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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Honorable John C. Hayes, Circuit Court Judge

DAVID I. SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001823

APPENDIX

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ATTORNEYS FOR RESPONDENT

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1 (July 10, 2014.)

2 THE COURT: You are David Israel Smith?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You got indicted for attempted
5 murder which carries a sentence of up to 30 years in
6 prison. I'm told the State will allow to you plead
7 guilty to assault and battery of a high and aggravated
8 nature which carries a sentence of up to 20 years in
9 prison.

10 Do you want to plead guilty to assault and
11 battery of a high and aggravated nature?

12 THE DEFENDANT: Yes.

13 THE COURT: Now, you were on probation at the
14 time this offense was committed which causes that
15 probation to be violated.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Now, you have a right
19 to a jury trial. You give up your right to a jury trial
20 when you plead guilty. If you want a trial, stop me. We
21 will arrange that for you. The State then has to present
22 enough evidence to convince 12 jurors that you're guilty
23 beyond a reasonable doubt. All 12 have to agree you're
24 guilty in order to convict you, and, if convicted, you
25 have the right to appeal.

1 You can challenge the State's evidence, put
2 up evidence of your own, testify if you want, and if you
3 don't want to testify, the judge will tell the jury not
4 to hold that against you while they are deliberating.

5 Do you understand those rights?

6 THE DEFENDANT: I understand.

7 THE COURT: I need you to say yes or no out
8 loud.

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Are you pleading
11 guilty to this charge because you're guilty of it?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you under the influence of
14 drugs or alcohol today?

15 THE DEFENDANT: No, I'm not.

16 THE COURT: Do you need any more time with
17 your lawyer?

18 THE DEFENDANT: No, sir.

19 THE COURT: Are you satisfied with his
20 representation?

21 THE DEFENDANT: Yes, I am.

22 THE COURT: Did he do everything you asked
23 him to do?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Now, other than

1 reducing this charge from attempted murder down to
2 assault and battery of a high and aggravated nature, did
3 anyone promise you anything or threaten you to get you to
4 plead guilty?

5 THE DEFENDANT: No.

6 THE COURT: How old are you?

7 THE DEFENDANT: Thirty-six years old.

8 THE COURT: How far did you get in school?

9 THE DEFENDANT: Eleventh.

10 THE COURT: Did you work before you got
11 arrested? Did you have a job?

12 THE DEFENDANT: I got a trade, I got a couple
13 trades.

14 THE COURT: Doing what?

15 THE DEFENDANT: Drywall, framing, metal stud
16 framing.

17 THE COURT: Married?

18 THE DEFENDANT: No, sir.

19 THE COURT: You got children?

20 THE DEFENDANT: I got one son.

21 THE COURT: How old is he?

22 THE DEFENDANT: Twelve.

23 THE COURT: Does he understand what he's
24 doing?

25 MR. MALLOY: Yes, Your Honor.

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THE COURT: I find his plea is freely, voluntarily, and intelligently made.

What would the State like to tell me?

MS. BALDWIN: Thank you, Your Honor. This occurred on October 18 of 2011 at [REDACTED], which is in the city and county of Charleston.

The defendant and the victim had dated and had lived together for a number of years. Just prior to the incident, the victim had actually broken off the relationship. The night of the incident, the victim arrived home, got out of her car. She heard rustling in the bushes, and the defendant jumped out of them.

He then jumped on the victim's back and began trying to stab her with a large knife. The victim fought back, and at one point actually grabbed him to fight him off. He then punched the victim in the face and knocked her to the ground. He continued slashing at her and tried to stab her.

She did continue to fight him off while yelling for help. The victim's sister was actually inside the house, and she heard the victim yelling for help, so she went out on the front porch and saw the defendant on top of the victim, saw the knife in the defendant's hand, and saw the defendant trying to stab the victim. She saw a silver item slashing at the

1 victim.

2 The victim's sister yelled at the defendant
3 to get off of the victim, at which point the defendant
4 said, I'm going to kill both of you bitches, and he fled
5 the scene.

6 The victim suffered multiple lacerations and
7 stab wounds to her arms, her right hand, and her back.
8 She also had a cut on her nose from where the defendant
9 punched her. The defendant actually was located in Las
10 Vegas two months later. While he was on the run, he was
11 calling and texting the victim, all the while threatening
12 her saying that he was going to come back and cause her
13 arm.

14 As to his record, he has a 1998 assaulting a
15 police officer while resisting arrest, two counts of
16 that, a simple resisting arrest, and a concealed knife;
17 in 2001, possession of marijuana; in 2002, unlawful
18 carrying of a weapon; in 2003, speeding, DUS second, and
19 failure to stop for a blue light; in 2004, possession of
20 marijuana; in 2007, possession of a controlled substance;
21 and in 2009, possession with intent to distribute cocaine
22 and failure to stop for a blue light.

23 Your Honor, the victim and her family are
24 present in the courtroom today. The State is not making
25 any recommendations as to sentencing, but we are taking a

1 position, and that position is that the maximum 20 years
2 should be imposed for the following reasons: One, the
3 degree of violence that was involved. There is very
4 little doubt that but for the victim's sister coming
5 outside, Mr. Smith would have killed the victim.

6 The fact that he was lying in wait in the
7 bushes and waiting for her to come home is an indication
8 of his malice. He also has a history of violence and
9 weapons, given his record for assaulting a police
10 officer, and the concealed knife and the unlawful
11 carrying.

12 Also, the defendant was on probation when the
13 incident occurred, which indicates that he cannot behave
14 while on supervision. He fled after the incident, so
15 it's a possibility that were he to be let free he would
16 flee the state again. There is also the fact that the
17 defendant fled and he continued to threaten the victim
18 while he was on the run, saying he was going to come back
19 and cause further harm to her.

20 It's the State's understanding from the
21 victim, Your Honor, as well that the defendant has
22 continued to communicate with the victim since he's been
23 in jail. He's written letters to her several times,
24 despite on his bond, even though he hasn't made bond, a
25 bond condition being that he's not supposed to have any

1 contact with her. It indicates he's still focused on
2 having control over the victim.

3 There's little doubt in the State's mind,
4 Your Honor, that were he to be freed at any time soon he
5 would hunt down the victim and attempt to finish what he
6 started. The victim would like to speak and address the
7 Court at the appropriate time. I believe her and her
8 daughter would.

9 THE COURT: All right.

10 Yes, ma'am. What is your name, please?

11 THE WITNESS: Maudell Grayson.

12 THE COURT: What would you like to tell me?

13 THE WITNESS: That he's really dangerous.

14 Like they said, he has sent several letters to me. He's
15 called me to threaten me, and he's just not fit to be out
16 on the streets.

17 THE COURT: All right. Did you want to say
18 something? What is your name?

19 THE WITNESS: Smarel.

20 THE COURT: What would you like to say?

21 THE WITNESS: Well, before he got sentenced,
22 he was actually working with our family, so we now have
23 three businesses instead of one, and I still see -- my
24 mom is still, like -- she still has flashbacks since this
25 has occurred, so we still don't feel comfortable. Like,

1 even though he's in jail, we still feel like -- because
2 we know how he feels about the system, he always says
3 that it's a joke, so we feel like he could attempt to
4 plea, you know, we just -- we still feel paranoid,
5 basically, so I feel like he should get the maximum
6 sentence because several things have occurred before this
7 huge accident occurred with him and her that I can't
8 bring up because he wasn't charged for it, but --

9 THE COURT: All right. Thank you. Anything
10 else from the State?

11 MS. BALDWIN: Nothing further, Your Honor.

12 THE COURT: All right. Mr. Malloy?

13 MR. MALLOY: Thank you, Your Honor. May it
14 please the Court: This is an old case. Dave has been in
15 jail since his arrest on December 21, 2011, and I know
16 he's had an awful lot of time to think about things since
17 then.

18 As you heard, he and Ms. Grayson did have a
19 relationship prior to this. He worked at the deli that
20 she owns, and I know during that time he did develop some
21 very strong feelings for her. Things were going well at
22 the deli. There was a lot happening there, and I know he
23 enjoyed that time very much, and he enjoyed his time with
24 her, Your Honor, but things got to a point where the two
25 had split.

1 I believe Ms. Grayson wanted an end to the
2 relationship, and Mr. Smith, I think, still had feelings
3 for her and he still wanted to be with her, and we talked
4 a lot about not only the incident that we're here for
5 today, but that relationship and what led up to this, and
6 he always says more than anything he showed up at her
7 house that day because he wanted to know what was going
8 on and he wanted some closure, and this thing escalated.

9 He does not deny that he is in the wrong
10 because of what he did at that time. I know a big
11 concern here is going to be, well, is he going to go back
12 and try to harm Ms. Grayson or the members of her family,
13 and he tells me -- as you heard, he left the state after
14 this incident. He was extradited back. He says if it
15 wasn't for that, he probably never would have come back.

16 He says he is done with this. It made him do
17 something that he knows is terrible. His record, he does
18 have resisting a police officer, but this is the most
19 serious charge that he has ever faced.

20 And, Your Honor, he also was aware, coming in
21 here today, that the State was going to request the max
22 on this charge. He is catching a break by being allowed
23 to plead to this ABHAN instead of attempted murder. I'm
24 asking you to consider -- and he also knows that he's
25 going to get some time for what occurred back in 2011.

1 He has probation. I believe there is a
2 five-year sentence that is hanging over his head. He's
3 facing 85 percent today. I would ask you consider a
4 split sentence, revoking that probation in full, five
5 years on the ABHAN at 85 percent, and suspending
6 the rest. A substantial sentence on probation, of course
7 I think a no contact order would be appropriate, and,
8 Your Honor, I would just ask you to give him credit for
9 coming in here today and taking responsibility for this
10 incident.

11 THE COURT: Mr. Smith, would you like to say
12 anything?

13 THE DEFENDANT: Yes, sir. I'm very sorry for
14 the pain that I caused. I definitely have strong
15 feelings for Ms. Maudell. It doesn't justify what I did.
16 When I left the State, I stayed in contact, not to be
17 malicious, a verbal conversation I had with her. I
18 wanted to turn myself in.

19 I take responsibility. I definitely carry a
20 torch, and I don't have no wantings {sic} to be in
21 Charleston South Carolina. I'm not a malicious person.
22 I took a knife from a woman who stabbed her husband,
23 ironically, and got I got that on my record.

24 Again, I apologize. I take full
25 responsibility for my actions.

1 THE COURT: Well, it's good that you did.
2 You got the benefit of coming off of 30 years, which, had
3 you gone to trial and got convicted, based on what I
4 heard, you probably would get 30 years.

5 I think 20 years is a break, and that's all
6 the break that I think you're going to get, based on what
7 you've heard today.

8 So I'll sentence you to 20 years. You'll get
9 credit for time served. Good luck.

10 THE AGENT: Probation?

11 THE COURT: Terminate.

12 THE AGENT: Thank you.

13 - - -

14 (Whereupon, the proceedings were concluded.)

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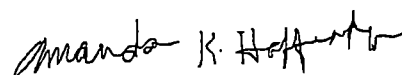
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 10th of July 2014.

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

May 19, 2015



Circuit Court Reporter

AMANDA K. HAFFENDEN, RPR, CRR
Circuit Court Reporter
P.O. Box 424
Summerville, SC 29484
(843) 771-3755

May 19, 2015

TO: Sara B. Moore
Office of the Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549

IN RE: SC vs. David I. Smith
DATE: July 10, 2014
TRANSCRIPT OF PROCEEDINGS
BEFORE: Honorable Roger M. Young

ORIGINAL 13 pages @ \$3.25: \$42.25

Amanda K. Haffenden

Amanda K. Haffenden, RPR, CRR

***-**-6999

JBN20111208773

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1117122

ARREST WARRANT NUMBER

1601373

DATE OF ARREST

December 22, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: MAY 07 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2012GS1002533

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

vs.

DAVID ISRAEL SMITH

DOB: [REDACTED]
B/M

Indictment for
Attempted Murder

FILED

5/24/2012 8:43:43 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about October 18, 2011, the Defendant, DAVID ISRAEL SMITH, did, with intent to kill and malice aforethought, attempt to kill Maudell Grayson. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



JESSICA BALDWIN
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
 COUNTY OF Charleston
 STATE VS.
David Israel Smith
 AKA:
 Race: BLACK Sex: M Age: 36
 DOB: 77 SS# [REDACTED]
 Address: President St
 City, State, Zip: Charleston, SC 29403
 DL#: [REDACTED] SID#: SC01064700

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2012GS1002533
 A/W#: 1601373
 Date of Offense: 10/18/2011
 S.C. Code § : 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault and Battery of a High and Aggravated Nature

CONVICTED OF or PLEADS

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 76284 [Signature] LUKE Malloy 100169
 Baldwin, Jessica SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Payment Terms: _____
 Set by SCDPPPS _____
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

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

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: [Signature]
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 2134
 Sentence Date: 7/10/14

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s):
Warrant No(s): I601373; W10110325
Charge(s): Attempted Murder, Probation
Violation

STATE OF SOUTH CAROLINA)

vs.)

DAVID ISRAEL SMITH,)

Defendant)

MOTION TO RECONSIDER SENTENCE

PLEASE TAKE NOTICE THAT the Defendant, **David Israel Smith**, through his undersigned attorney, will move this Honorable Court for a reconsideration of the sentence imposed on July 10, 2014. The grounds for the motion will be presented at the hearing on July 29, 2014.

Respectfully submitted,



Luke J. Malloy
Attorney for the Defendant

Charleston, South Carolina

Dated: July 18, 2014

FILED
2014 JUL 18 AM 11:28
JULIE S. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	2015-CP-10-1855

DAVID I. SMITH,)	
Plaintiff,)	TRANSCRIPT OF RECORD
-vs-)	November 17, 2014
THE STATE OF)	Charleston, South Carolina
SOUTH CAROLINA,)	
Defendant.)	

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Luke Joseph Malloy, III, Esq.
Attorney for the Plaintiff

Jessica Baldwin, Assistant Solicitor
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (November 17, 2014.)

2 THE COURT: All right. This is State versus
3 David Israel Smith, a motion to reconsider. Is this your
4 motion?

5 MR. MALLOY: It is, Your Honor. Your Honor,
6 Mr. Smith, this case started off -- was originally
7 charged as a criminal domestic violence of a high and
8 aggravated nature, was eventually indicted as attempted
9 murder, but he was allowed to plea to assault and battery
10 of a high and aggravated nature and to receive the
11 20-year sentence, which is the max for an ABHAN.

12 I'm asking you to reconsider that and
13 consider imposing a sentence less than the max. I first
14 want to point out that I don't think if this were to be a
15 trial that a conviction for attempted murder would be a
16 foregone conclusion. We disagreed with some of the facts
17 as presented by the State.

18 Unfortunately, I think it would have been a
19 situation where we would have been stuck arguing for an
20 ABHAN conviction, which is obviously not a great position
21 to be in at trial, but I think that ABHAN is the
22 appropriate charge in this case, and I think that it was
23 the correct decision for him to plead on that charge.

24 And, Your Honor, one thing that I was not
25 made aware of at the time of the plea, through no fault

1 of the solicitor, are several letters, two letters, that
2 were sent from Mr. Smith to the victim in this case,
3 Ms. Grayson, from the detention center. Those letters
4 were turned over to the previous attorney who had the
5 case.

6 Unfortunately, one of the unfortunate
7 consequences of switching representations is things get
8 lost in the mix, and those did not stay with the file
9 which the State presented, those files with their request
10 for a maximum sentence, arguing that Mr. Smith would be a
11 danger to go back to the victim in this case and harm
12 Ms. Grayson.

13 After reviewing those letters, Your Honor, I
14 did not perceive them to be threatening in nature. I
15 don't believe they are intended to be threatening. I
16 think they may have been perceived in that way by
17 Ms. Grayson, but I would characterize them as more
18 consistent with a love letter. He talks about the good
19 times that they shared in their relationship, Your Honor.

20 There was a relationship between he and
21 Ms. Grayson before this incident occurred. Through my
22 experience representing Mr. Smith, it does not appear to
23 me he has any intention of going back to Ms. Grayson at
24 all, and I think it's been made abundantly clear to him
25 that she does not want him in her life and that he is not

1 to have any contact with her, Your Honor, but I would ask
2 you to consider imposing a sentence less than 20 years,
3 or perhaps suspending a portion of that 20-year sentence.
4 Thank you.

5 And, Your Honor, Mr. Smith is joined today by
6 his two aunts, Sharon and Jennifer, and his brother Seth.

7 THE COURT: All right. What would the State
8 like to say?

9 MS. BALDWIN: Do you need a refresher on the
10 facts at all?

11 THE COURT: I do. I don't recall.

12 MS. BALDWIN: As Mr. Malloy said, the
13 defendant and victim did date prior to the incident.
14 Just prior to the incident, they had broken up, and as to
15 the incident itself, the victim came to her house. She
16 got home. It was nighttime. She got out of her car.
17 She heard a rustling in the bushes, and the defendant
18 jumped out of the bushes at her.

19 He then jumped on the victim's back and began
20 trying to stab her. She fought back, trying to grab the
21 knife from him. He then punched her in the face, knocked
22 her to the ground. He continued slashing at her, tried
23 to stab her. She continued to fight him off while
24 yelling for help.

25 The victim's sister, who is also present with

1 the victim in the courtroom today, was inside and heard
2 the yelling. She came outside, saw the defendant on top
3 of the victim, saw the knife in the defendant's hand, and
4 saw the defendant trying to stab the victim.

5 The sister then yelled for the defendant to
6 get off of her, at which point defendant said, I'm going
7 to kill both of you bitches, and then he fled the scene.
8 The victim did suffer multiple lacerations, stab wounds
9 to her arms, her right hand, and her back. She had a cut
10 on her nose from where the defendant punched her, and the
11 defendant was located in Las Vegas two months later.
12 During the time he was on the lam, he had been texting,
13 contacting the victim several times and threatening her.

14 As to his record, there's a 1998 assaulting
15 police officer while resisting arrest; another resisting
16 arrest; 2001 possession of marijuana, second offense;
17 2002 unlawful carrying of a weapon, 2003 failure to stop
18 for a blue light; 2004 possession of marijuana; 2007
19 possession of a controlled substance; and in 2009, PWID
20 cocaine and failure to stop for a blue light, which at
21 the time of the incident he was on probation for those
22 charges.

23 As to the letter Mr. Malloy alludes to, it's
24 not the State's point whether the letters he sent Ms.
25 Grayson from jail were threatening. Mr. Smith couldn't

1 accept the fact Ms. Grayson no longer wanted to be with
2 him since she separated from him before this incident
3 happened. I think it may have been a situation of if I
4 can't have you, no one will, and that is one of the main
5 reasons, or one of the reasons, why the State was asking
6 for the maximum sentence on the ABHAN charge.

7 We did give him the benefit of reducing it to
8 ABHAN instead of attempted murder. It's the State's
9 position that the sentence should remain as is because of
10 the violence involved in the incident, the fact Mr. Smith
11 continued to contact the victim while on the lam and
12 while in jail, and it's also the victim's wishes that the
13 sentence remain the same.

14 The victim and her daughter are in the
15 courtroom today and would like to address the Court with
16 your permission.

17 THE COURT: Sure. What is your name, please?

18 THE WITNESS: Maudell Grayson.

19 THE COURT: What would you like to say?

20 THE WITNESS: Right now, 20 years, he know
21 the reason why he's in jail. No one went through it the
22 way I went through it with him, so he really know. He
23 does. If he get out, I know David. He used to sneak up
24 behind me when I was in the store. He did everything to
25 himself. I didn't do anything to him, so this is the

1 reason he has the 20 years. That's all.

2 THE COURT: All right. Who else? Yes, your
3 name, please?

4 THE WITNESS: My name is Esthereana. I'm her
5 sister. I was the one that was at the house the night he
6 came over to the house and attacked my sister, and I
7 yelled for him to get off my sister.

8 He had threatened us before. In July he had
9 threatened us, and he didn't get arrested that time, and
10 the judge was getting ready to arrest him. And when he
11 stopped over to our house that night, like she was
12 saying, he kept threatening the family wherever he was
13 running to, wherever they found him.

14 And I don't think that as long as my sister
15 is here and he know where my sister is going to be, I
16 feel like he is a threat to our family, and I feel like
17 he is a very dangerous person.

18 THE COURT: Thank you. Your name, please?

19 THE WITNESS: Smarel Brown. She's my mom.

20 Like my Aunt Hadasah said, before this
21 incident occurred, we also had an incident, the whole
22 machete incident, with him chasing me with a machete, but
23 my mom had given him a chance to work with us, and the
24 whole, I think, year that he was there, it caused
25 conflict between our family. There's still some things

1 that I'm getting therapy on because of this, and for the
2 three months that he was -- the two or three months that
3 he was in jail, we couldn't go home.

4 I was in college at that time. We couldn't
5 go home without having a police officer check the house.
6 We couldn't go out. We couldn't go around the corner
7 without having friends walking us anywhere.

8 My mom spent two-and-a-half, three months
9 looking over her back, and still to this day, she is
10 still conscious about every place that she goes. She
11 can't hang out late at night, so he may have changed his
12 appearance, you know, and he may cut off his locks and he
13 may give everybody a good story, but I know what my mom
14 went through. I know what she continues to go through,
15 and I know what he would do if he got out.

16 My brother and I were getting that software
17 together and working with the US marshals and finding
18 numbers he was calling from. My mom woke up at 4:00 in
19 the morning. He's saying he's going to come back and
20 kill me. Seeing my mom still to this day have
21 nightmares, if he gets out -- I know he hates me because
22 of how I stand behind my mom. I know he's going to try
23 to destroy our whole family just to get to my mom.
24 That's what he said on the phone.

25 He said, My plan was to come back and kill

1 you and kill myself, because that's how strong he thinks
2 their love was. So I think that if it can't be longer,
3 his sentence should stay exactly where it is.

4 THE COURT: All right.

5 MS. BALDWIN: Nothing further, Your Honor.

6 THE COURT: All right. Did you want to reply
7 to anything? You look like --

8 MR. MALLOY: Your Honor, I would. I would
9 like to briefly reply.

10 I mentioned there are several facts that
11 Mr. Smith does dispute regarding her -- in regards to how
12 the State presented what occurred at this incident. Your
13 Honor, he denies the statement saying that, I'm going to
14 kill you; I'm going to kill you.

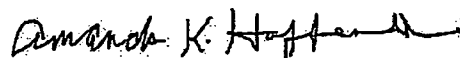
15 He's always said he was parked in a vehicle.
16 He wanted to have a conversation regarding the nature of
17 their relationship. He did not jump out of the bushes
18 and charge her from behind, but this thing started off as
19 sort of an argument and then escalated from there.

20 And, Your Honor, when I say this, I'm not
21 trying to downplay the significance of what occurred
22 during this incident, but I would not characterize the
23 wounds as life threatening in nature. We're dealing with
24 lacerations to the hands and arms, no body wounds, no
25 damage to organs. All X-rays came back negative.

I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 17th of November 2014.

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

June 16, 2017



Circuit Court Reporter

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STATE OF SOUTH CAROLINA

COUNTY OF _____

IN THE COURT OF COMMON PLEAS

2015-CP-10-1855
CIVIL ACTION COVERSHEET

David I. Smith # 360693
Plaintiff(s)

vs.

Defendant(s)

FILED
MIS MAR 31 AM 9:42
JULIE J. ARMSTRONG
CLERK OF COURT

Submitted By:
Address:

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint
- NON-JURY TRIAL demanded in complaint
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 _____ -CP- _____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conviction (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanics' Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstates Drv. License (600) <input type="checkbox"/> Judicial Review (610) <input type="checkbox"/> Relief (620) <input type="checkbox"/> Permanent Injunction (630) <input type="checkbox"/> Forfeiture-Petition (640) <input type="checkbox"/> Forfeiture-Consent Order (650) <input type="checkbox"/> Other (699) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex/Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature:

David I. Smith

Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)

IN THE COURT OF COMMON PLEAS
2015-CP-10-1855

David J. Smith #)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION REVIEW

FILED
2015 MAR 31 AM 9:43
JULIE ARMSTRONG
CLERK OF COURT

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 McCormick Correctional Institution
McCormick SC 29899
2. Name and location of Court which imposed sentence General Session Court of
Common Pleas for Charleston County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012GS1102533

- (b) _____
- (c) _____

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

- (a) 7/10/2014 sentence of 20 yrs
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

no

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

- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. N/A
 - iii. _____

- (c) the date of each such result:
 - i. _____
 - ii. N/A
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. N/A
 - iii. _____

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

- (a) did not know that I could have

(b) _____

(c) _____

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

(a) Misadvice in guilty Pleadings, advised within timely manner

(b) Ineffective Assistance of Counsel

(c) Forgery of indictment

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

(a) Counsel was not prepared for this case.

(b) Counsel misadvised me to accept a plea after

(c) Counsel was not on case long enough to prepare a defense.

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

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____ N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____ N/A

iv. _____

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

i. _____

ii. _____

iii. _____ N/A

iv. _____

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

_____ No

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

(a) which grounds have been presented:

i. _____ N/A

ii. _____

iii. _____

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

i. _____ N/A

ii. _____

iii. _____

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) _____ NO
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (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? _____

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. Luke, Joseph Malloy III, 101 meeting st, chas. G. C. 29401
5th floor
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. at plea and sentencing
 - ii. _____
 - iii. _____

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

sentence vacated, charges dismissed, or time served

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, David I. Smith #360603, 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.

David I. Smith

SWORN to and subscribed before me this 10th day of November, 2014.

[Signature]
Notary Public (L.S.)

My Commission Expires: May 12, 2021

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

I, David I. Smith #36603, 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.

David I. Smith
Applicant

SWORN or affirmed to and subscribed before me this
4th day of February, 2015.

Stephanie Marshall
Notary Public

My Commission Expires: May 12, 2021



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
)	
David I. Smith, #360603,)	2015-CP-10-1855
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed March 31, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2012 term of the Charleston County Grand Jury for attempted murder (2012-GS-10-2533). Luke Malloy, Esquire, represented the Applicant. On July 10, 2014, the Applicant pled guilty to the lesser included offense of assault and battery of a high and aggravated nature (ABHAN). The Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for twenty (20) years. The Applicant did not appeal his sentence or plea.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction(s), the application, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Misadvice in guilty plea"
2. "Not indicted within timely manner"
3. "Ineffective Assistance of Counsel"
 - a. "Counsel was not prepared for this case"
 - b. "Counsel misadvised me to accept a plea offer"
 - c. "Counsel was not on case long enough to prepare a defense"
4. "Forgery of indictment"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRC(a).

III.

The Applicant's first and third claims are allegations of ineffective assistance of plea counsel. The Respondent submits plea counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the 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.

The Respondent interprets the Applicant's second and fourth claims as allegations of due process violations. The Applicant's allegations claim infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds

upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General

P.O. Box 11549
Columbia, SC 29211

August 12, 2015.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 DAVID I. SMITH, #360603)
)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

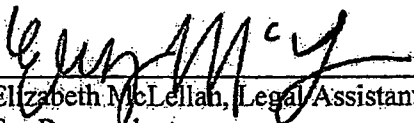
2015-CP-10-1855

AFFIDAVIT OF SERVICE BY MAIL

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

Christopher L. Murphy, Esq.
Murphy Law Offices, LLC
PO Box 2008
Mt. Pleasant, SC 29465

DATED this 12th day of August, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF CHARLESTON)	Case No. 2015-CP-10-1855
<hr/>		
DAVID I. SMITH,)	
)	
Applicant,)	
)	
vs.)	Transcript of Record
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	DATE: August 1, 2016
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B E F O R E:

THE HONORABLE JOHN C. HAYES

A P P E A R A N C E:

CHRISTOPHER L. MURPHY
Attorney for the Applicant

J. RUTLEDGE JOHNSON
Attorney for the Respondent

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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1 MR. JOHNSON: May it please the Court. This is
2 David Smith vs. The State of South Carolina, Case No.
3 2015-CP-10-1855.

4 Mr. Smith was indicted at the May 2012 term of the
5 Charleston County Grand Jury for attempted murder. Luke
6 Malloy represented him on July 10th, 2014. He pled to the
7 lesser-included offense of assault and battery of a high and
8 aggravated nature. The Honorable Roger M. Young sentenced
9 him to confinement for 20 years. He did not appeal this plea
10 or sentence.

11 He thereafter filed this action on March 31st, 2015.
12 The State filed its return on August 12th, 2015. He is
13 represented by Chris Murphy.

14 MR. MURPHY: Yes, Your Honor. Thank you. May it
15 please the Court. We would call Mr. David Smith as our first
16 witness.

17 DAVID SMITH,

18 having been duly sworn, testifies as follows:

19 THE CLERK: State your first and last name and spell
20 your last loudly and clearly into the microphone.

21 THE WITNESS: David Smith, S-m-i-t-h.

22 DIRECT EXAMINATION

23 BY MR. MURPHY:

24 Q. Now, Mr. Smith, you were represented by Mr. Luke
25 Malloy in these charges, correct?

1 A. Yes.

2 Q. But he was not your first attorney, was he?

3 A. No, he wasn't.

4 Q. And how many attorneys did you have before him?

5 A. I had before him two other lawyers, Ms. Counselor
6 Woosley and Esquire Penn.

7 Q. Okay. Now, did you, prior to Mr. -- let me ask you
8 this. Did you go over the facts and your strategy in this
9 case with your first attorney?

10 A. My first attorney, she represented me at my
11 preliminary.

12 Q. I'm sorry. She did the preliminary hearing and that
13 was the extent of her involvement, correct?

14 A. Right, right.

15 Q. The second attorney, did you develop a strategy or
16 defense in your case?

17 A. Yes, Ms. Penn, she intended to challenge the
18 attempted murder and prove it to be CDV/HAN. And I have an
19 exhibit here of --

20 Q. Let's not worry about that. We are focusing on you
21 talking with Ms. Penn about the defense.

22 A. Right.

23 Q. And you had a trial strategy, correct?

24 A. Right.

25 Q. Did you talk to Mr. Malloy about the trial strategy?

1 A. Yes, I did.

2 Q. And what evidence did you want him to present in
3 furtherance of this strategy?

4 A. I wanted him to get medical records. If he chose --
5 if he challenged it, medical records would have shown the
6 severity of Ms. Grayson's wounds. The expert witness would
7 have attested to what was reported in the --

8 Q. Let's back up. This was a stabbing case, correct?

9 A. Right.

10 Q. Now, were you injured in this?

11 A. Right, right.

12 Q. You were injured?

13 A. Yes, I was.

14 Q. Okay. And why is that -- did you tell Mr. Malloy
15 you were injured?

16 A. Right. And, plus, I had took a swab test.

17 Q. Okay. Let's back up a bit. I know you've got a lot
18 to say, but, please, listen to me. All right. Were you cut
19 in this instance?

20 A. I was cut.

21 Q. And did you tell Mr. Malloy that?

22 A. Told Mr. Malloy.

23 Q. Why is that important or why was that important in
24 your case?

25 A. It shows that as far as different story, there was

1 more to the story than they presented.

2 Q. You believed you had a self-defense claim?

3 A. Self-defense, right.

4 Q. Did you talk to Mr. Malloy about this self-defense
5 claim?

6 A. Right. And he told me he didn't believe me.

7 Q. Did you talk about specific facts that would have
8 supported this self-defense claim?

9 A. Right.

10 Q. You did?

11 A. Right.

12 Q. And what was Mr. Malloy's reaction?

13 A. He told me that he didn't believe me, nobody would
14 believe me, and it would be in my best interest to accept the
15 plea. He told me that I would receive 40 years.

16 Q. Let's back up now. At one point, you were -- you
17 did not want to plead guilty; is that correct?

18 A. I never wanted to plead guilty.

19 Q. You wanted to go to trial, correct?

20 A. Correct.

21 Q. And you always wanted to go to trial?

22 A. Correct.

23 Q. Did you talk to Mr. Malloy? You were facing
24 attempted murder charges, correct?

25 A. Yes.

1 Q. Did you talk to Mr. Malloy about the elements of
2 attempted murder?

3 A. Right. Yeah. They came -- I know they came through
4 after because I didn't come there with a knife. I told him
5 that.

6 Q. After talking with Mr. Malloy about the elements of
7 attempted murder, did you believe that you could be convicted
8 of attempted murder?

9 A. No. I know I -- Ms. Penn told me I wouldn't be
10 convicted. I got it in my exhibit.

11 Q. Okay. Now, you had a conversation about whether or
12 not to plea or go to trial with Mr. Malloy, correct?

13 A. Right.

14 Q. And he convinced you to plead guilty, correct?

15 A. Yes.

16 Q. Tell me, did you want to plead guilty?

17 A. No, I didn't want to plead guilty.

18 Q. Tell me why you decided to plead guilty. What did
19 Mr. Malloy say to get to you plead guilty?

20 A. He told me that if I didn't plead guilty, that I
21 would receive 40 years, 30 with attempted murder and 10 for
22 the CDV/HAN. And I told him, isn't that double jeopardy?
23 And he said, no, no. He went to get Pennington. And I was
24 in this box for, like, 10 or 15 minutes.

25 Q. When you say Pennington, you are talking about the

1 chief public defender, Ashley Pennington?

2 A. Yes.

3 Q. That would be Luke Malloy's boss?

4 A. Correct.

5 Q. Go ahead.

6 A. From there, he told me that -- he said: I talked to
7 Mr. Pennington. The judge going to give you 10. He's not
8 going to give you the whole 20.

9 And I was like, all right.

10 Q. How did you know -- what basis did Mr. Malloy say
11 that he would get 10 years rather than a possible 20, or do
12 you know?

13 A. What he said is, he talked to Mr. Pennington and he
14 believe the judge is not going to give me -- I don't know the
15 basis.

16 Q. What else did he say to get you to --

17 A. I didn't --

18 Q. Was your family present at the time?

19 A. Oh, yeah. I asked him -- I wanted to talk to my
20 family before I proceed. I told him that I know my family,
21 they understand, I think I needed a lawyer. And he's like,
22 wait, you've been here how many years, three years. And he
23 said, I don't believe -- I don't believe that you will get a
24 lawyer now. And I said, tell my family I want to talk to my
25 brothers.

1 Q. The purpose was you wanted to get a new attorney to
2 represent you?

3 A. Right.

4 Q. And how many times had you met with Mr. Malloy prior
5 to this?

6 A. Prior to that, it was two times.

7 Q. And did you have any communication with other
8 lawyers or talk to your family about hiring another lawyer at
9 that point?

10 A. No, because I didn't -- I didn't think I had -- Ms.
11 Penn, she just -- two months prior to trial, that's when
12 Malloy was appointed to me.

13 Q. Did Mr. Malloy say he would ask the Court to tell
14 you that -- tell the Court or inform the Court that you
15 wanted new counsel?

16 A. No, he didn't.

17 Q. All right. And then you ended up going before the
18 judge and you pled guilty; is that correct?

19 A. Right.

20 Q. And you received a 20-year sentence?

21 A. Right.

22 Q. Did you talk to Mr. Malloy after you got that
23 sentence?

24 A. He told me that I could, he used word "revoke" my
25 plea, said I had 10 days to do so.

1 Q. That would have been 10 days. Did you talk about
2 filing an appeal or motion for reconsideration?

3 A. No, he just told me about revoke, withdraw my plea,
4 but used the word "revoke my plea".

5 Q. Did he say "withdraw the plea"?

6 A. Well, he used the word "revoke", but I'm thinking
7 that's revoke my plea.

8 Q. Did you talk to him about appealing the sentence
9 that you received?

10 MR. JOHNSON: Objection, Your Honor. Anything about
11 an appeal is not in the application; should be stricken from
12 any testimony on that.

13 THE COURT: Again, I will allow it. Keeping in mind
14 that I'm the finder of fact and I will give it the weight it
15 deserves. Thank you.

16 BY MR. MURPHY:

17 Q. Did he talk to you about filing an appeal during the
18 sentence?

19 A. Didn't talk about filing an appeal.

20 Q. Did you know that you could file an appeal?

21 A. No, but when I got in the back, I was -- I talked to
22 another inmate. And I'm behind the wall and I'm screaming.
23 Actually have what I wrote. I actually have what I mailed
24 from Kirkland facility, the appeal. I have the --

25 Q. That was a notice of appeal that you wanted to

1 file?

2 A. Yes, I have a notice of appeal that I wanted to
3 file. I have the certificate of service here. And I also
4 have the pass when I told them that I wanted to revoke my
5 plea.

6 Q. Let's just back up. Did you want to appeal the
7 sentence?

8 A. I wanted to, yeah.

9 Q. That's all we needed. Now, after the sentence, did
10 you have any other communications with Mr. Malloy?

11 A. Yes, after. At Kirkland, he called me at Kirkland
12 and he told me that because of a letter that he didn't know
13 about, that he had grounds to revoke. And he told me that I
14 won't have to put in the motion to revoke, I won't have to do
15 anything. I didn't trust him. So, again, I went and did
16 that. And he never -- two months or month later, at the
17 reconsideration hearing, he told me that I didn't have no
18 grounds. And I was like -- he set me up.

19 Q. No grounds to file an appeal, correct?

20 A. That's what he told me.

21 MR. MURPHY: That's all I have, Your Honor. Thank
22 you.

23 MR. JOHNSON: May it please the Court, Your Honor.

24 THE COURT: Yes.

25 CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q. Mr. Smith, the plea court asked you if you were
3 pleading guilty because you were guilty, and you said yes; is
4 that not correct?

5 A. The plea court -- can you repeat that?

6 Q. I said, the plea court asked you if you were
7 pleading guilty because you were guilty of this crime; isn't
8 that correct?

9 A. Well, actually, before I pled?

10 Q. No, sir, during the plea.

11 A. Mr. Malloy told me that I needed to go along with
12 what the judge had. So I basically took his advice and just
13 agreed to everything the court said.

14 Q. You never stopped the court and said that, did you?

15 A. No, because I said he told me if I did, I would
16 definitely get it.

17 Q. You also told the court you were satisfied with
18 Mr. Malloy's representation, did you not?

19 A. Again, because of what he said, he told me just go
20 along with everything and I would be able to -- I have 10
21 years. So I'm thinking I will go along with what he's
22 saying.

23 Q. Okay. So you are not satisfied with his
24 representation today, are you?

25 A. With my lawyer?

1 Q. Mr. Malloy's representation?

2 A. No.

3 Q. But you said it under oath at the guilty plea,
4 right?

5 A. Because he advised me to do so.

6 Q. Yes or no? Did you say it under oath?

7 A. Yes, because he advised me to do so.

8 Q. So you are lying today that you said you were
9 satisfied with his --

10 A. I'm not lying. I'm not lying about anything.

11 Q. You can't have it both ways. It's either yes or no.
12 You can't say that, yes, I am satisfied with his
13 representation, and then come in here and say you are not.
14 That's two different statements.

15 A. I'm not saying that. I'm telling you the reasons
16 why. I went along with the plan. His strategy was for me to
17 plead, because he said if I did not plead, I would receive 40
18 years. So that's a lie. And because I did not know the law,
19 I went along with his strategy.

20 Q. Sir, this is not the first time you've plead guilty,
21 is it? You have a long history of breaking the law; do you
22 not?

23 A. Yeah. Not no CDV or attempted murder or anything
24 like that.

25 Q. Don't you have assaulting a police officer with a

1 knife?

2 A. No, I don't have no assaulting police officer with
3 no knife. I took a knife from a lady that was stabbing her
4 husband and they gave me concealed weapons. I don't have
5 no -- I never assaulted a police officer with a knife.

6 Q. You have assaulting a police officer; do you not?

7 A. I did have assault on a police officer when I was,
8 what, 19.

9 Q. This isn't your first -- this is not your first time
10 in the criminal justice system, is it?

11 A. No, it's not my first time.

12 Q. So you have pled guilty before?

13 A. Not on no assault and battery, nothing like that.

14 Q. You've never been in general sessions and pled
15 guilty?

16 A. I've pled guilty for -- I think a drug charge I did
17 plead guilty for.

18 Q. So you know what questions the judge will ask you?

19 A. Yeah. And it was -- Ms. Mary, it was the same
20 situation. She told me if I went along, and I went along
21 with her, and happened like she told me. But with him, it
22 didn't happen the same way. That's my experience.

23 Q. But you never stopped the judge and told him that,
24 did you?

25 A. Because of my experience, I went along with the same

1 situation I had in court before. And the lady that
2 represented me, she delivered exactly what she said. He did
3 not.

4 Q. And you told the judge under oath that nobody
5 promised you anything or threatened you to plead guilty;
6 isn't that correct?

7 A. It's the same question, the same question. I got
8 the same answer.

9 Q. No, they are different questions. Did you tell the
10 judge nobody threatened you or promised you anything to plead
11 guilty?

12 A. I went along with what he told me.

13 Q. So when the judge asked you if you have children,
14 you just went along with what he told you?

15 A. The judge asked me what?

16 Q. How many children you had?

17 A. Judge didn't ask me how much children I have.

18 Q. Your Honor, if you look at page 4, line 19 and 20:
19 "Do you have any children?

20 "I've got one son."

21 Okay. So that happened, didn't it?

22 A. That's a fact. That's -- I had a -- I got one
23 son.

24 Q. Is that what Mr. Malloy told you to say?

25 A. No.

1 Q. All right. And then you say, when given a chance to
2 speak, "I'm very sorry for the pain I caused. I definitely
3 had are strong feelings for Ms. Maud. It did not justify
4 what I did. I take responsibility. I took a knife from a
5 woman who stabbed her husband and ran. And got that on my
6 record. I take full responsibility for my actions." Right?

7 A. I said I took a knife from a woman?

8 Q. You said, "I'm not a malicious person. I took a
9 knife from a woman who stabbed her husband. Ironically, I
10 got that on my record."

11 That's the knife you were talking about earlier.
12 But then you say you took full responsibility for your
13 actions. Did Mr. Malloy tell you to say that?

14 A. No.

15 Q. You said that honestly?

16 A. I said I take responsibility for my actions. Yes, I
17 did say that, obviously.

18 Q. So all of this other stuff saying you plead guilty
19 because you were guilty and nobody threatened you, that's all
20 what Mr. Malloy told you to say?

21 A. He told me to go along with what the program --

22 Q. Once you are given a chance to speak, you speak
23 honestly, is what you want us to believe?

24 A. When I got a chance to speak, I told them that I'm
25 sorry for any pain that I caused. I remember saying that I'm

1 sorry for any pain that I caused. And I'm still sorry for
2 the pain that we went through together. It wasn't no one-way
3 deal.

4 Q. You said, I took full responsibility for my actions:

5 MR. JOHNSON: No further questions, Your Honor.

6 MR. MURPHY: Nothing further, Your Honor.

7 THE COURT: You can step down. Thank you. Call
8 your next witness.

9 MR. MURPHY: We would rest, Your Honor.

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

12 MR. JOHNSON: Yes, Your Honor. I call Mr. Malloy.

13 THE COURT: Mr. Malloy, please come up and be sworn.

14 LUKE MALLOY,

15 having been duly sworn, testifies as follows:

16 THE CLERK: Please state your first and last name
17 and spell your last into the microphone.

18 THE WITNESS: Luke Malloy, M-a-l-l-o-y.

19 DIRECT EXAMINATION

20 BY MR. JOHNSON:

21 Q. Please tell the Court how you came to represent
22 Mr. Smith.

23 A. I was appointed to represent Mr. Smith in March of
24 2014, after his previous attorney Alicia Penn left the
25 office.

1 Q. So you are with the PD's office?

2 A. Correct.

3 Q. How long have you been practicing law?

4 A. Today, a little over 4 1/2 years.

5 Q. And how many times did you meet with Mr. Smith?

6 A. I have that I met with him while he was incarcerated
7 on four separate occasions.

8 Q. Did you explain the charges?

9 A. I did.

10 Q. Did he tell you his side of the story?

11 A. He did.

12 Q. Did he ever deny doing this?

13 A. He wanted to assert a self-defense argument. He did
14 not deny being involved in this altercation.

15 Q. Did he ever want to take this case to trial?

16 A. He did.

17 Q. What would have been your recommendation?

18 A. I advised against that. I did not believe we had a
19 very good self-defense argument.

20 Q. Did you interview any witnesses?

21 A. I personally did not.

22 Q. Is that because the solicitor probably wouldn't let
23 you speak to the victim?

24 A. The victim and her sister were their main witnesses.
25 I believe we attempted to speak to the victim, the previous

1 attorney did, but I don't think she was interested in
2 speaking with us.

3 Q. Did you ever threaten him with 40 years?

4 A. No. I'm sure that I was clear that at trial he was
5 facing up to 30 on an attempted murder.

6 Q. Did he ever explain that he wanted a new attorney?

7 A. He did indicate the desire to hire a private
8 attorney.

9 Q. Was he able to do so?

10 A. He was not.

11 Q. And did you negotiate with the solicitor to drop the
12 charge from attempted murder down to an ABHAN?

13 A. I did.

14 Q. And was there any recommendations, any negotiations
15 of sentence?

16 A. There were none. I was made aware that the
17 solicitor was going to ask for the maximum sentence. I told
18 Mr. Smith that, but that we were free to ask for whatever we
19 wanted to ask for, but it was a straight-up plea, so to
20 speak.

21 Q. And did you explain that to Mr. Smith?

22 A. I did.

23 Q. Did he understand that?

24 A. He did.

25 Q. Was he agreeable to that?

1 A. Obviously, he wanted something less than the max,
2 but he was aware of the potential on the ABHAN plea straight
3 up.

4 Q. He also was aware of potential of attempted murder
5 30 years?

6 A. Correct.

7 Q. Did you ever force or threaten or coerce him to
8 plead guilty?

9 A. I did not.

10 Q. Whose decision was it to plead guilty?

11 A. It was Mr. Smith's.

12 Q. Did you ever tell him what to say at the guilty
13 plea?

14 A. I did not. I'm sure I went over with him the
15 questions that were likely to be asked by the judge, but I
16 didn't tell him how to answer those questions.

17 Q. Did he ever tell you that he wanted to withdraw his
18 guilty plea?

19 A. Well, after the plea, I did discuss possible motion
20 to withdrawal due to several letters that were presented to
21 the court that I had not been made aware of. I considered
22 doing a motion to withdraw based on a Rule 5 violation;
23 however, the solicitor provided a date in an e-mail with the
24 letters attached where she provided those letters to
25 Mrs. Penn, his previous attorney. And with that, I believe

1 we did not have any grounds to withdraw the plea. Instead,
2 we had the motion to reconsider.

3 Q. Did you file an appeal in this case?

4 A. I did not.

5 Q. Was the judge within his discretion in sentencing?

6 A. He was.

7 Q. Did you see anything that was appealable in this
8 case?

9 A. After we cleared up the issue with the letters, I
10 did not believe there was any grounds for appeal.

11 Q. Did he ever ask you for one?

12 A. Mr. Smith?

13 Q. Yeah.

14 A. He was not satisfied with the result, clearly,
15 but -- I remember discussing the motion to withdraw, but I
16 don't recall being asked to appeal.

17 MR. JOHNSON: That's all the questions I have.

18 Thank you.

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

21 CROSS-EXAMINATION

22 BY MR. MURPHY:

23 Q. Were you working with Ms. Penn when you took over
24 this case?

25 A. I was.

1 Q. And was Ms. Penn in the public defender's office or
2 was she private attorney?

3 A. She was in the public defender's office.

4 Q. How was it that you came to represent Mr. Smith?

5 A. Ms. Penn left the office, and his case was
6 transferred to me.

7 Q. Now, in terms of -- you indicate that Mr. Smith
8 indicated that he had a self-defense claim. And did you do
9 any investigation into that self-defense claim?

10 A. Well, I already had most of the discovery in this
11 case, so I could -- so, obviously, I went through all the
12 discovery. And there really wasn't any investigation that
13 could have been done, in my opinion, by the time that I got
14 the case.

15 Q. And I meant by the time you got the case, did you
16 talk to Mr. Smith about any superficial injuries he had on
17 his hands or arms as a result of the incident?

18 A. There was some discussion of that.

19 Q. And would those injuries indicate that there was a
20 self-defense claim?

21 A. I did not think that that would give rise to a
22 self-defense argument.

23 Q. And did Mr. -- the victim's name was Grayson; is
24 that correct?

25 A. Yes, Maudell Grayson.

1 Q. And did Mr. Smith tell you that it was Ms. Grayson
2 that actually struck him first?

3 A. He did tell me that at one point.

4 Q. And in terms of investigating or discussing a
5 self-defense claim with him, did you have any other
6 discussions with Mr. Smith about trying to get that claim --
7 or substantiate that claim?

8 A. I had several discussions with him. And,
9 unfortunately, with the age of the case, there really wasn't
10 any other information that we were going to be able to get
11 pursuant to our investigation.

12 Q. And at this point, was Mr. Smith -- was he still
13 resisting the idea of pleading guilty, or did he want a
14 trial?

15 A. He did express a desire to have a trial, but as I
16 remember, his biggest goal was to avoid prison.

17 Q. In terms of once you got him to the plea court, did
18 Mr. Pennington come down and discuss the elements and the
19 expectations or ramifications of a plea?

20 A. He did.

21 Q. What was the purpose for bringing Mr. Pennington in?

22 A. Well, Mr. Pennington, obviously, is my boss. And I
23 had discussed the case with him previously. I think that
24 Ms. Penn may have discussed the case with him as well. And I
25 felt it was a situation where we needed a third -- a second

1 person or a third person in on the conversation, just to put
2 things in perspective.

3 Q. If I can kind of make an assumption, would it be
4 fair to say that the reason Mr. Pennington came in is because
5 Mr. Smith still didn't want to plead at that point?

6 A. He was considering it. He was weighing the options,
7 but he did indicate that he wanted a trial. But, again, I
8 think his main goal was to avoid prison.

9 Q. And in your discussions with him, I know you've had
10 lots of clients and sometimes you lean harder on others to
11 try to get them to plead to help themselves. Was this a case
12 where you were leaning real hard on Mr. Smith to get him to
13 plead or --

14 A. I was advising him that he needed to plead, given
15 the severity of the case and given the unlikelihood that we
16 could win on a self-defense argument. I felt like we would
17 be arguing, essentially, for a lesser-included at trial of an
18 ABHAN. And that would have been the best result in a trial.

19 Q. And in terms of when you were having your plea
20 discussions with him, did you indicate that it was most
21 likely that he would get 40 years if he went to trial?

22 A. Not 40; 30 on the attempt murder, or at least I was
23 clear that that's what he could potentially get.

24 Q. And did you talk to him about the questions the
25 judge would ask him at this plea?

1 A. I did.

2 Q. Did you tell him what his answers needed to be at
3 the plea?

4 A. I did not.

5 Q. Did you have any discussions with Mr. Smith saying
6 to the effect that, if you don't answer yes with the judge,
7 this is going to break down the plea and he's not going to
8 accept it?

9 A. I advised him unless he -- unless the judge thought
10 there was a factual basis for the plea, he would not accept
11 it.

12 Q. And in terms of the 20-year sentence, were you
13 surprised by that sentence?

14 A. I was.

15 Q. Meaning you thought it was excessive?

16 A. I thought he could get -- I was expecting to get
17 somewhere less than the max just for pleading guilty.

18 Q. In terms of the appeal, you actually filed a motion
19 to reconsider, I believe?

20 A. I did.

21 Q. And did you talk to Mr. Smith about the motion to
22 reconsider?

23 A. I did.

24 Q. In terms of an appeal, that motion was ultimately
25 denied, I assume, correct?

1 A. It was.

2 Q. Did you file an appeal of that?

3 A. I did not.

4 Q. Did you talk to Mr. Smith about whether or not he
5 wanted to file an appeal?

6 A. I do not believe I spoke to him after the motion to
7 reconsider.

8 Q. In terms of kind of your standard operating
9 procedure, if somebody gets the maximum sentence, do you
10 folks automatically file an appeal, or is it something you
11 talk to the client about?

12 A. It's something you talk to the client about.

13 Q. Okay. And would that be the case -- well, strike
14 that.

15 A. In a case where you get the maximum sentence, we
16 usually do file a motion to reconsider.

17 MR. MURPHY: That is all the questions we have, Your
18 Honor.

19 REDIRECT EXAMINATION

20 BY MR. JOHNSON:

21 Q. Just to rehash, he never asked you for an appeal?

22 A. No.

23 Q. And you said you found no appealable issues in this
24 case after the motion to reconsider?

25 A. No.

1 MR. JOHNSON: That's all I have, Your Honor. Thank
2 you.

3 MR. MURPHY: None, Your Honor.

4 THE COURT: You may step down. Thank you.

5 MR. JOHNSON: The State has no further witnesses,
6 Your Honor.

7 MR. MURPHY: Nothing further, Your Honor.

8 THE COURT: Mr. Murphy, if you would, so I can --
9 I'm having a little trouble, quite frankly. Tell me what the
10 grounds are. If you will kind of break down -- I'm taking
11 notes, but I can't quite get a handle on exactly what he's
12 saying was ineffective assistance.

13 MR. MURPHY: It's two-fold. Number one, he's saying
14 that he was coerced into doing the plea; that had he known
15 the ramifications and the possible sentence, he would have
16 not have gone forward with the plea. His testimony is he
17 wanted a trial the whole time and he was coerced or convinced
18 into pleading guilty, Your Honor.

19 Second point would be that he would -- he wanted to
20 file an appeal. And we would ask for, if he's denied on his
21 PCR application, that he will be able to file a belated
22 appeal on the matter. So we are asking for two remedies, so
23 to say.

24 MR. JOHNSON: That was never brought up in the
25 application. And that's why I objected. And if I have to

1 renew that operation at this time, I will, and I am.

2 Also, US Constitutional case of *Rowe v.*

3 *Flores-Ortega*: From a guilty plea, counsel does not have an
4 affirmative duty to file an appeal unless he's asked to file
5 an appeal and a rational defense attorney would think he
6 would file an appeal. That's why the questions I asked, did
7 he ever ask you for one and, did you see any appealable
8 issues? So I think *Rowe v. Flores-Ortega* wipes the State's
9 claim out.

10 However, looking at the transcript, he's clearly
11 under oath. He admitted he did this crime. Nobody
12 threatened or coerced him. Mr. Malloy's testimony was that
13 he never threatened or coerced. There is no involuntary
14 guilty plea in this matter. He just has buyer's remorse
15 because he got the maximum sentence, Your Honor. He could be
16 facing 30. And he's lucky he wasn't. We ask you to deny
17 this application.

18 MR. MURPHY: Thank you, Your Honor. Nothing
19 further.

20 THE COURT: Okay. I will take it under advisement.

21 (Whereupon, proceedings are adjourned.)
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AG

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
David I. Smith, #360603,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent,)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-10-1855

ORDER

2016 AUG -1, AM 11:53

Applicant filed this Post-Conviction Relief application on March 23, 2015. The Court heard this matter on August 1, 2016. Applicant was represented by Christopher Murphy, Esquire; the State was represented by J. Rutledge Johnson, Esquire.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2012 term of the Charleston County Grand Jury for attempted murder (2012-GS-10-2533). Luke Malloy, Esquire, represented him.¹ On July 10, 2014, the Applicant pled guilty to the lesser included offense of assault and battery of a high and aggravated nature (ABHAN).² The Honorable Roger M. Young, Sr. sentenced the Applicant to confinement for twenty (20) years. The Applicant did not appeal his sentence or plea.

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Misadvise in guilty plea"
2. "Not indicted within timely manner"
3. "Ineffective Assistance of Counsel"
 - a. "Counsel was not prepared for this case"

¹ Applicant had two other attorneys prior to his representation by Luke Malloy, Esq.

² Which carries a potential penalty of up to twenty (20) years incarceration. SC. Code Ann. § 16-03-600(B)(1).

- b. "Counsel misadvised me to accept a plea offer"
 - c. "Counsel was not on case long enough to prepare a defense"
4. "Forgery of indictment"

Applicant's first and third claims are allegations of ineffective assistance of plea counsel. In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.³

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for

³ The same standard applies to pleas of guilt.

counsel's alleged errors, she 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).

The Court interprets the Applicant's second and fourth claims as allegations of due process violations. The Applicant's allegations claim infringement of his rights under certain amendments to the United States Constitution. Applicant presented absolutely no evidence in support of these grounds. Upon request by the Court at the conclusion of the presentation of evidence, Applicant's counsel stated Applicant had two grounds. First, his plea was coerced due to his not being aware of the consequences. Second, Applicant wanted counsel to file an appeal. The Court will therefore address only these two asserted grounds, although it is noted there is no evidence in the record in support of grounds 2 and 4.

Taking the second stated ground first, trial counsel is not ineffective for not filing an appeal for a plea of guilt unless the client requests or where a reasonable attorney would conclude that one entering a plea desires an appeal. See Roe v. Flores-Ortega, 528 US 470 (2000). Applicant has not carried his burden of proof as to either of these exceptions.

Perhaps more significantly, and on its own dispositive of this second ground is that it is not alleged as a ground in Applicant's application for Post-Conviction Relief. Therefore, his second ground is not before the Court for consideration.

As to the first ground, Applicant has not carried his burden of proof. Applicant has not proven neither that he was coerced into entering his plea, nor that he did not understand the consequences of entering a plea. The credible testimony is that of trial counsel. Trial counsel testified that he advised Applicant that Applicant could receive a sentence of up to twenty (20)

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years incarceration. Trial counsel testified he never advised Applicant that Applicant could receive forty years as Applicant testified.⁴

Applicant presented a wide range of testimony encompassing his belief that he would not be convicted, that he had a defense of self-defense, he was told by trial counsel that after his plea he could within ten days "revoke" his plea, and that he wanted to appeal. None of these established proof of coercion in his choice to enter his plea of guilty. As to the latter two of his beliefs, they would address post plea issues.

Trial counsel's advice to Applicant that he should enter a plea of guilt is not a coercive event. Rather, it is within the province and responsibility of trial counsel to so advise his or her client to enter a plea when trial counsel is of that belief. Here, counsel understood a plea of guilty by Applicant was in his client's best interest and so advised Applicant. The decision to plea is ultimately in every case, and in this case the record reflects the entry of the plea, was Applicant's free and voluntary choice. See Plea Tr. p. 2, LL 4-11; p. 3, LL 10-12; p. 3, L 25-p.4, LL 13-25.

Applicant also testified he wanted to talk to his family before he decided to plea or not. He apparently had plenty of opportunity to do so as there was a two year lapse of time between indictment and plea. None of Applicant's family testified and Applicant did not testify as to what, if any, value discussions with his family would have on his decision to plead guilty. In any event, the fact that he chose to plea at the time he plead was a choice he made knowing he could go to trial if he desired based on his own testimony at his post-conviction relief hearing, and based on notice from the plea judge. (Plea Tr. p. 2, L 18-p. 3, L 4).

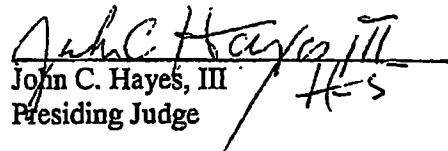
Wherefore, I find Applicant has not carried his burden of proof as to elements of his stated grounds for relief, and has not proven trial counsel was ineffective.

⁴ The plea judge, Roger M. Young, Sr., told Applicant on the record at the time of his plea that attempted murder "carried a sentence of up to 30 years." (Plea Tr. p 2, LL 4-9).

Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

August 3rd, 2016
Charleston, South Carolina