

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

Honorable R. Ferrell Cothran, Circuit Court Judge

RECEIVED

MAR 10 2017

S.C. SUPREME COURT

ERIC Q. TINDAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001692

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CLARENDON	)	2011-GS-14-0039
	)	2001-GS-14-256
	)	2008-GS-14-196
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Eric Quentel Tindal	)	)
DEFENDANT	)	July 12, 2011

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE.

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

AMY LAND, ASSISTANT SOLICITOR
Attorney for the State

SCOTT ROBINSON, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	Mental Evaluation	11	

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1 THE COURT: All right. Mr. Robinson, I believe
2 there's been a change in the defendant's status. The
3 State and the defense have worked out a matter that will
4 result in the defendant pleading guilty; is that correct?

5 MR. ROBINSON: Yes, sir, Your Honor.

6 THE COURT: All right. Ms. Land, if you'll hand
7 up the sentencing sheets and I have the indictment.

8 MS. LAND: Your Honor, if I may, in addition to
9 what we were going to trial on, Mr. Tindal has two pending
10 charges or indictments with this court. He is pleading
11 guilty to both of those. They are 2001-GS-14-256. Under
12 that indictment, he is charged with possession of crack.
13 And also 2008-GS-14-196 and under that indictment, he's
14 plead guilty to distribution of marijuana.

15 THE COURT: If you'll got those indictments for
16 me, Mrs. Roberts.

17 THE CLERK: Yes, sir, we working on them right
18 now.

19 THE COURT: On that sentencing sheet there,
20 Mrs. Roberts, on the distribution of marijuana, what's the
21 CDR code?

22 THE CLERK: 186.

23 THE COURT: Okay. It was probably five years at
24 the time.

25 MS. LAND: And I asked Mr. Robinson if he minded

1 that I just put the current numbers on there because it
2 really in the whole scheme of things doesn't matter.

3 THE COURT: All right, Mr. Robinson, have
4 Mr. Tindal come around please.

5 THE CLERK: You solemnly swear to tell the
6 truth, the whole truth, and nothing but the truth so help
7 you God?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Mr. Robinson, I know, of course,
10 that you represent the defendant on burglary and attempted
11 murder charges contained in the indictments 2011-GS-14-039
12 because you all participated in the jury selection as well
13 as any motions that was before this court yesterday. In
14 addition, he is charged in indictments numbers
15 2001-GS-14-256 with possession of crack. And in
16 indictment number 2008-GS-14-0196 with distribution of
17 marijuana. Have you also advised him of the charges
18 contained in those two indictments, the possible
19 punishment and his Constitutional Rights including his
20 right to a jury trial?

21 MR. ROBINSON: I have, Your Honor.

22 THE COURT: In your opinion, does he understand
23 all of the charges against him including those for which
24 the jury has been called today or been selected today as
25 well as those other two charges?

1 MR. ROBINSON: He does, Your Honor.

2 THE COURT: All right. And he originally
3 entered a plea of not guilty to the burglary first and
4 attempted murder, but it is my understanding that the
5 State and the defense have worked out a negotiated plea on
6 that. And that the charges will run concurrent and that
7 the charges on the other two counts of possession of crack
8 and distribution of marijuana will also run concurrent
9 with the charge for which he's on trial today. Is that
10 your understanding?

11 MR. ROBINSON: Yes, sir, Your Honor, that is it.

12 THE COURT: And it's your understanding that he
13 wishes to plead guilty to all three indictments; is that
14 correct?

15 MR. ROBINSON: Yes, sir, Your Honor.

16 THE COURT: All right. You are Eric Quentel
17 Tindal; is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Mr. Tindal, before I can
20 accept your plea of guilty, it is necessary for me to make
21 sure that your plea of guilty is made freely and
22 voluntarily. I need to ask you some questions. If you
23 don't understand the questions or the words I use, you
24 tell me, I'll be glad to explain them to you. You may
25 talk with your lawyer at any time as we go through this

1 process. You understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: How old are you?

4 THE DEFENDANT: Thirty one.

5 THE COURT: And how far did you go in school?

6 THE DEFENDANT: Ninth grade.

7 THE COURT: What kind of work do you normally
8 do?

9 THE DEFENDANT: I wasn't working.

10 THE COURT: Okay. Are you today under the
11 influence of any medications, drugs or alcohol?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you ever been treated for the
14 abuse of alcohol or mental illness?

15 THE DEFENDANT: No, sir.

16 THE COURT: Is that a yes?

17 THE DEFENDANT: No, sir.

18 THE COURT: No. All right. Are you today aware
19 of any physical, emotional or nervous problem that would
20 keep you from understanding what you're doing?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Ms. Land and
23 Mr. Robinson, I'm aware, of course, that the defendant was
24 sent to the department of mental health for a mental
25 evaluation. And I think that we need to go ahead and get

1 that on the record as well. Do you have the reports from
2 the Department of Mental Health with regard to both
3 competency to stand trial and criminal responsibility?

4 MS. LAND: Yes, sir, I do have the report. I
5 found it, Judge. I'm going to pass forward the report,
6 Your Honor.

7 THE COURT: All right. Mr. Robinson, I believe
8 I asked you yesterday if you were in receipt of this
9 report and I believe you acknowledged that you have
10 received a copy of it?

11 MR. ROBINSON: Yes, sir, Your Honor, I have.

12 THE COURT: The Court has a copy of the report
13 of the Department of Mental Health. The department
14 apparently on order of this court or ordered that the
15 defendant be evaluated from the standpoint of competency
16 to stand trial and his criminal responsibility that is his
17 ability to differentiate between right and wrong and
18 conform his conduct to the standards of society. The
19 evaluation was conducted according to this report on
20 April the 4th 2011, by the South Carolina Department of
21 Mental Health. And result in the report on both the
22 competency to stand trial and criminal responsibility,
23 which this court has reviewed and will give to the court
24 reporter to a make part of the record as Court's Exhibit
25 Number 1. It is a multi-page document that consist of a

1 cover letter to Ms. Land, a couple of covered letters,
2 plus the report of competency to stand trial consisting of
3 five pages and criminal responsibility report consisting
4 of five pages. All of these are stapled together and will
5 be made apart of the record as Court's Exhibit Number 1.

6 First, let's address the matter of competency to
7 stand trial. The Court would note that the Department of
8 Mental Health found that he was competent to stand trial.
9 One of the statements in the report is that although he
10 claimed not to know the concepts involved in plea
11 bargaining, it is our opinion that he has the mental
12 capacity to understand a plea offer if it is fully explain
13 to him. The Court has also had an opportunity to hear
14 from the defendant yesterday and observe him today. Based
15 upon that and under the case of State vs. Blair 275 South
16 Carolina 529 273 Southeastern Second 536, based upon the
17 report before me and my own observations, the Court finds
18 that the defendant has the capacity to fully understand
19 and appreciate the nature of the charges larged against
20 him and the extent of his peril, to understand the
21 function and proceedings of the Court and to assist his
22 attorney in the development and execution of an adequate
23 defense. Based upon the medical testimony and my personal
24 observation of the defendant, I find him -- I find as a
25 fact that Mr. Eric Quentel Tindal is competent to stand

1 trial.

2 Now, with regard to the issue of criminal
3 responsibility, the forensic evaluation report again of
4 South Carolina Department of Mental Health makes a
5 finding, that we find no evidence of a delusion, command
6 auditory hallucination, compulsion or other symptom of
7 mental illness that would have impaired his ability to
8 conform his conduct to the requirements of the law.
9 There's a long standing history of interpersonal
10 difficulties and physical altercations between the
11 defendant and the alleged victim according to the
12 defendant's mother. And the Department of Mental Health
13 concluded that he was criminally responsible and that he
14 did know the difference between right and wrong and was
15 able to conform his conduct to the standards of society.
16 Based upon the medical testimony and my personal
17 observation of the defendant, I find as a fact that the
18 defendant is criminally responsible under the McNaughton
19 standard that he knows the difference between right and
20 wrong and is able to conform his conduct to the standards
21 of society. And therefore is criminally responsible for
22 his action.

23 Madam clerk, would you give the report to the
24 court reporter and have her mark it as Court's Exhibit
25 Number 1.

1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 the record.)

3 THE COURT: Mr. Tindal, you've heard your
4 attorney tell me that he's explained to you the charges
5 against you including the charges for which you are on
6 trial today and the two charges in the other indictments
7 and your possible punishment for these crimes and your
8 Constitutional Rights and that you understand these
9 things; is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Let's take a look at the
12 indictment for which you are on trial today. I want to
13 go over them with you and make sure that you do understand
14 them. The indictment number 2011-GS-14-039 charges you
15 with attempted murder that on or about November the 15th
16 of 2010 that you did feloniously, willfully and with
17 malice aforethought either expressed or implied attempt to
18 kill one, Aretha Mack by means of stabbing Aretha Mack
19 and charges one of attempted murder. Do you understand
20 that charge?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that for that
23 charge you can get up to 30 years in prison?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that that is a no

1 parole offense, that means that you will have to serve
2 85 percent of whatever I sentence you to before you would
3 be eligible for any kind of community supervision. You
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You also understand that it is a
7 most serious offense and that it would -- if you were to
8 be convicted of two most serious offenses or three serious
9 offenses, that you would be subject to life in prison.
10 You understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You also understand that it is
13 considered a violent offense under our law?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And Mr. Robinson has explain to you
16 what is meant by violent offense; is that right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The other count of the indictment is
19 Count 2 is burglary and it charges that on that same date
20 November the 25th of 2010, you entered the dwelling of
21 Aretha Mack without consent and with intent to commit a
22 crime and that that happened at night. And therefore, it
23 is a charge of burglary first. And you are charged with
24 burglary in the first degree. Do you understand that
25 charge?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you understand that that
3 carries from 15 years to life?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And it is also a most serious
6 offense and is an offense which means that you would have
7 to serve 85 percent of whatever I sentence you to before
8 you would be eligible for any kind of community
9 supervision. You understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: It is also a most serious offense
12 and would actually be -- I'm not sure probably these two
13 together since it's at the same time it would be one
14 strike rather than two. But if you were to have another
15 most serious offense, you be subject to be life
16 imprisonment. And if you had two more serious offenses,
17 you would be subject to life in prison. You understand
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Now, the other charges
21 are not before the Court for trial, but are pending in
22 this Court. One is indictment number 2008-GS-14-0196.
23 And it charges you with distribution of marijuana on
24 September the 7th of 2007. And for that, you can get up
25 to five years in prison and a fine of up to \$5,000. You

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And then indictment number
4 2001-GS-14-0256 charges that you did on October the 4th of
5 2000 knowingly and intentionally possessed a quantity of
6 crack cocaine and that is a charge of possession of crack.
7 I'm not sure when the law change, but at some point in
8 time, the law change for possession of crack from five
9 years to three years. I'm going to treat it as a three
10 year offense and a \$5,000 fine. You understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Now, Mr. Tindal, when
13 you plead guilty you give up important Constitutional
14 Rights. You give up your right to remain silent, that is
15 your privilege against self-incrimination. Your right to
16 say nothing at all. You give up your right to have a jury
17 trial, that is your right to have a jury decide whether
18 you're guilty beyond a reasonable doubt. In a trial, you
19 would be presume to be innocent and the State would have
20 to prove beyond a reasonable doubt that you were guilty of
21 the offense for which you are being tried. That means
22 they would have to convince all 12 members of the jury of
23 your guilt beyond a reasonable doubt. You give up your
24 right to confront the witnesses against you, that is the
25 right to require the witnesses against you to come into

1 court and testify, have your lawyer cross-examine those
2 witnesses and the right to subpoena and call witnesses on
3 your own behalf. Those are all Constitutional Rights that
4 you give up when you plead guilty. Do you understand
5 that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, in the case of the burglary and
8 the attempted murder, we have already drawn the jury and
9 that jury is here and prepared to hear the testimony in
10 this case and to make a decision. Do you understand that
11 if I accept your plea of guilty on this charge that is
12 before the Court today on the attempted murder and
13 burglary that that jury will be excused and will make no
14 decision in this case. You understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you also understand that you're
17 waiving your right to have a jury trial and your right of
18 confrontation and the right to remain silent with regard
19 to the other three charges -- the two charges as well?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Do you have any questions
22 before I ask you how you wish to plea in this matter? Do
23 you have any questions with regard to any of the charges
24 against you or the possible punishment for any of the
25 charges against you?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you have any questions with
3 regard to your Constitutional Rights ---

4 THE DEFENDANT: No, sir.

5 THE COURT: --- that you would like further
6 explanation about?

7 THE DEFENDANT: No, sir.

8 THE COURT: Understanding the nature of the
9 charges against you and the consequences of a guilty plea,
10 how do you wish to plead to the charges contained in
11 indictment number 2011-GS-14-039 attempted murder and
12 burglary first guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: How do you wish to plead to the
15 charges contained in indictment number 2008-GS-14-0196
16 distribution of marijuana guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: How do you wish to plead to the
19 charge contained in indictment number 2001-GS-14-256
20 possession of crack guilty or not guilty?

21 THE DEFENDANT: Guilty.

22 THE COURT: Do you understand that when you
23 plead guilty you are admitting the truth of the charges
24 made against you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you pleading guilty because you
2 are guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, you may have defenses to one or
5 more of these charges. I don't know whether you do or
6 not. But do you understand what when you plead guilty,
7 you waive or give up any defenses that you might have to
8 these charges?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You also made an incriminating
11 statement or a confession in one or more of these cases.
12 Do you understand that when you plead guilty you waive or
13 give up your right to challenge whether or not that
14 statement was freely and voluntarily given in accordance
15 with your Constitutional Right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you are pleading guilty freely
18 and voluntarily?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has anyone promised you anything or
21 held out any hope of reward to get you to plead guilty?
22 But before you answer that, I guess I better get the plea
23 negotiations on the record because I understand it is a
24 negotiated plea; is that correct?

25 MS. LAND: That's correct, Your Honor. It's a

1 negotiated plea of 22 years. That is both on the
2 attempted murder and on the burglary. And, of course,
3 they would run concurrent with each other. We would ask
4 for whatever sentence you feel is appropriate on the other
5 two charges that would run concurrent with the 22 years.

6 THE COURT: All right. Is that what your
7 understanding of the negotiations are, Mr. Robinson?

8 MR. ROBINSON: Yes, 'sir, that is, Your Honor.

9 THE COURT: Mr. Tindal, the State and your
10 lawyer have advised me that after conferences together,
11 that the State and the defense have arrived at a
12 negotiated sentence of 22 years on the burglary and the
13 attempt murder. And that whatever I sentence you to on
14 the possession of crack and distribution of marijuana
15 would run concurrent. All of these would run concurrent
16 with each other which would mean all together. And that
17 would be the extent of negotiations. Is that what you
18 understand the negotiations to be?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is there anything else that you
21 think that should be a part of the negotiations and put
22 on the record?

23 THE DEFENDANT: No, sir.

24 THE COURT: Anything that you know of that
25 should be put on the record with regard to the

1 negotiations other than what we said, Mr. Robinson?

2 MR. ROBINSON: No, sir, Your Honor, I believe
3 that covers it.

4 THE COURT: Other than that has anyone promised
5 you anything or held out hope of reward to get you to
6 plead guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay. And you're pleading guilty of
9 your own freewill and accord?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that this is a
12 negotiated plea. And that means that I don't have any
13 choice about it. And after hearing the facts of this
14 matter, if I should decide that I cannot accept the
15 negotiated plea, I would allow you to withdraw your guilty
16 plea and we be back to start block one. You understand
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You're represented in this case by
20 Mr. Scott Robinson. Are you satisfied with the manner in
21 which Mr. Robinson has advised you and represented you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has he done everything for you that
24 you feel he could have or should have done on your behalf?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has he done anything you feel he
2 should not have done?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you had enough time to talk
5 with Mr. Robinson?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You need any more time to talk with
8 him?

9 THE DEFENDANT: No, sir.

10 THE COURT: And you completely satisfied with
11 his services?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any complaint that you
14 want to make about your lawyer, the solicitor or any of
15 the police officers?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you understood my questions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have your answers to me been
20 truthful?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have anything that you would
23 like to ask me about what we been over?

24 THE DEFENDANT: No, sir.

25 THE COURT: And do you understand that you have

1 the right to appeal the guilty plea and sentence of the
2 Court and you must do so within ten days?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. All right. Ms. Land, give me
5 the factual background please.

6 MS. LAND: Your Honor, I'm going to start with
7 the oldest case 2001-GS-14-256. This occurred on
8 October 4th of 2000 in the Manning area of Clarendon
9 County at the corner of Market. Mr. Tindal's brother was
10 being arrested for having drugs in his possession an
11 unrelated charge to Eric Tindal's. As they were arresting
12 Cedric Tindal, they watched this one, Eric, walk over to a
13 trash can and throw a medicine bottle in there. One of
14 the officers went and retrieved that medicine bottle and
15 it contained three beige rock-like substances. They then
16 arrested him. That substance was analyzed and it was
17 found to be .20 grams of crack cocaine.

18 THE COURT: All right. The Court finds there is
19 a substantial factual basis for that plea. I find the
20 defendant's decision to plead guilty is freely and
21 voluntarily made after having been advised by counsel.
22 And the Court will accept the plea on indictment
23 2001-GS-14-0256.

24 MS. LAND: Your Honor, the indictment
25 2008-GS-14-196 occurred on September 7th of 2007.

1 Mr. Tindal was employed at the Mid Eastern Truck Wash on
2 AM Nash Road. A confidential informant went through that
3 truck wash, was audio -- did -- was equipped with audio
4 and video equipment, went through the truck wash and
5 purchased from Mr. Tindal what was analyzed and found to
6 be 2.91 grams of marijuana.

7 THE COURT: All right. The Court finds there is
8 a substantial factual basis for that plea as well. I find
9 the defendant's decision to plead guilty is freely and
10 voluntarily made. That he has had the advice of counsel
11 of an attorney with whom he says he is satisfied. The
12 Court will accept that plea, that's indictment number
13 2008-GS-196.

14 MS. LAND: Your Honor, the indictment
15 2011-GS-14-39, the victim in that case is Erica Denise
16 Mack. She and Mr. Tindal share three children together.
17 They shared a home, but Mr. Tindal had moved out three
18 weeks earlier and was no longer welcome in that home. She
19 gave a statement from that night that I think is the best
20 recollection of the facts. This occurred on
21 in the Manning area of Clarendon County.

22 She says early on the morning of November 25th
23 2010, I got off from work at three a.m. I bought
24 something to eat and went home. When I arrived home, it
25 was a little after 3:30. I ate, watched a cartoon and got

1 dressed for bed. As I began to lay down, I heard a noise
2 and noticed some things in my room weren't how I left
3 them. So I got up checked the door to make sure it was
4 locked. As I was coming back down the hall to my bedroom,
5 I saw something move in my kid's room. When I backed up
6 to take another look, I saw Eric Quentel Tindal crawl from
7 the side of the bed with a knife in his hand. That's when
8 I ran to my room, look the door and called the police. He
9 busted down the door, threw me against the wall, cursing
10 me out and asking me questions. He then grabbed me, threw
11 me to the bed, climbed on top of me and began to stab me
12 with the knife he had in his hand.

13 At this point, he had already heard the operator
14 and asked why did I call the police and told me he was
15 going to kill me. When the police arrived and began to
16 knock on the door, he just kept stabbing me. When he
17 heard the door being knocked in, he got up, looked down
18 the hall, got on the bed beside me, so I rolled on the
19 floor. As I layed on the floor, he stabbed himself
20 directly in the stomach. The police came in and found me
21 lying on the floor between the bed and the dresser stabbed
22 15 times and him on the bed stabbed once with the knife
23 still in his stomach. Luckily, she was not -- when I say
24 seriously injured, his injuries ended up being more
25 serious. They were both airvacked together to Columbia to

1 a hospital there where they were treated. As a result of
2 this, she lost her job. She worked at Gold Kist and
3 didn't have any sick time. Because she didn't have a job,
4 she's lost her home. To listen to that 9-1-1 tape, is
5 probably one of the scariest things I've ever heard. She
6 just keeps begging for mercy telling him to stop. And
7 he's somewhat calm telling her he's going to kill her.
8 It's by the grace of God that she is here today and that
9 it's an attempted murder and not a murder. As I stated,
10 he was not welcome in that home. They had had I don't
11 know if it was a disagreement, a falling out, but they
12 decided to part ways. That was her home where she lived
13 with the children.

14 She said another far reaching affect of this
15 incident is that she has three children who want to know
16 where their dad was. He took care of them during the day
17 while she went to work to support the family, so they
18 obviously became very close with him and they don't know
19 where he is. I get the feeling that she is a very
20 respectful person and that she has spared her children a
21 great many of these details, seems to be a very good
22 loving mother and has had the mercy on him to agree to a
23 22 year sentence, which we all think is fair.

24 THE COURT: All right. Thank you. Before I
25 accept the plea, I want to hear from the other side since

1 it is negotiated. I do want to hear from the defense.
2 Before I call on you, Mr. Robinson, let me tell Miss
3 -- the victim in this matter Miss Mack that you, of
4 course, have the right to be present at every stage of the
5 proceedings. You have the right to be kept advised of
6 everything that is going on and you also have the right to
7 address the Court. So if there's anything you would like
8 to say in addition to what Ms. Land has presented, I'll be
9 glad to hear from you.

10 MISS MACK: No, sir.

11 THE COURT: Thank you, ma'am.

12 All right. Mr. Robinson.

13 MR. ROBINSON: Thank you, Your Honor.

14 Mr. Tindal is 31 years old. And I think as Ms. Land told
15 you he and Miss Mack have three children together, three
16 young children that he was caring for during the day. And
17 I think as the evaluation report noted that there has been
18 a history of problems between them unfortunately as is
19 all too often the case they have had some problems with one
20 another in the past.

21 Mr. Tindal does have a prior record. He has one
22 conviction previously, it is a drug charge but no record
23 beyond that that I can remember. I looked at his criminal
24 record I think that's it. It was a very short record.

25 Mr. Tindal is quite honestly not a violent

1 person, that is one of the concerns and I think we mention
2 this to the Court yesterday in our motion for continuance
3 in discussing this case. And one of the reasons for
4 asking initially for a psychological evaluation is how out
5 of character this type of behavior was for Mr. Tindal.
6 Obviously, at some point he and Miss Mack were both close.
7 They share three children that he was the caregiver for
8 them during the day while Miss Mack work. Miss Mack talk
9 with me this morning very graciously and expressed her
10 concerns. And she's absolutely right this is a terrible
11 situation for everyone involved. Everyone was hurt
12 physically, everyone was hurt emotionally. And those
13 wounds and those scars exist today.

14 Mr. Tindal can't go back and erase what
15 happened. He can't turn back time and undue what
16 happened. But he can stand before you today as he is
17 pleading guilty, telling you that he's guilty and
18 accepting responsibility for what he's done. Why he did
19 it? I don't know perhaps he doesn't even know whether it
20 was the heat of the moment. It was a terrible decision
21 that has affected his life and his family's life and
22 Miss Mack's life forever and for that he is truly sorry.
23 And he's expressed that sorrow to me and I think both his
24 biggest regret and Miss Mack's is the impact that it has
25 had on the children, that he has become very close to and

1 that he will not get to see grow up. They will be adults
2 by the time he gets out of prison on these charges if the
3 Court imposes this sentence. There's really not a whole
4 lot else to say, Your Honor. It's a very serious
5 situation. A very tragic situation. Everybody standing
6 in the courtroom today involve with this is a loser in
7 this situation. They have lost something that can never
8 be replaced, but we feel under the circumstances after
9 talking with Ms. Land and with the victim that 22 years is
10 appropriate and fair under the circumstances and are
11 standing before you willing to accept that sentence and
12 just ask that the Court impose that sentence.

13 THE COURT: All right. Thank you, sir.

14 Anybody on behalf of the family like to speak up
15 I'll be glad to hear from you if anything they would like
16 to say, just identify yourself for the court reporter
17 please.

18 HELEN TINDAL: I'm Helen Tindal Eric Tindal's
19 mother. And Eric was -- him and the kids become close and
20 he did a lot caring for the children and the children was
21 his heart. They mean everything to him. And he was a
22 wonderful father to the children. And we so sorry that
23 all of this happened because it really like he say it put
24 a lost on a lot of our life because we being separated
25 like this. And I'm so sorry, I apologize for him too.

1 THE COURT: All right. Thank you, ma'am.

2 Anybody else? Your name?

3 THE WITNESS: I'm Lashonda C. Myers. I am
4 Eric's now fiancée. Eric the one person that I know me
5 and Eric been on and off for 12 years. We have two
6 children together. And it is a shame that this incident
7 has took place. It is. It is a terrible thing on both
8 parties part. The person that I know him of he is a good
9 person. He's a very good person. He's carrying. He is a
10 smart individual as well. I just ask that you take into
11 consideration everything to know of the person he really
12 is.

13 THE COURT: All right. Thank you.

14 All right. Mr. Tindal, be glad to hear from you
15 if there's anything you like to tell me?

16 THE DEFENDANT: No, sir.

17 THE COURT: With regard 2011-GS-14039, which is
18 the case for which the jury has been drawn and ready to go
19 to trial. I do find that the negotiations between the
20 parties are appropriate. I find the defendant's decision
21 to enter into this negotiated plea is freely and
22 voluntarily made after having been advised by counsel with
23 whom he says he is satisfied. And the Court is going to
24 accept and does hereby accept the negotiated plea.

25 The sentence on the attempted murder is

1 defendant is committed to the state department of
2 corrections for a term of 22 years. He will be given
3 credit for whatever time that he has served.

4 With regard to the burglary first, the sentence
5 of the Court is defendant is committed to the state
6 department of corrections for a term of 22 years to run
7 concurrent with count one.

8 With regard to indictment number
9 2001-GS-14-0256, sentence of the Court is defendant is
10 committed to the state department of corrections for a
11 term of three years to run concurrent with 2011-GS-14-039
12 again credit for time served.

13 And with regard to indictment number
14 2008-GS-14-0196, the sentence of the Court is defendant is
15 committed to the state department of corrections for a
16 term of five years concurrent to 2011-GS-14-039 and again
17 given credit for time serve.

18 So the bottom line, Mr. Tindal, is that I have
19 accepted the negotiations and have sentence you to 22
20 years. All of them to run concurrent with each other.
21 And you will be given credit for the time served. I hope
22 that you adjust well to prison and are able to get along
23 over there and get your time served and get out and become
24 a productive citizen. Good luck to you.

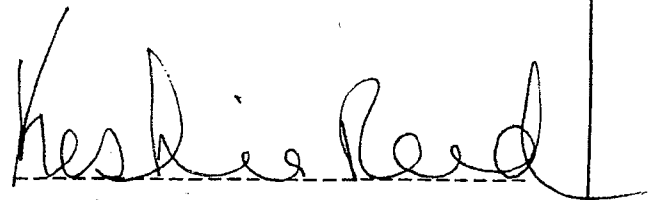
25 END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 30, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Clarendon County, South Carolina, on the 12th day of July,
2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 24th
day of March 2012.


Keshia Reed, Court Reporter

**COMPETENCY TO STAND TRIAL EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)**

DATE OF EVALUATION: April 4, 2011

PRESIDING EXAMINER: Richard L. Frierson, M.D., Professor of Clinical Psychiatry,
University of South Carolina School of Medicine

SECOND EXAMINER: Mohan Sridaran, Resident in Psychiatry,
University of South Carolina School of Medicine

DIAGNOSES: **AXIS I:** Malingering of Psychotic Symptoms and Cognitive Deficits.
Depression, Not Otherwise Specified
Cocaine Dependence
Cannabis Dependence
AXIS II: No Diagnosis
AXIS III: No Diagnosis

OPINION REGARDING COMPETENCY TO STAND TRIAL: Competent.

DISPOSITION: Mr. Tindal has been returned to the Clarendon County Detention Center.

IDENTIFYING INFORMATION: Eric Quentel Tindal is a 30-year-old African American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Clarendon County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976). He is currently charged with Attempted Murder and Burglary, First Degree.

Prior to participating in this evaluation, Mr. Tindal was informed that the evaluation was court ordered and that the evaluators were working for the Department of Mental Health. He was informed that we were not paid by his attorney or by the solicitor and were not on either side in his case. He was told that a report would be prepared and sent to his attorney, the solicitor, and the judge in his case. He was also informed that the examiners could be called to court to testify at a competency hearing. He understood this information and voluntarily agreed to participate in the evaluation.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.
2. Arrest warrant #M-089312 for Burglary, First Degree.

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3. Arrest warrant #M-089311 for Attempted Murder.
4. Incident report related to the alleged offense.
5. National Crime Information Center Report for the defendant.
6. Medical records from the Clarendon County Detention Center.
7. A social history obtained from the defendant's mother.
8. A two hour and fifteen minute clinical forensic interview with the defendant.
9. Recording of a 911 call related to the alleged offense.
10. Medical records from Palmetto Richland Memorial Hospital.
11. A psychological evaluation conducted by Sandra Stader, Ph.D., on April 20, 2011.

CLINICAL INFORMATION AND PSYCHIATRIC HISTORY: Mr. Tindal has no previous history of inpatient psychiatric hospitalization or outpatient psychiatric treatment. He has never been prescribed medication for psychiatric reasons. According to the court order, the reason for the evaluation was "suicidal behavior." Mr. Tindal reports that he thought about suicide a couple of times since his best friend, Patrick Conyers, killed himself in 2000. He states that this particular friend shot himself. He has thought about swallowing drugs or taking a cable and tying it around his neck. He denies any history of prior suicide attempts. He states that right after the alleged offense, "They say I stabbed myself." In reviewing the incident reports and victim information as well as medical records from Palmetto Richland Memorial Hospital, it would appear that at the time of the alleged offense, Mr. Tindal ended up with a knife stuck in his abdomen. This knife penetrated his liver. He told the consulting psychiatrist at Palmetto Health Richland that "I got stabbed." He claims not to know who had stabbed him. Records from the investigative report indicate that the alleged victim of his alleged offenses initially stated she wrestled the knife away from him during a struggle and stabbed him in the abdomen. If true, there would not appear to have been an actual suicidal act at the time of his alleged offense. However, she later gave a conflicting and self-protective statement that she did not stab him and he stabbed himself.

Currently, Mr. Tindal reports that he has difficulty coping in the jail. He states it is "too much pressure and I don't understand why I have to go through all of this." He displayed a tearful affect at times during the interview. However, some of his reported symptoms appeared to be manufactured and were atypical of mental illness. He also had a tendency to thrust his symptoms forward at the beginning of the interview. Very early on, he reported "I don't understand what's going on - they say I sleep walk and talk in my sleep and I don't understand nothing [sic] - I hear voices." He described auditory hallucinations in a manner that were atypical for mental illness. More importantly, he described abnormal and fantastical visual hallucinations. He claims to see the devil who has "three toes with long claws and looks like a coyote - he stands on two feet with an alligator tail and has yellow eyes." He also states that his ears are "like dog ears." Such fantastical hallucinations are not seen in persons with genuine mental illness and are more consistent with symptoms that are not genuine.

Because of these atypical symptoms, Mr. Tindal was referred to Sandra Stader, Ph.D. for a psychological evaluation. He was administered psychological testing which indicated that he was feigning memory deficits on a cognitive measure. His low level of performance was highly unlikely.

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when compared to clinical populations with known severe memory impairment. Additionally, on a measure of reported clinical symptoms, he obtained elevated scores on seven of eight scales, each of which measures a different way in which respondents may feign psychiatric symptoms. This number of scale elevations is characteristic of respondents who are malingering or exaggerating symptoms and is rarely found in individuals who are responding candidly. It was the conclusion that based on available data that a defendant appears to meet diagnostic criteria for Malingering. He has an external incentive to feign symptoms due to the nature of his pending legal charges. His results on the psychological testing indicate feigning and his clinical history, current presentation symptoms are not typical of a psychotic disorder. While the presence of malingering does not mean the defendant is totally free from mental health problems, it does make it more difficult to determine whether genuine symptoms are likely present.

SUBSTANCE ABUSE HISTORY: Mr. Tindal reports prior addictions to cannabis and cocaine. He reports he had difficulty trying to stop using both substances. His mother confirms that he has used cannabis. He also reports he has been addicted to crack cocaine in the past which he mixed with marijuana. He has two prior convictions for crack cocaine related offenses. Given his history of use of these substances, he would meet diagnostic criteria for Cannabis Dependence and Cocaine Dependence. He reports that he drinks alcohol when he is around other people who are drinking, but reports this only occurs once or twice a month. He states when he drinks, "It makes me want to beat someone up." He denied a history of prior DUI's.

MEDICAL HISTORY: His medical history is remarkable for an accident where his foot was run over by a tractor in approximately 2007. He also has a history of headaches and the aforementioned damage to his liver from being stabbed during the alleged offenses.

FAMILY HISTORY: His mother is Helen Tindal and is 52 years of age. She suffers from hypertension, hypercholesterolemia, diabetes, and depression. She is prescribed medication for depression. A great grandmother on his mother's side was in a psychiatric hospital. His father is deceased and was murdered when the patient was 17 months old. The defendant is the youngest of three children.

SOCIAL HISTORY: He was born in Manning, South Carolina and his father was murdered when the father was 23 years old and the patient was 17 months old. Therefore, he was raised by a single mother. During her pregnancy, the mother reported that she was depressed and had a nervous breakdown. The defendant appeared to have difficulties following his father's death. He had difficulty not having a father in his life and would ask his mother why other kids had dads and he did not have one. There is no history of abuse or neglect. There is no childhood history of fire setting, cruelty to animals, or running away. He grew up in a very poor household and sometimes there were not financial resources to meet basic needs. At times, they were without running water. His mother provided childcare. He has a history of being hit in the head with a brick as a child and had to be rushed to the hospital, but was not hospitalized.

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He reportedly was in regular classes, but had to repeat a grade in elementary school due to missing too many days. He did not participate in extracurricular activities. He was suspended in high school due to having drugs in school. He was eventually arrested for trafficking crack cocaine and was sent to a boot camp. He left school in the 9th or 10th grade and does not have a GED. According to his mother, he has been in a relationship with Erica Mack for the past six years and has three children by her. There is a longstanding history of physical altercations between him and Ms. Mack. At one time, she gave him black eyes and also tried to run over him with a car two years ago. At that time, she was charged with attempted murder. According to his mother, "He was a battered man."

Mr. Tindal has worked at several jobs, but for the longest amount of time was at a truck wash. He states that he once worked there for three years straight. He also worked at lumber company for two months and at a McDonald's Restaurant for nine months. He reports that he once went to Florida because a gang was after him. He also reported that he was in the Crips Gang at one time. He reports, "Ever since I met Erica Mack, my life went down - she tried to run me over and she also attacks me when I try to leave."

MENTAL STATUS EXAM: On today's date, he was alert and oriented to person and day of the week. He gave approximate answers to the month and the year. For example, he states it was March rather than April and 2010 rather than 2011. He was able to register three objects, but he claimed he could not recall them after five minutes. Even when given prompts, he was only able to recall one. He was able to state the current president's name, but could not name a former president. He could not spell the word *world*. He spelled his last name, but could not spell it backwards. He appeared to give very poor effort on tasks of cognitive abilities. He claimed 57¢ from \$1.00 = 22¢. He claimed not to know the number of nickels or pennies in a dollar. He rated his mood as 1 on a scale of 1 to 10. He states, "I will hurt myself if you put me on a suicide watch." He denied homicidal ideas. When asked if he had any unusual thoughts that other people don't believe, he states, "People don't believe me about the devil or my best friend." When asked if he ever got special messages from the television, he stated "Yes", but when asked to give an example, he could not do so. His auditory and visual hallucinations have been previously described under Clinical History and they do not appear consistent with mental illness. His thinking was logical and goal directed without loosening of associations or flight of ideas. He found no credible evidence of disturbed thought processes or thought content.

DIAGNOSTIC FORMULATION: Given his lack of prior mental health treatment, bizarrely reported psychotic symptoms, poor performance on simple cognitive tests inconsistent with his prior functioning in society, and his performance on objective psychological tests designed to detect feigning, we are assigning a diagnosis of Malingering of Psychotic Symptoms and Cognitive Deficits.

The rationale behind the diagnoses of Cocaine Dependence and Cannabis Dependence has been outlined previously.

Finally, he reports suicidal thoughts at times since a friend committed suicide. His mother reports he would sit and cry while talking about how bad his life was. She states he was stressed and worried a

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lot. He does not meet diagnostic criteria for Major Depression. However, given these reported symptoms that were confirmed by his mother, we are assigning a diagnosis of Depression Not Otherwise Specified.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Tindal was aware that he was charged with Attempted Murder and Burglary, First Degree. He states that they are serious and that someone told him that he could receive a thirty year sentence. He states the job of his attorney is "to get me in court and he is supposed to help me." He stated, "I don't want to go to prison - I want to go back on the street - prison ain't no place for me." He was able to state his attorney's name. He stated, "I want him to help me and get the devil out of my life." He states that he has met with his attorney on one occasion and can tell him everything he knows about the allegations against him. He states the job of the solicitor is "to keep me in jail." He reports, "She told the judge that I don't belong on the street because I stabbed Erica up [sic]." He understands the role of the judge in deciding whether he were to be sent to prison or not. He states that the jury "decides who's right and who is wrong." He did not know the number of persons on a jury or the unanimous requirement for a jury verdict. He was able to define the pleas of *guilty* and *not guilty*. He claimed not to know what a plea bargain was. He stated *probation* is "like parole - you report to a place every month - you take a drug test, you go to classes, and if you violate, they send you back to prison." He understands the importance of appropriate courtroom behavior. He was able to solve a hypothetical problem involving the courtroom. He states his desired outcome would be "to get help."

Mr. Tindal has no history of intellectual deficits or mental health treatment that would potentially impair his ability to understand the legal system or work with an attorney on his defense. Although he is presenting with psychotic symptoms and memory problems, they are most likely malingered as evidenced by his description of symptoms as well as objective psychological measurements of malingering. It is our opinion that he has a sufficient factual understanding of the legal system and can assist his attorney in a defense if he so chooses. Although he claimed not to know the concepts involved in plea bargaining, it is our opinion that he has the mental capacity to understand a plea offer if it is explained carefully to him.



Richard L. Frierson, M.D.

Professor of Clinical Psychiatry

University of South Carolina School of Medicine

RLF/oj

D: 05/05/11

RT/EM: 05/06/11

F/EM: 05/06/11

TINDAL, ERIC QUENTEL

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**CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION
FORENSIC EVALUATION SERVICE
SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH (SCDMH)**

DATE OF EVALUATION: April 4, 2011

PRESIDING EXAMINER: Richard L. Frierson, M.D., Professor of Clinical Psychiatry,
University of South Carolina School of Medicine

SECOND EXAMINER: Mohan Sridaran, Resident in Psychiatry,
University of South Carolina School of Medicine

DIAGNOSES: **AXIS I:** Malingering of Psychotic Symptoms and Cognitive Deficits,
Depression, Not Otherwise Specified
Cocaine Dependence
Cannabis Dependence

AXIS II: No Diagnosis

AXIS III: No Diagnosis

OPINION REGARDING CRIMINAL RESPONSIBILITY: Responsible.

OPINION REGARDING CAPACITY TO CONFORM: Capable of conforming.

DISPOSITION: Mr. Tindal has been returned to the Clarendon County Detention Center.

IDENTIFYING INFORMATION: Eric Quantel Tindal is a 30-year-old African American male who was seen at the Forensic Evaluation Service pursuant to a court order from the Clarendon County Court of General Sessions. This court order requests an evaluation of his criminal responsibility and capacity to conform his conduct to the requirements of the law on or about November 25, 2010 pursuant to S.C. Code Ann. § 17-24-10 (1976). He is currently charged with Attempted Murder and Burglary, First Degree.

Prior to participating in this evaluation, Mr. Tindal was informed that the evaluation was court ordered and that the evaluators were working for the Department of Mental Health. He was informed that we were not paid by his attorney or by the solicitor and were not on either side in his case. He was told that a report would be prepared and sent to his attorney and possibly the solicitor and judge in his case. He was also informed that the examiners could be called to court to testify at his trial. He understood this information and voluntarily agreed to participate in the evaluation.

JEM
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Because of these atypical symptoms, Mr. Tindal was referred to Sandra Stader, Ph.D. for a psychological evaluation. He was administered psychological testing which indicated that he was feigning memory deficits on a cognitive measure. His low level of performance was highly unlikely when compared to clinical populations with known severe memory impairment. Additionally, on a measure of reported clinical symptoms, he obtained elevated scores on seven of eight scales, each of which measures a different way in which respondents may feign psychiatric symptoms. This number of scale elevations is characteristic of respondents who are malingering or exaggerating symptoms and is rarely found in individuals who are responding candidly. It was the conclusion that based on available data that a defendant appears to meet diagnostic criteria for Malingering. He has an external incentive to feign symptoms due to the nature of his pending legal charges. His results on the psychological testing indicate feigning and his clinical history, current presentation symptoms are not typical of a psychotic disorder. While the presence of malingering does not mean the defendant is totally free from mental health problems, it does make it more difficult to determine whether genuine symptoms are likely present.

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MEDICAL HISTORY: His medical history is remarkable for an accident where his foot was run over by a tractor in approximately 2007. He also has a history of headaches and the aforementioned damage to his liver from being stabbed during the alleged offenses.

FAMILY HISTORY: His mother is Helen Tindal and is 52 years of age. She suffers from hypertension, hypercholesterolemia, diabetes, and depression. She is prescribed medication for depression. A great grandmother on his mother's side was in a psychiatric hospital. His father is deceased and was murdered when the patient was 17 months old. The defendant is the youngest of three children.

SOCIAL HISTORY: He was born in Manning, South Carolina and his father was murdered when the father was 23 years old and the patient was 17 months old. Therefore, he was raised by a single mother. During her pregnancy, the mother reported that she was depressed and had a nervous breakdown. The defendant appeared to have difficulties following his father's death. He had difficulty not having a father in his life and would ask his mother why other kids had dads and he did not have one. There is no history of abuse or neglect. There is no childhood history of fire setting, cruelty to animals, or running away. He grew up in a very poor household and sometimes there were not financial resources to meet basic needs. At times, they were without running water. His mother

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provided childcare. He has a history of being hit in the head with a brick as a child and had to be rushed to the hospital, but was not hospitalized.

He reportedly was in regular classes, but had to repeat a grade in elementary school due to missing too many days. He did not participate in extracurricular activities. He was suspended in high school due to having drugs in school. He was eventually arrested for trafficking crack cocaine and was sent to a boot camp. He left school in the 9th or 10th grade and does not have a GED. According to his mother, he has been in a relationship with Erica Mack for the past six years and has three children by her. There is a longstanding history of physical altercations between him and Ms. Mack. At one time, she gave him black eyes and also tried to run over him with a car two years ago. At that time, she was charged with attempted murder. According to his mother, "He was a battered man."

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DIAGNOSTIC FORMULATION: Given his lack of prior mental health treatment, bizarrely reported psychotic symptoms, poor performance on simple cognitive tests inconsistent with his prior functioning in society, and his performance on objective psychological tests designed to detect feigning, we are assigning a diagnosis of Malingering of Psychotic Symptoms and Cognitive Deficits.

The rationale behind the diagnoses of Cocaine Dependence and Cannabis Dependence has been outlined previously.

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Finally, he reports suicidal thoughts at times since a friend committed suicide. His mother reports he would sit and cry while talking about how bad his life was. She states he was stressed and worried a lot. He does not meet diagnostic criteria for Major Depression. However, given these reported symptoms that were confirmed by his mother, we are assigning a diagnosis of Depression Not Otherwise Specified.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Tindal reports he is not guilty of Burglary because he was living at the incident location and had permission to be there. He states he had lived there for 6 years. He reports the alleged victim was working and he was taking care of the three kids 24 hours a day. He denies that he had moved out two weeks earlier. He states he had come home from grilling a turkey at his uncle's house. He states that he and the victim had argued the night before about his using too many minutes on a cell phone. He states he was watching TV and dozed off. He then states he "woke up to a disaster with a knife in my stomach." He reports he had consumed some beer before coming home that night.

On the 911 calls he is heard in the background telling her to "shut up". He does not report a delusion or other symptom of mental illness in relation to the alleged offense. His lack of memory of the alleged offense is consistent with an alcoholic blackout, suppression, or malingering. He spontaneously told these examiners at the beginning of the interview that he was sleepwalking in jail. It is possible that he wishes to use this as a defense. However, purposeful violence directed towards another person in the manner contained in the police reports is not consistent with sleepwalking. It is our opinion that he would have been criminally responsible pursuant to S.C. Code Ann. §17-24-10.

CONCLUSION REGARDING CAPACITY TO CONFORM: We find no evidence of a delusion, command auditory hallucination, compulsion, or other symptom of mental illness that would have impaired his ability to conform his conduct to the requirements of the law. There is a long standing history of interpersonal difficulties and physical altercations between the defendant and the alleged victim according to the defendant's mother.

Richard L. Frierson, M.D.

Richard L. Frierson, M.D.
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

RLF/cj

D: 05/05/11

RT/EM: 05/06/11

F/EM: 05/06/11

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1022-1781

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FORM 5

STATE OF SOUTH CAROLINA)

County of CLARENDON)2011-CP-14-595
IN THE COURT OF COMMON PLEAS

ERIC TINDAL, #243834

**CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE**Full name and prison number (if any) of Applicant 11/23/2011

v.

Berkley Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Inst, 136 Wilbore Ave
PO BOX 205, Ridgeville S.C. 29472
2. Name and location of Court which imposed sentence Clarendon County Court
of General Sessions
3. ~~Of General Sessions:~~ Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Burglary 1st., 20011-GS-14-0038; sentence 22yrs.

(b) Attempted Murder, 2011-GS-14-0039

(c) _____

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

(a) July 12 2011 Burglary 1st. 22yrs concurrent

(b) July 12, 2011, Attempted Murder, 22 yrs Concurrent

(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. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) Counsel didn't appeal

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) my guilty plea was not knowingly and intelligently
- (b) made. (2) Counsel was ineffective for failing to
- (c) argue my Sixth Amendment Right to Counsel.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached sheets
- (b) see attached sneets
- (c) see attached sneets
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? _____
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. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

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

i. N/A

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?

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) counsel did not appeal
- (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? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (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. Scott Robinson, esquire
- Clarendon County Public Defender
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea and sentencing
- ii. _____
- iii. _____

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

Specific sentence performance

New trial

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

DORCHESTER)

County of _____)

VERIFICATION

I, Eric Tumbel, 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.

Eric Tumbel

SWORN to and subscribed before me this 25th
day of October, 2011.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

I, Eric Tumbel, 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.

Eric Tumbel

Applicant

SWORN or affirmed to and subscribed before me this
25th day of October, 2011

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

48
COUNTY OF Clarendon
STATE VS.
Eric Quentel Tindal

INDICTMENT/CASE#: 2011-GS-14-0039A/W#: M089311Date of Offense: 11/3/2010S.C. Code §: 16-03-0010CDR Code #: 0116

AK: _____
Race: 2 Sex: M Age: 30
DOB: 00 SS#: _____
Address: Pinewood Gardens
City/State/Zip: Pinewood SC 29125
DL#: 00427978 SID#: _____

SENTENCE SHEET

*CL: ☐ Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Attemptedin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

Army Land Eric Tindal Scott R. Pugh
Land Army SC Bar# Defendant Attorney for Defendant SC Bar# 81651

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and 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:☒ 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.☐ 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:

☐ PROBATION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ SCDPPPS _____

Rec: _____

*Fees:

§ 16-3-96 (Assessments 107.5%) \$ _____

§ 16-3-96(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 16-3-96(A)(2) (DUI Surcharge) \$100 \$ _____

§ 16-3-96.5 (DUI Assessment) \$12 \$ _____

§ 16-3-96.6 (DUI Breath Test) \$25 \$ _____

Probation (Public Def/Prob) \$500 \$ _____

§ 16-3-12 (Law Enforce Funding) \$25 \$ 25.00

§ 16-3-13 (Drug Court Surcharge) \$150 \$ _____

§ 16-3-14 (BUI Breath Test Fee) \$50 \$ _____

§ 16-3-21 (Vehicle Assessment) \$40/ea \$ _____

Probation (SCCA Surcharge) \$5 \$ 5.00

§ 16-3-150(C) (Conditional Discharge) \$350 \$ _____

3% (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk: Beulah B. RobertsCourt Reporter: Kasika Reed

SC: (06/2010)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47-12 requires \$500 be paid to Clerk during probation.Presiding Judge Glenn PughJudge Code: 2107Sentence Date: 7/12/2011

ISSUES BEFORE THIS COURT

1. Applicant's plea of guilty was not knowingly and intelligently made and violates Due Process.
2. Applicant contends that counsel was ineffective before his plea by failing to explain the elements of "specific intent" and "intent" in relations to the crimes of "attempted murder" and burglary 1st, and now the doctrine of diminished capacity could negate those elements.
3. Applicant contends that counsel was ineffective by failing to argue to the plea court that the defendant had retained Shawn Kent, Esquire as counsel of record thus violating my Sixth Amendment Right To Counsel.
4. Applicant contends that counsel was ineffective by failing to object or file motions during the sentencing phase of the plea, because the prosecutor's negotiated sentence exceeds the statutory minimum for the offenses of attempted murder and burglary 1st which he has not authority to negotiate.

Dated

November 1, 2011

x Eric Nordal

MEMORANDUM OF LAW

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. States, 310 S.C. 360, 426 S.E.2d 795 (1993).

Because the defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969). Boykin requires that a defendant be made aware of the right to jury trial, the privilege against self incrimination, and the right to confront one's accusers.

Plea bargains rest on contract principles, and each party should receive the benefit of its bargain. U.S. v Ringling 988 F.2d 504, 505 (4th Cir, 1993). A defendant may, as part of a plea bargain, agree to plead guilty to a crime for which he has been indicted (or to which he has waived grand jury presentment), but of which he is not guilty. All that is required before a plea

can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the Constitutional Rights he is waiving, and that the record reflect a factual basis for a plea. Anderson v State, 342 S.C. 54, 535 S.E.2d 649 (2000).

Here the defendant was advice by counsel to plea guilty and enter a negotiate sentence of 22 years for Attempted Murder without being told about the element of "specific intent" and the doctrine of "dimished capacity."

In general, attempt is a specific intent crime. 21 Am.Jur.2d Criminal Law : 176 (1998) The act constituting the attempt must be done with the intent to commit that particular crime. Although a murder may be committed without an intent to kill, an attempt to commit murder requires a specific intent to kill.

In the context of an "attempt" crime, specific intent means that the defendant consciously intended the completion of acts comprising the choate offense. State v Sutton, 340 S.C. 393, 397 (2000).

The diminished capacity doctrine allows a defendant to offer evidence of his mental condition with respect to his capacity to achieve the mens rea required for the commission of the offense charged. 21 Am.Jur.2d Criminal Law y 38 (1998) In particular, the

defense may be invoke to negate specific intent, where such intent is an element of the offense charged. Diminished capacity differs from the insanity defense in that it may be raised by a defendant who has conceded to be legally sane. Gill v State, 352 S.E.2d 26, 346 S.C. 209, 220 (S.C. 2001).

The doctrine of "diminished capacity" and the element of specific intent were never discuss with the defendant before he pled guilty to attempted murder and burglary 1st degree. As for the burglary 1st degree, defendant had a key for the apartment and lived there and had never move.

22 C.J.S.Criminal Law § 33 (SPECIFIC INTENT)

The specific intent is just as must as an element of the crime as is the act. Proof of a required specific intent is just as necessary as proof of the act itself, and it must be established as an independent fact and with the same certainty as any other element.

The doctrine of "diminished capacity" and the element of specific intent were never discuss with the defendant before he pled guilty to attempted murder and burglary 1st degree.

As for burglary 1st , applicant had a key and didn't need consent to enter the apartment. Diminished capacity doctrine allows the applicant to offer evidence of his mental condition such as the heavy uses of alcohol and drug with respect to his capacity to achieved mens rea for commission of burglary 1st.

The applicant request an evidentiary hearing on this claim pursuant to the post conviction act 17-27-80 of the South Carolina Code of Laws.

2. Court appointed counsel failed to argue that applicant had retained Shawn Kent, esquire as counsel of record, resulting in an ineffective assistance of counsel and violating my Sixth Amendment Right to Counsel.

Removal as attorney of record is governed by rule 11(b), SCRCP. Rule 11(b) states in pertinent part: "An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the Court, and not otherwise. The language of rule 11(b) is clear. Once an attorney has made a formal appearance and become attorney of record in an action, withdrawal can only be accomplished by order of the Court. Ex Parte Strom 334 S.C. 605, 514 S.E.2d 599 (App. 1999) (quoting) Culbertson v Clemens, 322 S.C. 20, 471 S.E.2d 163 (1996).

The right to counsel is a fundamental right of criminal defendant, it assures the fairness, and thus the legitimacy of our adversary process. E.g. Gideon v. Wainwright, 372 U.S. 335. 344, 83 S.Ct. 792, 796, 9L.Ed.2d 799 (1963).

A formal appearance by an attorney is most commonly made by the signing of pleadings Rules 11(a), SCRCP, Culbertson, supra.

The Applicant, request an evidentiary hearing on this claim pursuant to the post conviction act 17-27-80 of the South Carolina Code of Laws.

3. Counsel was ineffective by failing to object or file motions during the sentencing phase of the plea, because the prosecutor's negotiated sentence exceeds the statutory minimum for the offense of Burglary 1st, which is the offense of which the defendant was convicted.

The applicant retained the right to amend his post conviction application when the State produce the transcript of his guilty plea.

Date

November 7 2011

Eric Timbal

CERTIFICATE OF SERVICE

The undersigned hereby certify that he cause to be mail the foregoing PCR applications to the Clerk of Court for Clarendon County Beulan Roberts, this 7 day of November 2011 by depositing same in the U.S. mail at Lieber mail-room.

Beulan Roberts, Clerk
PO BOX 136
Manning S.C. 29102

Eric Tindal

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)Eric Tindal, 243834)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
____ JUDICIAL CIRCUIT

CASE NO.: ____-CP-____-

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Eric Tindal
____, Bar No. N/A
Address: Lieber Correctional Inst
PO BOX 205
Ridgeville, S.C. 29472
Phone: Fax
E-mail: ____ Other: ____

Defendant's Attorney:
____, Bar No. ____
Address: N/A
Phone: ____ Fax ____
E-mail: ____ Other: ____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing InformationNature of Motion: Expert ServicesEstimated Time Needed: 30 min. Court Reporter Needed: ☒ YES/☐ NO**SECTION II: Motion/Order Type**

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Eric Tindal 11-14-11
Signature of Attorney for ☐ Plaintiff/☐ Defendant Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ ____
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☒ Other: ____

JUDGE CODE ____

Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____

- ☐ MOTION FEE COLLECTED: \$ ____
☒ CONTESTED - AMOUNT DUE: \$ ____

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

ERIC TINDAL, 243834

vs

STATE OF SOUTH CAROLINA

Defendant

IN THE COURT OF COMMON PLEAS

C/A no; _____

NOTICE AND MOTION FOR PAYMENT

OF EXPERT WITNESS

Come now Eric Tindal, 243834, pro-se moves this Court for an Order of this Court for expert services in the aboved captioned case. The applicant had expert examination before he pled guilty to burglary 1st and attempted murder, but that finding was limited, and make this motion pursuant to §17-3-50(a).

The "Diminished Capacity" doctrine allows a defendant to offer evidence of his mental condition with respect to his capacity to achieve the mens rea require for the commission of the offense charge. 21 AM.Jur.2d Criminal Law § 28 (1998) In particular the defense may be invoked to negate "Specific Intent", where such intent is an element of the offense charged. Gill v State, 340 S.C. 209, 220, 552 S.E. 2d 26 (S.C. 2001). The applicant has a diminished capacity claim before this court in the attempted murder charged and burglary 1st charge in achieving mens rea that is required by burglary 1st. The reading of the mental records would not satisfy diminished capacity. See Jeter v State 417 S.E.2d 594(S.C. 1992) where at a PCR hearing there were no live

live medical testimony.

CONCLUSION

Applicant prays that this Court would grant this motion for funds for an expert.

Dated

November 7, 2011

Eric Tindal

Eric Tindal, 243634
Lieber Correctional
Institution
PO BOX 205
Ridgeville, S.C. 29472

CERTIFICATE OF SERVICE

The undersigned hereby certify that he cause to be mail the motion for Payment of Expert Service to Clarendon County Clerk of Court this 7 day of November 2011, by depositing same in the U.S. mailed at Lieber mailroom.

Beulah Roberts, Clerk
PO BOX 136
Manning, S.C. 29102

Eric Tindal

Clarendon County Clerk of Court
Beulan Roberts, Clerk
PO BOX 136
Manning, S.C. 29102

BEULAN ROBERTS
CLERK OF COURT
CLARENDON COUNTY SC

RE: Post Conviction Application for filing.

Dear Clerk,

Enclosed would you please find one original and one copy of the PCR application, would you please file the original and return the time stamp copy to me.

Sincerely

Eric Tindal

STATE OF SOUTH CAROLINA

CLARENDON

COUNTY OF

IN THE COURT OF COMMON PLEAS

B

ERIC TINDAL, # 243834

Plaintiff(s)

CIVIL ACTION COVERSHEET

2011-CP-14-595

vs.

State of South Carolina

Defendant(s)

(Please Print) Eric Tindal, #243834

Submitted By:

Address: PO BOX 205
Ridgeville, SC 29472

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet 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 cover sheet 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 (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| ☐ Contracts | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Defamation (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/ File Med-Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (209) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| ☒ Inmate Petitions | ☐ Judgments/Settlements | ☐ Administrative Law/Relief | ☐ Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstatement Driver's License (800) | ☐ Arbitration (900) |
| ☐ Sexual Predator (510) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Mandamus (520) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Habeas Corpus (530) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Other (599) | ☐ Transcript Judgment (740) | ☐ Forfeiture (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Other (899) | ☐ SCDOT (950) |
| | ☐ Other (799) | | ☐ Worker's Comp (960) |
| | | | ☐ Zoning Board (970) |
| ☐ Special/Complex/Other | ☐ Pharmaceuticals (630) | | ☐ Administrative Law Judge (980) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | | ☐ Public Service Commission (990) |
| ☐ Automobile Arb. (610) | ☐ Out-of-State Depositions (650) | | ☐ Employment Security Comm. (991) |
| ☐ Medical (620) | | | ☐ Other (999) |
| ☐ Other (699) | | | |

Submitting Party Signature: Eric Tindal

Date:

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

SCCA / 234 (8/06)

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OF ORIGINAL FILED IN THIS OFFICE

Page 1 of 2

DATE

4/23/2011

Brenda H. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
	)	
	)	2011-CP-14-595
	)	
Eric Tindal, #243834,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 22, 2011, 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 Clarendon County Clerk of Court. The Applicant was indicted at the January 2011 term of the Clarendon County Grand Jury for (1) Attempted Murder and (2) Burglary 1st (2011-GS-14-0039). He was represented by Scott L. Robinson, Esquire. On July 12, 2011, the Applicant pled guilty to before the Honorable Howard P. King. Pursuant to a negotiated sentence, he was sentenced to twenty two (22) years imprisonment for Attempted Murder and to twenty two (22) years imprisonment for Burglary 1st, sentences to be served concurrently. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Clarendon County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript.¹ 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. "My guilty plea was not knowingly and intelligently made."
2. Ineffective Assistance of Counsel.
 - a. "Counsel was ineffective for failing to argue my Sixth Amendment Right to Counsel."
 - b. "...counsel was ineffective before his plea by failing to explain the elements of 'specific intent' and 'intent' in relations to crimes of 'attempted murder' and burglary 1st, and how the doctrine of diminished capacity could negate those elements."
 - c. "...failing to argue to the plea court that the defendant had retained Shawn Kent, Esquire as counsel of record thus violating my Sixth Amendment Right to Counsel."
 - d. "...failing to object or file motions during the sentencing phase of the plea, because the prosecutor's negotiated sentence exceeds the statutory minimum for the offenses of attempted murder and burglary 1st which he has not authority to negotiated."

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

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's

¹ As of the date of this return, the transcript has been ordered by Respondent but not yet received. The transcript will

conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

be forwarded upon receipt.

an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (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, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

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

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

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Assistant Attorney General

By: 
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Feb. 14, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

ERIC TINDAL, 243834,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-14-0595

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:

James O'Connor, Esquire
Law Office of Jim O'Connor
Post Office Box 97
Lexington, SC 29071-0310

DATED this 14th day of February, 2012.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

State of South Carolina	)	In the Court of Common Pleas
	)	Third Judicial Circuit
County of Richland	)	2011-CP-14-00595

Eric Tindal,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	
	)	

December 14, 2012
Sumter, South Carolina

B e f o r e:

The Honorable R. Ferrell Cothran, Judge

A p p e a r a n c e s:

Walt Whitmire, Esq.
Attorney for the Applicant

James Brian O'Connor, Esquire
Attorney for Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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ERIC TINDAL

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

1 MR. WHITMIRE: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. WHITMIRE: The State now calls *Eric Tindal vs. the*
4 *State of South Carolina*, 2011-CP-14-0595.

5 Applicant is presently confined at the South Carolina
6 Department of Corrections, pursuant to orders of commitment
7 from the Clarendon County Clerk of Court. Applicant was
8 indicted the July, 2011 term of the Clarendon County Clerk
9 of Court for burglary first, attempted murder. Applicant
10 was represented by Scott Robinson, Esq. on July 12, 2011.
11 Applicant appeared before the Honorable Howard King and
12 pled guilty as charged, pursuant to negotiated sentence of
13 22 years imprisonment. All -- all charges run concurrent.

14 Applicant did not appeal. Applicant filed this PCR
15 application November 22, 2011; State filed its return
16 February 14, 2012. At this time, I turn matters over to
17 Mr. O'Connor.

18 THE COURT: Okay.

19 MR. O'CONNOR: Your Honor, if it please the Court. My
20 client desires that we put forth a motion for continuance.
21 The reason for the motion is that they've been on lock down
22 in the prison, and he has not had sufficient time to access
23 the law library and requests a continuance.

24 MR. WHITMIRE: Your Honor, we object to that
25 continuance request. Mr. -- Mr. Tindal filed an

DIRECT EXAMINATION BY MR. O'CONNOR - ERIC TINDAL

5

1 application over a year ago, and I believe Mr. O'Connor is
2 present and prepared to move forward.

3 THE COURT: Mr. O'Connor, the fact that he doesn't
4 have access to a law library doesn't -- you're certainly a
5 qualified lawyer. That's what he's got you for. He
6 doesn't need the law library.

7 MR. WHITMIRE: Yes, sir. I have had access to my law
8 library.

9 THE COURT: Okay. Then we'll go forward.

10 MR. O'CONNOR: Your Honor, we're going to call Eric
11 Tindal, please.

12 ERIC TINDAL, having been first
13 duly sworn, testifies as follows:

14 THE BAILIFF: State your name please and spell your
15 first and last name for the record.

16 THE WITNESS: Eric Tindal.

17 THE COURT REPORTER: Spell your name, please.

18 THE WITNESS: E-r-i-c, T-i-n-d-a-l.

19 DIRECT EXAMINATION BY MR. O'CONNOR:

20 Q Mr. Tindal, did you hear the -- the Attorney General
21 up here explain the situation and why you're incarcerated
22 and what the charges were?

23 A Yes, sir.

24 Q And everything that he said, was that accurate?

25 A Say that again.

1 Q In -- in terms of what -- what he said -- the charges,
2 the indictment, and all -- were they accurate?

3 A Yes, sir.

4 Q What you're incarcerated for.

5 All right. You filed an application for PCR against -
6 - the was your attorney?

7 A Scott Robinson.

8 Q Okay. There was some issue -- at the time, when --
9 when you pled, as to ineffective assistance of counsel.
10 Could you explain that?

11 A Yes. I have three issues I'd like to argue. My
12 counsel was ineffective by erroneously advising me not to
13 worry about the burglary charge; and then advising me to
14 accept the plea offer or else I'd get a life sentence if I
15 goes [sic] to trial, when a trial would have likely
16 resulted in the burglary charge being dismissed.

17 And my second issue is that my counsel was ineffective
18 by failing to investigate the facts of my case and discover
19 self-defense for the charge of attempted murder.

20 And my third issue is that my counsel was ineffective
21 for failing to interview witnesses and properly prepare for
22 trial.

23 Q Okay. So would you like to elaborate on any of those
24 that you just explained?

25 A Yes. I say that my counsel was ineffective for

1 advising me to plead guilty for the charges of attempted
2 murder and burglary the first; when he failed to
3 investigate the facts of my case; and properly prepare for
4 trial because he did not interview me or the witnesses I
5 told him about in my case.

6 Had he interviewed me, he would have discovered that
7 the alleged victim attacked me first with a knife, and I
8 was only defending myself by the fear for my life. Because
9 the victim got a -- violence of history against me.

10 Once he tried to kill me on night of July 4, 2007.
11 While my kid was in the car with her, she tried to run me
12 over in front of the police. She got charged with child
13 endangerment and attempted murder because they caught that
14 on tape.

15 So therefore, that showed that she was very
16 aggressive. So we could have pursued a self-defense at
17 trial for the charge of attempted murder.

18 Had he interviewed my witnesses, he would have
19 discovered that there were witnesses were willing to
20 testify that I was living at that house with that alleged
21 victim at the time they claim I broke into the house.

22 We also had my keys as evidence, in my Rule 5, along
23 with the police incidence report where they said they had
24 to kick open the door to gain entry to that house. That
25 proved that I didn't break into the house.

1 We also got evicted because we both was [sic]
2 responsible for what happened that night, and that's, you
3 know, strong evidence to say that I was living at that
4 house. So that could have defeat the burglary charge
5 against me.

6 Q Okay. So -- and you did claim that your Fifth
7 Amendment right to counsel was violated. Can you explain
8 how those violated --

9 A Because I really didn't know that Scott Robinson was
10 going to be my lawyer because I had already hired another
11 attorney. No one come and see me at the jailhouse. Even
12 though I have my visitation logbook sheet where I
13 requested, you know, the visitation logbook showing any and
14 all attorney visit, I received -- since I was detained in
15 the jail from December the 1, 2012 -- 2010 to July 12,
16 2011. And it doesn't have Scott Robinson nowhere on this
17 visitation logbook sheet.

18 Q Okay. You had separate counsel already hired?

19 A Yes, sir. I have receipts right here (indicates.)

20 Q What was the name of that attorney?

21 A Shaun Kent.

22 Q For the same charges you pled guilty to?

23 A Yes, sir.

24 Q Okay. Was that expressed during the time of the plea?

25 A He -- it was on the transcript July 11. I think Scott

1 Robinson did say that I hired another attorney because he
2 never met with me to discuss the facts of my case. The
3 whole entire -- the whole entire six months I was in the
4 County, Scott Robinson never met with me. I met with him
5 once at the courthouse.

6 I can't remember everything we talked about in detail
7 because I was on a heavy medication the doctor gave me for
8 my stab wound. But I do remember telling him about that I
9 was living at that house and the witnesses. He told me
10 "don't worry about the burglary charge." He told me not to
11 worry about the burglary charge when I told him about my
12 witnesses.

13 So I took his advice because he was my lawyer at that
14 time, and I trusted him and I believed in him.

15 So after that, I never saw Scott Robinson again 'til I
16 came back to court. He told me to plead guilty or else I
17 would get a life sentence. He told my mother and my
18 brother the same thing. So this is why my guilty plea was
19 involuntarily given because if it wasn't for counsel error,
20 I would not plead guilty. I would have went to trial.

21 The only reason why I plead guilty because Scott
22 Robinson told me if I didn't plead guilty and go to trial,
23 I would get a life sentence. So I felt under duress to
24 accept the plea offer because I know he wasn't prepared for
25 trial. He didn't interview me to discover self-defense,

1 and he didn't interview my witnesses to discover that we
2 had credible witnesses who could have helped me beat the
3 burglary charge.

4 So yes, I told the judge I was satisfied with Scott
5 Robinson representation. But the only reason why I said
6 that because he told me, before I went in front of the
7 judge, that I answer "yes, sir" to all the judge's
8 questions. He said if I didn't answer "yes, sir," the
9 judge was gonna make me go to trial and give me a life
10 sentence.

11 So I took his advice and answered "yes, sir" to all
12 the judge's questions. But if it wasn't for counsel error,
13 I would not plead guilty. I would have went to trial.

14 Q Can you explain, very briefly, what that -- what that
15 lawyer error was? What was the error he made?

16 A He didn't investigate the facts of my case by he
17 didn't interview me to discover self-defense.

18 Q Okay.

19 A And he didn't interview the witnesses.

20 Q Your second allegation is based on you not knowing the
21 difference between specific intent and intent. Can you
22 explain that to the Court, please?

23 A Yeah. I didn't -- I didn't understand -- I still
24 don't understand it, you know, because that's -- I had a
25 motive for being there.

CROSS-EXAMINATION BY MR. WHITMIRE - ERIC TINDAL

11

1 Q And how did that affect your ability to plead guilty
2 or not plead guilty?

3 A I didn't understand because he told me to answer "yes,
4 sir." I was under Scott Robinson [sic] advice.

5 Q Okay. Do you have anything further you'd like to say
6 to the Court?

7 A If it wasn't for counsel error, I would not plead
8 guilty. I wanted a trial.

9 Q Okay. Please answer any questions they may have.

10 CROSS-EXAMINATION BY MR. WHITMIRE:

11 Q Mr. Tindal, so it's your testimony that Mr. Robinson
12 coerced you into pleading guilty.

13 A Yes, sir.

14 Q And didn't you tell the Court that day, when the judge
15 came, that you were pleading guilty on your own free
16 volition, that noone was ---

17 A No.

18 Q --- making you?

19 A No. I -- I -- what I was under Scott Robinson advice.

20 Q But you ---

21 A He told -- he told me to answer "yes, sir," to all the
22 judge's questions. If I didn't, the judge was gonna take
23 me to trial and give me a life sentence. So I answered
24 "yes, sir." I took his advice. But if wasn't for counsel
25 error, I would not plead guilty and I'd have went to trial.

1 Q Didn't you tell Judge King that noone promised you
2 anything to get you to plead guilty?

3 A Under Scott Robinson advice.

4 Q But didn't you tell Judge King you were being truthful
5 that day, that you understood all of his questions?

6 A Under Scott Robinson advice.

7 Q So were you lying then or are you lying now? Did you
8 lie to Judge King?

9 A I was under Scott Robinson advice.

10 Q And would you briefly -- briefly tell me what it was
11 that he didn't investigate?

12 A He didn't investigate the facts of my case. He didn't
13 interview me to discover self-defense for the charge of
14 attempted murder. And he didn't interview my witnesses to
15 discover that there were witnesses willing to testify at
16 trial that I was living at that house with that alleged
17 victim at the time of the incident.

18 Q Mr. Tindal, weren't you looking at a lot of time for
19 these charges, possibly 60 years to life?

20 A He told me I could get a life sentence if I goes [sic]
21 to trial.

22 Q So wouldn't you say the plea offer that he was able to
23 get for you from the State was a good offer, 22 years?

24 A No. I never agreed to that.

25 Q But you did agree to it when you pled guilty.

DIRECT EXAMINATION BY MR. WHITMIRE - SCOTT ROBINSON 13

1 A On Mr. Scott Robinson advice.

2 Q But you never told the Court that you were pleading
3 guilty under the advice of counsel, that you were doing it
4 on your own free will.

5 A I was under Scott Robinson advice though. I did what
6 he told me to do.

7 MR. WHITMIRE: That's all, Your Honor.

8 THE COURT: Okay. Anything further?

9 MR. O'CONNOR: Your Honor, Plaintiff rests.

10 THE COURT: (To the witness) You can step down.

11 (The witness complies.)

12 MR. O'CONNOR: We rest, Your Honor.

13 THE COURT: Okay.

14 MR. WHITMIRE: Your Honor, the State calls Mr.
15 Robinson.

16 THE COURT: Okay.

17 SCOTT ROBINSON, having been first
18 duly sworn, testifies as follows:

19 COURT CLERK: State your name and spell your first and
20 last name for the record.

21 THE WITNESS: Scott Lamar Robinson, S-c-o-t-t, R-o-b-
22 i-n-s-o-n.

23 DIRECT EXAMINATION BY MR. WHITMIRE:

24 Q Mr. Robinson, good morning.

25 A Good morning.

1 Q Approximately how many times did you meet with Mr.
2 Tindal during the course of your representation of him?

3 A I would say half a dozen or more.

4 Q And you filed for the necessary discovery motions?

5 A Yes, I do that in every case.

6 Q Mr. Robinson, can you briefly describe the State's
7 case against Mr. Tindal and the charges he was facing?

8 A If I recall -- and I don't have the file in front of
9 me -- but I believe he was charged with burglary first,
10 kidnapping, and attempted murder.

11 Q And do you recall any of the evidence?

12 A Well, the alleged victim had -- and I don't remember
13 whether it was 15 or 17 -- but multiple stab wounds, and
14 Mr. Tindal was found at the scene with a butcher knife in
15 his abdomen, unconscious. And obviously there were some
16 photos.

17 And there was a 911 recording of the entire incident
18 that started, basically, from what the -- what the tape
19 showed is the victim called 911 when she discovered Mr.
20 Tindal in the home, went into a room, and shut the door.
21 Was talking to the 911 operator, the door was kicked in.
22 She dropped the phone and the rest of the incident was
23 recorded on that 911 recording where she was screaming and
24 begging him to stop and was pretty -- pretty damning
25 evidence.

DIRECT EXAMINATION BY MR. WHITMIRE - SCOTT ROBINSON

15

1 Q And do you believe that 911 tape would have been
2 admissible at trial?

3 A Yes.

4 Q And did you advise Mr. Tindal of this tape, the
5 strength of its potential use?

6 A Mr. Tindal and I listened to the tape one time
7 together, alone; and then we listened to it with his
8 mother, and there may have been another relative there.
9 But I now we listened to it together on two occasions: one
10 time just the two of us, and one time I think with at least
11 his mother present, yes.

12 Q Thank you. And you reviewed all discovery materials
13 with Mr. Tindal?

14 A I did. And we talked about -- initially, when I
15 talked with Mr. Tindal, before we had the discovery and the
16 911 tape -- and I don't remember whether it was in the
17 context -- context of the preliminary hearing or one of his
18 bond hearings -- but we talked about the self-defense issue
19 that he brought up in here today. And that there --
20 perhaps, his girlfriend, as he said, had set him up, was
21 framing him, had stabbed him, and then inflicted wounds
22 upon herself to do -- to do that. Then we got the tape and
23 listened to it, and then he told me at that point that he
24 couldn't really remember what happened.

25 So you know, with his testimony being "I don't

1 remember what happened" and the tape basically
2 corroborating the victim's version of the facts, I didn't
3 think that was a very reliable defense to gamble that kind
4 of time with.

5 Q Did you have a chance to investigate all the potential
6 beneficial witnesses that Mr. Tindal gave you?

7 A I don't really remember him telling me about any
8 witnesses. He may have told me that there were a couple of
9 people that were willing to testify that he was living
10 there, but as he -- as he said, the burglary first was not
11 my main concern in this.

12 It may very well have been that he was living with
13 her, and I think we had establishes that there was some
14 prior cohabitation. But even with the burglary gone out
15 the window, you know, the attempted murder and the
16 kidnapping charges were pretty severe. So -- and to those
17 charges there were no real witnesses.

18 Q And was Mr. Tindal attentive during your discussions
19 with him throughout this process?

20 A He seemed to be. At the first -- maybe the very first
21 bond hearing we had, he -- he was kind of out of it, under
22 some heavy medication at that time. But he had just been
23 released from the hospital. He was not taken immediately
24 to jail from the scene. He was taken to -- I think it was
25 Richland Memorial Hospital. Soon after he was released

DIRECT EXAMINATION BY MR. WHITMIRE - SCOTT ROBINSON 17

1 from there, we had a bond hearing and you could tell he was
2 still in pretty bad shape at that time.

3 But subsequent to that, once he recovered, he's -- he
4 was fine and engaged in conversation as we talked in detail
5 about his case.

6 Q Can you briefly describe why you had Mr. Tindal
7 evaluated?

8 A Well, Mr. Tindal related to me -- well, first of all,
9 when he started telling me that he couldn't remember what
10 had happened -- that he had blacked out and didn't know
11 what happened. And then the fact that, I think, his mother
12 had told me that he had some history or mental health
13 treatment of counseling or something of that nature. So
14 those two things, coupled with the severity of these
15 charges, I felt it was certainly my duty to -- to have him
16 evaluated, make sure that he did not have some insanity
17 defense or competency issues.

18 Q Do you recall Mr. Tindal having any issues
19 understanding the charges against him?

20 A Not -- not at all. Not in my conversations with him.

21 Q Thank you, Mr. Robinson. Just a few more questions.
22 Can you describe your guilty plea negotiations with the
23 State?

24 A Well, not with vivid detail or memory, but typically
25 Ms. Land would -- would, you know, send out a trial list

1 with Mr. Tindal's name on it, along with others's
2 obviously. And I -- and it would probably not have been
3 called for trial the first time this was put out there.
4 But we would have discussed the case.

5 And I do believe there was a prior offer, and I don't
6 recall what it was, whether it was 30 years or 27 years or
7 something, but it was a higher offer.

8 And I had discussed that with Mr. Tindal, and you
9 know, talked to him about trying to get the -- the time
10 lowered and -- and see what we could do to -- to do that.
11 And in my experience with Ms. Land, sometimes if you push
12 her to the point of picking a jury, you know, you get a
13 better offer. And that's what we did in this particular
14 case. She came down the day of, the morning of, or
15 something to that effect of the trial with a 22 year offer,
16 which I discussed with Mr. Tindal with his mother; and you
17 know, based on all of the circumstances, he felt that was
18 in his best interest. And I, quite frankly, agreed with
19 him.

20 Q And during these discussions you had with Mr. Tindal
21 regarding his plea negotiations, were other members of his
22 family present?

23 A His mother was -- the -- the day of trial that we
24 ultimately ended up, you know, entering he plea and getting
25 Ms. Land down to the 22-year offer, his mother was present

CROSS-EXAMINATION BY MR. O'CONNOR - SCOTT ROBINSON

19

1 and very involved because we listened to the tape; and I
2 wanted her to know what we were dealing with so that it --
3 it wouldn't be, as Mr. Tindal said, me telling him what to
4 do. That's -- that's not the way it works.

5 What I do is I tell them, quite frankly, that this is
6 your case and your life. I don't have to serve any time.
7 If you want to go to trial, that's what I'm here for,
8 that's my job. But I'm also here to advise you.

9 And I wanted his mother or somebody else in his family
10 to be involved in that as well, you know, because it
11 affects them tremendously more than it affects me.

12 So yes, I did discuss that with family members.

13 Q And Mr. Robinson, whose decision was it to plead
14 guilty?

15 A It was Mr. Tindal's.

16 Q And you didn't tell Mr. Tindal to lie to the judge or
17 pressure him.

18 A No, I did not.

19 MR. WHITMIRE: That's all, Your Honor.

20 THE COURT: Okay.

21 MR. WHITMIRE: Thank you, Mr. Robinson.

22 MR. O'CONNOR: May it please the Court?

23 CROSS-EXAMINATION BY MR. O'CONNOR:

24 Q Mr. Robinson ...

25 A Yes, sir.

1 Q Mr. Shaun Kent is a lawyer in your area. Is it true
2 that he was representing Mr. Tindal at the time?

3 A Not to my knowledge. I had had conversations with
4 Eric's mother and I think with Eric as well. But I had
5 talked with his mother. She had expressed a desire to hire
6 Mr. Kent, and I told her I certainly didn't have any
7 problem with that. You know, that -- that was their choice
8 and their prerogative and Mr. Kent is a very fine lawyer.
9 Whether they actually retained him, didn't retain him, I --
10 I really don't know what happened to that, but I ended up
11 representing Mr. Tindal at the trial and for ---

12 Q Did ---

13 A --- potential trial and the plea.

14 Q How far did it go in terms of the trial that day?

15 A I believe we picked the jury, and I'm not positive. I
16 don't recall -- I don't think we actually started the
17 trial. But we were there in preparation, ready to go, if
18 that's what Mr. Tindal elected to do.

19 Q Mr. Robinson, how many clients do you have at any
20 given time on average?

21 A A hundred and twenty - thirty. Somewhere in that
22 neighborhood I think.

23 Q Do you think you could give sufficient time to Mr.
24 Tindal's case dealing with 120/130 cases?

25 A Yeah. Because luckily I don't have to deal with them

1 all at one time. I believe that's why they give you the
2 trial list and especially crimes of -- of this severity.

3 Q How many times would you say that you did meet with
4 Mr. Tindal?

5 A At least a half a dozen.

6 Q All right. Do you recall where those places were,
7 where you met with him?

8 A They were mainly at the courthouse.

9 Q Okay. So how many times did you visit him at the
10 jail? Do you recall?

11 A I -- I don't recall. He said none and that may be
12 accurate from what I like to do. There's not a whole lot
13 of privacy down there. I will ask them, during a term of
14 court or for a bond hearing or something, to bring him up
15 and I have a lot more time to -- to talk.

16 Q Do you have his case file with you today?

17 A I do not.

18 Q Do you still have a case file?

19 A There -- one exists somewhere. What -- typically what
20 happens with the Public Defender's Office is when we close
21 a file, we send them the file, they scan it in; and that's
22 the end of that. So I do not -- I don't think I have a
23 physical file. It may be scanned into their system.

24 Q What did you review prior to coming to this PCR
25 hearing today?

1 A The -- his application.

2 Q Okay. All right. You -- did you advise him to plead
3 guilty or he was going to get a life sentence?

4 A No. I never have ever advised any client to plead
5 guilty. I have advised them of this is what happens if you
6 plead guilty; this is the best case scenario and worst case
7 scenario if you don't plead guilty. Because I'm very frank
8 with all of them at the end of the day -- win, lose, or
9 draw -- I go home.

10 Q Was he looking at a life sentence?

11 A If the burglary charge had stuck, yes, he was
12 potentially looking at a life sentence. And that's, you
13 know, part of what I have to advise him. Even though the
14 burglary may have been a weaker charge or a charge that we
15 could have beaten, I can't guarantee that. So in advising
16 him of what his potential time would be, I would include
17 the burglary charge, which was a burglary first, which does
18 carry up to life in prison.

19 Q And if he was in fact living in that home, do you
20 think that a burglary first charge would have stuck?

21 A I think we probably could beat the burglary first
22 charge, yes. But again, I can't guarantee a result of that
23 nature.

24 Q All right. Did you attempt to try to get a burglary
25 second in terms of the negotiated plea, as opposed to a

RE-DIRECT EXAMINATION BY MR. WHITMIRE - SCOTT ROBINSON 23

1 burglary first if it was that strong?

2 A I don't really recall doing that. No, sir. I was
3 more worried about the time frame, the -- the length of the
4 sentence, when I say "the time frame."

5 Q Okay.

6 MR. O'CONNOR: No further questions, Your Honor.

7 THE COURT: Okay. Anything further from the State?

8 MR. WHITMIRE: Just a few quick questions on re-
9 direct.

10 RE-DIRECT EXAMINATION BY MR. WHITMIRE:

11 Q Mr. Tindal's plea negotiation was --

12 (Unknown person coughs.)

13 THE COURT REPORTER: I'm sorry?

14 Q Would Mr. Tindal's plea negotiations -- all sentences
15 were set to run concurrent, right?

16 A That's correct.

17 Q And how much time was Mr. Tindal facing for his
18 attempted murder charge?

19 A Thirty years.

20 Q And he got what?

21 A 22.

22 Q Okay. And just one quick question regarding
23 substitution of counsel: Did you ever receive any notice
24 that Mr. Kent had -- took over Mr. Tindal's case?

25 A No. And again, I talked with his mother, Ms. Helen

RE-DIRECT EXAMINATION BY MR. WHITMIRE - SCOTT ROBINSON 24

1 Tindal, about this. She told me they were in the process
2 of trying to hire Shaun Kent and I told her that that would
3 be fine; that I would do whatever they needed me to do.
4 You know, they hadn't -- I didn't have a personal stake in
5 this. I had a job to represent Mr. Tindal and would be
6 glad to do so. If they hired Mr. Kent, then they -- they
7 would be doing well because he's a good attorney.

8 Q So that did not affect the quality of your
9 representation?

10 A Not at all.

11 MR. WHITMIRE: That is all, Your Honor.

12 THE COURT: Okay. Anything from you?

13 MR. O'CONNOR: Nothing further, Your Honor.

14 THE COURT: You can step down.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Anything further from the State?

17 MR. WHITMIRE: State rests.

18 THE COURT: Okay. All right. I will -- I assume you
19 don't have any reply?

20 MR. O'CONNOR: No, sir.

21 THE COURT: Then I'll review the file and let y'all
22 know my decision.

23 MR. WHITMIRE: Thank you, Your Honor.

24

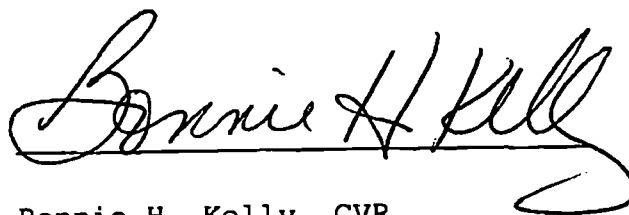
25

-- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Sumter County, South Carolina, on the 14th day of December, 2012.

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



Bonnie H. Kelly, CVR
Official Court Reporter

Columbia, South Carolina

October 10, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Eric Q. Tindal, #243834,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-14-595

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE

3/7/13

ORDER OF DISMISSAL

CLERK OF COURT
CLARENDON COUNTY SCBEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
20 FEB -5 PM 3:27

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 22, 2011. The Respondent made its Return on or about February 14, 2012. An evidentiary hearing was convened on December 14, 2012 at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James Brian O'Conner, Esquire. The Respondent was represented by John W. Whitmire, Esquire, of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Scott L. Robinson, Esquire. This Court had before it the records of the Clarendon County Clerk of Court, the guilty plea transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the January 2011 term of the Clarendon County Grand Jury for (1) Attempted Murder

and (2) Burglary—1st Degree (2011-GS-14-00039). Scott L. Robinson, Esquire, represented the Applicant. On July 12, 2011, the Applicant pled guilty before the Honorable Howard P. King. Pursuant to a negotiated sentence, he was sentenced to twenty-two years imprisonment for Attempted Murder and twenty-two years imprisonment for Burglary—1st Degree, sentences to be served concurrently. Applicant did not appeal his guilty plea or sentence.

At the August 14, 2012 evidentiary hearing, Applicant moved forward on two allegations of ineffective assistance of counsel: (1) failure to investigate Applicant's case; (2) involuntary guilty plea.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied 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 v. State,

286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Investigate

This Court finds this allegation is without merit. This Court finds plea counsel's testimony credible and Applicant's testimony not credible. This Court finds plea counsel is an experienced criminal defense attorney equipped to represent defendants in cases of this nature. This Court finds plea counsel conducted a sufficient investigation into Applicant's case.

Accordingly, plea counsel effectively advised Applicant during the course of representation. Plea counsel discussed the elements and punishments of the offense with Applicant. Plea counsel obtained discovery and adequately reviewed it with Applicant. Plea counsel reasonably investigated potential witnesses and defenses that Applicant provided him.

This Court finds that plea counsel reasonably investigated and advised Applicant on the strength of the State's case in relation to Applicant's potential defenses. Plea counsel stated that emergency dispatch recording of the offense rendered a self-defense strategy untenable. Plea counsel held the legally sound opinion that the recording would have been admissible at trial. Applicant presented no evidence to the contrary. Plea counsel also stated that the victim was willing to testify against Applicant at trial. Plea counsel diligently had Applicant undergo a mental evaluation which resulted in a finding that Applicant was not criminally insane. Plea counsel stated that Applicant had a strong defense to the Burglary—1st charge that he would have further pursued at trial.

This Court also finds plea counsel pursued a valid plea strategy. Plea counsel prepared for trial and strengthened his bargaining position in plea negotiations by waiting to until the Solicitor offered a favorable plea bargain at the eve of trial. Plea counsel stated that Applicant desired a favorable guilty plea bargain instead of proceeding to trial. Plea counsel stated that Applicant was facing a potential life sentence. As a result, Plea counsel obtained a favorable plea bargain for Applicant where Applicant's sentences would run concurrently under the thirty year maximum term of imprisonment he was facing for the attempted murder charge. Plea counsel was prepared to proceed to trial if Applicant rejected the offer.

This Court finds Applicant failed to present any evidence that proves plea counsel was

ineffective in investigating the case and advising him to plead guilty. An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Involuntary Guilty Plea

This Court finds Applicant's allegation that his guilty plea was involuntarily rendered is without merit. This Court finds plea counsel's testimony credible and Applicant's testimony not credible. Plea counsel stated that he did not coerce Applicant into pleading guilty. This Court also finds that plea counsel held the reasonable belief that Applicant understood their discussions and was able to communicate with counsel during the course of representation. Plea counsel thoroughly advised Applicant on the consequences of entering a guilty plea. Plea counsel further stated that Applicant's mother was present during these discussions where Applicant decided to accept the twenty-two year negotiated offer from the State.

Furthermore, this Court finds that the guilty plea hearing record shows that Applicant entered his guilty plea knowingly and voluntarily. At the guilty plea hearing, Applicant told the guilty plea judge that he was entering his plea freely and voluntarily. (Tr. 19, lines 8-9). Applicant also told the guilty plea judge that no one promised him anything in return for pleading guilty. (Tr. 19, lines 4-7). Additionally, Applicant told the guilty plea judge that he was completely satisfied with plea counsel and needed no additional time to consult with plea counsel before entering his guilty plea. (Tr. 20, lines 4-8).

Last, this Court finds Applicant failed to prove his allegation that his guilty plea was rendered involuntarily because plea counsel illegally represented him at the guilty plea hearing. Although Applicant had discussions with outside counsel on seeking his substitute representation, Applicant failed to present evidence that substitute counsel was retained. Applicant failed to produce an Order of Substitution. The record reflects that plea counsel was the counsel of record for Applicant at the guilty plea hearing.

Therefore, Applicant fails to meet his burden to prove that his guilty plea was involuntarily rendered. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant 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 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991).

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

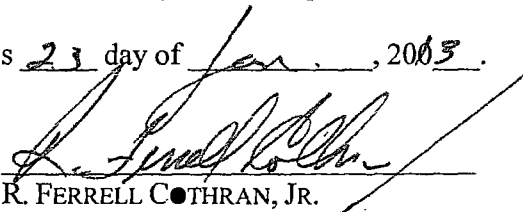
CONCLUSION

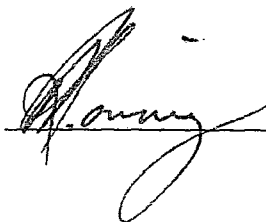
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his Application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 23 day of Jan., 2003.


R. FERRELL COTHAN, JR.
Presiding Judge
Fourth Judicial Circuit

 South Carolina.

101 3

MH

Eric Q. Tindal #243834
Lieber Corr. Inst. Stono B-48
P.O. Box 205
Ridgville, S.C. 29472

March 25, 2013

John W. Whitmire
Asst. Attorney General
S.C. Attorney General's Office
Rembert C. Dennis Building
P.O. Box 11549
Columbia, S.C. 29211-1549

Re: Eric Q. Tindal, #243834 v. State of South Carolina

Case No.: 2011-CP-14-595

Dear Mr. Whitmire,

Enclosed please find a copy of my Rule 59, SCRPC, Motion to Reconsider and Alter and Amend Judgment in the above case. Also, attached is my Certificate of Service.

Sincerely,

Eric Tindal

Eric Q. Tindal

File

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Eric Q. Tindal, #243834,
Applicant,

-VS-

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
2011-CP-14-595

CERTIFICATE OF SERVICE
BY MAIL

I, Eric Q. Tindal, #243834, the Applicant in the above-captioned case does hereby certify that I did on this 25 day of March, 2013, deposit true and exact copies of Applicant's Motion To Alter and Amend Judgment in the above-captioned case, Application for Post-Conviction Relief, in the State Indepartmental mail, at the Lieber Correctional Institution's mailroom, properly addressed to the Respondent's attorney:

John W. Whitmire, Asst. Attorney General
South Carolina Attorney General's Office
Rembert C. Dennis Building
P.O. Box 11549
Columbia, S.C. 29211-1549

and in the United States Mail ^{with proper prepaid first class postage affixed thereto,} and properly addressed to:

The Honorable R. Ferrell Cothran, Jr.
Resident Judge for the Third Circuit
P.O. Drawer 700
Manning, S.C. 29102

Applicant's Attorney of Record:
Law Office of Jim O'Connor
P.O. Box 97
Lexington, S.C. 29071

DATED this 25 day of March, 2013.

Eric Tindal

Eric Q. Tindal #243834
Lieber Corr. Inst. Stono B-48
P.O. Box 205
Ridgerville, S.C. 29472

Eric Q. Tindal #243834
 Lieber Corr. Inst. Stono B-48
 P.O. Box 205
 Ridgeville, S.C. 29472

March 25, 2013

Clerk of Court's Office
 For Clarendon County
 P.O. Drawer 700
 Manning, S.C. 29102

Re: Eric Q. Tindal #243834 v. State of South Carolina
 Case No.: 2011-CP-14-595 (PCR)

Dear Clerk,

Please find enclosed for filing with your Office the original and two (2) copies of Applicant's Motion To Reconsider and Alter and Amend Judgment in the above case, with the following attachments:

- 1) Certificate of Service,
- 2) Cover Letter to Jim O'Connor; Attorney for Applicant;
- 3) Cover Letter to John W. Whitmire, Attorney for Respondent;
- 4) Copy of Envelope with date received "LCI - March 18, 2013";
- 5) Copy of Rent Receipts #'s 969671 and 193424; and
- 6) Copy of Order of Dismissal.

Please file the original with your Office, clock-stamp the copies. Forward one copy to Judge Cothran, and return the other copy to me in the enclosed prepaid self-addressed envelope.

I thank you in advance for your assistance in this matter.

With Kind Regards,
 Eric Tindal
 Eric Q. Tindal

File

Eric Q. Tindal #243834
 Lieber Corr. Inst. Stono B-48
 P.O. Box 205
 Ridgeville, S.C. 29472
 March 25, 2013

Law Office of Jim O'Connor
 P.O. Box 97
 Lexington, S.C. 29071

Re: Eric Q. Tindal, #243834 v. State of South Carolina
 Case No. 2011-CP-14-595 (PCR)

Dear Mr. O'Connor,

I received the true certified copy of the Order of Dismissal in the above-referenced case, which I am the applicant, on Monday, March 8th, 2013. It was signed by Judge Cothran on January 23rd, 2013, and filed on February 5th, 2013.

I asked that a Rule 59, SCRPC, be filed to at least preserve my issues for certiorari but I have received nothing from you concerning Rule 59. I have taken the liberty to draft a Rule 59 motion, although it may be ineffectually drafted, I request that you either file it immediately or draft a motion to reconsider and/or alter and amend judgment in the denial of my PCR.

I am informed and believe that to have my "one bite of the apple" a Rule 59 motion must be filed to preserve for appellate review.

I am informed and believe that these issues were incorrectly ruled upon by the PCR court.

File my Rule 59 motion or draft one and file. I want this motion filed before you file a "Notice of Appeal." Should you elect to go forward with a Notice of Appeal against what I telling you. I will request that the Court of Appeals hold in abeyance or dismiss the the appeal and give you time to file Rule 59 motion.

I'm not waiving my right to file Rule 59 motion in my case. I'm looking forward to hearing from you as soon as possible. I am

Sincerely,
Eric Tindal
 Eric Q. Tindal

File

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Eric Q. Tindal, #243834
Applicant,

-VS-

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-14-595

APPLICANT'S MOTION TO ALTER
AND

AMEND JUDGMENT
(Rule 59, SCRPC)

COMES NOW, Applicant, Eric Q. Tindal, #243834, through counsel, pursuant to SCRPC Rule 59, who hereby moves this Honorable Court to:

I. Reconsider its ORDER OF DISMISSAL filed February 5th, 2013, and received by the undersigned on March 18th, 2013, in the above captioned Post-Conviction Relief case, a copy of which is attached hereto (hereafter "PCR"), with copy of envelope, and enter a new order/judgment granting the relief requested by Applicant [New Trial].

II. Amend or supplement the findings of fact and conclusions of law contained in its February 5th, 2013 Final Order.

III. The purpose of this motion is to request that the Court reconsider its findings and rulings so that issues raised and facts presented by the Applicant are adequately addressed for preservation review pursuant to South Carolina Appellate Court Rules, Rule 243 should the Court not find an alteration of the judgment appropriate. In support of this motion, Applicant respectfully asserts as follows:

1. Applicant's PCR Application was heard on December 14, 2012, by the Honorable R. Ferrell Cothran, Jr. at the Sumter County Courthouse.

2. At the conclusion of the hearing, Judge Cothran informed the parties that he would be taking the matter under advisement, but requested undersigned counsel and Assistant Attorney General John W. Whitmire to each prepare proposed Orders setting out their proposed findings of fact and conclusions of law.
3. Judge Cothran issued his written decision on January 23, 2013, which decision was journalized on the record of the Court on February 5th, 2013.
4. Applicant's attorney received a written copy of the signed and filed Order on March 15th, 2013, which Applicant received a certified true copy from attorney on March 18th, 2013.
5. Applicant respectfully requests that the Court amend or supplement its findings of fact and conclusions of law, reconsidering its February 5th, 2013, Order of Dismissal holding that plea counsel was not ineffective, on the following grounds:
 - (a). The Court incorrectly found that plea counsel's performance was not deficient in that plea counsel conducted a sufficient investigation into Applicant's case;
 - (i) The Court incorrectly found that plea counsel effectively advised Applicant during the course of representation;
 - (ii) The Court incorrectly found that plea counsel discussed the elements and punishments of the offense with Applicant;
 - (iii) The Court incorrectly found that plea counsel obtained discovery and adequately reviewed it with Applicant;
 - (iv) The Court incorrectly found that plea counsel reasonably investigated potential witnesses and defenses that Applicant provided him.

- (v) The Court incorrectly found that plea counsel reasonably investigated and advised Applicant on the strength of the State's case in relation to Applicant's potential defenses.
 - (vi) While plea counsel did have Applicant undergo a mental evaluation that resulted in a finding that Applicant was not criminally insane, trial counsel failed to request and have did, a criminal responsibility evaluation did on Applicant, and, the Court failed to address this issue.
 - (vii) The Court incorrectly found that plea counsel pursued a valid plea strategy, prepared for trial and strengthened his bargaining position in plea negotiations by waiting to until the Solicitor offered a favorable plea bargain at the eve of trial.
 - (viii) The Court incorrectly found that desired a favorable plea bargain instead of proceeding to trial, and that plea counsel was prepared to proceed to trial if Applicant rejected the plea offer.
 - (ix) The Court incorrectly found that Applicant failed to present any evidence that proves plea counsel was ineffective in investigating the case and advising him to plead guilty.
6. Applicant respectfully requests that the Court amend or supplement its findings of fact and conclusions of law, reconsidering its February 5th, 2013, Order of Dismissal holding that Applicant entered his guilty plea knowingly and voluntarily.
- (a) The Court incorrectly found that:
 - (i) Applicant's testimony was not credible, and plea counsel's testimony credible; and that Applicant understood discussions and was able to communicate with counsel during the course of representation.
 - (i) The Court incorrectly found that Applicant did not retain outside counsel to represent him at a trial.

by the court incorrectly found that.

108
i) Applicant testimony was not credible and plea counsell's testimony credible and that Applicant understood discussions and was able to communicate with counsel during the course of representation

ii) The court incorrectly found that Applicant did not retain outside counsel to represent him at a trial.

FINDINGS OF FACT

Whether or not the Court grants the relief requested in item I above, Applicant respectfully submits that the Court should amend or supplement its findings of fact to include the following, which, upon information and belief was proved through Applicant's testimony at the PCR hearing:

7. That trial counsel was ineffective for advising Applicant's ~~testimony~~ to plead guilty to the offense of Burglary, First Degree and attempted murder when he failed to investigate the facts of Applicant's case.

8. That trial counsel's failure to investigate and interview witnesses and obtain police reports of victim's violent actions towards Applicant in the past rendered Applicant's plea involuntary, unknowing and unintelligent.

9. Applicant further submits that trial Counsel testified on July 11th 2011 hearing trial counsel testified that he was not prepared to represent Applicant.

10. That trial counsel spoke with Applicant for approximately one (1) hour prior to plea hearing.

1. Failed to contact and interview witnesses that would have testified on Applicant's behalf at trial.

2. For the record, that PCR attorney didn't contact Applicant nor Applicant's witnesses to let them know where the PCR hearing would be held at. Applicant thought that the PCR hearing would be at the Clarendon County Court house.

Applicant's witnesses went to the Clarendon County Court house too because they thought the PCR hearing was going to be held there because the Applicant's PCR attorney did not contact them to let them know where it was going to be held.

~~County Courthouse in time to testify~~

13. That Applicant was not guilty of Burglary First Degree, that Applicant resided at the apartment with the alleged victim, paid the rent, and had a set of keys for apartment. See attached Receipts for rent paid by Mrs. Helen Tindal for the Applicant. Mrs. Helen Tindal, Applicant's mother, oversaw the Applicant's financial and mental health situations.
14. That trial counsel failed to investigate the alleged victim's assaulting the Applicant by attempting to run Applicant over with automobile that was caught on police video.
15. That trial counsel failed to advise Applicant of potential self-defense defense and that had Applicant gone to trial Applicant could have requested a jury charge of "self-defense, and that Judge Cothran's finding was incorrect that Applicant was not in a self-defense situation.
16. That trial counsel failed to have a criminal responsibility evaluation ~~did~~ on the Applicant.

Ineffective Assistance Of Counsel And Involuntary Guilty Plea

Trial counsel's failure to do any pretrial investigation of both factual and legal issues deprived Applicant of the ability to make a decision as to plausible defenses; i.e., "self-defense" jury charge, and that Applicant was not criminally responsible, as to whether or not plea or proceed to trial.

Trial counsel's failure to research the applicable laws in effect that pertained to Applicant's arrest, pretrial investigation and court proceedings rendered Applicant's plea of guilty involuntary. *Strickland v. Washington*, 466 U.S. 668 and *Hill v. Lockhart*, 474 U.S. 52.

Trial counsel's inactions denied Applicant the effective assistance of counsel and rendered his plea of guilty involuntary, unknowing and unintelligent when counsel encouraged Applicant to plead guilty without conducting any investigation.

For the reasons set forth above, Applicant requests that the Court reconsider its Order of Dismissal filed February 5th, 2013, and amend same to grant the relief sought by Applicant in his PCR Application.

Respectfully Submitted,

Jim O'Connor, Attorney for Applicant
P.O. Box 97
Lexington, S.C. 29071

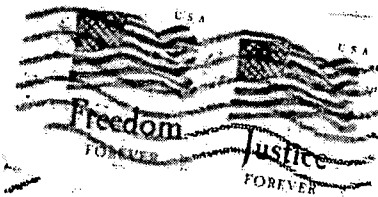
Eric Tindal
Eric Q. Tindal #243834
Lieber Corr. Inst. Stono B-48
P.O. Box 205
Ridgeville, S.C. 29472

March 25, 2013
Ridgeville, South Carolina

LAW OFFICE OF JIM O'CONNOR
PO BOX 97
LEXINGTON, SC 29071

COLUMBIA SC 290

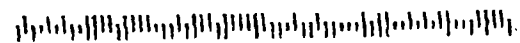
16 MAR 2013 PM 3 L



SB48

ATTORNEY MAIL
Lieber Correctional Institution
ATTN: Inmate Eric Tindal (243834)
PO Box 205
Ridgeville, SC 29472

29472020505



RECEIPT

DATE 5-2-11 No. 969671

RECEIVED FROM Helen Lindal \$ 1000.00

One thousand & 00/100 DOLLARS

☐ FOR RENT Eric Lindal

☐ FOR

ACCOUNT	<u>7500.00</u>
PAYMENT	<u>1000.00</u>
BAL. DUE	<u>6500.00</u>

☒ CASH
☐ MONEY ORDER
☐ CHECK
☐ CREDIT CARD

FROM _____ TO _____

BY Helen Bordman

2B: 1182

696-4173

225-3021

300 E. South St.
 Apt. 28
 Manning, SC

RECEIPT DATE 7-1-11 No. 193424

RECEIVED FROM Helen Lindal \$ 740.00

Seven hundred forty & 00/100 DOLLARS

☐ FOR RENT Eric Lindal

☐ FOR

ACCOUNT	<u>6300.00</u>
PAYMENT	<u>740.00</u>
BAL. DUE	<u>5560.00</u>

☒ CASH
☐ CHECK
☐ MONEY ORDER
☐ CREDIT CARD

FROM _____ TO _____

BY Helen Bordman

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

Eric Q. Tindal, #243834,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-14-595

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE

3/7/13

ORDER OF DISMISSAL

Brenda S. Roberts
CLERK OF COURT
CLARENDON COUNTY SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 22, 2011. The Respondent made its Return on or about February 14, 2012. An evidentiary hearing was convened on December 14, 2012 at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James Brian O'Conner, Esquire. The Respondent was represented by John W. Whitmire, Esquire, of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Scott L. Robinson, Esquire. This Court had before it the records of the Clarendon County Clerk of Court, the guilty plea transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the January 2011 term of the Clarendon County Grand Jury for (1) Attempted Murder

and (2) Burglary—1st Degree (2011-GS-14-00039). Scott L. Robinson, Esquire, represented the Applicant. On July 12, 2011, the Applicant pled guilty before the Honorable Howard P. King. Pursuant to a negotiated sentence, he was sentenced to twenty-two years imprisonment for Attempted Murder and twenty-two years imprisonment for Burglary—1st Degree, sentences to be served concurrently. Applicant did not appeal his guilty plea or sentence.

At the August 14, 2012 evidentiary hearing, Applicant moved forward on two allegations of ineffective assistance of counsel: (1) failure to investigate Applicant's case; (2) involuntary guilty plea.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied 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 v. State,

286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Investigate

This Court finds this allegation is without merit. This Court finds plea counsel's testimony credible and Applicant's testimony not credible. This Court finds plea counsel is an experienced criminal defense attorney equipped to represent defendants in cases of this nature. This Court finds plea counsel conducted a sufficient investigation into Applicant's case.

Accordingly, plea counsel effectively advised Applicant during the course of representation. Plea counsel discussed the elements and punishments of the offense with Applicant. Plea counsel obtained discovery and adequately reviewed it with Applicant. Plea counsel reasonably investigated potential witnesses and defenses that Applicant provided him.

This Court finds that plea counsel reasonably investigated and advised Applicant on the strength of the State's case in relation to Applicant's potential defenses. Plea counsel stated that emergency dispatch recording of the offense rendered a self-defense strategy untenable. Plea counsel held the legally sound opinion that the recording would have been admissible at trial. Applicant presented no evidence to the contrary. Plea counsel also stated that the victim was willing to testify against Applicant at trial. Plea counsel diligently had Applicant undergo a mental evaluation which resulted in a finding that Applicant was not criminally insane. Plea counsel stated that Applicant had a strong defense to the Burglary—1st charge that he would have further pursued at trial.

This Court also finds plea counsel pursued a valid plea strategy. Plea counsel prepared for trial and strengthened his bargaining position in plea negotiations by waiting to until the Solicitor offered a favorable plea bargain at the eve of trial. Plea counsel stated that Applicant desired a favorable guilty plea bargain instead of proceeding to trial. Plea counsel stated that Applicant was facing a potential life sentence. As a result, Plea counsel obtained a favorable plea bargain for Applicant where Applicant's sentences would run concurrently under the thirty year maximum term of imprisonment he was facing for the attempted murder charge. Plea counsel was prepared to proceed to trial if Applicant rejected the offer.

This Court finds Applicant failed to present any evidence that proves plea counsel was

ineffective in investigating the case and advising him to plead guilty. An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Involuntary Guilty Plea

This Court finds Applicant's allegation that his guilty plea was involuntarily rendered is without merit. This Court finds plea counsel's testimony credible and Applicant's testimony not credible. Plea counsel stated that he did not coerce Applicant into pleading guilty. This Court also finds that plea counsel held the reasonable belief that Applicant understood their discussions and was able to communicate with counsel during the course of representation. Plea counsel thoroughly advised Applicant on the consequences of entering a guilty plea. Plea counsel further stated that Applicant's mother was present during these discussions where Applicant decided to accept the twenty-two year negotiated offer from the State.

Furthermore, this Court finds that the guilty plea hearing record shows that Applicant entered his guilty plea knowingly and voluntarily. At the guilty plea hearing, Applicant told the guilty plea judge that he was entering his plea freely and voluntarily. (Tr. 19, lines 8-9). Applicant also told the guilty plea judge that no one promised him anything in return for pleading guilty. (Tr. 19, lines 4-7). Additionally, Applicant told the guilty plea judge that he was completely satisfied with plea counsel and needed no additional time to consult with plea counsel before entering his guilty plea. (Tr. 20, lines 4-8).

Last, this Court finds Applicant failed to prove his allegation that his guilty plea was rendered involuntarily because plea counsel illegally represented him at the guilty plea hearing. Although Applicant had discussions with outside counsel on seeking his substitute representation, Applicant failed to present evidence that substitute counsel was retained. Applicant failed to produce an Order of Substitution. The record reflects that plea counsel was the counsel of record for Applicant at the guilty plea hearing.

Therefore, Applicant fails to meet his burden to prove that his guilty plea was involuntarily rendered. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant 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 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991).

●ther Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

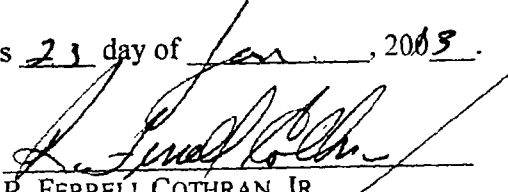
CONCLUSION

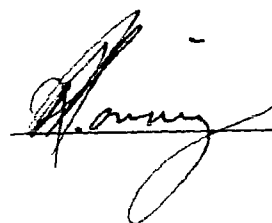
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his Application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 23 day of Jan, 2003.


R. FERRELL COTHAN, JR.
Presiding Judge
Fourth Judicial Circuit

 South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Eric Q. Tindal,
S.C.D.C. No. 243834

Applicant,

v.

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE

1/8/2014

*Bonnie H. Roberts*CLERK OF COURT
CLARENDON COUNTY, SCORDER DENYING RULE 59, SCRPC,
MOTION TO ALTER OR AMEND

This matter comes before the Court by way of the Applicant's *pro se* motion to alter or amend pursuant to Rule 59, SCRPC. This matter originally came before the Court by way an Application for post-conviction relief (PCR) filed November 11, 2011. A hearing was held at the Sumter County Courthouse on December 14, 2012. The Applicant was present and represented by James Brian O'Conner, Esquire. The Respondent was represented by Assistant Attorney John W. Whitmire. By Order dated January 23, 2013, this Court dismissed the Application.

This Court dismisses Applicant's Rule 59(e), SCRPC motion because it was a pro se filing made while the Applicant was represented by counsel. See Rule 11(a), SCRPC; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal). Furthermore, the previous order fully comports with the requirements of Rule 52(a), SCRPC.

IT IS THEREFORE ORDERED:

1. That the Applicant's motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 17 day of May, 2013

R. FERRELL COTHRAN, Jr.
Presiding Judge
Third Judicial Circuit

_____, South Carolina

122

STATE OF SOUTH CAROLINA

County of CLARENDONEric Q. Tindal, #243834

Full name and prison number (if any) of Applicant

v.

State of South Carolina

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICEDATE 7/15/2015Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC
APPLICATION FOR

POST-CONVICTION RELIEF

2015 JUL 14 PM 3:27

BEULAH B. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SCINSTRUCTIONS - 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 South Carolina Department of Corrections -
Lieber Correctional Institution
2. Name and location of Court which imposed sentence Clarendon County Court
of General Sessions; Hon. Howard P. King, presiding judge.
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) Attempted Murder; 2011-GS-14-00039

(b) Burglary - 1st Degree; 2011-GJ-14-00034

123

(c) _____

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

(a) July 12, 2011; twenty-two years

(b) July 12, 2011; twenty-two years, sentences to

(c) be served concurrently

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

No

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

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) N/A

(b) _____

(c) _____

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

(a) Ineffective Assistance of PCR counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): PCR counsel was ineffective for failing to file an

(a) appeal/certiorari of the denial of Applicant's PCR(b) Applicant advised PCR counsel to file both a "Rule 59 Motion(c) to Alter or Amend" before filing a "Notice of Appeal"

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? yes(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? yes

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

(a) the specific nature thereof: 2011-CP-14-595i. Application for Post-Conviction Reliefii. Rule 59(e) Motion to Alter or Amend Judgmentiii. Court of Common Pleas for Clarendon County

iv. _____

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

i. Court of Common Pleas for Clarendon Countyii. Manning, South Carolina

iii. _____

iv. _____

(c) the disposition thereof:

i. ~~March 7, 2013 filed~~; Dismissed with prejudice

ii. May 17, 2013, filed January 8, 2014 denied

iii. and dismissed

iv. _____

(d) the date of each such disposition:

i. Signed January 23, 2013; Filed February 5, 2013

ii. January 8, 2014

iii. _____

iv. _____

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

i. N/A

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?

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: PCR ineffective for failing to file
 (a) appeal/certiorari of denial of Applicant's PCR
 (b) first opportunity to raise ineffective assistance of
 (c) PCR counsel for failing to file appeal/certiorari of denial
of Applicant's PCR 2011-CP-14-595
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (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. Scott L. Robinson, Esquire, address not available
 ii. Law Office of Jim O'Connor, Post Office
Box 97, Lexington, South Carolina 29071
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. plea and sentencing
 ii. PCR
 iii. _____

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

Austin v. State review of denial of PSR - 2011-
CP-14-595

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 DORCHESTER)

VERIFICATION

I, Eric Q. Tindal, #243834, 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.

X Eric Tindal

SWORN to and subscribed before me this 6th
 day of July, 2015.

Lucheen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

BEULAH G. ROBERTS
 CLERK OF COURT
 2015 JUL 14 PM 3:27

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Eric Q. Tindal, #243834,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-14-345

**RETURN AND MOTION TO DISMISS
ALL CLAIMS EXCEPT AUSTIN REVIEW**

In response to the post-conviction relief application filed July 15, 2015, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the January 2011 term of the Clarendon County Grand Jury for (1) Attempted Murder and (2) Burglary 1st (2011-GS-14-0039). He was represented by Scott L. Robinson, Esquire. On July 12, 2011, the Applicant pled guilty to before the Honorable Howard P. King. Pursuant to a negotiated sentence, he was sentenced to twenty two (22) years imprisonment for Attempted Murder and to twenty two (22) years imprisonment for Burglary 1st, sentences to be served concurrently. The Applicant did not appeal his guilty plea or sentence.

The Applicant subsequently filed an application for post-conviction relief (PCR) on November 22, 2011 (C.A. No. 2011-CP-14-595). An evidentiary hearing into the matter was convened on December 14, 2012, at which the Applicant was present and represented by James Brian O'Connor, Esquire. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of trial counsel.
 - a. Failure to investigate
2. Involuntary guilty plea

The Honorable R. Ferrell Cothran denied and dismissed Applicant's application with prejudice by written Order dated January 21, 2011. Applicant submitted a pro-se motion to alter or amend the order of dismissal pursuant to Rule 59(e) SCRCP. Judge Cothran denied and dismissed the motion by order filed January 8, 2014. No appeal was filed.

II.

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

1. Ineffective assistance of PCR Counsel
 - a. PCR Counsel was ineffective for failing to file an appeal/certiorari of the denial of Applicant's PCR. Applicant advised PCR Counsel file both a Rule 59 motion to alter or amend before filing a "notice of appeal."

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

III.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

[Signature block on following page]

V.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to a review of his first PCR application pursuant to Austin v. State, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. Respondent requests counsel be appointed and an evidentiary hearing be held solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

ALAN WILSON
Attorney General

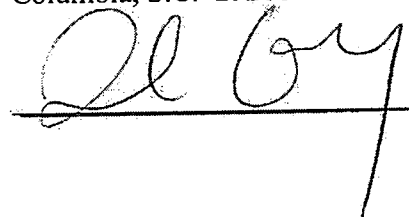
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:

A handwritten signature in dark ink, appearing to read "D. Gourley", is written over a horizontal line.

September 23, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

ERIC Q. TINDAL, #243834,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

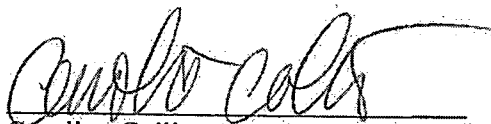
2015-CP-14-345

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 and Motion to Dismiss All Claims Except Austin Review** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 The Boozer Law Firm, LLC
 807 Gervais Street, Suite 203
 Columbia, SC 29201

DATED this 23rd day of September, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Clarendon	)	Case No. 2015-CP-14-00345
	)	
Eric Q. Tindall,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

November 18, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Tanya A. Gee, Judge

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

Lance S. Boozer, Esquire
Attorney for the Plaintiff

Daniel Gourley, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E XWITNESS/DESCRIPTIONPAGE NUMBER

Eric Tindall

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Jim O'Connor

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Ruling..... 16

Court Reporter Certification..... 18

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 NOVEMBER 18, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 10:47 a.m.)

5 THE COURT: All right. Mr. Gourley?

6 MR. GOURLEY: Yes, Your Honor. This is Eric Tindall
7 versus the State of South Carolina, Docket Number 2015-CP-14-
8 345. He's presently confined in the South Carolina Department
9 of Corrections pursuant to orders of commitment of the
10 Clarendon County Clerk of Court.

11 He was indicted at the January 2011 term of the Clarendon
12 County Grand Jury for attempted murder and burglary in the
13 first degree. He was represented by Mr. Robinson.

14 On July 12th, 2011, he pled guilty before the Honorable
15 Howard P. King. Pursuant to a negotiated sentence, he was
16 sentenced to a 22-year term of imprisonment for attempted
17 murder and 22 years for burglary first. Those were served
18 concurrently. He did not appeal his guilty plea or sentence.

19 He subsequently filed an application for PCR on November
20 22nd, 2011. An evidentiary hearing was heard into the matter
21 on December 14th, 2012. He was represented by Mr. O'Connor,
22 and the applicant raised various issues of ineffective
23 assistance of counsel and involuntary guilty plea. The
24 Honorable R. Ferrell Cothran denied and dismissed applicant's
25 application with prejudice by written order dated January 21st,

1 2011 [sic].

2 The applicant submitted a pro se Motion to Alter or Amend
3 the Order of Dismissal pursuant to Rule 59(e). Judge Cothran
4 denied and dismissed that motion by order of January -- filed
5 January 8th, 2014.

6 He subsequently filed his second PCR application on July
7 15th, 2015, alleging ineffective assistance of PCR counsel for
8 failing to file a 59(e) and/or notice of appeal. The State
9 has filed its return and motion to dismiss all claims except
10 the Alston review on September 23rd, 2015, and he is
11 represented in this matter by Mr. Boozer.

12 THE COURT: All right. Mr. Boozer?

13 MR. BOOZER: Thank you, Your Honor. If it pleases the
14 Court, we would go ahead and call Mr. Eric Tindall to the
15 stand.

16 THE COURT: All right. Mr. Tindall, if you could, come
17 forward and be sworn in, please.

18 THE CLERK: Place your left hand on the Bible and raise
19 your right hand. Excuse me. State your name, please.

20 THE APPLICANT: Eric Quintell Tindall.

21 THE CLERK: Do you solemnly swear or affirm your
22 testimony to the Court shall be the truth, the whole truth,
23 and nothing but the truth, so help you God?

24 THE APPLICANT: Yes, sir.

25 THE CLERK: Thank you. Come around here, please, sir.

ERIC TINDALL - DIRECT BY MR. BOOZER

1 Please state your full name --

2 THE APPLICANT: Eric --

3 THE CLERK: -- and spell your last name for the record.

4 THE APPLICANT: Eric Quintell Tindall. That's T-i-n-d-a-
5 l-l.

6 ERIC TINDALL, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BOOZER:

10 Q: Mr. Tindall, how are you doing today?

11 A: I'm fine.

12 Q: Good. Do you know why we're here today?

13 A: Yes, sir.

14 Q: Okay. Why is that?

15 A: Because I'm here -- because I'm here to file my motion on
16 Rule 59.

17 Q: All right. You filed a post-conviction relief
18 application?

19 A: Yes, sir.

20 Q: And in that post-conviction relief application, you've
21 alleged that your lawyer basically failed to file a Rule 59(e)
22 motion or appeal your prior PCR?

23 A: Yes, sir.

24 Q: Okay. And what you're asking this Court today to do is
25 to grant you basically a belated appeal of your prior PCR?

ERIC TINDALL - DIRECT BY MR. BOOZER

1 A: Yes, sir.

2 Q: All right. Who represented you in that prior PCR
3 application?

4 A: Jim O'Connor.

5 Q: All right. And Mr. O'Connor -- he handled your PCR for
6 you?

7 A: Yes, sir.

8 Q: All right. And y'all had a hearing?

9 A: Yes, sir.

10 Q: And that was denied?

11 A: Yes, sir.

12 Q: All right. When was it denied?

13 A: It was -- Judge Cothran written this issue January the
14 23rd, 2013.

15 Q: Let's -- let's -- let's -- I'll help you out a little
16 bit. How about January 21st, 2011, when he denied the PCR?

17 A: 2011?

18 Q: Yeah.

19 A: No, it wasn't 2011.

20 Q: It wasn't 2011? Was it 2013 then?

21 A: Let me see.

22 Q: Excuse me. You helped me out. It was 2013?

23 A: Yes, sir.

24 Q: Okay.

25 A: And it was filed on February the 5th, 2013, the final

ERIC TINDALL - DIRECT BY MR. BOOZER

1 order.

2 Q: Okay. So your case was denied and did you ask your
3 lawyer to file either an appeal or a Rule 59(e) for you?

4 A: Yes, sir.

5 Q: All right. When did you ask him to file?

6 A: I asked him to file me a Rule 59 and a notice of appeal,
7 but I never heard nothing from him since. I mean after I got
8 denied, I ain't never heard nothing else from my lawyer.

9 Q: How did you ask him?

10 A: Huh?

11 Q: How did you ask him?

12 A: Okay.

13 Q: Did you write him a letter?

14 A: Yes, sir.

15 Q: All right.

16 A: I wrote him a letter and I didn't get nothing back in
17 response.

18 Q: Okay. Do you have a copy of that letter with you?

19 A: No, sir.

20 Q: All right. Do you know when you wrote the letter?

21 A: I think it was in -- I think it was in March. Around
22 about March during the same year, 2013.

23 A: Well, let me ask you this. Did you know that your PCR
24 application had been denied?

25 A: No, sir. Well, it took me a minute until -- I didn't

ERIC TINDALL - DIRECT BY MR. BOOZER

1 heard anything until I had to, you know, wrote the Court and
2 see what was going on. And then they told me -- you know what
3 I'm saying?

4 Q: When you say a minute, how long did it take before you
5 found out your PCR had been denied?

6 A: About four months.

7 Q: About four months?

8 A: Uh-huh.

9 Q: All right. What did you do after that? Did you try and
10 file anything on your own?

11 A: Yes, sir.

12 Q: What did you do?

13 A: I tried to file a Rule 59.

14 Q: All right. You tried to file a Rule 59(e) motion?

15 A: Yeah.

16 Q: And what happened?

17 A: Because I asked -- well, they -- they wrote me back. I
18 got a letter from the Supreme Court August the 28th saying that
19 they looked in the -- in their -- in the record in their
20 office and they couldn't find no -- they didn't find no -- no
21 file of me filing for an appeal or a notice -- I mean a Rule
22 59, a motion.

23 Q: You had actually gotten a letter back from the court
24 saying that --

25 A: They --

ERIC TINDALL - DIRECT BY MR. BOOZER

1 Q: -- you had tried to file a pro se motion?

2 A: Yeah. They didn't file anything on it. That's how I
3 didn't know that my lawyer really didn't do anything.

4 Q: All right. So obviously you want an appellate court to
5 review your PCR and you want this Court to grant a belated
6 appeal for you?

7 A: Yes, sir.

8 Q: Okay.

9 MR. BOOZER: Your Honor, I have no further questions of
10 this witness.

11 THE COURT: All right. Mr. Gourley?

12 MR. GOURLEY: Thank you, Judge.

13 CROSS-EXAMINATION

14 BY MR. GOURLEY:

15 Q: Mr. Tindall, when did you ask Mr. O'Connor to file an
16 appeal?

17 A: It was during March. It was in the month of March of
18 2013.

19 Q: Okay.

20 A: I don't remember what day it was.

21 Q: Okay. So after you got the order of dismissal denying
22 everything, that's when you said, hey, I want to appeal this?

23 A: Yes, sir.

24 Q: Okay.

25 MR. GOURLEY: Thank you so much. Thank you, Judge.

JIM O'CONNOR - DIRECT BY MR. GOURLEY

1 THE COURT: All right. Thank you. You can step down.

2 THE APPLICANT: All right.

3 MR. BOOZER: No further witnesses by the applicant, Your
4 Honor.

5 THE COURT: All right. Any witnesses for the State?

6 MR. GOURLEY: Yes, Your Honor. We'd call Mr. O'Connor.

7 THE CLERK: Put your left hand on the Bible and raise
8 your right hand. State your name, please.

9 THE WITNESS: Jim O'Connor.

10 THE CLERK: Do you solemnly swear or affirm your
11 testimony to the Court shall be the truth, the whole truth,
12 and nothing but the truth, so help you God?

13 THE WITNESS: I swear.

14 THE CLERK: Thank you. Have a seat up here, please.
15 Please state your full name and spell your last name for the
16 record.

17 THE WITNESS: James Brian O'Connor, O-c-o-n-n-o-r.

18 JIM O'CONNOR, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GOURLEY:

22 Q: Mr. O'Connor, you were appointed to represent Mr.
23 Tindall?

24 A: Yes, sir.

25 Q: Okay. And did you have a discussion with Mr. Tindall

JIM O'CONNOR - DIRECT BY MR. GOURLEY

1 about an appeal?

2 A: I did not.

3 Q: Okay. Did he ever request you to file an appeal?

4 A: No, sir.

5 Q: Okay. And had he requested you to file an appeal, would
6 you have filed one?

7 A: Yes, sir.

8 MR. GOURLEY: Thank you. That's all I have.

9 THE COURT: All right. Mr. Boozer?

10 MR. BOOZER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BOOZER:

13 Q: Mr. O'Connor, did he ever ask you to file any sort of
14 document for him?

15 A: I had -- for the record, I would say, like, timeline
16 wise, we had the hearing in December. As of March, I hadn't
17 received a copy of the order yet. So on March 13th, I wrote a
18 letter to the Attorney General's Office and I got a copy of
19 the order on March 21st.

20 I sent out a copy of that order to him with instructions
21 and everything else and what the order reflected. And on
22 March 23rd -- I'm sorry -- March 25th, I got a letter from him
23 indicating specifically not to file a notice of appeal because
24 he wanted to file the Rule -- a motion to reconsider. And if
25 I were to file notice of intent to appeal, he'll ask the court

JIM O'CONNOR - CROSS BY MR. BOOZER

1 to dismiss it or hold it in abeyance, and he used the words
2 hold in abeyance. So I was instructed not to file a notice of
3 appeal.

4 Q: Was it your understanding that he wanted you to file a
5 59(e) motion?

6 A: No. He had already filed. The date -- the date March
7 25th is when he wrote this letter and at the same time, March
8 25th, he filed his motion for reconsideration. It was
9 subsequently dismissed I think in August, a few months later.

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

11 THE COURT: You may.

12 BY MR. BOOZER:

13 Q: May I see a copy of the letter?

14 A: Yes.

15 Q: Do you have it? Thank you. Has he seen this?

16 A: I -- I do not believe so. I believe I showed it --
17 that's what we were discussing earlier, but I don't believe
18 the Attorney General's Office has seen it.

19 (WHEREUPON, there was a pause in the proceedings as
20 counsel conferred.)

21 BY MR. BOOZER:

22 Q: Mr. O'Connor, I was taking a look at a letter that's
23 dated March 25th, 2013, that you actually gave me from your
24 file. In looking at this letter, this is from Mr. Tindall to
25 you, March 25th, 2013, in which he indicates he received the

JIM O'CONNOR - CROSS BY MR. BOOZER

1 order of dismissal and that he's asked --

2 I asked that a Rule 59 be filed to at least preserve my
3 issues, but I've received nothing from you concerning Rule 59.
4 I've taken the liberty to draft a 59 motion. Although it may
5 be -- it may be inartfully drafted, I request you either file
6 it or draft a motion to reconsider and alter or amend judgment
7 in the denial of my PCR. I'm informed and believe that my --
8 that to have my one bite of the apple, a Rule 59 motion must
9 be filed to preserve for appellate review. I'm informed and
10 believe these issues were incorrectly ruled upon by the PCR
11 Court. File my 59 motion or draft one and file. I want this
12 motion filed before you file a notice of appeal. Should you
13 elect to go forward with a notice of appeal against what I'm
14 telling you, I request the Court of Appeals hold in abeyance
15 or dismiss the appeal and give you time to file the 59(e) or
16 59 motion. I'm not waiving my right to file a Rule 59 motion
17 in my case. I look forward to hearing from you as soon as
18 possible.

19 Did you respond to this letter?

20 A: To him directly?

21 Q: Yes, sir.

22 A: No. Now, the Rule 59 motion was filed at the same time.
23 I know March 25th. So I called the Attorney General's Office.
24 Whether or not I -- I'm sure I responded to it. I don't know
25 that I put -- I have a letter indicating such; so I don't

JIM O'CONNOR - CROSS BY MR. BOOZER

1 know, to be honest with you. But the Rule 59 motion was filed
2 at that same time as that was done.

3 Q: And he's got -- and I'm just interpreting this letter. I
4 asked that a Rule 59 be filed. Do you know if he asked you at
5 any time prior to to file that?

6 A: No, I don't think so.

7 Q: Okay.

8 MR. BOOZER: Your Honor, I don't have any further
9 questions.

10 THE COURT: Okay. Mr. Gourley?

11 MR. GOURLEY: I don't have anything further, Your Honor.

12 THE COURT: All right. You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you. Any closing arguments?

15 MR. BOOZER: Your Honor, no closing. However, my client
16 just handed me a note that appears he wrote before today and
17 it's got an additional issue. I imagine the AG, of course,
18 would object to that, but just for the record, may I read what
19 was given to me?

20 THE COURT: You may.

21 MR. BOOZER: Thank you, Your Honor. His additional issue
22 is that Judge Cothran should have been recused from ruling on
23 his PCR because of a conflict of interest. He says he was
24 familiar with his case based on a prior ruling denying his
25 bail on three prior occasions, and then he's got -- and this

1 is his quote. Surely this went beyond judicial discretion. I
2 just put that in for his benefit as well.

3 THE COURT: All right. What's the State's position on me
4 considering that additional issue raised today?

5 MR. GOURLEY: Any -- any additional issues outside of the
6 failure to file an appeal would be barred by the statute of
7 limitations and the fact that he's already had his one bite of
8 the apple at his full evidentiary hearing; so it would be
9 successive as well.

10 THE COURT: Okay. All right. I have -- just to clarify,
11 from the testimony that I just heard, the -- there was a
12 letter from March of 2015 in which Mr. Tindall wrote to Mr.
13 O'Connor explaining that he had drafted a Rule 59(e) motion
14 and wanted Mr. Tindall [sic.] to either redraft the 59(e)
15 motion or to file that 59(e) motion before filing an appeal.
16 Is that correct, Mr. Gourley?

17 MR. GOURLEY: I believe so, Your Honor. I think you said
18 2015, but I believe it's 2013.

19 THE COURT: Yes. Sorry. 2013.

20 MR. GOURLEY: Yes, Your Honor.

21 RULING

22 THE COURT: All right. I have reviewed this file prior
23 to taking the bench. I've listened carefully to the testimony
24 today and I find that the defendant -- the applicant -- I'm
25 sorry -- is entitled to an *Alston v. State* appeal based on his

1 letter from March of 2013 asking his attorney to file a Rule
2 59(e) motion on his behalf or either to redraft the motion or
3 to file the one prepared by Mr. Tindall, and that was not
4 done.

5 I understand that Mr. O'Connor interpreted that to mean
6 that he was not to file an appeal on Mr. Tindall's behalf.
7 However, I find otherwise and found Mr. Tindall's testimony to
8 be credible and the letter to indicate that an appeal should
9 have been filed.

10 MR. BOOZER: Thank you, Your Honor.

11 THE COURT: And, Mr. Boozer, can you draft an order?

12 MR. BOOZER: I can, Your Honor.

13 THE COURT: Thank you.

14 MR. BOOZER: Thirty days, please?

15 THE COURT: Yes, absolutely. Thank you all.

16 MR. GOURLEY: Thank you, Judge.

17 (WHEREUPON, the proceedings ended at 11:04 a.m.)

18

19 --- END REQUESTED TRANSCRIPT ---

20

21

22

23

24

25

1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 17 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Clarendon County, South Carolina, held in
13 Sumter, South Carolina, on the 18th day of November, 2016.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.
16

17 s/Krystal J. Smith

18 Court Reporter
19

20 Florence, South Carolina

21 October 11, 2016
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Eric Q. Tindal, #243834,

Applicant,

vs.

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-14-345

ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE

OF ORIGINAL FILED COPY
DATE FILED IN THIS OFFICE

DATE

Beulah H. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

BEULAH H. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
JAN - 6 2 45

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated July 15, 2015. The Respondent made its Return and Motion to Dismiss on September 23, 2015. An evidentiary hearing on the matter was convened on November 18, 2015, at the Sumter County Courthouse. The Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Daniel Gourley, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

The Court had before it the guilty plea transcript, the Clarendon County Clerk of Court's records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return and Motion to Dismiss, and the South Carolina Court of Appeals records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was true bill indicted during the January 2011 term of the Clarendon County Grand Jury for Attempted Murder and Burglary, First (2011-GS-14-39). Scott Robinson, Esquire, represented him. Following a guilty plea, he was sentenced by the Honorable Howard P. King to twenty-two

106 4 JRG

(22) years concurrent for Attempted Murder and Burglary, First. The Applicant did not appeal his plea or sentence.

The Applicant subsequently filed an application for post-conviction relief (PCR) on November 22, 2011 (C.A. No. 2011-CP-14-595). An evidentiary hearing into the matter was convened on December 14, 2012, at which the Applicant was present and represented by James Brian O'Connor, Esquire. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of trial counsel.
 - a. Failure to investigate.
2. Involuntary guilty plea.

The Honorable R. Ferrell Cothran denied and dismissed Applicant's application with prejudice by written Order dated January 21, 2011. Applicant submitted a pro se motion to alter or amend the order of dismissal pursuant to Rule 59(e) SCRCP. Judge Cothran denied and dismissed the motion by order filed January 8, 2014. No appeal was filed.

ALLEGATIONS

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

1. Ineffective assistance of Counsel
 - a. PCR counsel was ineffective for failing to file an appeal/certiorari of the denial of Applicant's PCR. Applicant advised PCR counsel to file both a Rule 59 motion to alter or amend before filing "notice of appeal."

Respondent made its Return and Motion to Dismiss on September 23, 2015, requesting an evidentiary hearing be held solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing was held to solely address whether or not the Applicant freely and voluntarily waived his right to appeal the denial of his application for post-conviction relief.

2 of 4 JTH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. The Court heard testimony from Applicant, who testified that he requested his prior post-conviction relief counsel to file an appeal upon the denial of his prior action and produced correspondence requesting an appeal. Testimony from both the Applicant and prior PCR counsel indicated Applicant requested an appeal, however, it was not filed.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the Applicant is entitled to appeal the denial of his first post-conviction relief application (2012-CP-14-00132) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

However, this Court summarily dismisses the Applicant's allegation that his prior PCR Counsel was ineffective for failing to file a 59(e) and thereby entitling him to a belated 59(e) of his first PCR application, as this claim is outside the scope of PCR. This Court notes the Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). This Court finds that the contention that prior PCR counsel was ineffective for failing to file a 59(e) is non justiciable. Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

308 4 JAF

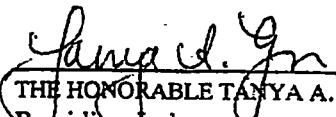
Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Applicant invites this Court to extend Austin's holding to include a claim of ineffective assistance of PCR counsel for failing to file a motion to alter or amend judgment pursuant to rule 59(e) SCRCP. However, this Court finds Austin does not contemplate such reasoning and declines to extend Austin's specific exception to ineffective assistance of post-conviction relief counsel to include a claim of ineffective assistance of PCR counsel for failing to file a rule 59(e) SCRCP.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2011-CP-14-595) pursuant to Austin v. State is warranted. All other allegations are denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2011-CP-14-595 pursuant to Austin v. State; and
2. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29th day of December, 2015.


 THE HONORABLE TANYA A. GEE
 Presiding Judge
 Third Judicial Circuit

Columbia, South Carolina.

WITNESSES

Thomas Burgess Clarendon County Sheriff

ARREST WARRANT NUMBER

M089311 M089312

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

1/28/11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-14-0039

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE

vs.

ERIC QUENTEL TINDAL

Indictment for

ATTEMPTED MURDER
BURGLARY 1ST

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

INDICTMENT FOR
ATTEMPTED MURDER
BURGLARY 1ST

At a Court of General Sessions, convened on January 26, 2011 the Grand Jurors of
CLARENDON County present upon their oath:

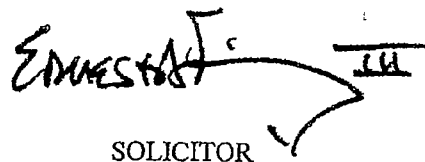
COUNT ONE- ATTEMPTED MURDER

That ERIC QUENTEL TINDAL did in Clarendon County on or about November 25, 2010, feloniously, willfully and with malice aforethought, either expressed or implied, attempt to kill one Erica Mack by means of stabbing Erica Mack, in violation of Section 16-03-0010, South Carolina Code of Laws (1976), as amended.

COUNT TWO - BURGLARY 1ST

That ERIC QUENTEL TINDAL did in Clarendon County on or about November 25, 2010, enter the dwelling of Erica Mack, without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime, in violation of Section 16-11-311, 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.


SOLICITOR