

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SEP 15 2017
S.C. SUPREME COURT

Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

SHANTEL HARRIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001249

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

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INDICTMENT82

1 MR. GRIFFIN: Your Honor, this is the
2 State of South Carolina versus Shantel Harris. I
3 believe he was on perhaps yesterday's list. He had
4 a couple sets of charges. So we have gotten
5 everything together in an attempt to go over
6 everything at one time. There are multiple
7 indictments on this case, so I'll start with the
8 ones that I'm in charge of. Mr. Matthews in our
9 office, has a case on Mr. Harris as well.

10 The first incident is 2012-GS-43-689.
11 It's a true billed indictment for assault and
12 battery in the first degree. The second case that
13 I'm in charge of 2012-GS-43-0183, Mr. Harris will be
14 pleading to the lesser included offense of
15 Count 2. He's originally charged with assault and
16 battery by mob in the third degree. We are reducing
17 that to assault and battery. And he also will be
18 pleading to the lesser included offense of Count 1,
19 which was originally charged as assault and battery
20 by mob second degree. He'll be pleading to assault
21 and battery in the first degree on that charge;
22 talking away the assault and battery by mob
23 component. And all the other charges on that
24 indictment would be nol-prossed in exchange for his
25 guilty plea.

1 And Mr. Matthews has also a case against
2 Mr. Harris that he will be pleading to today.

3 MR. MATHEWS: Judge, there are three
4 counts on this most recent offense. Mr. Harris
5 under indictment No. 2015-0054, Mr. Harris is before
6 the court under an indictment for burglary first
7 degree. He will be pleading to burglary second
8 degree non-violent. One count of kidnapping. He
9 will be pleading to kidnapping. And one count of
10 armed robbery. He will be pleading guilty to strong
11 armed robbery on that offense.

12 Your Honor, Mr. Harris is represented by
13 Kosha Timmons. Indicates he wishes to plead to all
14 of these enumerated charges. And at the appropriate
15 time, we have a recommendation on each charge that I
16 think it will probably be more efficient if we say
17 the recommendation as he pleads to each charge.

18 (Whereupon, the defendant is sworn.).

19 THE COURT: Mr. Harris, you want to plead
20 guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you had enough time to
23 talk to your lawyer about this?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you satisfied with her

1 representation?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Anybody promised you anything
4 or threatened you in any way?

5 THE DEFENDANT: No, sir.

6 THE COURT: So you are pleading freely and
7 voluntary?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You understand on assault
10 first degree, I can give you up to 10 years on each
11 one of those.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And on the third degree up to
14 30 days.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And on the burglary second, I
17 can give you up to 10 years on that.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And even though it's a
20 nonviolent burglary, it's a crime of violence in
21 South Carolina. Do you understand that?

22 THE DEFENDANT: Yes, sir, I understand.

23 THE COURT: And I can give 30 years on the
24 kidnapping.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And it's a violent and a most
2 serious offense. If you get another most serious
3 offense against you, you would be looking at life
4 without the possibility of parole, do you understand
5 that?

6 THE DEFENDANT: Yes, sir, I understand
7 that.

8 THE COURT: And it is a no parolable
9 offense, do you understand that?

10 THE DEFENDANT: Yes, sir, I understand.

11 THE COURT: And the strong armed robbery,
12 I can give up to 15 years. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, Mr. Solicitor, does this
15 kidnapping have any sexual connotations to the
16 crime?

17 MR. MATHEWS: No, Your Honor.

18 THE COURT: So under the kidnapping
19 statute, I have to explore those, and I have to put
20 that it on the record that it does not involve in
21 sex crime, therefore you won't have to register as a
22 sexual predator. Do you all disagree with that? I
23 mean, the situation, is it?

24 MR. MATHEWS: No, we agree that it does
25 not involve a sexual component to it.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you under the influence of
4 alcohol or drugs today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you got any mental
7 diseases that would keep you from understanding?

8 THE DEFENDANT: No, sir.

9 THE COURT By pleading, you are giving up
10 your constitutional right under the 5th Amendment to
11 remain silent, because you're telling me you are
12 guilty. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you're giving up your
15 right to a jury trial, where you would be presumed
16 innocent. The State would have to prove you guilty
17 of these charges beyond a reasonable doubt to all 12
18 jurors. You would be able to sit in the courtroom
19 and confront each witness that would testify against
20 you. Your lawyer could cross examine each one of
21 those witnesses. She could subpoena witnesses to
22 testify on your behalf. She could put up any
23 defenses you have to these crimes. But when you
24 plead guilty, you're giving up all that. Do you
25 understand?

1 THE DEFENDANT: Yes, sir, I understand.

2 THE COURT: Have you had an opportunity to
3 look at the discovery that the solicitor's office
4 has provided your attorney in this case?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you have any issues with
7 that as far as them not providing discovery, or not
8 having a chance to look at?

9 THE DEFENDANT: No, sir. I have had a
10 chance to look at it.

11 THE COURT: Have you got any questions you
12 want to ask me concerning your rights?

13 THE DEFENDANT: No, sir.

14 THE COURT: If you want to appeal this
15 case, you've got to file it with the clerk of court
16 within 10 days or you give up that right. Do you
17 understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Solicitor.

20 MR. MATHEWS: Judge, just before I begin
21 the factual recitation, I've mentioned to
22 Ms. Timmons beforehand that looking in the clerk's
23 indictment files there, that the front page to the
24 indictment was there in each of those co-defendants.
25 And Ms. Britt in the Clerk's Office, made a copy of

1 the additional second page that has the remaining
2 counts on it. I just wanted to let the court know.
3 For the record, I believe Ms. Timmons doesn't have
4 any objections or---

5 THE COURT: Is that right?

6 MR. MATTHEWS: ----exceptions to that?

7 MR. TIMMONS: That is correct, Your Honor.

8 THE COURT: Okay.

9 MR. MATTHEWS: Judge, on August 31st of
10 2014, law enforcement responded to Number ■ Corbett
11 Street in the in the City of Sumter, in reference to
12 a home invasion. They made contact with the victim
13 Ronald Thrower, who is here in the courtroom today,
14 along with Darlene Bradley, and India Kilcrest, who
15 stated that three individuals had broken into their
16 house. Starting with the situation beginning with
17 Mr. Thrower, was outside attempting to get into his
18 car to go to work. This was in the predawn hours
19 around 4 to 5 a.m. when this happened.

20 Mr. Thrower stated three subjects
21 approached him outside the house when he was
22 attempting to get into his car. And they all
23 presented handguns, and demanded that he let them
24 inside the house. He was forced at gunpoint to
25 knock on the door and give the subjects entry to the

1 house. Once they got inside, the subjects demanded
2 to know where the money was. And Mr. Bradley -- I'm
3 sorry, Mr. Thrower, Ms. Bradley and Ms. Kilcrest
4 were held at gunpoint downstairs. And there was a
5 child, a 3-month-old baby, in the next room over
6 that was not harmed during the incident.

7 Three adults were held at gunpoint while
8 one of the individuals searched through the house
9 demanding to know where the money was. That
10 individual emerged from the room of Ms. Bradley's
11 24-year-old son, Devon Rodriguez, with an amount of
12 cash in his hand. Which was presumably the money
13 that they were referring to, and demanding to know
14 where the money was. Ms. Bradley also had her purse
15 and a her Samsung Galaxy cell phone taken from her.
16 When the three subjects exited the house, two other
17 individuals a Devon Rodriguez and Marcus Rhodes
18 pulled up in their vehicle. They had been called by
19 Ms. Amy Kilcrest who attempted to make a phone call
20 as soon as the individuals broke into the house.
21 And gunfire was exchanged. And that vehicle was
22 damaged in the gunfire.

23 A third co-defendant, Darcus Forbe was
24 charged with attempted murder for that shooting,
25 because those individuals identified him as being

1 the one that shot. On September 4th, Darlene
2 Bradley came to police and stated that during --
3 when she was held up by these individuals, she got
4 into a physical fight with one of the individuals
5 when he tried to take her cell phone and her purse.
6 And he had a tee-shirt over his face. And she tore
7 his tee shirt down, and identified him as somebody
8 that went by the name of Furly. Law enforcement
9 knew of Furly as being an individual that goes by --
10 Shantel Harris goes by the name of Furly.

11 They prepared a 6-person photo lineup for
12 her. She identified Shantel Harris in that lineup
13 as being the individual that she took the shirt off
14 of his face, and she identified as Furly. And
15 warrants were then drawn up on this Mr. Harris.
16 That is the factual basis relating to these charges.
17 That would be the burglary second nonviolent, the
18 kidnapping, and the strong armed robbery.

19 MR. GRIFFIN: Judge, do you want to hear
20 as far as Mr. Matthews' charges, do you want to hear
21 the recommendations---

22 THE COURT: Yes.

23 MR. GRIFFIN: ---on each of those charges
24 while we're at it?

25 MR. MATTHEWS: Your Honor, the State's

1 recommendation ask that there be a cap of 13 years.

2 And that is only recommendation from the State.

3 MR. GRIFFIN: And, your Honor, do you want
4 to hear Mr. Thrower, the victim, before we move on
5 to the second set of warrants?

6 THE COURT: Sure. I will be glad to hear
7 from Mr. Thrower.

8 MR. THROWER: I still get choked when I
9 hear that story. I really do. It's senseless. And
10 to be honest with you, a lot of times I am still
11 scared to come outside my house. Because the only
12 way that I know how to go to work is that early in
13 the morning. A lot of times my boss man don't
14 require me to come outside that early, but sometimes
15 we have jobs where I have to come outside. I never
16 had to carry a gun. And this is, you know, it still
17 gets scary from the time I leave my house until the
18 time, you know, I get to my vehicle. It's always,
19 it will be a constant reminder.

20 THE COURT: I understand. I'm sorry you
21 had to go through that and I appreciate you coming.

22 MR. THROWER: Yes, sir.

23 MR. GRIFFIN: Your Honor, turning to the
24 charges that I am prosecuting on this defendant,
25 Mr. Harris. First chronologically is,

1 2012-GS-43-689, a single count of assault and
2 battery in the first degree.

3 Judge, this case occurred back in December
4 of 2011. A bunch of young individuals were in the
5 vicinity of a club on the Rast Street called Club
6 Rose. A verbal altercation turned physical.
7 Shantel Harris, the defendant before you, threw a
8 piece of asphalt at a victim by the name of Malik
9 Kennedy. The asphalt struck Mr. Kennedy in the face
10 causing facial fractures which required Mr. Kennedy
11 to be transported to Palmetto Richland Trauma
12 Center. Judge, certainly a piece of asphalt can
13 certainly be seen as a deadly weapon. I think if we
14 were to go to trial, the testimony regarding the
15 skull fracture that Mr. Kennedy received would
16 certainly rise to the level of assault and battery
17 in the first degree.

18 The second case, Judge, this occurred on
19 May 30, 2012. This occurred at the South Sumter gym
20 at 630 South Sumter Street. Mr. Harris again was
21 involved in an altercation with two juveniles, one
22 being Roderick Anderson, and the other being
23 Jemetrius Judge. Your Honor, Mr. Harris and four
24 juveniles who were dealt with in Family Court were
25 involved in a physical altercation with these two

1 young boys. Roderick Anderson suffered multiple
2 facial fractures: A fractured jaw, pretty severe
3 injuries.

4 After, Judge, this did occur during the
5 commission of a robbery. We are dismissing the
6 robbery charge. But I think it meets assault and
7 battery in the first degree under two criteria.

8 No. 1, the injury suffered, multiple
9 facial fractures, sinus fractures, a general
10 fracture. Pretty severe injuries that were caused by
11 Mr. Harris hitting him in the face, and kicking him
12 in the face. And also some property was taken as a
13 result of the altercation.

14 The injuries that Mr. Judge, the juvenile,
15 Jemetrius Judge suffered, were just facial swelling
16 and confusions. So that's the reason we're reducing
17 that to assault and battery in the third degree.
18 Judge, on these charges I've talked with the parents
19 of each of these individuals, Mr. Anderson and
20 Jemetrius Judge. We are recommending on both the
21 assault and battery first degree charges, a cap of
22 8 years. And also we're recommending 30 days. He's
23 done well over 30 days on these -- on this assault
24 and battery third degree. Judge, we -- the
25 sentence start date on these charges that I'm

1 handling, should be July 6th of 2012.

2 Judge, he was on house arrest at least a
3 certain portion of this. And certainly on house
4 arrest while he was he -- when he committed these
5 crimes that Mr. Matthews is handling. Given the
6 fact that he's pleading to kidnapping, I have no
7 problem with since that's going to be an 85 percent,
8 I have problem with giving him credit for the house
9 arrest time. But we would recommend a cap of
10 8 years for the assault and battery first, to run
11 concurrent with whatever you give him on the more
12 serious charges.

13 And, excuse me, just for the record, our
14 office did speak with the parents. I may have said
15 this before, but I want to make it clear. We did
16 speak by telephone with both sets of victims in the
17 indictment ending in 1083. I made them aware that a
18 guilty plea was going to happen this week. They
19 have chosen not to be here. But we did tell them
20 what the recommendation was going to be on these
21 charges. And they didn't give us the impression
22 that they had any problem with what we were
23 recommending. And they have been made aware, and
24 their rights have been protected under the victim's
25 bill of rights.

1 THE COURT: Are those facts, correct,
2 Mr. Harris?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You are pleading guilty
5 because you are guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I find as a factual basis to
8 your plea has been freely and voluntarily entered
9 into. And you've had advice of competent counsel
10 with whom you tell me you are satisfied, and I will
11 accept your plea. Yes, ma'am.

12 MR. TIMMONS: Thank you, Judge. If I may
13 approach, I have Acknowledgment of Rights, that my
14 client has filled out. And I believe the
15 recommendation from the State is a cap of 8 years on
16 the charges for -- that Mr. Griffin is handling,
17 concurrent with cap of 13 years that Mr. Matthews is
18 handling. Judge, my client, Mr. Harris, he is
19 21 years old. He lives here in Sumter. He has
20 4 kids. Two 3-year-old boys, a one-year daughter
21 and another two-year-old son. He has a 12th grade
22 education. Prior to his arrest, on all these
23 charges, he used to do landscaping work. He also
24 used to work at the Gold Kist.

25 He already has plans for what he is going

1 to do after he will serve some time on all of his
2 charges. He plans to work at the tire shop, Harris
3 Tire Repair. It's a family business. He will be
4 able to secure job over there. Originally
5 Mr. Harris was scheduled to plea yesterday and his
6 mother, his younger brother and girlfriend were over
7 here to support him. And they didn't know that his
8 plea was rescheduled for today, so this is the only
9 reason why they're not here. They're fully
10 supporting him. His mother tells me all great
11 things about him, that he is a huge help. She has a
12 lot of health issues going on. And he is -- she
13 tells me that he is a very good son that helps a
14 lot.

15 Also my client tells me one of his one of
16 3-year-old son's also has a lot of health issues
17 with a hole in his lungs. This is his -- since my
18 client has no general sessions criminal record, this
19 will be his first offense. He realizes that he
20 faced a very serious charges. He's not putting the
21 State to the test. He is cooperating with the law
22 enforcement. We ask for a lenient sentence and
23 credit for a time served since July 6th 2012. And I
24 believe he started serving time on the charges that
25 Mr. Matthews is handling since September 9th 2014.

1 THE COURT: September 9th 2014?

2 MR. MATHEWS: That's correct, Judge. He's
3 been in jail since September 9th.

4 MS. TIMMONS: And, Your Honor, my client
5 would also like to address the court.

6 THE DEFENDANT: I would like to ask the
7 court to have mercy on me. And I am sorry to the
8 victims. I am sorry, Mr. Thrower.

9 THE COURT: Okay. On indictment
10 2012-GS-43-89 assault and battery in the first
11 degree, the Sentence of the Court is you are
12 committed to the State Department of Corrections
13 for a term 8 years. On Indictment 2012-1083 on the
14 assault and battery third, the sentence is 30 days.
15 And on the assault and battery first is 8 years to
16 run concurrent. You are given credit for the time
17 you served as well.

18 On the burglary charge, on incident
19 2015-43-54, Sentence of the Court is you are
20 committed to the State Department of Corrections for
21 a period 9 years. It's to run concurrent with all
22 other charges. You are given credit for time
23 served. On the strong armed robbery, the sentence
24 is 13 years to run concurrent with credit for time
25 served. And on the kidnapping is 13 years to run

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in General Sessions Court on July 14th 2015, in Sumter County, Sumter, South Carolina.

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

1-15-17
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21

FORM 5

STATE OF SOUTH CAROLINA

County of Sumter

Shantel Harris 364719
Full name and prison number (if any) of Applicant

v.

State of South Carolina

RECORDED
2016 AUG 11 9 33 AM THE COURT OF COMMON PLEAS

JAMES D. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2016-CP-43-1447

APPLICATION FOR
CERTIFIED TRUE COPY
OF ORIGINAL FILE
POST-CONVICTION RELIEF
Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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 Bishopville South Carolina
Lee C.T. 990 Wilsack Hwy
2. Name and location of Court which imposed sentence Sumter
County Third Judicial
3. Name(s) of co-defendant(s) (if any) Darius Ford
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015 GS 430054
 - (b) _____

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AUG 08 2016

Referred to Valencia/dm
Answered see above

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 7-14-15 Sentence 13 years
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty yes
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Not Effective Assistance Counsel
 - (b) Involuntary Plea
 - (c) _____

- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) Violations of U.S. Const. 6th Amend
 - (b) 14th Amend of The Constitution
 - (c) _____

- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? 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. _____
 - ii. _____
 - iii. N/A
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. N/A
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

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

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

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

- (a) your arraignment and plea? Not at Preliminary
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

- (a) the name and address of each attorney who represented you:
 - i. _____
 - _____
 - ii. _____
 - _____
 - iii. _____
 - _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - _____
 - ii. _____
 - _____
 - iii. _____
 - _____

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

Vacated Sentence Remand For New
Trial

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

NO

STATE OF SOUTH CAROLINA)
County of Sumter)

VERIFICATION

I, Shantel Harris, 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.

Shantel Harris

SWORN to and subscribed before me this 12
day of July, 2010.

Delna Eastredge (L.S.)
Notary Public

My Commission Expires: 3/3/2016

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

I, Shantel Harris, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Shantel Harris
Applicant

SWORN or affirmed to and subscribed before me this

12 day of July, 2014.

Debra Eastwood
Notary Public

My Commission Expires: 3/3/2024

RECORDED
2016 AUG -1 AM 8:39
JAMES T. CAMPBELL
CLERK OF COURT
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Shantel Harris, #364719,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2016-CP-43-1447

**RETURN AND MOTION FOR
MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 1, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted by the January 2015 term of the Grand Jury for Sumter County for Possession of a Weapon during the Commission of a Violent Crime, Armed Robbery, Burglary – 1st degree, two counts of Attempted Murder, three counts of Kidnapping, Criminal Conspiracy, and Possession of a Weapon by a Convicted Felon (2015-GS-43-0054). Applicant was represented by Katarzyna Timmons, Esquire.

Applicant pled guilty as indicted to one charge of Kidnapping and also pled guilty to the lesser included offenses of Burglary – 2nd degree and Strong Arm Robbery pursuant to recommendation by the State. Applicant was sentenced on July 14, 2015, by the Honorable R. Ferrell Cothran, Jr. to thirteen years' imprisonment for Kidnapping, thirteen years for Strong Arm Robbery, and nine years for Burglary – 2nd degree, to be served concurrently. Applicant did not appeal his plea or his sentence.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Violation of 6th Amendment."
2. Involuntary Guilty Plea
 - a. "Violation of 14th Amendment."

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent further submits Applicant's second allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983);

Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires

Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

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

VII.

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.

VIII.

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

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(Court Reporter's Note: No exhibits were marked or received into evidence.)

1 (The following proceedings are reported on
2 March 28, 2017.)

3 THE COURT: Call your case, please.

4 MS. COLEMAN: Yes, Your Honor. This is
5 Shantel Harris versus the State of South Carolina,
6 Docket Number 2016-CP-43-1447. The applicant is
7 presently confined in the South Carolina Department of
8 Corrections pursuant to orders of commitment for the
9 Sumter County Clerk of Court.

10 Applicant was indicted by the January 2015
11 term of the Grand Jury for Sumter County for possession
12 of a weapon during the commission of a violent crime,
13 armed robbery, burglary first degree, two counts of
14 attempted murder, three counts of kidnapping, criminal
15 conspiracy, and possession of a weapon by a convicted
16 felon. Applicant was represented by Katarzyna Timmons,
17 Esquire.

18 Your Honor, there might be -- we were just
19 looking at some of the indictments before the case. It
20 seems like we might be missing one indictment from your
21 packet from the record. We can pull that from the court
22 if we need to today and supplement afterwards.

23 Applicant pled guilty as indicted to one
24 charge of kidnapping and also pled guilty the lesser
25 included offenses of burglary second degree and strong

1 arm robbery pursuant to a recommendation by the State.

2 Applicant was sentenced on July 14, 2015, by
3 the Honorable R. Ferrell Cothran Jr. to 13 years
4 imprisonment for kidnapping, 13 years for strong arm
5 robbery, and nine years for burglary second degree to be
6 served concurrently.

7 Applicant did not appeal his plea or his
8 sentence. Applicant filed a timely application for post
9 conviction relief on August 1, 2016, alleging that he
10 was being held in custody unlawfully based on the
11 following allegations: Ineffective assistance of
12 counsel and involuntary guilty plea.

13 The State filed its return February 13, 2017;
14 and he is present today and represented by Mr. Lance
15 Boozer.

16 THE COURT: Mr. Boozer.

17 MR. BOOZER: Thank you, Your Honor. If it
18 pleases the Court. My client did want to make one
19 notation and correction to the State's recitation of the
20 procedural history with the attempted murder.

21 There is a multi-count indictment that was
22 done with multiple defendants, and one of those counts
23 was an attempted murder. That is not something that he
24 was charged with in this case. He just wanted that
25 clarified for the record.

1 THE COURT: Okay.

2 MR. BOOZER: Judge, other than that, we will
3 go ahead and call Mr. Harris to the stand.

4 (The witness comes forward.)

5 SHANTEL HARRIS, being
6 first duly sworn, testifies as follows:

7 CLERK: State your name for the record and
8 spell your last name, please.

9 THE WITNESS: Shantel Harris, H-A-R-R-I-S.

10 THE COURT: Yes, sir.

11 MR. BOOZER: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. BOOZER:

14 Q Mr. Harris, how are you doing today?

15 A I'm doing all right.

16 Q If you could, just keep your voice up. Madame
17 Court Reporter has to take down everything you are
18 saying. All right?

19 A All right.

20 Q Mr. Harris, do you know why you are here today?

21 A Yes, sir.

22 Q And why is that? What did you file to get into
23 court today?

24 A Ineffective counsel.

25 Q You have also alleged involuntary guilty plea?

- 1 A Yes, sir.
- 2 Q And you allege that through a PCR application?
- 3 A Yes, sir.
- 4 Q I know you heard me clarify the background in this
5 case. What were you charged with in this case?
- 6 A I was charged with the three counts of kidnapping,
7 I was charged with armed robbery, burglary, and
8 conspiracy.
- 9 Q All right. You were never charged with attempted
10 murder?
- 11 A No, sir.
- 12 Q What did you end up ultimately pleading guilty to?
- 13 A Zero to 13 years.
- 14 Q To what charges? What were you ultimately
15 convicted of?
- 16 A Strong arm robbery, one kidnapping, and a first
17 degree assault and battery, a second degree assault
18 and battery.
- 19 Q Were you also -- did you plead to a burg second?
- 20 A Yeah, a burglary. I said a burglary.
- 21 Q And what type of sentence did you receive?
- 22 A Zero to 13.
- 23 Q But ultimately what is the sentence you are serving
24 now? How much time did you get?
- 25 A Thirteen years.

1 Q You understand what it is that this Court can do
2 for you? You and I have had that discussion. Do
3 you understand that this Court can't reduce your
4 sentence or let you out early, make you parole
5 eligible or change --

6 A Yes, sir.

7 Q -- or change the classification of your sentence
8 from violent to nonviolent. Do you understand
9 that?

10 A Yes, sir.

11 Q And do you understand that the only thing this
12 Court do for you is basically send your case back
13 to square one to the original charges that you
14 faced, and you would face those all over again? Do
15 you understand that?

16 A Yes, sir.

17 Q And we've discussed this?

18 A Yes, sir.

19 Q And understanding there is some risk in doing that?
20 Do you understand that?

21 A Yes, sir.

22 Q And knowing that risk, you want to go forward with
23 your PCR hearing?

24 A Yes, sir.

25 Q Okay. Who represented you in your case?

1 A Ms. Timmons.

2 Q Do you recall when you were first arrested on the
3 charges?

4 A What do you mean by that?

5 Q Do you remember when you were first arrested? I
6 know it's been a while.

7 A September 8th or 9th, one of the two. I know it
8 was in September 2014.

9 Q When did Ms. Timmons come on to your case?

10 A I had Tiffany Butler at first, and Tiffany Butler
11 got reduced [sic] somewhere else. So as I was on
12 the street, Ms. Timmons came on; and once I got
13 locked up, she came to see me.

14 Q And when did your plea happen?

15 A My plea happened July 14, 2015.

16 Q Between the time that she came on your case
17 following Ms. Butler and the time you entered the
18 plea, how many times do you think you met with her?

19 A I seen her a couple of times.

20 Q Do you think it was -- do you think, other than a
21 couple of times, do you think you met with her
22 anymore than that?

23 A No, sir.

24 Q During those couple of times you say you met with
25 her or spoke with her, what would you two discuss?

1 A I was trying to discuss about trial, but it seemed
2 like she always find a way to get on the subject
3 about the plea bargain.

4 Q What would y'all talk about? What would you try
5 and discuss with her about trial?

6 A I got an eyewitness that came to the family members
7 of my victim that was at the same place with me at
8 the same time who was willing to tell that I was
9 with him; but she said that's tampering with a
10 witness because he write a statement on my
11 codefendant.

12 Q And who was that?

13 A Rodriquez, Darryl Rodriguez.

14 Q Tell me what else you were talking about with her
15 for trial.

16 A That's about it.

17 Q Did y'all review any discovery materials?

18 A No. I just tell her what I had knowed, and she
19 just wrote it down or whatever the case may be, and
20 she always just talk about the plea.

21 Q Okay. And what would she tell you about a plea?
22 Was she telling you that they were making -- well,
23 let me ask you this: Did you have an initial plea
24 offer that you declined?

25 A The first time, July the 13th, she came without my

1 family knowing or me knowing. They brought me to
2 court. I turned zero to 13 down. Then the next
3 day she came again, and she told me that trial
4 would be worse. I would probably get worser than
5 13 years, and zero to 13 was the best plea.

6 And she told me the kidnapping wasn't violent
7 because no get hurt or no one get sexual assault.
8 So I wouldn't get the whole 13, and I end up
9 getting the whole 13.

10 Q Where did that conversation happen?

11 A In one of these little room around here.

12 Q What were you guys doing there in court? Were you
13 on a trial docket or were you there for just a roll
14 call or what?

15 A I don't know what was going on. She just call me
16 out the blue. My family know nothing of what was
17 going on.

18 Q Did you want to plead guilty?

19 A No, sir.

20 Q Go back a little bit. She was telling you that it
21 was a zero to 13 offer?

22 A Yes, sir.

23 Q And what was she telling you? I think you were
24 explaining a little bit of that, but specifically
25 what was she telling you about what sort of

1 sentence to expect, if she was telling you anything
2 at all?

3 A She really didn't tell me what to expect, but she
4 just told me that she know that I wouldn't get the
5 whole 13 years because I kept telling her I didn't
6 do it. I don't want to plea.

7 She was like, "If you go to trial, you get
8 worser than 13. Just take the zero to 13. That's
9 a good plea." She said I wouldn't get the whole
10 13, and I end up getting the whole 13 years. The
11 kidnapping violent, when she said no one got hurt
12 or sexual assaulted, it shouldn't be violent.

13 Q Did you understand the difference between violent
14 and nonviolent at that time?

15 A No. I just was scared. She just scared me. So I
16 went with what she told me. I thought she was
17 working with me, but she really tricked me into 13
18 years of my freedom.

19 Q Do you know the distinction between a violent
20 offense and a nonviolent offense, the
21 classification --

22 A Violent when somebody get hurt.

23 Q But do you also understand that in terms of
24 sentencing that typically if a crime is classified
25 as violent, you are not parole eligible for that

1 crime? Do you understand that?

2 A I understand that.

3 Q Do you understand that now or did you understand
4 that then?

5 A I understand that now as I went -- when I got to
6 prison and started going to the law library.

7 Q So were you under the impression also that you
8 would be parole eligible for your crimes?

9 A No, sir.

10 Q I mean, at the time you pled, did you think you
11 would have a chance to be paroled?

12 A Until the judge say 85 percent.

13 Q Is that the first time you had heard that?

14 A Yes, sir.

15 Q Tell this Court why it was that you ultimately went
16 in there and entered the plea rather than having a
17 trial?

18 A Because she scared me. She said -- her exact words
19 were: If we go to trial, I get worser than 13,
20 like she didn't have no faith in going to trial.
21 She was like doing 13 was the best plea, and she
22 know I wouldn't get the whole 13 years because the
23 kidnapping, nobody got hurt or nothing sexual
24 happened. So I went with her, thinking she was
25 working with me; but really she tricked me out of

1 my freedom.

2 Q Obviously at your plea there was some questions
3 that were asked of you. Do you recall that?

4 A Yes, sir.

5 Q The judge would ask you some questions. One of
6 those questions is, of course, if you were pleading
7 guilty because you are guilty or were you satisfied
8 with your lawyer. Why did you make certain
9 statements that day in --

10 A Because I was scared and thinking she was with me,
11 but once everything got handled, she really was
12 against me.

13 Q And this same plea offer is the one you originally
14 turned down; is that right?

15 A No. The first time, once I was in the county, she
16 would come see me. It was 20 years. I tell her I
17 can't do no 20 years. Then the day before I
18 originally plea, that's when it went from zero to
19 13.

20 I turned it down that Monday. That following
21 Tuesday they came again to get me that next morning
22 without my family knowing again or without me
23 knowing. That when she tell me about she feel like
24 if I go to trial, it will be worser than 13. It's
25 the best plea.

1 Q Did you have any kind of -- after you entered the
2 plea, did you have any further discussions or did
3 you ever talk to --

4 A No, she never came to the back to see me. How I
5 got my motion for discovery is I had to write a
6 letter.

7 Q Okay. And just for the Court, let me finish the
8 question before you answer because if we are both
9 talking, she can't take it down at once. Just wait
10 on me to ask the question.

11 A Yes, sir.

12 Q Thank you.

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

15 THE COURT: Yes, sir.

16 BY MR. BOOZER:

17 Q You have shown to me today a copy of what appears
18 to be a blank indictment, as well as a sentencing
19 sheet. Do you recall that?

20 A Yes, sir.

21 Q If you could just take a moment. What does that
22 appear to be and what are you looking at?

23 A A blank indictment.

24 Q For what?

25 A Assault and battery first degree.

1 Q When did you first see that?

2 A Once I had write for my motion and send a letter
3 out for my motion, she sent the motion.

4 Q Is that after you entered the plea?

5 A That was after I plead.

6 Q What is the second document you have behind that
7 indictment?

8 A It's a plea sheet.

9 Q And what does that reflect?

10 A The time I had supposed to get for the assault and
11 battery first degree.

12 Q Which is what?

13 A Eight years.

14 Q And what's your issue with that?

15 A It blank. They don't have violent, no nothing.

16 Q Okay.

17 A It's the same one to the blank indictment.

18 MR. BOOZER: Your Honor, at this time the
19 sentencing sheet is obviously already a part of the
20 record; but I would go ahead and move to mark the
21 indictment as Applicant's Exhibit 1.

22 THE COURT: Any objection?

23 MS. COLEMAN: I object, Your Honor. This was
24 what I explained before the hearing. We seem to be
25 missing the indictment from the packet that we have

1 given you. I am happy to pull a proper copy from the
2 Clerk's Office.

3 I doubt that this was the filed copy. There
4 is no indication that this was filed with the clerk or
5 whether it was true billed or anything. I think it's
6 just a blank indictment that he got.

7 THE COURT: Let me see it, please.

8 (Hands to Court.)

9 THE COURT: I will not let that into evidence.
10 If you want to get a copy from the Clerk's Office and
11 let me take a look at it, we can do that.

12 MR. BOOZER: Sure. Your Honor, do you want us
13 to leave the record open to do that or go ahead and do
14 that now?

15 THE COURT: No, just leave the record open and
16 provide that to me.

17 MR. BOOZER: May I explain that off the record
18 to my client what is happening? I understand he is on
19 the stand.

20 THE COURT: You can explain it to him after
21 you finish questioning him.

22 MR. BOOZER: Okay.

23 BY MR. BOOZER:

24 Q Mr. Harris, obviously you have a copy of what
25 appears to be a blank indictment. That's something

1 you said you've never seen before?

2 A No, sir. I seen it when she sent the motion in,
3 and I had write her a letter once I got to prison.

4 Q Did you ever discuss that with her?

5 A No, I just write her a letter once I got to prison
6 for my motion to discovery. This was in it.

7 Q And if, in fact, there were an indictment that was
8 not properly completed or filed, would you have
9 wanted your lawyer to make a motion to have it
10 dismissed?

11 A Yes, sir.

12 Q Did you have any discussion with your lawyer about
13 that?

14 A No, sir. She never talked to me. After I catch my
15 time, I never talked to her again until I write the
16 letter. She just sent the motion. That was the
17 last conversation we ever had.

18 MR. BOOZER: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. BOOZER:

22 Q Had you known that you were going to get -- and I
23 believe from the transcript it appears there was a
24 recommendation with a cap. The solicitor was
25 saying it was going to be capped at 13 years.

1 Had you known you were going to get the full
2 13 years with the violent designation or
3 classification attached to it, would you have pled
4 guilty?

5 A No, sir. If she would have did what I asked, I
6 still wouldn't pled guilty, and I would have been
7 home.

8 Q Mr. Harris, I think we have covered all of your
9 allegations. But if you would, if there is
10 anything we have not covered, please let me know
11 and go ahead and tell the Court. Is there anything
12 else that we have left out?

13 A I had asked her about consent plea. She told me
14 there is no such thing, but in the library there is
15 such a thing.

16 Q Explain what you mean by that.

17 A When you plead guilty but you are not guilty, you
18 just scared.

19 Q Are you talking about an Alford plea where you are
20 not admitting guilt, but you are stating that the
21 State has enough -- may have enough evidence to
22 prove your guilt?

23 A Yeah, that how she put it.

24 Q Okay.

25 A But she said there ain't no such thing.

1 Q Is there anything else that we have not covered?

2 A The eyewitness. That's about it.

3 Q Let's cover that. What do you want to tell the
4 Court about Mr. Rodriguez?

5 A We was together the night the crime happied. His
6 mother said I did. Like I told her, I can't tell
7 you nothing about nothing else, where I been to and
8 he was with me. She said that's what happened with
9 the witness because he wrote a statement saying
10 that he seen my codefendant.

11 Q And that's the one you wanted her to investigate?

12 A Yes, sir. And the investigator that she gave me, I
13 seen him one time. He said the same thing she
14 said. After that I came up for a plea and never
15 seen him again.

16 Q Okay. Is there anything else?

17 A No, sir.

18 Q Please answer any questions the State may have of
19 you.

20 A Yes, sir.

21 THE COURT: Cross examination.

22 MS. COLEMAN: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MS. COLEMAN:

25 Q Good morning, Mr. Harris.

1 A How are you doing?

2 Q Fine. Thank you. You pled guilty to these crime;
3 correct?

4 A Yes, ma'am.

5 Q Do you recall waiving your rights at the guilty
6 plea, like your right to a jury trial and your
7 right to remain silent?

8 A I don't recall that. I know I turned the plea down
9 that Monday.

10 Q I mean, at the actual guilty plea on, what,
11 July 15th, I think?

12 A Fourteenth.

13 Q Fourteenth. Do you remember telling the judge that
14 you wished to waive your right to a jury trial?

15 A I'm not sure.

16 MS. COLEMAN: Judge, that is on page 6 at
17 line 14.

18 THE COURT: All right.

19 BY MS. COLEMAN:

20 Q Do you recall telling the plea judge that you were
21 satisfied with your attorney's services?

22 A Yes, ma'am, because I thought she was working with
23 me.

24 Q But you had no complaints against her at the time?

25 A No, until after I realized she really tricked me

1 out of my freedom.

2 Q Do you remember telling the judge that no one was
3 promising or threatening you to plead guilty?

4 A Yeah, because she was my judge [sic]; and I thought
5 she was with me, like I said, the first time.

6 Q Do you recall telling the judge that you were
7 guilty of these crimes?

8 A Yeah, because that was a guilty plea.

9 Q Right. So there is no question that you committed
10 these crimes?

11 A I didn't commit them but I plead to them because
12 she act like she couldn't beat the trial, and she
13 ain't had no faith in it.

14 Q Do you recall agreeing with the facts that the
15 State presented at the hearing?

16 A I don't even remember the facts.

17 MS. COLEMAN: Judge, that is on page 15 at
18 line 1.

19 THE COURT: All right.

20 BY MS. COLEMAN:

21 Q Do you remember the judge explaining to you that
22 this was a violent crime under South Carolina law?

23 A Yes, but I thought he was talking about the armed
24 robbery.

25 Q And did you think to stop and ask him any questions

1 about that?

2 A No, I was just scared and ready to get it over
3 with.

4 Q Okay.

5 A I didn't want to mess nothing up.

6 Q You were facing, on all these charges, a pretty big
7 potential sentence if you had gone to trial;
8 correct?

9 A I understand that. But the charges that I plead
10 guilty to, I ain't guilty.

11 Q And you got a 13-year deal?

12 A Yes, ma'am.

13 Q Did your attorney ever promise you that you would
14 get less than 13 years?

15 A She told me I wouldn't get the whole 13. So to me
16 that's less than 13 years.

17 Q Thank you. No further questions.

18 THE COURT: Mr. Boozer?

19 MR. BOOZER: No redirect, Your Honor.

20 THE COURT: Sir, you may step down. Thank
21 you.

22 THE WITNESS: Yes, sir.

23 (The witness leaves the witness stand.)

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

25 MR. BOOZER: No, Your Honor.

1 MS. COLEMAN: The State calls Katarzyna
2 Timmons.

3 THE COURT: Ma'am, if you would come around to
4 be sworn, please.

5 (The witness comes forward.)

6 KATARZYNA TIMMONS, being
7 first duly sworn, testifies as follows:

8 CLERK: State your name for the record and
9 spell your last name, please.

10 THE WITNESS: Katarzyna Timmons. Timmons is
11 T-I-M-M-O-N-S.

12 THE COURT: Spell that first name too, please.

13 THE WITNESS: K-A-T-A-R-Z-Y-N-A. I just go by
14 Kasha. I think that is easier.

15 THE COURT: Thank you. Ms. Coleman.

16 MS. COLEMAN: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. COLEMAN:

19 Q Good morning, Ms. Timmons. How are you?

20 A I'm good. How are you?

21 Q Fine. Thank you. How long have you been
22 practicing law?

23 A Since May 2013, over three years.

24 Q Were you appointed or retained in this case?

25 A I work as a public defender.

1 Q Do you recall when you were appointed to the case?

2 A I started working as a public defender on
3 September 15, 2014. So I believe that's when I
4 started representing Mr. Harris.

5 Q How many times did you meet with the applicant
6 before his guilty plea?

7 A At least eight times. That's what my file says.
8 There may be more times that I just didn't put in
9 our system.

10 Q Did you file any Rule 5 or Brady motions?

11 A Yes, they were filed.

12 Q Did you review the discovery with the applicant?

13 A I did.

14 Q Do you remember when or where you did this?

15 A It was at the jail, every time at the jail, since
16 he was incarcerated the whole time I represented
17 him.

18 Q Did you discuss the applicant's version of the
19 facts?

20 A I did talk to him, yes.

21 Q Did he admit his guilt to you before the guilty
22 plea?

23 A Well, to plead guilty he would have had to admit
24 the allegations, yes.

25 Q So, I mean, he told you before the guilty plea that

1 he had done these crimes?

2 A He never said he didn't do it.

3 Q Did the applicant ever want a trial on these
4 crimes?

5 A Yes, there was a conversation about a trial or
6 trial strategy.

7 Q Did you discuss any possible defenses with the
8 applicant?

9 A I did.

10 Q What were those?

11 A He was saying, I guess, that it wasn't him involved
12 in this.

13 Q Did you discuss the elements of the charges and
14 what the State was required to prove?

15 A Yes, every time I see the defendant. My first
16 visitation I was discussing the charges that they
17 were charged with, the maximum punishment, and any
18 consequences, yes, and the minimum punishment.

19 Q Would you describe the State's evidence against the
20 applicant as overwhelming or strong?

21 A They were -- I think they had enough to convict
22 him. It wasn't an extremely good case. That's why
23 there was a plea bargain; but I think if we went to
24 trial, there were evidence for the jury to find him
25 guilty.

1 Q Did you explain all this to him?

2 A Yes.

3 Q Did he give you any potential leads or witnesses to
4 investigate?

5 A I don't recall. I think today was the first time
6 I've heard about an alibi witness. If there had
7 been an alibi, we would have investigated it some
8 more. I hired a investigator on his case. So all
9 of that would have been investigated.

10 Q Before the guilty plea, did you review the
11 applicant's constitutional rights?

12 A I did, and I think it should be part of the record.
13 Pretty much every time somebody pleads guilty to
14 serious charges, I go over it with them, go over
15 acknowledgment of rights that they are waiving just
16 so that I will have a paper trail that I did: What
17 charges they are pleading guilty to, what are the
18 recommendations, maximum punishment, if it's
19 violent or nonviolent, parole, sexual offender
20 registry, all of that.

21 Q Did the applicant ever tell you that he did not
22 understand something?

23 A No, he did not.

24 Q Did you promise him that he would get less than 13
25 years for pleading guilty to this charge?

1 A No. I informed him that the State's recommendation
2 is a cap of 13 years, that he could get anything
3 from zero to 13 years.

4 Q Did he seem to understand that at that time?

5 A Yes, ma'am.

6 Q Whose decision was it to plead guilty?

7 A It was his decision. I've never forced anybody to
8 plead guilty.

9 Q Do you agree with that decision?

10 A I think it was a good decision, yes.

11 Q Thank you. No further questions.

12 THE COURT: Mr. Boozer.

13 MR. BOOZER: Thank you, Your Honor. If it
14 pleases the Court.

15 CROSS EXAMINATION

16 BY MR. BOOZER:

17 Q Ms. Timmons, how are you?

18 A I'm good. How are you?

19 Q I'm doing fine. Thank you. You had indicated
20 y'all had discussed, I guess, some trial or trial
21 strategy?

22 A I met with him so many times I don't really recall
23 every discussion we had or what exactly we're
24 talking about.

25 Q I understand that. But do you recall what

1 specifically you may have discussed about preparing
2 for trial or what the trial strategy would have
3 been in this situation?

4 A In this case it would have been that on those
5 charges that I believe it wasn't Mr. Harris that
6 was involved in this incident.

7 Q I'm sorry?

8 A The strategy would be that at that point that it
9 just wasn't Mr. Harris.

10 Q You indicated you hired or you had an investigator
11 working on his case?

12 A Yes. I tried to hire him sometime in March. I
13 know we had issues with our chief administrative
14 judge. It was Judge Cothran. He didn't want to
15 sign a funding order for a case that wasn't
16 indicted yet.

17 Q Do you know if you did have an investigator working
18 with you on the case?

19 A Yes.

20 Q Who would that have been?

21 A John Davis.

22 Q Do you know what he did to investigate the case, if
23 anything?

24 A I think it was -- he may have met with Mr. Harris.
25 It was shortly after Mr. Davis was hired Mr. Harris

1 pled.

2 Q Do you know if you spoke with the investigator
3 about his meeting or any investigation he did into
4 the case?

5 A I don't remember.

6 Q Is that something that you would normally do?

7 A Any time -- yes, any time I hired an investigator,
8 I talked to them before they talked to the
9 defendant. Then after they talk to the defendant
10 or investigate, they always update me.

11 Q Do you recall -- and I think you indicated earlier
12 that you didn't -- but do you recall specifically
13 him giving you guys the name of a Devon Rodriguez
14 to investigate?

15 A I don't remember.

16 Q If that were someone who could have provided an
17 alibi defense, is that someone that you should have
18 investigated?

19 A Yes.

20 Q But you don't recall if that happened or not?

21 A I don't recall. I haven't received the file of my
22 notes, and it happened in 2015. So I've had so
23 many clients I don't remember. If there was some
24 alibi witness and my client was adamant that he
25 didn't do it, and there is a alibi witness, I would

- 1 have investigated it.
- 2 Q And he was adamant that he didn't do this?
- 3 A No, he wasn't.
- 4 Q He wasn't adamant?
- 5 A No, he wasn't.
- 6 Q Do you recall how many plea offers were made in the
- 7 case?
- 8 A There were several pleas offers. Prior to those
- 9 charges, Mr. Harris had other charges pending.
- 10 There were plea offers made on those charge, and
- 11 there were plea offers made that included the new
- 12 set of charges: The kidnapping, burglary first,
- 13 armed robbery. I think the initial offer was 20
- 14 years. Then it went down to 15 years, and I guess
- 15 the final was a cap of 13 years.
- 16 Q And he declined those initial offers?
- 17 A Yes.
- 18 Q Was he talking to you at that point still about
- 19 going to trial?
- 20 A No, he just wanted to get a better plea offer.
- 21 Q Did you explain to him -- obviously, he pled -- and
- 22 the armed robbery was reduced to strong arm
- 23 robbery. So that would be a nonviolent --
- 24 A That's right.
- 25 Q -- classified charge. Did you explain to him that

1 the only charge that would be the violent one would
2 be the kidnapping?

3 A Yes, and I explained that this would be the most
4 serious one.

5 Q Did you have a discussion with him or explain to
6 him that that classification would make him not
7 eligible for parole with regard to that charge?

8 A That's a conversation I had with every client
9 whenever I talked to them. So, yes, kidnapping
10 violent charge, non-parolable, I would have
11 informed him about it.

12 Q I understand and appreciate that --

13 A And I believe whenever he signed the sentencing
14 sheet, it also was marked that's it a violent
15 charge, most serious charge. Whenever I would go
16 over his acknowledgment of rights, I explain it to
17 him too.

18 Q And I think you said you usually explain or you
19 always explain that to your clients. Do you have
20 an independent memory of explaining that to this
21 particular client, to Mr. Harris?

22 A I'm pretty sure I did it. It's something very
23 important that we, as defense attorneys, as a
24 defense attorney, we are required to do it.

25 Q Did you ever tell him that going into the plea

1 offer with zero to 13 that you had any -- did you
2 ever express any thought that he wouldn't get the
3 cap or the most on the 13, he may get somewhere a
4 little bit less or in the middle? Did you ever
5 have any discussion or share your thoughts with
6 him?

7 A I know for sure I told him a cap of 13 means the
8 judge can give him anywhere from zero to 13 years.
9 I'm pretty sure I told him I wouldn't be surprised
10 if he got the maximum.

11 Q Why would you think that?

12 A Because of the nature of -- the amount of his
13 charges, the nature of his charges.

14 Q And you say that you are pretty sure. You can't
15 say for sure that you had that discussion with him
16 though; right?

17 A I can't say for sure. But on a cap of zero to 13,
18 it's zero to 13 years, anything from zero to 13
19 years.

20 Q Did you have any discussion with Mr. Harris about
21 entering an Alford plea?

22 A I don't remember that.

23 Q You don't recall whether you had one or whether you
24 didn't?

25 A I don't recall it. But I know that if he asked me

1 about it, I would have told him that there is
2 always an option.

3 Q Did you review -- did you receive and review the
4 indictments with Mr. Harris prior to the plea?

5 A I don't know if I reviewed them with him. I
6 reviewed the charges and allegations. So I guess
7 that would be included.

8 Q In reviewing the indictments, do you recall ever
9 seeing an indictment that was either not true
10 billed or that had not been presented to the grand
11 jury?

12 A I don't remember that.

13 Q If there were, is that something that you should
14 bring to the Court's attention or review with your
15 client?

16 A I mean, if the case wasn't true billed, then, yes,
17 that is certainly something that would have to be
18 addressed with the judge.

19 MR. BOOZER: Beg the Court's indulgence.

20 THE COURT: All right.

21 (Pause.)

22 BY MR. BOOZER:

23 Q Did you have any communications from Mr. Harris
24 after the plea where he requested a copy of the
25 discovery materials?

1 A Yes. Prior to his plea, I provided Mr. Harris with
2 the discovery. And after he pled, he sent me a
3 letter asking for discovery. I think in the letter
4 he stated that he lost the copy that I provided him
5 with or he left it at Sumter-Lee before he was
6 transported to SCDC.

7 I remember I had a conversation with my boss.
8 His discovery included several hundred pages. I
9 didn't know if it was our policy -- if we provided
10 our clients with the discovery once, should we
11 print it off again and give it to the defendant?

12 Just to be on the safe side, I think I printed
13 the whole closed file, and he received it. So the
14 discovery, I guess the indictment that hasn't been
15 signed or the sentencing sheet in the discovery
16 that I had sent it to him, it might have been
17 something that the solicitor gave me sometime
18 earlier, and it had just been scanned together with
19 the rest of discovery, together with the rest of
20 the file.

21 Q Thank you. I have no further questions.

22 MS. COLEMAN: Nothing further.

23 THE COURT: Ma'am, you may step down. Thank
24 you.

25 THE WITNESS: Thank you.

1 (The witness leaves the witness stand.)

2 MS. COLEMAN: The State has no further
3 witnesses.

4 THE COURT: Anything by way of argument from
5 the applicant or the State?

6 MR. BOOZER: Nothing further, Your Honor.

7 MS. COLEMAN: Nothing further. Thank you.

8 THE COURT: I will let you all know.

9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Sumter County, South Carolina, on the 28th day of March, 2017.

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

July 17, 2017

s/L.Coconut Pantsari

Court Reporter

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| <p>BY MR. BOOZER: [6] 5/12 14/15 16/22 17/20 27/15 33/21 BY MS. COLEMAN: [4] 19/23 20/18 21/19 23/17 CLERK: [2] 5/6 23/7 MR. BOOZER: [14] 4/16 5/1 5/10 14/12 15/17 16/11 16/16 16/21 17/17 22/18 22/24 27/12 33/18 35/5 MS. COLEMAN: [10] 3/3 15/22 19/21 20/15 21/16 22/25 23/15 34/21 35/1 35/6 THE COURT: [25] 3/2 4/15 4/25 5/9 14/14 15/21 16/6 16/8 16/14 16/19 17/18 19/20 20/17 21/18 22/17 22/19 22/23 23/2 23/11 23/14 27/11 33/19 34/22 35/3 35/7 THE WITNESS: [5] 5/8 22/21 23/9 23/12 34/24</p> | <p>admitting [1] 18/20 after [11] 14/1 15/4 15/5 16/20 17/14 19/14 20/25 28/25 29/9 33/24 34/2 afterwards [1] 3/22 again [7] 7/14 10/3 13/21 13/22 17/15 19/15 34/11 against [3] 13/12 20/24 25/19 agree [1] 27/9 agreeing [1] 21/14 ahead [4] 5/3 15/20 16/13 18/11 ain't [3] 18/25 21/13 22/10 Alford [2] 18/19 32/21 alibi [5] 26/6 26/7 29/17 29/24 29/25 all [16] 5/15 5/18 5/19 6/9 7/14 11/2 18/8 20/18 21/19 22/6 26/1 26/8 26/20 33/20 35/8 36/6 allegations [4] 4/11 18/9 24/24 33/6 allege [1] 6/2 alleged [1] 5/25 alleging [1] 4/9 already [1] 15/19 also [6] 3/24 5/25 6/19 11/23 12/7 31/14 always [5] 9/2 9/20 29/10 31/19 33/2 am [2] 16/1 36/10 amount [1] 32/12 answer [2] 14/8 19/18 any [21] 9/17 14/1 14/2 15/22 17/12 19/18 21/25 22/24 24/10 25/7 25/17 26/3 29/3 29/7 29/7 32/1 32/2 32/5 32/20 33/23 36/11 anybody [1] 27/7 anymore [1] 8/22 anything [10] 11/1 16/5 18/10 18/11 19/1 19/16 27/2 28/23 32/18 35/4 anywhere [1] 32/8 appeal [2] 4/7 36/7 appear [1] 14/22 appears [3] 14/17 16/25 17/23 applicant [16] 1/6 1/19 3/6 3/10 3/16 3/23 4/2 4/7 4/8 24/5 24/12 25/3 25/8 25/20 26/21 35/5 applicant's [3] 15/21 24/18 26/11 application [2] 4/8 6/2 appointed [2] 23/24 24/1 appreciate [1] 31/12 approach [1] 14/13 are [23] 3/1 5/14 5/17 5/20 6/23 11/25 13/7 14/8 14/22 18/17 18/19 18/19 18/20 20/1 23/19 23/20 26/15 26/17 26/17 27/17 27/18 31/24 32/14 argument [1] 35/4 arm [4] 4/1 4/4 6/16 30/22 armed [5] 3/13 6/7 21/23 30/13 30/22 around [2] 10/11 23/3 arrested [2] 8/2 8/5 ask [4] 9/23 13/5 14/10 21/25 asked [4] 13/3 18/5 18/13 32/25 asking [1] 34/3 assault [5] 6/17 6/17 10/7 14/25 15/10 assaulted [1] 11/12</p> | <p>assistance [1] 4/11 Asst [1] 1/20 attached [1] 18/3 attempted [4] 3/14 4/20 4/23 6/9 attention [1] 33/14 attorney [5] 1/19 1/20 1/21 22/13 31/24 attorney's [1] 20/21 attorneys [1] 31/23 August [1] 4/9 August 1 [1] 4/9</p> <p>B</p> <p>back [3] 7/12 10/20 14/4 background [1] 6/4 bargain [2] 9/3 25/23 based [1] 4/10 basically [1] 7/12 battery [4] 6/17 6/18 14/25 15/11 be [26] 3/18 3/20 4/5 9/19 10/4 11/12 12/8 12/11 13/24 14/18 14/22 15/24 16/25 17/25 23/4 24/8 26/12 28/8 30/23 31/1 31/2 31/3 32/9 33/7 33/17 34/12 beat [1] 21/12 because [14] 9/10 10/7 11/5 12/18 12/22 13/7 13/10 14/8 19/9 20/22 21/4 21/8 21/11 32/12 been [13] 8/6 18/6 19/7 23/21 26/7 26/9 28/3 28/4 28/20 33/10 34/14 34/16 34/18 before [11] 3/19 13/17 14/8 15/24 17/1 24/6 24/21 24/25 26/10 29/8 34/5 Beg [2] 17/18 33/19 behind [1] 15/6 being [3] 4/10 5/5 23/6 believe [4] 17/23 24/3 28/5 31/13 best [3] 10/5 12/21 13/25 better [1] 30/20 between [3] 8/16 11/13 11/19 big [1] 22/6 billed [3] 16/5 33/10 33/16 bit [3] 10/20 10/24 32/4 blank [6] 14/18 14/23 15/15 15/17 16/6 16/25 blue [1] 10/16 BOOZER [8] 1/19 2/4 2/8 4/15 4/16 22/18 22/24 27/12 boss [1] 34/7 both [1] 14/8 Brady [1] 24/10 bring [1] 33/14 brought [1] 10/1 BROWN [1] 1/15 burg [1] 6/19 burglary [7] 3/13 3/25 4/5 6/7 6/20 6/20 30/12 Butler [3] 8/10 8/10 8/17</p> <p>C</p> <p>call [4] 3/3 5/3 10/14 10/15 calls [1] 23/1 came [9] 8/12 8/13 8/16 9/6 9/25 10/3 13/21 14/4 19/14 can [5] 3/21 7/1 16/11 16/20 32/8 can't [6] 7/3 13/17 14/9 19/6 32/14 32/17 cap [6] 17/24 27/2 30/15 32/3</p> |
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| <p>Q</p> <p>question [3] 14/8 14/10 21/9 questioning [1] 16/21 questions [8] 13/2 13/5 13/6 19/18 21/25 22/17 27/11 34/21</p> | <p>S</p> <p>s/L.Coconut [1] 36/17 safe [1] 34/12 said [14] 6/20 9/9 11/9 11/11 12/18 17/1 18/25 19/6 19/8 19/13 19/14 21/5 25/2 31/18 same [5] 9/7 9/8 13/13 15/17 19/13 satisfied [2] 13/7 20/21 say [5] 8/24 12/12 32/14 32/15 32/17 saying [4] 5/18 17/25 19/9 25/11 says [1] 24/7 scanned [1] 34/18 scared [6] 11/15 11/15 12/18 13/10 18/18 22/2 SCDC [1] 34/6 second [5] 3/25 4/5 6/17 6/19 15/6 see [6] 8/13 13/16 14/4 15/1 16/7 25/15 seeing [1] 33/9 seem [2] 15/24 27/4 seemed [1] 9/1 seems [1] 3/20 seen [6] 8/19 17/1 17/2 19/10 19/13 19/15 send [2] 7/12 15/2 sent [5] 15/3 17/2 17/16 34/2 34/16 sentence [7] 4/8 6/21 6/23 7/4 7/7 11/1 22/7 sentenced [1] 4/2 sentencing [5] 11/24 14/18 15/19 31/13 34/15 September [3] 8/7 8/8 24/3 September 15 [1] 24/3 September 2014 [1] 8/8 September 8th [1] 8/7 serious [3] 26/14 31/4 31/15 served [1] 4/6 services [1] 20/21 serving [1] 6/23 set [1] 30/12 several [2] 30/8 34/8 sexual [4] 10/7 11/12 12/23 26/19 SHANTEL [4] 1/5 3/5 5/5 5/9 share [1] 32/5 she [60] sheet [5] 14/19 15/8 15/19 31/14 34/15 shortly [1] 28/25 should [4] 26/12 29/17 33/13 34/10 shouldn't [1] 11/12 shown [1] 14/17 sic [2] 8/11 21/4 side [1] 34/12 sign [1] 28/15 signed [2] 31/13 34/15 silent [1] 20/7</p> | <p>sollicitor [2] 17/24 34/17 some [7] 3/19 7/19 13/2 13/5 26/7 27/20 29/23 somebody [2] 11/22 26/13 someone [2] 29/16 29/17 something [8] 4/23 16/25 26/22 29/6 31/22 33/13 33/17 34/17 sometime [2] 28/12 34/17 somewhere [2] 8/11 32/3 sorry [1] 28/7 sort [1] 10/25 SOUTH [8] 1/1 1/8 1/12 3/5 3/7 21/22 36/4 36/8 specifically [3] 10/24 28/1 29/12 spell [3] 5/8 23/9 23/12 spoke [2] 8/25 29/2 square [1] 7/13 stand [4] 5/3 16/19 22/23 35/1 started [3] 12/6 24/2 24/4 STATE [16] 1/1 1/8 1/21 3/5 4/1 4/13 5/7 18/21 19/18 21/15 23/1 23/8 25/14 35/2 35/5 36/3 State's [3] 4/19 25/19 27/1 stated [1] 34/4 statement [2] 9/10 19/9 statements [1] 13/9 stating [1] 18/20 step [2] 22/20 34/23 still [2] 18/6 30/18 stop [1] 21/25 strategy [4] 25/6 27/21 28/2 28/8 street [1] 8/12 strong [5] 3/25 4/4 6/16 25/20 30/22 subject [1] 9/2 such [3] 18/14 18/15 18/25 SUMTER [6] 1/2 1/12 3/9 3/11 34/5 36/8 Sumter-Lee [1] 34/5 supplement [1] 3/22 supposed [1] 15/10 sure [8] 16/12 20/15 31/22 32/7 32/9 32/14 32/15 32/17 surprised [1] 32/9 sworn [3] 5/6 23/4 23/7 system [1] 24/9</p> |
| <p>R</p> <p>R.P.R [1] 1/23 rather [1] 12/16 ready [1] 22/2 realized [1] 20/25 really [6] 11/3 11/17 12/25 13/11 20/25 27/22 recall [20] 8/2 13/3 14/19 20/5 20/8 20/20 21/6 21/14 24/1 26/5 27/22 27/25 29/11 29/12 29/20 29/21 30/6 32/23 32/25 33/8 receive [2] 6/21 33/3 received [3] 2/15 29/21 34/13 recitation [1] 4/19 recommendation [3] 4/1 17/24 27/1 recommendations [1] 26/18 record [12] 1/6 3/21 4/25 5/7 15/20 16/13 16/15 16/17 23/8 26/12 35/9 36/5 redirect [1] 22/19 reduce [1] 7/3 reduced [2] 8/11 30/22 reflect [1] 15/9 regard [1] 31/7 registry [1] 26/20 relative [1] 36/7 relief [1] 4/9 remain [1] 20/7 remember [12] 8/5 20/13 21/2 21/16 21/21 24/14 29/5 29/15 29/23 32/22 33/12 34/7 reported [1] 3/1 Reporter [4] 1/24 5/17 36/3 36/18 Reporter's [1] 2/14 represented [4] 3/16 4/14 7/25 24/16 representing [1] 24/4 requested [2] 33/24 35/9 required [2] 25/14 31/24 Respondent [1] 1/9 rest [2] 34/19 34/19 retained [1] 23/24 return [1] 4/13 review [6] 9/17 24/12 26/10 33/3 33/3 33/14 reviewed [2] 33/5 33/6 reviewing [1] 33/8 right [14] 5/15 5/18 5/19 6/9 13/14 20/6 20/7 20/14 20/18 21/9 21/19 30/24 32/16 33/20</p> | <p>T</p> <p>T-I-M-M-O-N-S [1] 23/11 take [5] 5/17 11/8 14/9 14/21 16/11 talk [5] 9/4 9/20 14/3 24/20 29/9 talked [5] 17/14 17/15 29/8 29/8 31/9 talking [6] 9/14 14/9 18/19 21/23 27/24 30/18 tampering [1] 9/9 tell [13] 9/8 9/14 9/18 9/21 11/3 12/15 13/16 13/23 18/11</p> | <p>spell [3] 5/8 23/9 23/12 spoke [2] 8/25 29/2 square [1] 7/13 stand [4] 5/3 16/19 22/23 35/1 started [3] 12/6 24/2 24/4 STATE [16] 1/1 1/8 1/21 3/5 4/1 4/13 5/7 18/21 19/18 21/15 23/1 23/8 25/14 35/2 35/5 36/3 State's [3] 4/19 25/19 27/1 stated [1] 34/4 statement [2] 9/10 19/9 statements [1] 13/9 stating [1] 18/20 step [2] 22/20 34/23 still [2] 18/6 30/18 stop [1] 21/25 strategy [4] 25/6 27/21 28/2 28/8 street [1] 8/12 strong [5] 3/25 4/4 6/16 25/20 30/22 subject [1] 9/2 such [3] 18/14 18/15 18/25 SUMTER [6] 1/2 1/12 3/9 3/11 34/5 36/8 Sumter-Lee [1] 34/5 supplement [1] 3/22 supposed [1] 15/10 sure [8] 16/12 20/15 31/22 32/7 32/9 32/14 32/15 32/17 surprised [1] 32/9 sworn [3] 5/6 23/4 23/7 system [1] 24/9</p> |

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Shantel Harris, #364719,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2016-CP-43-1447

ORDER OF DISMISSAL

RECORDED
2017 MAY 18 PM 1:58
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 1, 2016. Respondent made its Return and Motion for More Definite Statement on February 13, 2017. An evidentiary hearing was convened on March 28, 2017, 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.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Katarzyna Timmons, Esquire ("Plea Counsel") also testified. The Court had before it a copy of the guilty plea transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted by the January 2015 term of the Grand Jury for Sumter County for Possession of a Weapon during the Commission of a Violent Crime, Armed Robbery,

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Burglary – 1st degree, three counts of Kidnapping, Criminal Conspiracy, and Possession of a Weapon by a Convicted Felon (2015-GS-43-0054). Applicant was represented by Katarzyna Timmons, Esquire.

Applicant pled guilty as indicted to one count of Kidnapping, and also pled guilty to the lesser included offenses of Burglary – 2nd degree and Strong Arm Robbery pursuant to a recommendation by the State. Applicant was sentenced on July 14, 2015 by the Honorable R. Ferrell Cothran, Jr. to thirteen years' imprisonment for Kidnapping, thirteen years for Strong Arm Robbery, and nine years for Burglary – 2nd degree, to be served concurrently. Applicant did not appeal his guilty plea or his 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. "Violation of 6th Amendment."
2. Involuntary Guilty Plea
 - a. "Violation of 14th Amendment."

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, (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

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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).

V. SUMMARY OF RELEVANT TESTIMONY

Applicant testified that he was originally charged with three counts of kidnapping, burglary, armed robbery, and conspiracy. He stated that he pled guilty and received a thirteen year sentence. He stated that he met with Plea Counsel a couple of times before his plea, but she never came to see him. Applicant testified that his co-defendant gave a statement to law enforcement that would have been used against him. He stated that he declined the initial plea offer for 20 years, but he later accepted the State's plea offer for 0-13 years, with a cap of thirteen years. He stated that Plea Counsel told him that he would not get the whole thirteen years because his kidnapping was not violent or sexual. He stated that he did not understand his parole eligibility at the time of the guilty plea.

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Applicant testified that he was scared when he pled guilty, and he thought his lawyer was with him, but she was actually against him. Applicant stated that he would not have pled guilty if Plea Counsel had done what he asked or if he had known that it was a violent crime and he would get the full thirteen year sentence.

Plea Counsel testified that she was appointed to this case on September 15, 2014. She stated that her file indicates that she met with Applicant at least eight times. She stated that she reviewed discovery with Applicant at the jail, and the State had enough evidence to convict Applicant. She stated that she hired an investigator to investigate the case, but he could not be hired until after Applicant was indicted. She stated that she does not recall Applicant asking her to investigate a potential alibi witness named Devin Rodriguez, but she would have investigated him if Applicant were adamant about his innocence, and he was not. She stated that Applicant never told her that he did not commit the crime, but he just wanted a better plea offer.

Plea Counsel testified that she never promised Applicant that he would get less than a thirteen year sentence. She stated that she told him he could get anywhere from zero to thirteen years, and he understood that before the guilty plea. She testified that she explained to Applicant that kidnapping is a violent charge and is not parole-eligible, and the plea judge went over this with him at the guilty plea and it was on the sentencing sheet that he signed. She stated that she provided Applicant with his discovery before the plea, and she provided him with another printed copy of his discovery material after the plea when he asked for it.

VI. 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

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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).

As a matter of general impression, this Court finds Applicant's testimony to be not credible. In contrast, this Court finds Plea Counsel's testimony to be very credible. These findings are applied to the specific findings below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted an allegation of ineffective assistance of counsel. This Court finds this claim to be meritless and it should be denied and dismissed with prejudice. This Court finds that Plea Counsel's representation did not fall below the standards of professional norms in any manner. She met with Applicant at least eight times, communicated properly with him and reviewed all discovery materials with him. Based on this testimony and the record before the court, this Court finds that Plea Counsel's representation was not ineffective in any regard.

Plea Counsel credibly testified that she investigated Applicant's case and provided and reviewed the discovery material with him. She testified that Applicant understood what was happening at all times, and it was his decision to plead guilty. Plea Counsel explained Applicant's constitutional rights, the violent classification of his crime, and his lack of parole-eligibility. It is clear that Plea Counsel was well within the professional standards of representation in this case. Plea Counsel was not deficient in any regard, and there was no prejudice to Applicant from any of Plea Counsel's actions or inactions. Therefore, this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty

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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).

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.

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

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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.

BLANK INDICTMENT

At the evidentiary hearing, Applicant argued to this Court that his indictments were invalid because they were blank and he was not properly indicted by a grand jury. This allegation is meritless. It is clear upon further investigation of the Clerk of Court's records that Applicant was properly true-bill indicted. Plea Counsel credibly testified that if there had been anything wrong with the indictment, she would have raised the issue to the plea judge before his guilty plea. The Circuit Court had proper jurisdiction of Applicant and Applicant has failed to meet his burden of proving that his conviction is improper or invalid in any manner. Therefore, these allegations are 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.

VII. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his

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P-7/18


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.

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 2 day of May, 2017.



 D. CRAIG BROWN
 Presiding Judge
 Third Judicial Circuit

Florence, South Carolina

*Def
p. 8 78*

WITNESSES

N. Kelly Sumter Police Dept.

John Litaker Sumter Police Dept.

DOCKET NO. 2015-GS-43-0054.

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

THE STATE

vs.

RAINEY HOPE CROSBY

DARKUS ARMON FORD

SHANTEL HARRIS

ARREST WARRANT NUMBER

| | | |
|-----------------|-----------------|-----------------|
| 2014A4310200987 | 2014A4310200991 | 2014A4320100474 |
| 2014A4310200988 | 2014A4310200992 | 2014A4320100475 |
| 2014A4310200989 | 2014A4310200993 | 2014A4320100476 |
| 2014A4310200990 | 2014A4310200994 | 2014A4320100477 |
| 2014A4320100478 | 2014A4320100481 | 2014A4320100489 |
| 2014A4320100479 | 2014A4320100487 | 2014A4320100490 |
| 2014A4320100480 | 2014A4320100488 | 2014A4320100491 |
| 2014A4320100492 | | |
| 2014A4320100496 | | |

ACTION OF GRAND JURY

True 12:11

[Signature]
Foreperson of Grand Jury

Date: *1-8-15*

VERDICT

82 Foreperson of Petit Jury
Date:

Indictment for

Poss. weapon during violent crime

Armed Robbery

Attempted Murder

Kidnapping

Burglary

Criminal Conspiracy

Possession of a weapon by a convicted felon

[Signature]

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR
Poss. weapon during violent crime
Armed Robbery
Attempted Murder
Kidnapping
Burglary
Criminal Conspiracy
Possession of a weapon by a convicted felon

At a Court of General Sessions, convened on January 8, 2015 the Grand Jurors of
SUMTER County present upon their oath:

Grand Jurors of
OF ORIGINAL FILE
Barbara Shapa
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Rainey Hope Crosby, Darkus Armon Ford, and Shantel Harris did in Sumter County, on or about August 31, 2014, possess a firearm, or visibly display what appeared to be a firearm, 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 TWO
ARMED ROBBERY

That Rainey Hope Crosby, Darkus Armon Ford, and Shantel Harris did in Sumter County on or about August 31, 2014, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Ronald Thrower in the presence of Ronald Thrower, by means of force or intimidation goods or monies of the said Ronald Thrower, such goods or monies being described: a purse, a Samsung Galaxy 3 phone and a Wells Fargo Debit Card.

COUNT THREE
BURGLARY 1ST DEGREE

That Rainey Hope Crosby, Darkus Armon Ford, and Shantel Harris did in Sumter County on or about August 31, 2014 enter the dwelling of Ronald Thrower located at [redacted] Corbett Street in the City of Sumter, SC without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant The entering or remaining occurred in the nighttime, and the defendants were armed with a deadly weapon uses or threatens use of dangerous instrument, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT 2015-GS-43-0054 FOR RAINEY HOPE CROSBY, DARKUS ARMON FORD, AND SHANTEL HARRIS, WITH THE AFORESAID NAMES SHOWN THEREON:

COUNT FOUR
ATTEMPTED MURDER

That Darkus Armon Ford did in Sumter County on or about August 31, 2014, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Rainey Darkus Armon Ford did with intent to kill, attempt to kill another person, Ronald Thrower, with malice aforethought, either express or implied, by defendant did fire a handgun at the victim.

COUNT FIVE
ATTEMPTED MURDER

That Darkus Armon Ford did in Sumter on or about August 31, 2014, violate Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended, in that the said Rainey Darkus Armon Ford did with intent to kill, attempt to kill another person, Marcus Rhodes, with malice aforethought, either express or implied, by defendant did fire a handgun at the victim.

COUNT SIX
KIDNAPPING

That Rainey Hope Crosby, Darkus Armon Ford, and Shantel Harris Ford did in Sumter County on or about August 31, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Ronald Thrower, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT SEVEN
KIDNAPPING

That Rainey Hope Crosby, Darkus Armon Ford, and Shantel Harris Ford did in Sumter County on or about August 31, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one India Gilcrest, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT EIGHT
KIDNAPPING

That Rainey Hope Crosby, Darkus Armon Ford, and Shantel Harris Ford did in Sumter County on or about August 31, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Darlene Michelle Bradley, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT 2015-GS-43-0054 FOR RAINEY HOPE CROSBY, DARKUS ARMON FORD, AND SHANTEL HARRIS, WITH THE AFORESAID NAMES SHOWN THEREON:

COUNT NINE
CRIMINAL CONSPIRACY

That Rainey Hope Crosby and Shantel Harris did in Sumter County on or about August 31, 2014 combine with Darkus Armon Ford, and/or with other persons, for the purpose of accomplishing a criminal or unlawful objective or an objective that is neither criminal nor unlawful through criminal or unlawful means, to wit: Armed Robbery, Burglary 1st Degree and Kidnapping, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

COUNT TEN
POSSESSION OF A WEAPON BY A CONVICTED FELON

That Rainey Hope Crosby did in Sumter County on or about August 31, 2014 knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003, as amended, in violation of Section 16-23-0030(B), 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

