantial likelihood that
9 he be found guilty beyond a reasonable doubt?

10 MS. COOKE: I do, Your Honor.

11 THE COURT: All right. Mr. Wilson, now I need
12 to ask you a series of questions to make sure you're
13 entering into this plea freely, voluntarily, knowingly and
14 intelligently. But the first question I have is are you
15 under the influence of any alcohol or drugs today?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you taking any medication that
18 would cloud your judgment?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you aware of any physical,
21 emotional or nervous conditions that would keep you from
22 understanding what's happening today?

23 THE DEFENDANT: Repeat that again, sir?

24 THE COURT: Are you under the influence of any
25 intoxicates or anything like that that you're aware of any

1 nervous condition that would keep you from understanding
2 what's happening in this courtroom today?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. Now, it's my
5 understanding that you're wanting to plead guilty to
6 attempted murder -- and that's not a violent a offense?

7 MR. DONNARD: It is, Your Honor, most serious
8 violent.

9 THE COURT: That's kind of what I thought.

10 MR. DONNARD: I apologize for not checking the
11 box on the sentencing sheet.

12 THE COURT: All right. The indictment reads
13 that Timothy Jamal Wilson did in Sumter on or about
14 3-13-2013 violate section 16-3-29 of the South Carolina
15 Code of Laws 1976 as amended, in that the said Timothy
16 Jamal Wilson did with intent to kill attempt to kill
17 another person Quintin Roach with malice aforethought
18 either expressed or implied shot the victim, Quintin
19 Roach, is what's stated in this indictment the truth?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you -- Solicitor, what are the
22 facts? I think I know most of the facts?

23 MR. DONNARD: Your Honor, on March 13th 2013,
24 Mr. Wilson was at a house that was on Carolina Avenue I
25 believe is 128 Carolina Avenue here and that's what I was

1 over there looking up. At any rate, it's in the 120's on
2 Carolina Avenue here in Sumter County Your Honor. Mr.
3 Wilson was at the residence. He'd been taken there by a
4 lady by the name of Geneva Plowden either taking her or
5 accompanied there by Ms. Geneva Plowden. Ms. Plowden
6 left. Ms. Geneva Plowden is not in the courtroom, but her
7 mother is in the courtroom. Ms. Plowden is out in the
8 hallway. Understandably, she's very upset about the
9 transaction that had happened on this night in particular,
10 but she does also know about the plea, the negotiated plea
11 that we are entering into -- Mr. Wilson's entering into
12 and she is in approval as well as her mother who is
13 sitting in the courtroom, Your Honor.

14 At any rate on March the 13th of 2013,
15 Mr. Wilson was at the residence on Carolina Avenue inside
16 the residence when Quintin Roach pulled up with Ms. Geneva
17 Plowden. Mr. Wilson had a handgun in his possession, came
18 outside of the house. Geneva Plowden's testimony would
19 have been that she was trying to stop him. I don't know
20 what his testimony would have been and, of course, he
21 doesn't have to give any now, but her testimony would have
22 been that she was coming, that she tried to stop him
23 from -- Mr. Wilson from coming outside the house, was
24 unable to. That he did come outside of the house shot
25 three times. One round going through the driver side and

1 passenger side window striking Mr. Quintin Roach in the
2 head causing -- luckily, it did not kill him, luckily
3 for -- easy for us to say. Luckily for Mr. Wilson, but
4 especially luck for Mr. Roach. He was wearing a skull cap
5 at the time. The skull cap is in evidence. I would have
6 produced it had it gone to trial. There is an entry wound
7 and exit wound on that -- or an entry hole and an exit
8 hole on the skull cap that he was wearing right next to
9 his head.

10 THE COURT: The picture look like it just zing
11 his head. Is that what happened?

12 MR. DONNALD: Apparently so, but it was close
13 enough that it actually went underneath a portion of the
14 nylon wave cap that he had on his head at the time he was
15 shot. Fortunately for everybody involved, he -- although,
16 he was knock unconscious and his skull was fractured, he
17 did not pass away as a result of this. In fact, he got up
18 and walked out of the hospital, but at any rate we think
19 that's the factual basis for the plea that's before you is
20 that he did exit that residence and shoot Mr. Roach
21 striking him in the head.

22 THE COURT: All right. Mr. Wilson, do you agree
23 with the facts as stated by the Solicitor?

24 THE DEFENDANT: Yes, sir, I agree with some of
25 the facts, but some of it is false.

1 MS. COOKE: Your Honor, I had a conversation
2 with Mr. Wilson. I told -- he doesn't dispute anything
3 that would matter as far as your taking the plea. There
4 just a couple little things that he disputes the way ---

5 THE COURT: Did you shoot him?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you shot him with a gun?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you shoot him with a gun in the
10 head?

11 THE DEFENDANT: Yeah, I guess so.

12 THE COURT: Did it hit him?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: That's good enough. All right.

15 Now, you understand that the potential sentence for this
16 is what 30 years?

17 MR. DONNARD: That's correct.

18 THE COURT: Up to 30 years, but your attorney
19 and the State have negotiated 12 years. You understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And so I can only accept or deny and
23 I haven't decided yet what I'm going to do, but if I don't
24 accept it, then you can step down and we'll go ahead and
25 have the trial. You understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. You understand also that
3 this is a serious violent crime that means that you're
4 going to have to serve 85 percent of what I sentence you
5 to. And this is a strike on your three strikes you're
6 out. So if you get two more charges, you could end up
7 with a life without possibility of parole sentence. Do
8 you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Now, does he have any
11 other prior record that this makes it almost second or
12 something like that?

13 MR. DONNARD: Your Honor, his prior record
14 consist of one conviction for a possession of cocaine
15 first offense.

16 THE COURT: All right. That would not come into
17 that, so you still have some more. So you fully
18 understand the nature of the charge and the possible
19 sentence that you can get today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, you understand the
22 Constitutional Rights that you give up when you plead
23 guilty. The first one your right against
24 self-incrimination, not in this court would you ever be
25 required to testify against yourself. However, when you

1 plead guilty, you're doing exactly that. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So do you wish to waive your right
5 against self-incrimination at this time?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You're also waiving your right to
8 have a jury trial. We got 14 jurors 12 primary and two
9 alternates sitting back in that room ready to try this
10 case, but if you have that trial, I will tell the jury
11 they can't give -- if you decide not to take the stand,
12 they can't even consider that against you. They have to
13 find guilt beyond a reasonable doubt. Ms. Cooke could
14 call witnesses on your behalf, could artfully
15 cross-examination the witnesses presented by the State,
16 could challenge the evidence in anyway and possibly
17 assert an affirmative defense of self-defense which could
18 result in you being acquitted. But when the State -- when
19 you plead guilty, the State doesn't have to prove anything
20 and you don't get to ask any questions about the evidence.
21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So do you wish to waive your right
24 to have a jury trial and confront the witnesses against
25 you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Has anybody threatened
3 you in anyway to get you to plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anybody promised you anything to
6 get you to plead guilty?

7 THE DEFENDANT: You talking about this?

8 THE COURT: Other than the negotiated plea?

9 THE DEFENDANT: No, sir.

10 THE COURT: And are you fully satisfied with the
11 services of Ms. Cooke?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has she done anything that you wish
14 she had not have done?

15 THE DEFENDANT: No, sir.

16 THE COURT: And do you need any more time to
17 speak with her?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. Let me ask you you're
20 pleading guilty though because you are guilty; is that
21 correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Now, have you understood
24 all of my questions?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions for the
2 Court?

3 THE DEFENDANT: No, sir.

4 THE COURT: And do you understand if you change
5 your mind about your decision to plead guilty or the
6 sentence that I give you, that you will only have ten days
7 in which to file an appeal?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Under indictment -- and I understand
10 also you all are dropping all the other counts; is that
11 correct?

12 MR. DONNALD: That's correct.

13 THE COURT: Under indictment 2013-GS-43-744, how
14 do you plead guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: All right. I find there's a
17 substantial factual basis for the plea. I find the
18 defendant has entered freely voluntarily. He has had the
19 advice of counsel that he says he is well pleased. I will
20 accept the plea. His criminal history is only a drug
21 offense?

22 MR. DONNALD: That's correct.

23 THE COURT: Mr. Donald, why is the State
24 offering a 12 year negotiated sentence in this case?

25 MR. DONNALD: Your Honor, we stand here ready to

1 go forward and have witnesses in the courtroom and at
2 courthouse with evidence that can show I think when you
3 take into account the defendant confession and his
4 subsequent leading the officers to the gun that was use in
5 the shooting and sufficient evidence to prove that he did
6 in fact come out of the house and shot Quintin Roach in
7 the head.

8 However, Mr. Roach has certainly not been a
9 cooperative witness in this case and I don't know his
10 reason. Ms. Plowden hasn't been as cooperative as I like
11 people to be. We kind of had to force her to be here
12 today. She doesn't want to be. I don't necessarily blame
13 her for not wanting to be here. And I'll tell you why she
14 tells me she's afraid of what happens if we don't win. I
15 don't blame her for that at all, but I can tell you that
16 that as you well know presents a significant evidentiary
17 problem to the State.

18 I don't think we have any problem putting in
19 enough evidence to get pass a directed verdict with the
20 confession, but I can't guarantee that that confession is
21 going to come in. I think there's a substantial
22 likelihood that it comes in, but it's just one statement.
23 And given all the facts that we have and given
24 conversation with law enforcement who's present in the
25 courtroom and understand how significant it would impact

1 my case if I don't have the person who was shot sitting in
2 the witness stand saying I was shot and he's not at the
3 courthouse as we speak. I'm continually promised that
4 he's just about to come, but that's been going on for two
5 weeks now.

6 So at any rate some point we have to decide to
7 go forward and go forward on the evidence that I can put
8 in the witness stand. I think we have enough that there's
9 a substantial likelihood we would have gotten a guilty
10 verdict had we completed the trial in this case. But I
11 also know there's a likelihood that a jury would come back
12 with not guilty. All that being the case, having talked
13 with the victims of all charges, with the victims of this
14 particular charge except for Mr. Roach, who hasn't talked
15 to me yet, but with Ms. Plowden who is here and was
16 boyfriend girlfriend with Mr. Roach at the time, she's the
17 one who actually drove Mr. Roach to the hospital and is
18 the eyewitness to what happened. But taking into account
19 everyone who is involved including law enforcement, we
20 just believe that it would be of the greatest benefit to
21 the State to allow him to take responsibility for what
22 he's done in exchange for a negotiated 12 years.

23 THE COURT: All right. Ms. Cooke.

24 MS. COOKE: Your Honor, Mr. Wilson is 24 years
25 old. He went to the ninth grade. He lives with his

1 grandmother. His brother's here with him and his mother
2 was here all morning to support him, but she was so
3 distraught when I called her and told her that he was
4 pleading, she just said she couldn't come back and watch
5 it and she was crying all morning in the courtroom. And,
6 of course, we were going to put forth self-defense and
7 that in his statement he stated that he felt Quintin Roach
8 was reaching for a gun and he shot him in self-defense.
9 And we're also going to ask for an instruction under that
10 new case that says attempted murder requires specific
11 intent to kill. And we would just ask that you take the
12 negotiated plea.

13 Mr. Wilson did want me to ask you one thing. He
14 spent nine months in SCDC on that charge that Mr. Donald
15 spoke about. We wrote several times to each other while
16 he was there about bringing him back from SCDC to allow
17 him to plead to this charge, so that his time can run
18 concurrent. And I spoke with Mr. Donald about it a couple
19 times, but we couldn't agree on a number or anything and
20 he's just ask me -- I told him that SCDC will not give him
21 credit for that unless ---

22 THE COURT: And I really can't force that. I
23 mean, I can -- I'm only dealing with -- it's hard enough
24 to deal with this case, that's the only one I can deal
25 with.

1 MS. COOKE: I understand.

2 THE COURT: He'll have to fight with them. Was
3 he incarcerated on this case for a while?

4 MS. COOKE: He was incarcerated at Sumter Lee,
5 but I don't know for how many days, Your Honor.

6 THE COURT: On this case? I'll put that he get
7 credit for time served. Somebody else will have to do the
8 computation though.

9 MR. DONNALD: Your Honor, if it pleases the
10 Court, he was arrested on December -- March the 13th and
11 he bonded out on April -- I have to go look it up in the
12 computer because it's not in my system.

13 THE COURT: I'll give him credit for time
14 served, but it's only going to be for this offense. He'll
15 have to take that up through ALJ if he doesn't think the
16 other one gave him the right amount of time.

17 MS. COOKE: Yes, sir.

18 THE COURT: Would your client like to say
19 anything?

20 MS. COOKE: I don't believe so, Your Honor.

21 THE COURT: Sentence of the Court is that he be
22 committed to the state department of corrections for a
23 period of 12 years. Thank you.

24 MS. COOKE: Thank you, Your Honor.

25 MR. DONNALD: Thank you, Your Honor.

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(WHEREUPON, Court's Exhibits Nos. 1, 2 and 3
were marked for the record.)

END OF REQUESTED TRANSCRIPT

FORM 5 RECORDED

STATE OF SOUTH CAROLINA

2015 SEP 11 AM 11:35

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
JAMES C. CAMPBELL OF ORIGINAL FILE
CLERK OF COURT
SUMTER COUNTY, S.C. *Shaper*

TIMOTHY J. WILSON
Full name and prison number (if any) of Applicant.
S.C.D.C.# 359578

2015-CP-43-2130
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention *M.C.I., 1516 OLD GILLIARD RD, RIDGEVILLE S.C. 29472*
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) *SUMTER COUNTY COURT HOUSE*
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *2013-GS-43-0744 ATTEMPTED MURDER*
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *6-17-15*
 - (b) *12 YEARS VIOLENT 85%*

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty NO
- (c) after a plea of nolo contendere N/A
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/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) COUNSEL FAILED TO DO HIS DUTY
- (b) COUNSEL FAILED TO ADVISED ME OF APPEALING PLEA
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

CONST. VIOLATIONS

- (a) FAILURE TO INVESTIGATE AND SUPPRESS ANY
- (b) EVIDENCE. FAILURE TO FILE APPEAL
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL

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

- (a) SEE ATTACHMENT FACTS.
- (b) SEE ATTACHMENT FACTS.
- (c) SEE ATTACHMENT FACTS.

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. _____

ii. NIA

iii. _____

iv. _____

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

i. _____

ii. NIA

iii. _____

iv. _____

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

NO FIRST BITE OF THE APPLE.

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

(a) which grounds have been presented:

i. _____

ii. NIA

iii. _____

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

i. _____

ii. NIA

iii. _____

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

(a) COUNSEL FAILED TO DO HER DUTY
(b) FIRST TIME FOR THE COURT TO HEAR THESE ISSUES

(c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
- i. ELAINE COOKE
 - ii. 215 N. HARVIN ST. RM. 151
 - iii. STUMTER, S.C. 29150
- (b) the proceedings at which each such attorney represented you:
- i. PLEA
 - ii. _____
 - iii. SENTENCING

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

TO VACATE SENTENCE AND CLEAR RECORD / TIME RECONSIDER

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

NO

RECORDED

STATE OF SOUTH CAROLINA

2015 SEP 11 AM 11:35

VERIFICATION

County of Berkeley

JAMES C. CAMPBELL
CLERK OF COURT

SUMTER COUNTY, S.C.

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Timothy Wilson

SWORN to and subscribed before me this 9th
day of Sept., 2015.

Lisa M. Cross (L.S.)
Notary Public

My Commission Expires: Jan 16, 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

ATTACHMENT FACTS

FAILURE TO INVESTGATE CASE

2015-CP-43-30

2015-CP-43- RECORDED
TIMOTHY WILSON 3595

2015 SEP 16 AM 11:30
UNITED STATES V. MOONEY, 497 F.3d 392, 404

[4TH CTR. 2007] COUNSEL JAMES D. CAMPBELL
CLERK OF COURT

SUMTER COUNTY, S.C.
ARE CHARGED WITH THE RESPONSIBILITY OF
CONDUCTING APPROPRIATE INVESTIGATIONS,
BOTH FACTUAL AND LEGAL; TO DETERMINE IF
MATTERS OF DEFENSE CAN BE DEVELOPED.

GOMEZ V. BETO, 462 F. 2D F96, 597 [5TH CTR.
1972] WHEN A DEFENSE COUNSEL FAILS TO
INVESTIGATE HIS CLIENT'S ONLY POSSIBLE
DEFENSE, ALTHOUGH REQUESTED TO DO SO BY
HIM, AND FAILS TO SUBPOENA WITNESSES IN
SUPPORT OF THE DEFENSE, IT CAN HARDLY BE
SAID THAT THE DEFENDANT HAS HAD THE
EFFECTIVE ASSISTANCE OF COUNSEL.

BOBBY V. VAN HOOK, 558 U.S. —, 125 L.ED.2D
255, 259 [2009] AMERICAN BAR ASSOCIATION
[ABA] STANDARDS ARE TO BE USED ONLY AS "GUIDE"
IN REVIEWING WHERE AN ATTORNEY'S PERFOR-
MANCE WHERE THE LOWER COURT TREATED THE
ABA'S STANDARDS AS INEXORABLE COMMANDS
THAT ATTORNEYS MUST "FULLY COMPLY WITH"
COUNSEL IN THIS CASE AT BAR FAILED TO DO A
AGE 10F.3 IVESTAGATION, AND CASE SHOULD BE VACATED

ATTACHMENT FACTS
FAILURE TO SUPPRESS EVIDENCES

Timothy Wilson 3595

UNITED STATES V. WOOD, 879 F.2D 927, 934 [D.C. CIR. 1989] TO MAKE OUT A CLAIM OF INEFFECTIVE ASSISTANCE RELATED TO AN ATTORNEY'S FAIL TO MOVE FOR SUPPRESSION OF EVIDENCE, THE MOVANT MUST SHOW THAT THE CLAIM HAD MERIT AND THERE IS A REASONABLE PROBABILITY THAT BUT FOR THE EXCLUDABLE EVIDENCE THE VERDICT WOULD HAVE BEEN DIFFERENT. IF COUNSEL HAD SUPPRESS THE STATEMENT AND HAD PUT A SPEEDY TRIAL MOTION IN FOR DEFENDANT, THEN SUPPRESS THE MOTION IN A HEARING, DEFENDANT WOULD NOT BE HERE AS OF NOW.

CONSTRUCTIVE DENIAL OF COUNSEL

UNITED STATES V. CRONIC, 466 U.S. 648. 658-59, 80 L.E.D. 2D 657 [1984] PRESUMPTION OF PREJUDICE APPLIES WHEN COUNSEL ENTIRELY FAILS TO SUBJ. THE PROSECUTIONS CASE TO MEANINGFUL ADVERSARIA TESTING. WHERE COUNSEL IS ACTUALLY OR CONSTRUCTIVELY DENIED DURING A CRITICAL STAGE OF THE PROCEEDINGS, OR WHEN THERE IS VARIOUS KINDS OF STATE INTERFERENCE WITH COUNSEL'S ASSISTANCE. COUNSEL IN THIS CASE AT BAR IS VERY INEFFECTIVE OF NO ASSISTANCE. DEFENDANT REQUEST SENTENCE TO BE VACATED AND RECORD CLEARED.

ATTACHMENT FACTSFAILURE TO FILE APPEAL REQUESTED

Timothy Wilson 359578

ROE V. FLORES - ORTEGA, 528 U.S. 470, 145 L. ED. 20

985 [2000] ATTORNEY FAILURE TO FILE AN APPEAL IN

SPITE OF BEING INSTRUCTED TO DO SO IS PER SE IN-

- EFFECTIVE ASSISTANCE? IN ADDITION, AN ATTORNEY

FAILURE TO ADVISE A DEFENDANT ABOUT AN APPEAL

CONSTITUTES INEFFECTIVE ASSISTANCE, WHEN

THERE IS REASON TO THINK EITHER [I.] THAT A

RATIONAL DEFENDANT WOULD WANT APPEAL [FOR EXAM,

BECAUSE THERE ARE NONTRIVIAL GROUNDS FOR APPEAL

OR [2.] THAT THIS PARTICULAR DEFENDANT REASON-

- ABLY DEMONSTRATED TO COUNSEL THAT HE WAS IN-

- TERESTED IN APPEALING.

COUNSEL KNEW THAT HE DID NOT OBJECT TO ANYTHING

TO SEAL A ISSUE FOR THE APPELLATE COURT TO

RAISE, PLUS COUNSEL DID NOT DO HIS DUTY AS A

REAL ATTORNEY WOULD HAVE.

FRAZER V. SOUTH CAROLINA, 430 F. 3D 696 (4TH CIR.

2005) INEFFECTIVE ASSISTANCE WHERE COUNSEL

FAILED TO CONSULT WITH DEFENDANT REGARDING

AN APPEAL AND DEFENDANT EXPRESSED AN INTER-

- EST AND INTENT TO PURSUE AN APPEAL

PAGE 3 OF 3

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER)	FOR THE THIRD JUDICIAL CIRCUIT
)	
Timothy Jamal Wilson, #359578,)	2015-CP-43-2130
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 11, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the July 2013 term of the Sumter County Grand Jury for murder, possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, weapons/sale or delivery of pistol to, and possession by, certain persons unlawful; stolen pistol (2013-GS-43-0744). Elaine Cooke, Esquire represented Applicant. On June 17, 2015, Applicant pled guilty to attempted murder before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant pursuant to negotiations to a twelve year term of imprisonment. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript will be sent upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel
 - a. Failure to investigate and suppress any evidence
 - b. Failure to file an appeal

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

III.

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

Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the

inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

November 17, 2015.

State of South Carolina)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2015-CP-43-2130

Timothy Jamal Wilson,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

Transcript of Record

July 27, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge

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

Lance S. Boozer, Esquire
Attorney for the Applicant

Julie A. Coleman, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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I N D E X

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T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

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1 THE COURT: Yes, ma'am.

2 MS. COLEMAN: May it please the court? This is
3 *Timothy Wilson vs. The State of South Carolina,*
4 2015-CP-43-2130. The applicant is presently confined in
5 the South Carolina Department of Corrections pursuant to
6 orders of commitment of the Sumter County clerk of court.

7 Applicant was true-bill indicted in the July 2013 term
8 of the Sumter County Grand Jury for murder; possession of a
9 weapon during a violent crime; unlawful carrying of a
10 pistol; weapon sale or delivery of pistol to and possession
11 by certain persons unlawful; and stolen pistol. Elaine
12 Cooke, Esquire, represented the applicant. On June 17,
13 2013, applicant pled guilty to attempted murder before the
14 Honorable W. Jeffrey Young. Judge Young sentenced
15 applicant pursuant to negotiations to a twelve-year term of
16 imprisonment. Applicant did not appeal his guilty plea or
17 sentence.

18 Applicant filed a timely application for
19 post-conviction relief on September 11, 2015, alleging that
20 he was being held in custody unlawfully based on the
21 following allegations: ineffective assistance of counsel
22 for failure to investigate and suppress any evidence, and
23 failure to file an appeal. Applicant filed an amended
24 application on February 24, 2016, alleging involuntary
25 guilty plea. The state filed its return on November 17,

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

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1 2015. He is present today and represented in this matter
2 by Mr. Lance Boozer.

3 THE COURT: Yes, sir, Mr. Boozer.

4 MR. BOOZER: Thank you, Your Honor. If it pleases the
5 court, Judge, we would go ahead and call Mr. Wilson to the
6 stand.

7 THE COURT: Yes, sir.

8 TIMOTHY JAMAL WILSON, BEING DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 BAILIFF: State your name for the record and spell
11 your last name for the record.

12 WITNESS: Timothy Wilson, W-i-l-s-o-n.

13 DIRECT EXAMINATION BY MR. BOOZER:

14 Q. Good morning, Mr. Wilson. How are you?

15 A. I'm all right.

16 Q. And if you could, just speak up while you're talking
17 so that Madame Court Reporter can take down everything that
18 we're saying, okay?

19 A. All right.

20 Q. All right. Do you know why you're here today?

21 A. Yes, sir.

22 Q. And why is that?

23 A. We're here on a PCR.

24 Q. All right, and do you know what it is that you're
25 asking this court for today?

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

5

1 A. I'm asking for my sentence to be reversed or vacated.

2 Q. All right, and are you asking for a new trial?

3 A. Yes, sir.

4 Q. All right, and do you understand that the only thing
5 that this court can basically do is send your case back to
6 solicitor's office if it grants a new trial, and you would
7 face your original charges? Do you understand that?

8 A. Yes, sir.

9 Q. Or you may, as you've alleged, that you want a belated
10 appeal?

11 A. Yes, sir.

12 Q. Okay, and knowing that if you go back to trial and you
13 do face your original charges, if everything just went
14 terribly wrong for you at a trial, there always is a chance
15 that you could get significantly more time than what you
16 have remaining. Do you understand that?

17 A. Yes, sir.

18 Q. And we've discussed that?

19 A. Yes, sir.

20 Q. And, and knowing that, you still want to go forward
21 with the PCR?

22 A. Yes, sir.

23 Q. Okay. Very good. Who represented you? You had a
24 plea, correct?

25 A. Yes, sir.

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

6

1 Q. All right. Who represented you?

2 A. Elaine Cooke.

3 Q. And was Ms. Cooke -- did you hire her, or was she
4 appointed to ---

5 A. She was ---

6 Q. --- represent you?

7 A. --- appointed.

8 Q. She was appointed?

9 A. Yes, sir.

10 Q. All right. Do you recall when you were first arrested
11 on these charges?

12 A. March 13, 2013.

13 Q. And your plea was ultimately when?

14 A. On the day of my trial.

15 Q. All right. So, initially you had a trial and it ended
16 up being a plea? Say yes.

17 A. Yes, sir.

18 Q. Okay. She has to take down everything you say. At
19 the plea -- do you know when that date was? Would June 17,
20 2015, sound about right?

21 A. Yes, sir.

22 Q. Okay. In between the time that Ms. Cooke -- when did
23 she -- let me, let me correct that. When did Ms. Cooke
24 first get appointed to your case?

25 A. Some time in 2013.

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

7

1 Q. All right. Do you know how many times you met with or
2 spoke with Ms. Cooke between the time she was appointed and
3 the time of your plea?

4 A. Only a, only a couple of times, like three or four.

5 Q. Where would those meetings occur?

6 A. At the county.

7 Q. At the county jail?

8 A. Yes, sir.

9 Q. Did you ever bond out?

10 A. No, sir.

11 Q. All right. What would you and Ms. Cooke discuss
12 during your meetings?

13 A. Well, the first time she came to see me, she just came
14 and told me what -- how much time I was facing for all of
15 my charges.

16 Q. Okay.

17 A. And that was it. The second time she came to see me
18 was when I was about to start my -- well, when we discussed
19 going to trial, and then one more time after that when she
20 came and tried to get me, take the twelve years, and that
21 was about it.

22 Q. All right. So, you -- initially did you proceed to a
23 trial?

24 A. I don't understand.

25 Q. Yes, sir. Did you, did you start a trial in this

1 case?

2 A. Did I start a trial?

3 Q. Yes, sir.

4 A. Yes, sir.

5 Q. All right. So, y'all actually ---

6 A. Picked the jury.

7 Q. --- pick the jury?

8 A. Yes, sir.

9 Q. How far did y'all get into the trial?

10 A. After we picked the jury, they took me in the back,
11 and she brought my mother back there in that visitation
12 room for the lawyer. She brought my mother back there, I
13 guess support me, help to convince me to take the plea.

14 Q. Well, let's get to that in a second. I know that's
15 one of your allegations, but how far along in the jury
16 trial did you get? Did y'all ---

17 A. We, we ---

18 Q. --- just pick the jury and ---

19 A. We just picked the jury and that was it.

20 Q. Okay. Prior to the trial, did Ms. Cooke review any
21 evidence with you?

22 A. No, sir. She only, she only saw me -- like, in my
23 motion, I don't have my photos or nothing. I don't have
24 the evidence, like, for the GSR, nothing. I don't have
25 none of that in my motion. I never seen none of that. The

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

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1 only thing she showed me was pictures of, of the victim.

2 Q. Okay. Did y'all discuss any trial strategy for your
3 trial?

4 A. She, she only -- she said, she said we was only going
5 for, like, self-defense or something.

6 Q. Did you know how she was going to argue or how you --
7 hang on a second -- or how you would present your
8 self-defense ---

9 A. No, sir.

10 Q. --- claim? Did you discuss any witnesses that ---

11 A. Yes, sir. I -- well, when I asked, I asked her. I
12 said can I call my own witnesses. She said, she told me I
13 couldn't, I couldn't call my own witnesses.

14 Q. All right. Now, you've alleged ineffective assistance
15 of counsel for failing to investigate and suppress
16 evidence. What is it that you mean by that?

17 A. Like, she, she, she never hired an investigator to
18 investigate the case and she -- I don't have, I don't have
19 no -- like, the evidence. I don't have nothing in here in
20 my motion, like, that tell me what all evidence they have
21 against me.

22 Q. All right. You've also alleged that she failed to
23 file ---

24 A. The appeal.

25 Q. --- an appeal.

1 A. Yeah.

2 Q. All right. What you mean by that?

3 A. She, she, she told me -- she told my mother after I
4 took the plea that she was going to file for an appeal, but
5 she didn't do that either.

6 Q. Okay. Did you want her to file ---

7 A. Yes, sir.

8 Q. --- an appeal? Wait. When -- wait for me to finish
9 my question before you answer because I think Madame Court
10 Reporter may be having a difficult time getting some of
11 your answers down, okay?

12 A. All right.

13 Q. Now, go back to the trial and then when you pled. Why
14 is it that you ended up pleading guilty in this case?

15 A. Well, one of the reasons was because when, when we
16 first got to the courtroom, she told me that my victim had
17 showed up to court, and he, he wasn't. And she, she really
18 used my mother to force me to take the plea because I
19 wasn't going to take the plea. I was going to go all the
20 way through with it, but she, she brought my mother in the
21 back through the courtroom where the lawyer's supposed to
22 be to. She brought my mother back there to help convince
23 me take the plea. So, after that, what I did, I finally
24 did took the plea.

25 Q. What, what's your mother's name?

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

11

1 A. Renee Wilson.

2 Q. All right. Tell me a little bit more about the
3 discussion that occurred with your lawyer or with your mom
4 about taking the plea.

5 A. I'm, I'm telling, I'm telling my mother, like, I, I
6 know I can beat it. I don't want to take the plea, and
7 she's crying and stuff. So, like, I'm telling her she want
8 me to take the plea, I will. But that was in -- that was
9 when we was in the courtroom. She told me just to do what
10 I want to do. So, I told her I want to go all the way
11 through with it. Then after I picked the jury and went
12 back to the back, they said I had a lawyer visit. So, the
13 lawyer came back there, which she came, she took my mother
14 back there, which my mother came back crying again and she,
15 she finally convinced me to take the plea.

16 Q. Did you want to plead guilty?

17 A. No, sir.

18 Q. Did you feel coerced into pleading guilty?

19 A. Yes, sir.

20 Q. Why?

21 A. Because I, I, I -- because she was -- she kept telling
22 me, like -- she, she was really saying that I, if I lose
23 this trial, I'm going to catch forty-one years. So, it
24 would be best for me to take the twelve. I was telling
25 her, like, I know I can beat it, so I'd rather go through

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

12

1 with it. But I, I -- my mother, my mother wanted me to
2 take the plea. So, I, I did it for her.

3 Q. Okay. Now, do you recall at the plea the, the judge
4 asking you some questions?

5 A. Yes, sir.

6 MR. BOOZER: Your Honor, may I approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. BOOZER:

9 Q. Mr. Wilson, I'm going to show you a copy of the plea
10 transcript from your guilty plea, and if you would, I'm
11 looking at page 9 on to the page 10 of the transcript, and
12 if you would just to yourself -- don't read it out loud.
13 Just review at page 9, lines 22 through 25 and then on to
14 page 10, review from the top down to line 13 for me.

15 (A PAUSE.)

16 Q. Have you had a chance to review that section of the
17 transcript?

18 A. Yes, sir.

19 Q. Okay. At -- in the section on page 9, the court asked
20 you: All right, Mr. Wilson, do you agree with the facts as
21 stated by the solicitor? And you responded: Yes, sir, I
22 agree with some of the facts, but some of it is false.
23 What did you mean by that?

24 A. Well, well, I, like, I tell -- really what I mean by
25 false is I'm, I'm taking -- I was taking the guilty plea

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

13

1 but I really, I really, I was really forced to taking the
2 guilty plea. I didn't really -- know what I'm saying? I
3 was just -- I was -- I had -- I said yes, I, I shot him. I
4 said yes, I did it because I was taking the guilty plea for
5 the twelve years just to make my mother happy so I won't
6 lose, lose in trial.

7 Q. Well, let me ask you this. Why, why didn't you tell
8 the court at that time you were trying to make your mom
9 happy?

10 A. I, I don't know, sir.

11 Q. Was she -- was your mother upset that day?

12 A. Yes, sir.

13 Q. Was she crying and ---

14 A. Yes, sir.

15 Q. --- visibly upset?

16 A. Yes, sir.

17 Q. Did you feel bad?

18 A. Yes, sir.

19 Q. Did you think that the only way to make her happy was
20 to take the plea?

21 A. Yes, sir.

22 Q. Okay, and you indicated that you did ask or try and
23 get Ms. Cooke to file an appeal or your mom did?

24 A. No. She, she told, she told my mother. She said, she
25 said -- she told my mother if I take this, she will, she

1 will file that appeal herself if I wanted to. I told her
2 yes, would like for her to file an appeal, but she never
3 did it.

4 Q. All right, we've, we've covered your allegations in
5 your PCR, and is there anything that we have not covered
6 that's alleged in your PCR or complaints against your
7 lawyer ---

8 A. Yeah. Like, I got ---

9 Q. Hang on. Hang on a second.

10 A. Sorry.

11 Q. That's all right, or anything that happened for your
12 plea? Is there anything we have not covered?

13 A. I just want to say, like, I have letters, like,
14 writing her asking her to take herself off my case because
15 I, I feel she wasn't representing me to her fullest
16 potential. She wasn't, she wasn't -- she was, she was
17 working against me. So, I wrote her letters asking her to
18 take herself off my case, and she wrote me back saying,
19 like, I didn't pay for a lawyer. So, she's not, she's not
20 taking herself off the case.

21 Q. Okay. Well, let's talk about that. What did you --
22 you wrote your lawyer?

23 A. Yeah. I got, I got letters. I don't got the letters
24 I wrote her, but I got letters to her response.

25 MR. BOOZER: Your Honor, may I approach the witness?

1 THE COURT: Yes, sir.

2 (A PAUSE.)

3 BY MR. BOOZER:

4 Q. All right, did you ever file a motion to have Ms.
5 Cooke relieved?

6 A. See, I don't, I don't, I don't know how to do stuff
7 like that. So, I called from the county jail house and she
8 didn't answer. So, I left her a message. The message I
9 left is, like, I asked Ms. Elaine Cooke -- I don't feel, I
10 don't feel you're representing me to your fullest
11 potential. I feel like you're working against me, and I
12 would like for you to take yourself off my case or, or
13 appoint me another public defender, and that's what she had
14 responded back.

15 Q. Based on your communication with Ms. Cooke, were you
16 under the impression that if you asked her to be relieved,
17 there were only two options: either you could hire a
18 private lawyer, or she has to remain on the case?

19 A. See, I, I, I don't -- I was hearing from other people,
20 like, I can -- I could write to somebody to get her off my
21 case, but I don't -- I didn't have time to do that before
22 the trial came up.

23 Q. You didn't want Ms. Cooke representing you?

24 A. I, I never did.

25 Q. What, what were your, your issues with Ms. Cooke?

1 A. Everything. Like, I write, like, I'm writing her --
2 well, I went to prison in 2014 on a drug charge. So, I'm
3 writing her, like, I got a pending charge, so I'm trying to
4 get it over, over with while I'm in prison if I have to.
5 So, I wrote her, like, if you could get me a plea for,
6 like, eight years or ten years, something like that, then
7 I'll go ahead, I'll go ahead and plea for it and get it
8 over with. That way, you don't have to worry about it.

9 And she's telling me that the solicitor never came up
10 with no, no -- solicitor didn't come up with no pleas yet,
11 and, and it's not her job to go to the solicitor with no
12 pleas, and she -- pardon -- it's not, it's not her job to
13 go to the solicitor with no pleas. It's the solicitor's
14 job to come up to her with pleas and when the solicitor
15 come up with a plea, she'll let me know, and it never
16 happened. Then I got, I got numerous letters where I've
17 written her and she, she's not responded. She's, she's...

18 Q. Were you having trouble communicating with your
19 lawyer?

20 A. Yes, sir.

21 Q. Okay. Other than what we've already discussed with
22 regard to your allegations and difficulties communicating
23 with your lawyer, and with some issues you had with her
24 responses, are there any other issues or allegation you
25 want to bring to the court's attention today?

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

17

1 A. I feel, I feel like she was, she was working -- she
2 was trying to get me time. It's like she wasn't trying to
3 get, get me home. She wasn't working with me at all.

4 Q. Okay. Anything else, though, with regard to your PCR
5 application and what you've alleged?

6 A. No, sir.

7 Q. Okay.

8 MR. BOOZER: That, that's all the questions I have for
9 you now, but please answer any questions that Madame
10 Attorney General may have for you.

11 MS. COLEMAN: May it please the court?

12 THE COURT: Yes, ma'am.

13 CROSS-EXAMINATION BY MS. COLEMAN:

14 Q. Hi, Mr. Wilson. How are you?

15 A. I'm all right.

16 Q. You said you, you testified that you met with your
17 attorney three or four times before your plea. Is that
18 correct?

19 A. Yes, sir.

20 Q. Okay. Do you recall reviewing discovery with your
21 attorney?

22 A. Really, no. She just brought me my motion discovery
23 and with -- that the -- that's time she came to see me.
24 She brought my motion discovery. She discussed how much
25 time I was facing for all the charges, and that was it.

1 Q. Do you recall discussing any possible defenses with
2 your attorney?

3 A. Only, only is -- that all that happened in the same
4 day. This would have been the self-defenses. She was
5 going for self-defense or something. All that was
6 discussed in the same day she brought my motion.

7 Q. Okay. Did you give your attorney any leads or
8 witnesses to investigate?

9 A. I -- no, sir -- I mean, no, ma'am. No, ma'am.

10 Q. Do you recall waiving your constitutional rights at
11 the guilty plea, like your right to a jury trial, your
12 right to remain silent?

13 A. Yes, sir -- I mean, yes, ma'am. I apologize.

14 Q. That's okay. Do you recall telling the plea judge you
15 were satisfied with your attorney's services?

16 A. I don't recall, but I probably did.

17 Q. Okay. Would you like to look at that if I showed it
18 to you?

19 A. Yes, ma'am.

20 Q. And that's on page 13 of the transcript. If you would
21 look at line 10 there and read that out loud, please?

22 A. Are you full satisfied with the services of Ms. Elaine
23 Cooke? The defendant: Yes, sir.

24 Q. Thank you. Does that refresh your memory?

25 A. Yes, ma'am.

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

19

1 Q. And Ms. Cooke had gone above and beyond what was
2 asked, correct, at the time? Did you think she had gone
3 above and beyond what she was, what she was required to do?

4 A. I don't understand.

5 Q. Do you recall telling that judge that no one was
6 promising or threatening you in order for you to plead
7 guilty?

8 A. Yes, sir -- yes, ma'am.

9 Q. Do you recall telling the plea judge that you were
10 indeed guilty of this crime?

11 A. Yes, ma'am.

12 Q. And he asked you if you cut the victim, and then you
13 admitted that you shot the victim in the head, correct?

14 A. Yes, ma'am.

15 Q. There is no question that you are guilty of these
16 charges?

17 A. No. Only, only reason, the only reason, only reason
18 I, I, I agreed to all of them, because I already took the
19 plea for the twelve saying I -- just to get it over because
20 of my mother.

21 Q. And you were facing several charges, correct, and you
22 just pled to -- let's see, you were originally facing one,
23 two, three, or four different charges?

24 A. Yes. I was, I was ready to go to trial for all of
25 them.

T. WILSON - DIRECT EXAMINATION BY MR. BOOZER

20

1 Q. But you just pled to one charge, correct?

2 A. Yes, ma'am.

3 Q. And so you got -- would you agree that you got a, a
4 good deal out of the pleading guilty? No?

5 A. No, ma'am.

6 Q. Twelve years as opposed to what you could have faced
7 if you had gone to trial?

8 A. Mm-hmm.

9 Q. Okay. Do you want a trial on these charges?

10 A. Yes, ma'am.

11 Q. Okay.

12 MS. COLEMAN: Thank you. No further questions.

13 THE COURT: Any redirect?

14 MR. BOOZER: No redirect, Your Honor.

15 THE COURT: All right, thank you, sir. You can go sit
16 next to your lawyer.

17 (THE WITNESS EXITS THE STAND.)

18 MR. BOOZER: Your Honor, at this time we would call
19 Renee Wilson as a witness.

20 FRANCES RENEE WILSON, BEING DULY
21 SWORN, TESTIFIES AS FOLLOWS:

22 BAILIFF: Please state your full name. Spell your
23 last name for the record.

24 WITNESS: My name is Frances Renee Wilson. That's
25 W-i-l-s-o-n.

F.R. WILSON - DIRECT EXAMINATION BY MR. BOOZER

21

1 DIRECT EXAMINATION BY MR. BOOZER:

2 Q. Ms. Wilson, how are you doing today?

3 A. Nervous.

4 Q. That's okay. That's understandable. Other than that,
5 how are you doing okay today?

6 A. I'm wonderful.

7 Q. Okay. Now, Ms. Wilson, are you related to Timothy
8 Wilson?

9 A. Yes. I'm his mother.

10 Q. You're his mom, all right. Were you present on June
11 17th of 2015 for what was initially a trial for your son
12 and then what turned into a guilty plea?

13 A. Yes, sir.

14 Q. All right. During the trial, was there ever a break
15 taken so that you could speak to your son?

16 A. Yes. When I first came in before they picked the jury
17 or whatever, I asked the bailiff could I hug my son, and he
18 let me, and I talked to him, and he said he was going
19 through with his trial. And I told him whatever he wanted
20 to do, I had his back.

21 Q. Okay. Now after the trial started, did you have any
22 conversation with his lawyer, Ms. Cooke, or with your son?

23 A. Well, I had a conversation with her before they
24 started anything because I had brought some items that I
25 thought she could use in his defense, and she told me

1 that ---

2 MS. COLEMAN: Objection, Your Honor. Hearsay.

3 THE COURT: I'm going to allow it.

4 MR. BOOZER: Thank you, Your Honor.

5 BY MR. BOOZER:

6 A. She told me that the judge wouldn't allow it. She
7 said that he was, like, one of the meanest judges they had
8 and that my son was facing forty years if we didn't take
9 the plea.

10 Q. Okay. What did -- how did that make you feel?

11 A. I just started crying. I couldn't help it.

12 Q. Okay. What happened next?

13 A. Give me a minute.

14 Q. Sure. Take your time.

15 A. Well, I went to ask her about, you know, his, you
16 know, defense, and she told me she couldn't discuss his
17 case with me, and they started their, like, a pre-thing
18 like before they pick, even pick the jury. It was, like,
19 some kind of hearing before the trial. And during that
20 time, I guess they was showing the photos of the victim,
21 and they had the pictures blown up, like, really big and
22 that upset me, too. So, I was, like, really emotional.

23 And so before they started picking the jury, I think
24 we went to a break and when we came back, I couldn't come
25 in because I had on flip flops. So, I sat on the outside.

1 I had -- I'd gotten my shoes, but I decided not to come in
2 because I didn't want to influence him and do -- T.J. to do
3 anything he didn't want to do.

4 Q. Who?

5 A. Timothy. I'm sorry. I'm so used to calling him T.J.

6 Q. All right. Just wanted to make sure that's who you
7 were talking about.

8 A. Yeah. So, I didn't even come back in. My son came in
9 but I sat on the outside of the courtroom and they went to
10 go to lunch, I think, and my son came out and we went to
11 walk down the hall, and someone was behind me calling my
12 name, yelling my name down the hall, and it was my son's
13 public defender. And she had followed me down the hall to
14 the elevator, and she told me that she was going to go talk
15 to the people up front to get them to bring Timothy in a
16 room so I could talk to him because if he didn't take this
17 plea, he was going to get forty years.

18 So, they brought him in some room downstairs with,
19 like, the glass in between. It was, like, a chair on the
20 side and they brought him on the other side. But I really
21 didn't get a chance to say too much to him because the --
22 his public defender did most of the talking. And from what
23 she was telling him, she said -- I can't say the word she
24 said, but she told him if he didn't take the plea that he
25 was that F'd. And I was listening to everything she was

1 saying, and then when I got to talk to him, she told me,
2 oh, we got to go. That's cameras in here. We're not even
3 supposed to be in here. So, I never even got a chance to
4 say what I wanted to say to him.

5 Q. What would you have said?

6 A. I didn't want him to take the plea because I was
7 listening to what she was saying. And even on his
8 statement, he was saying that he didn't -- was not trying
9 to kill anyone. But she didn't give me a chance to say
10 anything. She just dominated the conversation and just had
11 me in there, and I was very emotional and I guess -- I, I
12 don't know.

13 Q. Did you ---

14 A. It was ---

15 Q. Did you have any conversation with your son while you
16 were back there?

17 A. Not much at all. I was standing in the back behind
18 her, and I was shaking my head, but I was, I was really
19 upset.

20 Q. Were, were you crying?

21 A. Yes, sir.

22 Q. Okay. Did, did you want your son to take the plea, or
23 were you able to go ---

24 A. I didn't want him to take the plea, but she just kept
25 saying if he don't take the plea, you -- he's going to get

F.R. WILSON - CROSS-EXAMINATION BY MS. COLEMAN

25

1 forty years. This is the nastiest judge we've got, and
2 he's one of the meanest. He's going to get forty years.

3 Q. To your knowledge, did your son want a trial?

4 A. Yeah, he wanted a trial. That why I brought him a
5 suit and everything. I already have it. He was dressed
6 for his trial.

7 Q. Okay.

8 MR. BOOZER: Ms. Wilson, thank you. I don't have any
9 further questions, but please answer any the state may have
10 for you.

11 WITNESS: Yes, sir.

12 CROSS-EXAMINATION BY MS. COLEMAN:

13 Q. Hi, Ms. Wilson. Thank you for being here today.

14 A. Hi.

15 Q. Just a few questions for you. You just testified
16 about meeting with your son before the trial, how you
17 didn't get a chance to talk to him much before you had to
18 leave. Is that correct?

19 A. Yes, ma'am.

20 Q. So, did you tell him to take the plea?

21 A. No. I told him -- when I first talked to him, he said
22 he was going to take the plea, but that was before I talked
23 to his attorney.

24 Q. Now, obviously he was -- you said he was facing forty
25 years if he had ---

1 A. That's what ---

2 Q. --- been convicted at trial?

3 A. That's what she kept telling me: he's going to get
4 forty years.

5 Q. Right, and you would, you would rather have your son
6 be in prison for twelve years than forty years, right?

7 A. But it was just an emotional thing. I wanted him to
8 do what he wanted to do. I didn't want him to be in there
9 at all.

10 Q. Right, of course, but you never told him to take the
11 plea?

12 A. I told him that I did not want him to have forty
13 years, but it was up to him, you know.

14 Q. So, do you think this was his decision to take the
15 plea?

16 A. I think if I wasn't there, he wouldn't have taken the
17 plea.

18 Q. Okay, but ultimately you think he's the one who made
19 the choice to plead rather than go to trial?

20 A. He took it because I think, yes, he thought he didn't
21 have any choice. I don't think he -- he didn't want to
22 take it because the whole time he was telling me he was
23 going to trial. But I, I think if I wasn't there and if
24 she hadn't brought me in there with him, and if he didn't
25 see me the way I was, then he would not have taken the

E. COOKE - DIRECT EXAMINATION BY MS. COLEMAN

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1 plea.

2 Q. Okay.

3 MS. COLEMAN: Thank you. No further questions.

4 WITNESS: Can I get down now?

5 MR. BOOZER: No redirect, Your Honor.

6 THE COURT: Yes, you can get down now.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Any other witnesses, Mr. Boozer?

9 MR. BOOZER: Nothing further on behalf of the
10 applicant, Your Honor.

11 THE COURT: Okey doky.

12 All right, Ms. Coleman.

13 MS. COLEMAN: The state calls Elaine Wilson -- excuse
14 me, Elaine Cooke.

15 ELAINE COOKE, BEING DULY SWORN,

16 TESTIFIES AS FOLLOWS:

17 BAILIFF: Please state your full name. Spell your
18 last name for the record.

19 WITNESS: Elaine Cooke, C-o-o-k-e.

20 DIRECT EXAMINATION BY MS. COLEMAN:

21 Q. Good morning, Ms. Cooke. How are you?

22 A. Good morning. I'm good.

23 Q. Have long have you been practicing law?

24 A. About fifteen-plus years.

25 Q. Do you recall whether you were appointed or retained

1 in this case?

2 A. I work for the public defender's office. I was
3 appointed.

4 Q. How many times did you meet with the applicant prior
5 to his guilty plea?

6 A. I'm not sure, but it was several.

7 Q. Several. Did you file any Rule 5, *Brady* motions?

8 A. Yes, both.

9 Q. Both. Did you review discovery with the applicant?

10 A. Yes. I have a note in my file that I took him
11 discovery on April 2, 2014, more than a year before the
12 trial, and I definitely reviewed it for him, with him again
13 prior to trial.

14 Q. Did you discuss the applicant's version of the facts?

15 A. Yes.

16 Q. And can you tell us a little bit about what those
17 were?

18 A. He wanted to claim self-defense; I've got a long note
19 in my file that I talked to him about some defenses. I
20 told him that the statement to law enforcement after the
21 event was taped, that he negated his defense in his taped
22 statement, and the officer pointed that out to him. I told
23 him that he negated it to me. I told him that I felt like
24 it would surely fail and that we probably wouldn't even get
25 a charge on it.

E. COOKE - DIRECT EXAMINATION BY MS. COLEMAN

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1 Q. So, did you pursue that defense? Did you have a
2 Castle doctrine hearing or anything?

3 A. I, I was ready to do a Castle doctrine hearing. I, I
4 had the research. I had the statutes highlighted, but I
5 told him I thought it was going to fail. Had we proceeded
6 to trial, I would have done a Castle doctrine hearing.

7 Q. Okay. Can you talk a little bit about your plea
8 negotiations with the state, if any?

9 A. I don't remember specifics. I just remember that the
10 solicitor offered twelve years negotiated.

11 Q. Okay, and did you think that was in the applicant's
12 best interest to take that plea?

13 A. Absolutely.

14 Q. Can you briefly describe the evidence that the state
15 had against the applicant?

16 A. His own taped statement. Two officers were in the
17 room when he gave the statements, and there was -- the
18 victim lived. So, there was the victim. If I'm not
19 mistaken, there was another eyewitness.

20 Q. Would you describe their evidence as overwhelming?

21 A. Yes.

22 Q. Did the applicant give you any potential leads or
23 witnesses to investigate?

24 A. Not that I recall.

25 Q. Before the plea, did you review the applicant's

1 constitutional rights that he was waiving by pleading
2 guilty?

3 A. Yes. Oh, oh, I forget. I'm sorry. If I can go back
4 and clarify that last statement?

5 Q. Sure.

6 A. He did tell me something about the female eyewitness
7 that was there putting something on Facebook to the effect
8 that it was her fault. And I told him that even if we were
9 to bring that up at trial, that he was still the one that
10 shot the gun. Her putting it on Facebook that it was her
11 fault that he did it was not going to keep him out of an
12 attempted murder conviction.

13 Q. Did the applicant ever tell you at the guilty plea
14 that he did not understand something?

15 A. No. I -- not that I, not ---

16 Q. If ---

17 A. --- that I recall or from reviewing the transcript.

18 Q. Right, and if he had told you that he didn't
19 understand, would you have stopped to explain it to him?

20 A. Yes, and then Judge Young would have stopped until he
21 understood.

22 Q. Okay. Whose decision was it to plead guilty?

23 A. It's always my client's decision to plead guilty. I,
24 I have clients ask me what do I do, what would you do, and
25 I, I tell them that's one decision I can't make for you. I

E. COOKE - DIRECT EXAMINATION BY MS. COLEMAN

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1 can't make the decision for you whether to plead guilty or
2 go to trial; I can't make the final decision on whether you
3 should testify or not. I can tell you what I think is
4 going to happen if you go to trial, but I never try to make
5 my client -- the ultimate decision has to be theirs.

6 I did tell him that I thought that he would be found
7 guilty at trial and we'd get significantly more than forty
8 years, and Judge Young didn't want to take this
9 negotiation.

10 Q. Okay. The applicant and his mother have testified
11 that you had discussed the plea with his mother. Is that
12 correct?

13 A. I don't remember exactly what I discussed with her. I
14 usually do not talk to or involve family at all. I, I know
15 I did talk to her and involve her in this because she was
16 sitting in the courtroom crying. So, I believe I did tell
17 her what the negotiation was and the number of years he was
18 facing.

19 Q. Okay. Did you ever pressure them into -- either the
20 applicant or his mother -- into taking this plea?

21 A. No. I just simply told them what I thought. I told
22 them what I thought the outcome of the, of the trial would
23 be, and I told them what he was facing.

24 Q. Okay. Did you deliberately bring his mother into
25 court as a tactic to get him to accept the plea?

1 A. No. The only reason I talked to her was because she
2 was sitting in the courtroom crying, and I went after her
3 because -- normally family is not allowed in that room
4 downstairs, but I would never take anybody in that room
5 without permission. They told me I could take her in there
6 and she could speak with him, so I did. I, I believe this
7 building was pretty new at the time, and I was pretty
8 shocked that they allowed me to do that, but I'm not going
9 to risk my job, my security card, my license to take a
10 family member in a secured room without permission from
11 security. So, I had permission from security to take her
12 in there. And when they told me I could do that, I was
13 shock and I ran after her and said, hey, they're going to
14 let you talk him.

15 Q. Is it your practice to discuss the right to appeal
16 with your clients?

17 A. Yes.

18 Q. At what point do you usually do that?

19 A. Generally after -- either during the trial when we
20 have a break or after the trial or after a plea.

21 Q. Okay.

22 A. Or, or possibly right before. Generally right before
23 a plea or after a trial.

24 Q. Do you recall discussing the applicant's right to
25 appeal?

E. COOKE - DIRECT EXAMINATION / CROSS-EXAMINATION

33

1 A. I don't remember specifically discussing it. I know
2 that Judge Young went over it, and I know that any time a
3 client tells me they wish to appeal, I appeal it.

4 Q. Okay. So, if the applicant had indicated to you that
5 he wanted an appeal, would you have filed one?

6 A. Yes. Now what I may have said, you know, if he told
7 me he wanted to appeal a plea before he entered it, I
8 probably counseled him on the fact that, you know, you can
9 file an appeal on a guilty plea, but it ain't coming back
10 because there was no error of law unless you didn't
11 knowingly or intelligently enter into it. But if, if he
12 had still insisted on one, I would have done it.

13 Q. Okay. Did you think there was any factual or legal
14 basis to appeal in this case?

15 A. None.

16 Q. Were there any objections made during the proceeding
17 to appeal?

18 A. No.

19 Q. Okay.

20 MS. COLEMAN: No further questions. Thank you.

21 THE COURT: All right, Mr. Boozer.

22 MR. BOOZER: Thank you, Your Honor.

23 CROSS-EXAMINATION BY MR. BOOZER:

24 Q. Ms. Cooke, how are you?

25 A. Good.

1 Q. Good. Do you recall what discovery exactly you
2 reviewed with Mr. Wilson prior to trial?

3 A. No, I don't. I, I know I've got, I've got a folder
4 like this a foot thick in my office. I would have gone
5 over the incident report, his statement, and pictures.

6 Q. Do you recall in this case, was there ever, was there
7 ever a test for gunshot residue done?

8 A. I don't recall.

9 Q. Do you know if there were ever any fingerprint tests
10 or examinations made?

11 A. I don't think, I don't think, I don't think there were
12 any fingerprints done because there were eyewitnesses,
13 including the victim to the shooting, and he gave a
14 statement saying he did it.

15 Q. At the -- prior to the plea and, I guess, during the
16 trial, and I think you've already alluded to this, but were
17 you present for any discussion between -- actual discussion
18 between Ms. Wilson and her son about a plea?

19 A. Yes.

20 Q. Okay. Were you, were you in the room the entire time?

21 A. I, I don't think I left her in that room alone. I
22 believe I was.

23 Q. Do you recall using any colorful language?

24 A. No.

25 Q. Discussing the plea?

E. COOKE - CROSS-EXAMINATION BY MR. BOOZER

35

1 A. No.

2 Q. Okay.

3 A. I...

4 Q. I'm sorry?

5 A. I, I did not tell her the client was F'd. I may have
6 said that in a round about way, but I...

7 Q. Was Ms. Wilson pretty upset that day?

8 A. Yes, very upset.

9 Q. Okay. Did you have any discussion with Mr. Wilson
10 about how upset his mother was?

11 A. I do not recall.

12 Q. Okay.

13 A. I wish I did.

14 Q. Do you think that that had some affect on him entering
15 the plea?

16 A. I don't know. I mean, I certainly didn't use her and
17 say your mother wants you to take this plea, or look at
18 your mother. She's crying. You need to take this plea.

19 (A PAUSE.)

20 A. Looking for the letter? I think I have it.

21 Q. Ms. Cooke, did you ever -- well, let me ask you this.
22 What was your relationship like during your representation
23 of Mr. Wilson with him as a client?

24 A. Well, he was shipped -- if I'm not mistaken, he was
25 shipped off to SCDC for a while. So, we communicated via

1 letter during that time, and he, he -- I mean, he was
2 pretty insistent that his self-defense claim was going to
3 stick and get him out of this, and I kept trying to
4 convince him it wasn't. He also -- I, I don't have any
5 notes in here about him asking for five years. I have
6 notes in here that he wanted probation, and I told him
7 probation is not an option. That our judges have stated
8 more than once on the bench anyone that shot or stabbed
9 someone's going to prison for a while, and probation was
10 absolutely not an option.

11 Q. Okay.

12 MR. BOOZER: May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. BOOZER:

15 Q. Ms. Cooke, I'm going to hand you a letter that appears
16 to be dated June 2, 2015. Could you identify that letter
17 for me?

18 A. It's a letter that I appear to have written -- and
19 that is my signature -- to Mr. Wilson on June 2, 2015.

20 Q. Okay, and is that a true and accurate either copy or
21 original of that letter?

22 A. Yes.

23 Q. Okay.

24 A. I don't have any reason to think otherwise, yes.

25 MR. BOOZER: At this time, I would move to mark this

E. COOKE - CROSS-EXAMINATION BY MR. BOOZER

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1 as Applicant's Exhibit 1.

2 MS. COLEMAN: Would you mind if I looked at it just
3 briefly?

4 THE COURT: Absolutely. Go for it.

5 (A PAUSE.)

6 MS. COLEMAN: No objection, Your Honor.

7 (LETTER MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
8 NUMBER 1.)

9 MR. BOOZER: Thank you, and, Your Honor, I would hand
10 up this, but this is the only copy we have.

11 THE COURT: I understand.

12 BY MR. BOOZER:

13 Q. Ms. Cooke, if you would -- and I'm going to sit up
14 here with you while we look at this letter together. Does
15 this appear to be in response to a letter to Mr. Wilson?

16 A. It was a response to a voice mail.

17 Q. Okay, to a voice mail, and it indicates partially:

18 I'm not able to take myself off of your case. I
19 was appointed and not hired. Therefore, I am
20 your appointed counsel unless and until you hire
21 private counsel and that private counsel sends
22 our office and the solicitor's office either a
23 letter of representation on your behalf or a
24 consent order substituting counsel. Therefore,
25 unless and until you hire private counsel, I will

1 be your attorney.

2 Was he asking you to take yourself off the case?

3 A. I would imagine that's probably what the voice mail
4 said if I wrote that.

5 Q. Okay. Based on your response -- I mean, is there a
6 chance that if he did ask you to be removed from the case
7 that he may have another option, certainly at the court's
8 discretion, excuse me, of appointing another public
9 defender or moving the file within your office?

10 A. No. Our office does not do that. They will not move
11 a file from one public defender to another. If someone
12 wants to -- wants one of our attorneys to be relieved off
13 their case, we, we -- a judge has to do it, first of all.
14 Our office will not, will not do it and if a judge relieves
15 us, then the judge relieves the whole office.

16 Q. And then who, who would then take the case if the
17 whole office is relieved?

18 A. It depends on the judge. Sometimes they have to go
19 hire private counsel and, and sometimes the judge will ask
20 the clerk to appoint somebody on the 608 list. If just
21 depends on the judge and what happens up here and why we're
22 being relieved.

23 Q. And that letter, I believe, is dated June 2, 2015. Is
24 that right?

25 A. I think so. Yes.

E. COOKE - CROSS-EXAMINATION BY MR. BOOZER

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1 Q. And would you agree that that's a couple of weeks
2 before the trial?

3 A. Yes.

4 Q. Did you have any discussion in person with Mr. Wilson
5 about him wanting you to be relieved?

6 A. I do not specifically recall our discussions. I can
7 just tell you that in general, what I usually do if we're
8 about to go to trial and a client is still saying they want
9 me off their case is we go before the judge, and I say Your
10 Honor, the client has a motion to have me relieved. And I
11 don't know that -- I, I don't, I don't think we actually
12 went before the judge in this case. So, again, I don't --
13 I'm -- I don't specifically remember our discussions or
14 what happened. I'm just saying what I generally do with my
15 clients. I would imagine that I talked to him and told him
16 we can ask the judge to relieve me. But since we got the
17 plea offer, I'm assuming that's why that didn't happen.

18 Q. The, the twelve-year plea that he ultimately entered,
19 was that plea offer ever offered before the trial?

20 A. I don't think so. If, if it was, it was shortly
21 before the trial when -- and when I was told that it was
22 going on the trial list. I can't say a hundred percent for
23 sure it was not, but it, it was not offered a long time
24 before the trial.

25 Q. And do you recall Ms. Wilson ever asking you to file

1 an appeal?

2 A. I don't.

3 MR. BOOZER: Court's indulgence, Your Honor.

4 THE COURT: Yes, sir.

5 (A PAUSE.)

6 MR. BOOZER: Thank you, Ms. Cooke. That's all the
7 questions I have.

8 REDIRECT EXAMINATION BY MS. COLEMAN:

9 Q. Ms. Cooke, if the applicant had asked you to file a
10 motion to be relieved, would you have made one before the
11 judge?

12 A. Yes. I mean, I have clients ask me to relieve myself
13 all the time and -- at least, at, at the very least prior
14 to trial, I would have brought the problem up to the judge
15 and said, Judge, he doesn't want to go to trial and he
16 wants me off his case.

17 Q. Okay. Did you ever tell Ms. Wilson that you were
18 going to file an appeal?

19 A. No, I don't believe that I did that at all.

20 MS. COLEMAN: Okay. Thank you. No further questions.

21 THE COURT: Anything further, Mr. Boozer?

22 MR. BOOZER: Nothing further, Your Honor.

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

24 (THE WITNESS EXITS THE STAND.)

25 MS. COLEMAN: The state has no further witnesses.

1 THE COURT: All right, anything more from the
2 applicant on this case?

3 MR. BOOZER: Nothing further, Your Honor.

4 THE COURT: All right. I'll let y'all know something.
5 Thank you.

6 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON
THE 27TH DAY OF JULY, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

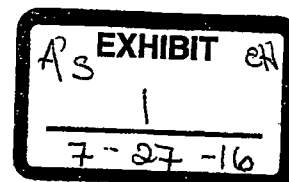
/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MARCH 28TH, 2017

Elaine Cooke
Sumter County Public Defender
215 N. Harvin Street, Room 151
Sumter, SC 29150
(803)436-2424 / (803)436-2423

June 02, 2015



Mr. Timothy Jamal Wilson
C/O Sumter Lee Regional Detention Center
1250 Winkles Road
Sumter, SC 29153

Re: State v. Timothy Jamal Wilson

Warrant/Ticket No(s): 2015A4310200350; 2015A4310200351; 2015A4310200352;
2015A4310200353

Dear Mr. Wilson:

I received your voice mail. I am not able to take myself off of your case. I was appointed and not hired. Therefore, I am your appointed counsel unless and until you hire private counsel and that private counsel sends our office, and the solicitor's office, either a: (1) letter of representation on your behalf, or (2) a Consent Order Substituting Counsel. Therefore, unless and until you hire private counsel, I will be your attorney.

I am sorry that you did not like my attempt to explain, to you, the misunderstanding of the law that you presented in your letter. However, you are entitled to have an attorney appointed, but, unfortunately, not the attorney of your choice. If you feel that you no longer want me to represent you, for being up-front and honest with you about your misunderstanding of the law, you have the right to hire the attorney of your choice.

If you cannot afford to hire the attorney of your choice, I hope that we will be able to work together to resolve your multiple charges. The solicitor on your case usually takes a long time to call a case to trial. Your charges will likely be pending for quite some time, so hopefully, you will have time to hire the attorney of your choice before your case comes to court. Although, on the attempted murder charge, the solicitor has already indicated to me that those charges are on his priority list and may come up sooner rather than later.

With Kind Regards,

Elaine Cooke, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
IN THE COURT OF COMMON PLEAS
2016 DEC 30 PM 3:59 JUDICIAL CIRCUIT

Timothy Jamal Wilson, #359578,

JAMES R. DANIEL, JR. 2015-CP-43-2130
CLERK OF COURT
SUMTER COUNTY, SC

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on September 11, 2015. Respondent submitted its return on November 17, 2015. An evidentiary hearing was convened on July 27, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the July 2013 term of the Sumter County Grand Jury for murder, possession of a weapon during the commission of a violent crime, unlawful carrying of a pistol, weapons/sale or delivery of pistol to, and possession by, certain persons unlawful; stolen pistol (2013-GS-43-0744). Elaine Cooke, Esquire represented Applicant. On June 17, 2015, Applicant pled guilty to attempted murder before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant pursuant to negotiations to a twelve year term of imprisonment. Applicant did not appeal his guilty plea or sentence.



II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. Failure to investigate and suppress any evidence
 - b. Failure to file an appeal

Applicant filed an amended application on February 24, 2016, adding an additional allegation of an involuntary guilty plea.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raises two allegations arguing that Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). This Court finds that the testimony presented at the PCR hearing satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.

This Court finds that Plea Counsel's representation did not fall below the standard of reasonableness under professional norms set out in Strickland. Plea Counsel acted competently in Applicant's best interest throughout the course of her representation and went above and beyond what was required of her.

At the hearing, Plea Counsel credibly testified that she met with Applicant several times prior to the guilty plea and they discussed Applicant's version of the facts and possible defenses. She stated that on April 2, 2014, she reviewed all of the discovery material with Applicant. She testified that Applicant wanted to claim self-defense, but she explained to him that law enforcement had a taped statement from him that negated his self-defense claim. Plea Counsel stated that she was prepared for a castle doctrine hearing, even though she believed the argument would fail based on the circumstances, but he pled guilty before a hearing was held.

Based on this testimony, this Court finds that Plea Counsel was not ineffective for failing to investigate Applicant's case, and that it was reasonable for Plea Counsel to focus on pursuing plea negotiations under the circumstances. Plea Counsel met a reasonable standard of professional norms in her investigation of this case. This Court further finds that Applicant has failed to prove that Plea Counsel was ineffective in any way regarding his charges or guilty plea.

This Court further finds that Plea Counsel was not ineffective for failing to file an appeal of Applicant's guilty plea. Plea Counsel testified that she did not recall Plea Counsel or his mother asking her to file an appeal, but if they had, she would have filed one. She stated that her typical practice is to discuss the right to appeal with her clients during or after the plea. Although she did not recall doing this in this case, Plea Counsel testified that the plea judge explained Applicant's right to appeal on the record during the plea. This Court finds that Applicant has produced no credible evidence that he requested an appeal, and Plea Counsel was not ineffective for failing to file an appeal.

Because Applicant has failed to meet his burden in proving that Plea Counsel was ineffective and that his ineffectiveness prejudiced him, these allegations are denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant alleges that his guilty plea was entered involuntary. He testified that the only reason he pled guilty is because Plea Counsel brought his mother to the trial to coerce him into taking the plea deal rather than going to trial. This claim is meritless and must be denied.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

At the evidentiary hearing, Applicant testified that he did not want to take the plea deal, but he decided to plead because his mother was upset and she talked him into taking the deal. Applicant's mother testified that she did not actually get a chance to tell her son to take the plea deal. She stated that she did not want to influence him to do anything that he did not want to do. She stated that it was Applicant's decision to plead guilty, not hers.

This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that she advised Applicant of all facts and risks of pleading guilty. This Court finds that Applicant's plea was knowingly and intelligently entered. Applicant, Applicant's mother, and Plea Counsel all testified that it was Applicant's decision to plead guilty. This Court finds that Applicant was not coerced and forced in any way to plead guilty, and he voluntarily chose to enter his plea.

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



ALL OTHER ALLEGATIONS

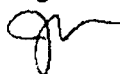
As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds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

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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


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IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 20th day of December, 2016.


JOCELYN NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

WITNESSES

John Litaker
Dept.

Sumter Police

ARREST WARRANT NUMBER

H363331 2013A4320100230
2013A4320100231

2013A4320100232

ACTION OF GRAND JURY

True bill

[Signature]

Foreperson of Grand Jury
Date: 7-11-13

VERDICT

88

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-43-0744

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

July TERM 2013

THE STATE

vs.

TIMOTHY JAMAL WILSON

Indictment for

Murder / Attempted Murder
Possession Of A Weapon During The Commission
Of A Violent Crime
Unlawful Carrying Of A Pistol
Weapons / Sale or delivery of pistol to, and possession by,
certain persons unlawful; stolen pistol

[Signature] III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Murder / Attempted Murder
Possession Of A Weapon During The Commission
Of A Violent Crime
Unlawful Carrying Of A Pistol
Weapons / Sale or delivery of pistol to, and possession by,
certain persons unlawful stolen pistol
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

At a Court of General Sessions, convened on July 11, 2103 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE

ATTEMPTED MURDER

That Timothy Jamal Wilson did in Sumter on or about 2013-03-13, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Timothy Jamal Wilson did with intent to kill, attempt to kill another person, Quentn Roach, with malice aforethought, either express or implied, by Shot the victim, Timothy Wilson

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Timothy Jamal Wilson did in Sumter County, on or about March 13, 2013, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

COUNT THREE

UNLAWFUL CARRYING OF A PISTOL

That Timothy Jamal Wilson did in Sumter County on or about March 13, 2013, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

COUNT FOUR

WEAPONS / SALE OR DELIVERY OF PISTOL TO, AND POSSESSION BY, CERTAIN PERSONS UNLAWFUL, STOLEN PISTOL

That Timothy Jamal Wilson did in Sumter County, on or about March 13, 2013, possess a firearm, that he was prohibited by law to possess, in violation of §16-23-0030, S. C. Code of Laws, 1976, as amended.

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

Solicitor

