

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to York County

Honorable John C. Hayes, Circuit Court Judge

JEREMY CORDERA MOBLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000843

APPENDIX

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STATE OF SOUTH CAROLINA)	GENERAL SESSIONS
)	
County of York)	2013-GS-46-4149
)	
)	
State of South Carolina,)	
)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
Jeremy Mobley.)	
)	
)	
)	

November 19th, 2013
York, South Carolina

BEFORE:

THE HONORABLE J. MARK HAYES, II, JUDGE.

APPEARANCES:

RYAN R. NEWKIRK, ASSISTANT SOLICITOR
Attorney for the State

MICHAEL MATTHEWS, ESQ.
Attorney for the Defendant

AMINAH R. HARDY, CM
Official Court Reporter

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P R O C E E D I N G S

1
2 MR. NEWKIRK: Thank you, Your Honor. May it please
3 the Court. Standing before you is defendant Jeremy Mobley
4 represented by his retained attorney, Mr. Michael
5 Matthews, of the York County bar. He stands before you on
6 one count of hit-and-run great bodily injury on indictment
7 2013-GS-46-04149. That indictment has not been true
8 billed before the York County grand jury, and pursuant to
9 the statute carries with it up to ten years. Your Honor,
10 he's pleading today with a recommendation from the state
11 of a cap of five years.

12 THE COURT: You are Mr. Mobley?

13 THE DEFENDANT: Yes, sir, I am.

14 THE COURT: Sir, it is your intent to enter a plea
15 that was announced by the solicitor?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: How old are you, sir?

18 THE DEFENDANT: 25, sir.

19 THE COURT: How far did you go in school?

20 THE DEFENDANT: I have my associate's degree in
21 business.

22 THE COURT: Where from?

23 THE DEFENDANT: York Technical College, Rock Hill.

24 THE COURT: Are you married, single, divorce,
25 widowed?

1 THE DEFENDANT: Single.

2 THE COURT: Do you have children?

3 THE DEFENDANT: No, sir.

4 THE COURT: Prior to your arrest on this charge, did
5 you have a job outside the home?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What were you doing?

8 THE DEFENDANT: I was working at Burger King.

9 THE COURT: Have you ever served in the military?

10 THE DEFENDANT: No, sir.

11 THE COURT: On this charge, how long have you been in
12 jail?

13 THE DEFENDANT: Six and a half months.

14 MR. MATTHEWS: 189 days.

15 THE COURT: Within the last 24 hours, have you
16 consumed any type of substance that is adversely affecting
17 your ability to understand what we're doing today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you ever been treated for any type
20 of substance abuse issues for drug or alcohol problems?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you satisfied with the work of your
23 lawyer?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Feel like you had enough time to talk to

1 him about the legal elements of this charge, the facts
2 that are behind this case, and any possible defenses?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anybody come to you and threatened
5 you in any way or made you any promises in order to get
6 you to make the decision to enter the plea today?

7 THE DEFENDANT: No, sir.

8 THE COURT: I'm correct to conclude this is a free
9 and voluntary decision by you?

10 THE DEFENDANT: Yes, sir, it is.

11 THE COURT: Sir, I need you to understand that under
12 law, you're presumed innocent of this charge and you are
13 entitled to have a jury trial on this charge. At any jury
14 trial that would take place, it would be the state that
15 has the burden of proof, and the state would have to
16 convince all 12 members of a jury that you are, in fact,
17 guilty beyond a reasonable doubt. Now, do you understand
18 that you have a right to that jury trial?

19 THE DEFENDANT: Yes, sir, I understand.

20 THE COURT: And do you wish to have a jury trial on
21 this charge?

22 THE DEFENDANT: No, sir.

23 THE COURT: Sir, I need you to understand there are
24 other very important constitutional rights that you are
25 entitled to but that you have to give up in order to enter

1 this plea. You have give up your right to confront and
2 cross-examine the state's witnesses. You also have to
3 give up the right to present evidence which you and your
4 lawyer might feel would be able to establish a defense,
5 and you have to give up your right of subpoena and your
6 right to remain silent. Do you understand all those
7 rights?

8 THE DEFENDANT: Yes, sir, I do.

9 THE COURT: You wish to give up all those rights?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Please listen to the
12 solicitor. He's going to tell us the facts, and then I'll
13 have more questions for you.

14 MR. NEWKIRK: Thank you, Your Honor. On Wednesday,
15 May 8th of 2013 at approximately 9:00 p.m, officers with
16 the Rock Hill Police Department Serious Traffic Accident
17 Reconstruction Team responded to the intersection of
18 Mt. Gallant and Celanese Road in Rock Hill, York County,
19 South Carolina in response to a hit-and-run. Upon
20 arrival, they noticed a black and green Yamaha motorcycle
21 mangled in the road. The driver of the motorcycle was
22 later identified as the victim in the case, a Mr. Joshua
23 Reynolds. He was transported to the hospital for
24 emergency surgery. The other vehicle involved in the
25 collision was not on scene. Officers were able to locate

1 parts of the vehicle and ran the part numbers through a
2 database to determine that the other vehicle involved in
3 the collision was an Infiniti I30 4-door sedan.

4 Officers then spoke to several witnesses who stated
5 that they saw the collision and then witnessed an
6 light-skinned African-American male get out of the
7 driver's seat of the vehicle and switch places with a
8 dark-skinned African-American male who drove the car away
9 from the scene. Neither individual stopped to render aid
10 to the victim, nor did they inquire about his well-being.
11 Police placed a be-on-the-lookout order for a dark model
12 Infiniti as being a vehicle of interest in the collision.

13 The following morning, Sergeant Crowder of the Rock
14 Hill Police Department was on patrol in the area of Farlow
15 Street in the city of Rock Hill, York County, and saw a
16 fresh set of tire marks leading to a small patch of grass
17 in the backyard of [REDACTED] Farlow Street. Upon further
18 investigation, he located a 2000 Infiniti I30 in the back
19 yard with extensive damage to the front passenger side of
20 the car. Parts located on scene of the accident were
21 matched to the vehicle. It was located in the backyard.

22 Officers interviewed a resident of the home named
23 Christopher Franklin, who is a codefendant in the case,
24 who told them his coworker, Jeremy Mobley, who stands
25 before you today had been driving the car at the time of

1 the collision. The vehicle was registered to the
2 defendant, Mr. Jeremy Mobley. The defendant was
3 interviewed and both defendants, Mr. Mobley and
4 Mr. Franklin, were arrested by Rock Hill Police
5 Department. Both gave statements that implicated each
6 other. I have further statements to make discussing our
7 presentation of the facts, Your Honor, but -- that
8 concludes our presentation of the facts. But as this is a
9 cap of five years, the state would like to be heard on
10 sentencing. And the victims are also present at the
11 appropriate time, would like to be heard.

12 Additionally, Your Honor, may I approach? Just so
13 you have an idea of the factual basis for the plea, that
14 first picture that I handed up to the Court is the
15 defendant's vehicle that shows the damage, and the second
16 picture is the victim's motorcycle laying in the middle of
17 the road.

18 THE COURT: Any objection to me receiving the
19 photographs?

20 MR. MATTHEWS: No objection, Your Honor.

21 THE COURT: We'll have the photographs marked as
22 state's 1 and 2 at the appropriate time.

23 Mr. Mobley, were you able to hear the solicitor when
24 he told me the facts behind this case?

25 THE DEFENDANT: Yes, sir, I did.

1 THE COURT: Do you believe as he stated the facts
2 that the solicitor is substantially correct?

3 THE DEFENDANT: Yes, sir, I do.

4 THE COURT: Now, sir, do you understand that I'm not
5 bound by recommendation that's made by the state?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And that today I could sentence you up to
8 10 years on this charge?

9 THE DEFENDANT: Yes, sir, I understand.

10 THE COURT: And you still wish to enter this plea?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you, in fact, guilty of this charge
13 of hit-and-run involving an accident resulting in great
14 bodily injury?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have all -- let me also ask you, sir:
17 You do understand that by entering the plea, it will also
18 be a violation of your present probation cases?

19 THE DEFENDANT: Yes, sir, I was aware of that.

20 THE COURT: Are you aware it's a violation of both of
21 them?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you still wish to enter this plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Sir, let me just ask you one more time

1 then: Are you, in fact, guilty of this charge of
2 hit-and-run in an accident resulting in great bodily
3 injury?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have all of your answers to my questions
6 been truthful and honest?

7 THE DEFENDANT: Yes, sir, they have.

8 THE COURT: Discovery been shared with the defense?

9 MR. NEWKIRK: It has, your Honor.

10 THE COURT: Prior record?

11 MR. NEWKIRK: Your Honor, he has a driving under the
12 influence and open container conviction in November of
13 2008; a possession of marijuana, first offense, in
14 September of 2009; a possession of marijuana, second
15 offense, in January of 2011; a driving under the
16 influence, second offense; distribution of crack cocaine
17 near a school; and possession of unlawful prescription
18 drugs in June of 2012; and a forgery less than \$10,000 in
19 August of 2012.

20 THE COURT: Does the state also wish to be heard on
21 the sentencing as well as hear from the victims?

22 MR. NEWKIRK: Yes, sir.

23 THE COURT: Which do you want to do first?

24 MR. NEWKIRK: I'll leave that in Your Honor's
25 discretion.

1 THE COURT: Let me hear from the victims first and
2 then you can close with your presentation.

3 MR. NEWKIRK: Thank you, sir. Your Honor,
4 Ms. Reynolds, who is the mother of -- yes, sir. She'll
5 come up.

6 THE COURT: Ma'am, if you would, just come up here
7 beside the solicitor. Ma'am, I just need to let you know
8 we're making a recording of everything that happens here,
9 so when you speak, please speak up loud enough so the
10 court reporter and I can hear you. And just start if you
11 would by giving us your full name.

12 MS. REYNOLDS: Sandy Reynolds.

13 THE COURT: Yes, ma'am, Ms. Reynolds.

14 MS. REYNOLDS: It's not a letter I ever thought I'd
15 write, but I hope to get my family's feelings across to
16 the Court. On May 8th, 2013, that was the worst day my
17 family ever had go through. For anyone who has children,
18 one of the biggest fears is that phone call saying one of
19 them has been a wreck. When I found out my son, Josh, was
20 hit while riding his motorcycle, I was devastated because
21 I expected the worst outcome. Then to get the hospital to
22 find out it was a hit-and-run and he was left on the right
23 side of the road to die, that made it even worse. What
24 kind of heartless coward would hit someone on a motorcycle
25 and then switch drivers and go hide the car behind a

1 house? Obviously the two men who did this to Josh are
2 exactly that: heartless, insensitive cowards. If they had
3 hit him and stayed with him until help arrived and shown a
4 little concern and compassion, this would be a whole
5 different situation. But they both chose to leave him
6 laying there with a severe brain injury, open compound
7 fractures to his left leg, broken ribs, and a partially
8 collapsed lung.

9 In my family's opinion, it doesn't matter who was
10 driving the car. The fact is they both left him laying
11 there and tried to hide the car and carry on with their
12 lives. The next morning I'm told one of them was leaving
13 for work at his job at Burger King. He was not the least
14 bit concerned with the 22-year-old young man he left on
15 the side of the road the night before. But the police
16 found the car and him before he could continue on with his
17 job and his life. The man driving the car only turned
18 himself in because he knew he would get caught since his
19 friend had been picked up.

20 We'll never understand why they chose to leave him
21 laying there and act as if nothing happened. There is
22 nothing they could say or do to make this right or to try
23 to justify any of it. If this had happened somewhere else
24 other than a busy intersection, there -- however there
25 were lots of people there around who saw it and tried to

1 help Josh. But if it had happened on a road there -- that
2 wasn't busy and no one saw what happened, my son would
3 have laid there and died alone. Those two men would have
4 carried on with their life like nothing happened and felt
5 no remorse. If either of these men have children and Josh
6 had hit one of them, he would have never left them laying
7 there. He would have called for help, stayed with them,
8 checked on them at the hospital, the normal things any
9 decent, caring person would do.

10 Josh has been a firefighter with the Lexington Fire
11 Department for several years, and he responded to numerous
12 calls during that time. He volunteers his time to help
13 people, and he's even said himself that if one of the men
14 who hit him was involved in a wreck and he was on the
15 scene, he would do what he had do to help them. I'm sure
16 he would be thinking about what they did to him the whole
17 time, but he would never leave them on the side of the
18 road dying. Decent people don't do that.

19 The two men who did this have no idea what our family
20 has gone through. They obviously don't care, but they're
21 the ones who will have to answer to a higher power one
22 day. And serving six or eight months in jail does not
23 justify what they did. We were told three days after the
24 wreck that Josh probably wouldn't survive through the
25 night because the swelling in his brain was so severe.

1 Unless you have been told that about your own child, you
2 have no idea how it felt. We were told that even if he
3 did survive, his outcome was not very good. I was
4 preparing myself mentally to take care of Josh for the
5 rest of his life, because I prayed to God not to take him
6 away from us. They had to paralyze him and put him in a
7 medically induced coma to give his brain a chance to start
8 healing, but there was still no way of knowing how he
9 would be when he woke up, or if he woke up.

10 Towards the end of May, the swelling had subsided and
11 they started weaning him off the paralytic and tried
12 bringing him out of the coma. It took over a week before
13 he was able to respond to any of us. Seeing a thumbs up
14 from your son that you were told he probably wouldn't
15 survive after the third night is the best thing in the
16 world. It was an uphill struggle to get him to where he
17 is today, but he made it. He's walking, talking, driving,
18 and just yesterday he was finally able to go back to work.

19 Even though Josh is doing really good now, it doesn't
20 mean what happened is okay. It will never be okay. It
21 will never be right, and it can never be justified. This
22 whole situation has put a major financial burden on our
23 families, but I realize that's not the most important
24 thing right now. We have great friends and family who
25 helped us out with donations to use for gas back and forth

1 to the hospital, food, et cetera, but we also had our
2 household bills to pay and that was hard to do when my
3 husband and I were staying at the hospital with Josh.

4 We do not expect or want an apology from either of
5 these men, because we know it would only be words spoken
6 with no meaning behind the words. The fact they left our
7 son lying there on the side of the road is sorry. For
8 them to say, "I'm sorry," means nothing to us. Thank you.

9 THE COURT: Anything else from the victims?

10 MR. NEWKIRK: No, sir. The remainder of
11 Mr. Reynolds' family is in the court, his sister and his
12 father. They do not wish to address the Court. I think
13 it would be more difficult for them than it was for their
14 mother, and you saw how difficult that was. Josh is also
15 here but he also does not wish to address Your Honor, but
16 he would like to you know to he is present.

17 I won't belabor the point. I'll try to be as brief
18 as I can, but I think the facts of this case warrant at
19 least a mentioning about sentencing from the state. I
20 would ask Your Honor to impose all of the five-year cap.
21 This should have been a case that involved a death of Josh
22 Reynolds. It is an absolute miracle that he sits here in
23 the courtroom today is and able to be present at this
24 plea, let alone that he went to work yesterday. When this
25 horrible event happened to him, he was left for dead on

1 the side of the road, and I can't tell you how many times
2 I met with him and his progress just has gone exponential
3 from the time of the accident.

4 His injuries -- and I had to touch up on this because
5 I'm not a doctor. His injuries included a serious head
6 injury which rated an eight on the Glasgow coma scale,
7 which is a scale that predicts whether a person with --
8 the seriousness of a coma and if they'll ever recover. It
9 goes up to ten. At ten, you're essentially nonfunctioning
10 for the rest of your life, and Josh was an eight when he
11 arrived at the hospital. He had a fractured left leg that
12 required a titanium rod that he has in his leg now. He
13 had a fractured rib. He lost 43 pounds. And when his
14 mother called me yesterday and said, "Is it okay if Josh
15 wears jeans to court because none of his dress pants fit
16 him because he lost so much weight." So he's lost a
17 substantial amount of weight, and he's recovering. And I
18 have showed a copy of this video to the defense just so
19 you can get an idea of his injuries. I'd like to show it
20 to the Court.

21 Can you dim the lights, please?

22 (Videotape played in open court.)

23 MR. NEWKIRK: Your Honor, that's how extent -- that's
24 the extent of Mr. Reynolds' injuries. As you can see -- I
25 don't know if you can tell from that video, a physical

1 therapist is trying to regain his muscle memory by putting
2 a bead on a string, and he's sitting in the courtroom
3 today. It's absolutely unbelievable.

4 I would also like to briefly say that Ms. Reynolds
5 touched upon the hardship to their family. I'm not going
6 to read this to the Court. I think you are kind of
7 gathering the picture of how serious his injuries were,
8 but I asked Ms. Reynolds: You think you could put a
9 timeline together of all of the things your family had to
10 do for Josh including surgery, physical therapy, driving
11 him to and from the doctor, and everything that you had to
12 get him in the courtroom today, and it's nine pages long.
13 I'm not going to read that to the Court, but do know it
14 was extensive and included surgery up until two weeks ago
15 when he had a tube removed from his stomach.

16 So it's a -- I can't say enough that it's a miracle
17 that he was here today, and I will say briefly on the
18 defendant in his own statement to law enforcement, he
19 admits to drinking and smoking marijuana prior to getting
20 into the car. And he -- up until the plea today even when
21 speaking to law enforcement during their investigation, he
22 never admits to driving and tried to place the blame on a
23 codefendant even after there was eyewitness testimony that
24 placed him as the driver.

25 He was driving under suspension and operating an

1 uninsured vehicle. He was operating a vehicle with
2 suspended tag, all charges which he's pled to in city
3 court. And so it's just a terrible situation, and all
4 those things led to him not stopping the car and doing the
5 right thing, and it left Josh in that horrible state that
6 you saw on the video screen.

7 The absolute last thing that I'll say, Your Honor,
8 before I conclude the state's request for a higher
9 sentence is that when we were speaking -- assistant
10 solicitor Matthew Shelton and I had met the Reynolds
11 several times in their home. When we were talking about
12 what kind of result would you like to see out of this?
13 What kind of justice can the state provide you? Obviously
14 there is no justice that we could provide them. They
15 firmly believe that we're doing the best we can, but they
16 wanted more. And when we talked about probationary
17 sentences and things like that and restitution orders,
18 they said, "We don't care about money, or anything like
19 that. We want him to go to jail for the maximum amount of
20 time allowed. We're even not going to consider
21 restitution. We -- if it's going to help him not go to
22 jail, that's not what we want." And that was hard for
23 them, and they stuck with that even today when I met with
24 them.

25 So that's all I'll say, Your Honor. I would ask Your

1 Honor respectfully that you impose the maximum of five
2 years with the cap. Thank you, Your Honor.

3 THE COURT: And he's presently on probation?

4 PROBATION OFFICER: Yes, sir, Your Honor. He's on
5 two separate probationary cases.

6 THE COURT: Right.

7 PROBATION OFFICER: And I would need to serve him
8 with the citations for both of those at this time.

9 THE COURT: All right.

10 PROBATION OFFICER: To be very brief, I believe the
11 solicitor did touch on it during his criminal history, but
12 he is on two separate probation cases, one being from
13 August 27th of last year he was sentence by Judge John
14 Hayes for DUI second, and also for an unlawful possession
15 of a prescription drug, receiving one year on each one of
16 those, suspended to two years' probation. And on the
17 second case it was -- he sentenced him December the 19th
18 of 2012 on that one by Judge Alford, and that was for a
19 forgery and there is restitution owed on that case. His
20 sentence was two years suspended to two years' probation.
21 On his restitution, he's \$495 in arrears with a total
22 balance owed of \$785.18. And he has not paid one payment
23 on that.

24 THE COURT: Any other violations in the history of
25 the cases?

1 PROBATION OFFICER: He has no past violations. His
2 violations are pleading to the charges today, Your Honor.

3 THE COURT: Anything from the case that involves the
4 restitution?

5 PROBATION OFFICER: The victim has been contacted.
6 It was a bank and they asked -- didn't wish to be present,
7 but they certainly would like to collect their
8 restitution.

9 THE COURT: Okay. Yes, sir.

10 MR. MATTHEWS: Your Honor, in June of this -- in
11 June -- he was arrested May 9th, and June I was retained
12 by the family, by his mother specifically. His family is
13 here present. His mother and family members are here in
14 support of Jeremy here. I've discussed with them as well
15 as with my client what's happening here today.

16 Your Honor, we've gone through much negotiation of
17 this. The one thing that stood out in my conversation
18 with Jeremy -- and I understand the position of
19 Ms. Reynolds in this matter. But my client has
20 constantly -- not only him but his family have constantly
21 been asking me how Mr. Reynolds has been doing and how his
22 recovery has been going. And I've asked in relation to
23 that, and up until recently whenever I heard he's gone
24 back to work has been -- it's been exactly as the
25 solicitor has said to me about his recovery and the extent

1 of the damages. To -- he's also -- constantly have told
2 me his remorse about what happened, about how he was
3 scared, how he understands that -- he's told me on
4 numerous occasions how much he wished they had stayed, but
5 didn't make the right decisions. The accident happened in
6 a flash of an incident, and got scared and didn't do the
7 right thing. He is -- the best way for me to have that
8 explained to you is for him to talk to you himself in a
9 few minutes.

10 The probation violations, just procedurally I told
11 him this would be a violation of those probation
12 violations. I would ask that whatever you do with those
13 cases run concurrent to what we're doing here today,
14 whatever you decide to do with that. The initial
15 conversation I had was that the \$785 be made a civil
16 judgment, but he's told you what the bank wants.

17 Your Honor, my client desperately has offered me to
18 ask about paying restitution back. Of course, what we've
19 been told is that there's other things going outside the
20 criminal process to try to recover some of these fees and
21 such and that they're quite substantial. But he is
22 constantly asked me, "Is there a way I can work to pay
23 back restitution?"

24 Your Honor, I'm asking on behalf of my client, my
25 client is asking for mercy. He did not intend for this to

1 happen. He did not intend for this result, and he got
2 scared and he ran. Your Honor, I would respectfully ask
3 to allow my client to speak. He has written out part of
4 his presentation. Some of it he may give it to you
5 verbally, others he may read to you, and ask for mercy in
6 this particular case.

7 THE COURT: Do you agree with what your lawyer has
8 already stated?

9 THE DEFENDANT: Yes, sir, I do.

10 THE COURT: Do you have witnesses to speak on his
11 behalf?

12 MR. MATTHEWS: I have his mother here.

13 THE COURT: I usually would like for him to speak
14 last.

15 MR. MATTHEWS: Okay.

16 THE COURT: Ma'am, I just need to let you know we are
17 making a recording of everything that happens here. So
18 when you speak, speak up loud enough so that both the
19 court reporter and I can hear you. And if you would, just
20 start by giving us your full name.

21 MS. GORDON: Joanne Gordon.

22 THE COURT: Yes, ma'am, Ms. Gordon. Be more than
23 happy to hear from you.

24 MS. GORDON: Well, Jeremy had told me that he was
25 getting off from work that night. And he was coming

1 straight home and said the motorcycle just come out of
2 nowhere. He didn't know what happened and he got scared.
3 He said he just -- it happened so quick. He just didn't
4 know what to do. But he was planning on -- he was
5 planning on going back to school, Your Honor, to get this
6 other degree. He got an associate's degree from York Tech
7 and he was planning on going back to school and getting
8 his, you know, life together.

9 THE COURT: Thank you, ma'am.

10 Mr. Mobley, I'll be glad to hear from you. Just be
11 sure you speak up loud enough so that both that court
12 reporter and I can hear you. Okay?

13 THE DEFENDANT: Yes, sir. Your Honor, members of the
14 court, his family. It's with both honesty and sincerity
15 that I ask for forgiveness from Mr. Reynolds and his
16 family. It was never my intention to bring hurt, harm,
17 and danger to anyone. The event that transpired was both
18 real and true and adds to the mistake. The months I've
19 been here have made me realize what I did was wrong and a
20 bad decision. I was both scared and frightened out of my
21 mind and made a rash decision to leave. If I could take
22 back everything that happened that night, I would. I just
23 ask that you have an open heart and take everything I'm
24 saying here in court into consideration as to bring this
25 matter to a close. I also hope that over the months you

1 have both an expedient and full recovery from any injuries
2 you acquired from the accident.

3 Like my mother said, like I just said and what I
4 wrote, it was an accident. I can't explain how it
5 happened or why, but what I did was wrong. I can't
6 justify what I did. I'm sorry for what I did. Like I
7 said, if I could take it back, I would. Mr. Reynolds, I'm
8 sorry for what happened, and I'm just -- I just hate it
9 ever happened, any of this. I just hate any of this ever
10 happened, Your Honor, and it was never meant to be.

11 THE COURT: Thank you, sir. I find that there's a
12 substantial factual basis for the plea and that the
13 defendant's decision to enter the plea has been made
14 freely, voluntarily, knowingly, and intellectually by him;
15 therefore, I will accept the plea. I found he's in
16 willful violation of the terms and conditions of his
17 probation cases by having entered the plea. We can do
18 full revocation of those cases. Give him credit for the
19 189 days that he's already served on those cases. Any
20 monetary obligations that can be satisfied by his time
21 he's going to serve can be; the others will be reduced to
22 civil judgments.

23 This is one of those rare occasions where I disagree
24 with everyone in the courtroom. Based upon what's been
25 presented to me, he was already on probation, not once,

1 but twice. So he had been given two opportunities by
2 other judges to conform his conduct.

3 At the time of the accident, he should not have been
4 driving. He did not have a driver's license, he was
5 driving under suspension and then there's also an
6 allegation or statement made to the Court that he was --
7 also had been consuming illegal substances at the time --
8 prior to the accident in clear violation of not only of
9 law but also both of his prior probationary cases that he
10 was on. Regardless of the issue of fault in the accident
11 is that he should not have been driving, period. A clear
12 violation of his probation cases, at least.

13 I'm willing to accept the defense's recommendation to
14 run the probation cases concurrent with this case, but
15 given his prior history, the facts that are around how
16 this accident happened, his prior two probationary cases,
17 I have to impose the ten-year sentence. And I will give
18 him credit for the 189 days. Good luck to you, sir.

19 MR. NEWKIRK: Thank you, Your Honor.

20 (State's Exhibits 1 and 2 were marked.)

21 (Whereupon, the proceedings were concluded.)

22

23

24

25

2014-CP-46-3296

FORM 5

STATE OF SOUTH CAROLINA)

County of York)

Jeremy Cordera Mobley 357960)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-RECEIVED
2014 OCT -6 PM 2:02
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
2014 OCT -7 AM 8:52
CERTIFIED TRUE COPY

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 Tyger River Correctional Institute
2. Name and location of Court which imposed sentence York County Court of General Sessions, York, SC
3. Name(s) of co-defendant(s) (if any) Christopher Franklin
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS4604149
 - (b) _____

(c) _____

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

(a) 11-14-13 10yrs

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Counsel, Mr. Michael Gary Matthews failed to comply with

ii. Rule 203(d)(1)(B)(iv) of the SCACR, and case was

iii. dismissed.

(c) the date of each such result:

i. July 21, 2014

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

- (a) Counsel, Mr. Michael Matthews failed to send all documents in time for appeal.
- (b) Conflicting statements from me and co-defendant.
- (c) My attorney and solicitor agreed on a cap of 5 years.

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

- (a) Letter from South Carolina Court of Appeals stating counsel
- (b) I signed an agreement for a plea of a 5 year cap.
- (c) Attorney and solicitor had different statements in the case.

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

11. (a) failed to comply with Rule 203 (d) (1) (B) (iv) of the South Carolina Appellate Court Rules, and my case was dismissed.

Also ineffective counsel.

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

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

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 - i. Michael G. Matthews, 1420 Ebenezer Road
Suite 104. Post Office Box 36668
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

Time Reconsideration

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

NO

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, Jeremy Mobley, 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.

Jeremy Mobley

SWORN to and subscribed before me this 1st day of October, 2014

[Signature] (L.S.)
Notary Public of S.C.

My Commission Expires: 1-14-2019

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

I, Jeremy Mobley, 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.

Jeremy Mobley
Applicant

SWORN or affirmed to and subscribed before me, this

1st day of OCTOBER, 2014.

Hunter Johns
Notary Public of S.C.

My Commission Expires: 1-14-2019

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
)
)
)
 Jeremy Cordera Mobley, #357960,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-3296

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 6, 2014, 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 York County Clerk of Court. The Applicant was charged with Hit and Run with Great Bodily Injury. Michael Matthews, Esquire, represented him. On November 19, 2013, the Applicant waived presentment of this charge to the grand jury, pled guilty before the Honorable J. Mark Hayes, III and was sentenced, pursuant to a recommendation from the State, ten (10) years for Hit and Run with Great Bodily Injury.

A notice of appeal was filed on Applicant's behalf but the South Carolina Court of Appeals dismissed his appeal for failure to comply with Rule 203. The Remittitur was issued on August 25, 2014.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s), Applicant's records from SCDC, the application and

the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Counsel, Mr. Michael Matthews failed to send all documents in time for appeal."
 - i. "Letter from South Carolina Court of Appeals stating Counsel failed to comply with Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules and my case was dismissed"
2. "Conflicting statements from me and co-defendant"
3. "My attorney and solicitor agreed on a cap of 5 years"
 - i. "I signed an agreement for a plea of a 5 year cap"
 - ii. "Attorney and solicitor had different statements in the case"

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

III.

Respondent construes these allegations as ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective

assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 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 an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

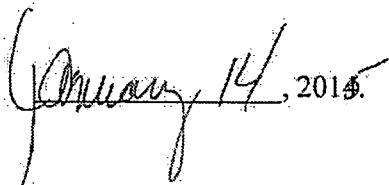
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2014-CP-46-3296

JEREMY MOBLEY, #357960

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

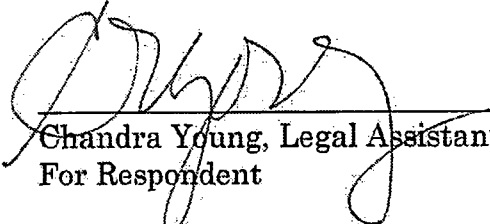
STATE OF SOUTH CAROLINA,

Respondent.

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

Leah B. Moody, Esquire
235 East Main Street; Suite 115
Rock Hill, SC 29730

DATED this 14th day of January, 2015.



Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
County of York)	2014-CP-46-3296
)	
Jeremy Mobley,)	
)	
Applicant,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent.)	
)	

April 15th, 2015
York, South Carolina

BEFORE:

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

APPEARANCES:

LEAH B. MOODY, ESQ.
Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the State

AMINAH R. HARDY
Official Court Reporter

INDEX

<u>WITNESS</u>	<u>Direct</u>	<u>Cross</u>
Jeremy Mobley	3	11
Michael Matthews	14	28
CERTIFICATE		30

EXHIBITS

No.	Description	Page
-----	-------------	------

(No exhibits were marked.)

P R O C E E D I N G S

1
2
3 THE COURT: May it please the Court, Your Honor.
4 This is the case of Jeremy Mobley versus state of South
5 Carolina, case number 2014-CP-46-3296. Mr. Mobley was
6 charged with hit and run with great bodily injury. On
7 November 19, 2013, he waived presentment of his charge the
8 grand jury and pled guilty before the Honorable J. Mark
9 Hayes, II, and was sentenced pursuant to a recommendation
10 from the state to ten years for hit and run with great
11 bodily injury. A notice of appeal was filed on his
12 behalf, but the Court of Appeals dismissed his appeal for
13 failure to comply with Rule 203. Remittitur was issued on
14 August 25, 2014. He filed a timely PCR on October 6, 2014.
15 The state filed its return January 14, 2015, and he is
16 represented here today by Ms. Leah Moody

17 MS. MOODY: At this time I would ask you to call
18 Jeremy Mobley to the stand.

19 JEREMY MOBLEY, after having first being duly sworn,
20 testified under oath as follows:

DIRECT EXAMINATION

21 BY MS. MOODY

22 Q Mr. Mobley, please state your full name for the
23 record, please.
24

25 A Jeremy C. Mobley.

JEREMY MOBLEY - DIRECT EXAMINATION BY MS. MOODY

- 1 Q Okay, and where are you currently incarcerated?
- 2 A Tiger River Correctional Institution.
- 3 Q And how long have you been there?
- 4 A Seven months.
- 5 Q Okay. And you're there on what charge, or
- 6 conviction?
- 7 A Hit and run resulting in great bodily injury.
- 8 Q And in that case who was your attorney?
- 9 A Mr. Michael Matthews.
- 10 Q Okay. And was he your original attorney?
- 11 A Yes, ma'am.
- 12 Q Okay. And how did you come to be represented by
- 13 Mr. Matthews?
- 14 A He was retained by my family.
- 15 Q Okay. And at the time, your charges were hit and
- 16 run?
- 17 A Uh-huh.
- 18 Q Okay. And did you have an opportunity to meet with
- 19 Mr. Matthews?
- 20 A Yes, ma'am. I did.
- 21 Q And how often did you get to meet with Mr. Matthews?
- 22 A Over a course of six and a half months I met with
- 23 him, like, four times. Four times.
- 24 Q And then each time, did you discuss your case?
- 25 A Yes, ma'am, we did.

JEREMY MOBLEY - DIRECT EXAMINATION BY MS. MOODY

1 Q Did you all have an opportunity to discuss your --
2 the consequences of a plea or going to trial?

3 A Yes, ma'am, we did.

4 Q Okay, and what did you discuss?

5 A We discussed that if I went to the trial, I face up
6 to ten years which is the maximum for this sentence. And
7 we also discussed the different plea options that he and
8 the solicitor had talked about.

9 Q Okay. And what were those plea options?

10 A It was -- the last one was the cap of zero to five,
11 which Mr. Matthews told me that he and the solicitor had
12 negotiated over the course of six and a half months he and
13 the solicitor, Mr. Ryan Newkirk, had negotiated a cap of
14 five over six months.

15 Q And, based on -- so that was the last offer that you
16 had?

17 A Uh-huh.

18 Q Okay. And so based on that, what decision did you
19 make in terms of how to resolve this case?

20 A I decided to go with the plea of cap of five.

21 Q Okay. And so at any point, were you talking about
22 going to trial?

23 A I did. I said if it -- if I -- um, the last offer
24 wasn't going to be sufficient then I would take it to
25 trial. But he said the last offer was a cap he and

JEREMY MOBLEY - DIRECT EXAMINATION BY MS. MOODY

1 Mr. Newkirk had negotiated a last -- a offer of cap of
2 five. That's the last offer, and I said I would take
3 that.

4 Q So, you went -- how soon after that -- receiving that
5 offer did you go and enter your plea?

6 A The same day. I received an offer -- I mean, I
7 signed the plea sheet and everything. I went in front of
8 the judge on the same -- that day -- November 19 of 2013.

9 Q Okay. And so during that time, did your attorney
10 explain to you the -- how you go through the plea of what
11 would happen in the plea?

12 A He just -- on that day Mr. Matthews came in told me
13 to initial every box he pointed to, and I wouldn't receive
14 no more than five years. He said that it was cap of
15 five -- receive no more than five years and, that was
16 that.

17 Q Okay. And so when you went before the judge, I
18 believe you went before Judge Hayes?

19 A Uh-huh.

20 Q What, if anything, did you understand about your plea
21 in going in front of Judge Hayes?

22 A Going in front of Judge Hayes I was told to say,
23 "yes, sir" to every question that he asked me and I
24 understood like I say, it was a cap of five.

25 Q Okay. And when you say you understood a cap of

JEREMY MOBLEY - DIRECT EXAMINATION BY MS. MOODY

1 five -- let's be clear on that -- you understand that you
2 weren't going to get any more than five?

3 A I mean, he said he could go over it but I had been
4 informed by Michael Matthews that as it being capped that
5 I wouldn't receive more than five years.

6 Q And so you went on through with the plea?

7 A Uh-huh.

8 Q Did you have any conversation with Mr. Matthews after
9 you entered your plea?

10 A After I entered my plea, before we came in the
11 courtroom, or --

12 Q No, after you -- when you were sentenced by the
13 judge, and he gave you your sentence, which you got a
14 sentence of ten years?

15 A Uh-huh.

16 Q Okay. And there was also another matter that took
17 place in this case? It was a probation violation.

18 A Uh-huh.

19 Q Okay. And so with that, what sentence did the judge
20 give you?

21 A For the probation violation?

22 Q For everything.

23 A Ten years.

24 Q Okay. And after you got that sentence, did you have
25 an opportunity to speak with Mr. Matthews?

JEREMY MOBLEY - DIRECT EXAMINATION BY MS. MOODY

1 A Oh, yes, ma'am. He came after -- he came after and
2 said we was going to appeal it, that we'll do a direct
3 appeal of the sentence.

4 Q Okay. And then what happened from there?

5 A From direct appeal it was dismissed because he failed
6 to -- to turn in some kind of -- some documentation rule
7 203-D1-IV.

8 Q Uh-huh.

9 A The documentation was not turned in a timely manner,
10 so the Court of Appeals dismissed it and it was sent to
11 lower court.

12 Q Okay. So he attempted to file your notice?

13 A Yes, ma'am, he did.

14 Q But it failed because he didn't submit some
15 information along with the bill?

16 A Yes, in a timely manner.

17 Q Okay. So, he was going to handle your appeal all the
18 way up, it wasn't he just filed your notice? He was going
19 to handle the actual appeal?

20 A No, he just -- he filed the notice for me and was
21 supposed to send documentation. I was going to have a
22 separate attorney who went -- who took it all the way up,
23 but he filed the notice of appeal for me.

24 Q But with that notice, it was missing something?

25 A Uh-huh, it was missing something with the notice of

JEREMY MOBLEY - DIRECT EXAMINATION BY MS. MOODY

1 appeal.

2 Q Okay. And so did you have an opportunity to talk to
3 Mr. Matthews after that?

4 A I talked to him maybe two, two or three times because
5 I -- the Court of Appeals sent me a letter saying they was
6 missing documentation. I called him and asked him about
7 the documentation. He said he sent it off and it must
8 have been some kind of miscommunication, but they sent me
9 another letter that said that the documentation still
10 hadn't arrived and that it was -- my case was going to be
11 dismissed, so --

12 Q So your appeal that was supposed to be going through
13 your attorney, Mr. Matthews, didn't send that information
14 in correctly, so you didn't get your appeal of this plea?

15 A No, I didn't. I didn't get my appeal.

16 Q Okay. So it ended there?

17 A Yes, ma'am, it ended there.

18 Q So after you got the notice stating that you weren't
19 going to be able to have the appeal, did you have an
20 opportunity to talk to Mr. Matthews then?

21 A Maybe once after that, that I wasn't going to have an
22 appeal.

23 Q Okay. And what, if anything, did he indicate?

24 A He said that he wasn't my counsel anymore. He
25 couldn't give me advice, but that's when I went to the law

JEREMY MOBLEY - DIRECT EXAMINATION BY MS. MOODY

1 library and found out about the PCR.

2 Q Okay. So, in this matter these are two things you're
3 filing your PCR for is because one, you were told that you
4 were going to not receive more than five years.

5 A Uh-huh.

6 Q Okay. And then when you attempted to appeal, your
7 attorney failed to perfect your appeal?

8 A Uh-huh.

9 Q Yes?

10 A Yes, ma'am.

11 Q Okay. And so, how has that prejudiced you, other
12 than the fact that you didn't get to appeal your sentence?

13 A Because I feel that the time of the crime -- I mean
14 time I received is not proportionate to the crime or what
15 the plea that I was told I was going to receive.

16 Q Okay, so is it based on the advice of your attorney?

17 A Yes, the advice of my attorney.

18 Q Okay. So, I mean you actually said that in your PCR
19 application.

20 A Yes.

21 Q Okay. So what relief are you seeking from the court
22 here today?

23 A I'm seeking time reconsideration. Reconsideration of
24 time.

25 Q Okay. So you want your -- you want to be sentenced

JEREMY MOBLEY - DIRECT EXAMINATION BY MS. MOODY

1 on this charge?

2 A Uh-huh.

3 Q Or you want a new trial?

4 A I want to be sentenced on this charge.

5 Q Okay. According to what you understood the plea was
6 supposed to be.

7 A Yes. Yes, ma'am.

8 Q Okay. Is there anything else you want to inform the
9 court of? As it relate to your allegations filed.

10 A No, just basically like I said at the time they sent
11 in my plea counsel Mr. Matthews informed me that he and
12 the solicitor, Mr. Newkirk, had negotiated a plea for a
13 cap of five. Had I known that Mr. Matthew's advice was
14 incorrect, I would have insisted on going to trial or I
15 would not have taken the plea. That's basically it.

16 A No further questions. Please answer any questions
17 the state may have.

18 MR. JOHNSON: Briefly, may it please the Court, your
19 Honor.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON

22 Q Mr. Mobley, so your main gripe is that your
23 understanding was that you were going to get a cap of five
24 years based on what Mr. Matthews had told you, correct?

25 A Yes, sir.

JEREMY MOBLEY - CROSS-EXAMINATION BY MR. JOHNSON

1 Q Okay. But at the guilty plea itself, the judge asked
2 you if you understand that he is not bound by that
3 recommendation, and you said yes?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes, sir.

7 Q Okay. And then the Court asked you that you could
8 receive a sentence up to ten years, to which you said,
9 yes, sir, I understand that?

10 A Yes, sir, I did.

11 Q Okay. Then did you sign a plea affidavit prior to
12 entering the guilty plea?

13 A Yes, sir. The same -- the same day.

14 MR. JOHNSON: May I approach, Your Honor?

15 BY MR. JOHNSON

16 Q Mr. Mobley, do you recognize that document?

17 A Yes, sir. I have it in my file.

18 Q Can you tell the Court what that is?

19 A It is the guilty plea transcript.

20 Q Was that the affidavit?

21 A Yes, sir.

22 Q And is that a true and accurate copy of what you
23 would have signed?

24 A Yes, sir. I have it in my file.

25 Q And that would be your signature? The J-A-M?

JEREMY MOBLEY - CROSS-EXAMINATION BY MR. JOHNSON

1 A Yes, sir. It is.

2 Q And then is this your signature on page 4?

3 A Yes, sir, it is.

4 Q I'm going to have this marked as Respondent's 1.

5 (Defendant's 1 was marked for identification.)

6 MR. JOHNSON: At this time, I'd enter this as

7 Defendant's 1.

8 THE COURT: Okay.

9 MR. JOHNSON: Do you have any objection?

10 MS. MOODY: None.

11 BY MR. JOHNSON

12 Q Mr. Mobley, if you would for me indicate where it

13 says "type of plea," what box has an X in it?

14 A Guilty.

15 Q And then right below what is X'd?

16 A Recommendation.

17 Q Do you see anywhere where there's an X in the box for

18 "negotiated"?

19 A No, sir.

20 Q And if you'll read right below that where it says,

21 "State is recommending," what does it say?

22 A Cap of five with restitution.

23 Q Okay. But it says recommendation, correct?

24 A Uh-huh.

25 Q Okay. I have no further questions, Your Honor.

JEREMY MOBLEY - CROSS-EXAMINATION BY MR. JOHNSON

1 MS. MOODY: No questions for this witness.

2 THE COURT: Okay. Step down.

3 MS. MOODY: Your Honor, at this time I call Michael
4 Matthews.

DIRECT EXAMINATION

5
6 BY MS. MOODY

7 Q Mr. Matthews, can you please state your full name for
8 the record?

9 A My name is Michael Gary Matthews.

10 Q And what is your profession?

11 A I'm a practicing attorney here in York County.

12 Q Okay. And how long have you been practicing?

13 A I was admitted to the bar in 1992.

14 Q And you are -- have you ever prosecuted?

15 A From 1992 to 1996, I worked for the prosecutor's
16 office here in York County prosecuting cases in York and
17 Union County.

18 Q And at the time of this plea, you obviously were a
19 defense attorney?

20 A That's correct.

21 Q Are a defense attorney?

22 A That's correct.

23 Q And do you recall the case with Mr. Mobley?

24 A Yes, ma'am. This is one of those cases that I
25 remember clearly.

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 Q Okay. And can you tell us kind of what kind of case
2 was this?

3 A This was a hit-and-run case. The family had hired me
4 in June approximately, had asked me -- early on in the
5 case asked me to come help Mr. Mobley. He was in jail at
6 the time. And it was a hit-and-run case where there was
7 some issues about who was driving the vehicle, and also
8 how the accident itself occurred.

9 Q And after they hired you, when do you recall meeting
10 with Mr. Mobley?

11 A I met with him shortly after we were retained to talk
12 to him about the case and kind of looking at what the
13 issues would be and moving forward with the investigation.

14 Q Okay. And so when you talked with him about the
15 case, did you all discuss any kind of strategy as to how
16 to handle the case?

17 A We talked about who was driving the vehicle. We were
18 talking about -- initially there was a codefendant in the
19 case. We talked about what his statements were going to
20 be like. Also talked about the location; this happened
21 out at the intersection near the new -- I call it the new
22 Food Lion out at Mt. Gallant and Celanese Road looking at
23 that intersection. Kind of looking at to see if there was
24 any cameras that could have caught that accident at the
25 scene and stuff like that.

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 Q And so based on your investigation of the case, what
2 did you think was the best resolution for this case?

3 A Well, after going out the scene and getting the
4 photographs and the discovery and talking about how my
5 client's presentation about how things happened versus the
6 witnesses that the defendant gave us; and listening to the
7 911 tapes; and going out to the scene seeing there's no
8 cameras pointed at the intersection and kind of going at
9 it from different angles to see if there was any camera
10 that could have seen the accident. We started talking
11 about the pros and cons of a plea versus a trial and going
12 from there, and we started talking about possible
13 situations. But you see when we first started talking
14 about a plea, the first thing out of the solicitor's mouth
15 was, "I don't know if I want to do anything on this, so
16 he's looking at ten years." And so that was about -- he's
17 right that was about six-and-a-half months before we
18 actually got to a final resolution.

19 Q And so specifically, y'all went before Judge Mark
20 Hayes in this case to enter -- at the end of that six and
21 a half months or so --

22 A When we were negotiating it out with Mr. Newkirk and
23 going through the different options and gradually
24 whittling it down, it came up that, you know, during
25 discussions it came up that Judge Mark Hayes was going to

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 be the judge during that particular week. My previous --
2 my personal previous experience with Judge Mark Hayes is
3 that when I've gone in front of him he's been a fairly
4 light sentencer in the cases. And that was a few years
5 prior to Mr. Mobley's case and looking at what has
6 happened since then, nothing had changed my opinion that
7 he was a light sentencer. So when we were looking at a
8 cap looking at the possible scenarios, I thought at the
9 time Judge Mark Hayes would be the best scenario to go in
10 front of and Mr. Newkirk didn't object, and we set it up
11 for that week.

12 Q Okay. And so before you entered a plea, you are
13 required to sign your client up in terms of signing the
14 sentencing sheets that the judge will review, correct?

15 A That's correct.

16 Q And you're required now, I believe in York County,
17 maybe only York County, and maybe some other counties the
18 judges like you to fill out a plea affidavit sheet.

19 A Yeah. That plea affidavit sheet was designed I think
20 by Judge Hayes, Judge Alford maybe a guy from another
21 county -- very similar to what the public defender's been
22 using here for a few years to go through. It requires the
23 prosecutor's signature, the judge's signature. Sometimes
24 they don't sign them, but at a minimum it requires the
25 initials of the client and his signature and my signature

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 at the end.

2 Q And then just for clarity on the record, the judge
3 that helped design this, Judge John Hayes and --

4 A That's correct.

5 Q And Judge Alford?

6 A That's correct. Judge John Hayes, our local judge.

7 Q Okay. So you went through the plea affidavit sheet
8 with Mr. Mobley. Did you read the sheet to him or did he
9 read it?

10 A I read it to him.

11 Q And kind of explain to us how you go through the
12 sheet. Do you read everything, then he initials it, or do
13 you have him initial it simultaneously as you're reading
14 the sheet?

15 A We don't do it -- I don't do it paragraph by
16 paragraph, initial paragraph by paragraph. What I do is
17 kind of read page 1, then have them initial after we get
18 through going through, page 2 and then initial where
19 appropriate, page 3 down until we get to the last page.

20 Q Okay, and the --

21 MS. MOODY: Your Honor, may I approach the witness?

22 THE COURT: Okay.

23 Q I'll have you identify what's been marked as
24 Defendant's Exhibit or -- yeah, defendant's Exhibit
25 Number 1. Can you identify that document?

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 A Defendant's Exhibit Number 1 is the -- what I call
2 the plea affidavit. It has my clients name on it, his
3 initials, and on the next to last page has my signature.

4 Q How many pages is this document?

5 A Five pages total.

6 Q So when you say you go through each -- you don't go
7 through each paragraph, you go through each page and then
8 have the client initial?

9 A That is correct.

10 Q Okay. And you would agree with me that these are
11 fairly lengthy paragraphs?

12 A That's true I mean --

13 Q -- at least for the layman's purpose of reading,
14 these are kind of lengthy paragraphs for them to remember?

15 A Well let me be more specific. When I say I don't
16 have them initial each as I go through the page, as I read
17 each paragraph I ask him does he understand that paragraph
18 and he indicates yes or no. If there's a paragraph he
19 doesn't understand, I stop at that paragraph and we
20 discuss it.

21 Q Okay.

22 A So when I say he initials each page that's after
23 we've gone through each paragraph and I asked him yes or
24 no, does he understand that?

25 Q Okay. And so just so I'm clear you'll read it,

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 you'll ask him the question does he understand it, and
2 he'll indicate affirmatively or negatively, and then after
3 you've gone through that whole sheet he will then -- you
4 will give him the sheet and he will then put his initials
5 by each box --

6 A That's correct --

7 Q -- that is applicable to him.

8 A That's correct.

9 Q Okay. So, on this particular day, again you read him
10 the sheets in their entirety and you had him sign it on
11 the 19th?

12 A That's correct.

13 Q And then you signed it on the 19th?

14 A That's correct.

15 Q And then this all was done on the same day of the
16 plea?

17 A Yes.

18 Q And how long after in -- completing this sheet I know
19 you have to sign the indictment and you have to sign the
20 sentencing sheet and do some other paperwork -- how long
21 after you completed the paperwork was it before you pled?
22 Was it within minutes, or was it --

23 A I don't remember at the end one right after the
24 other -- I mean, probably a short period of time. I
25 think -- you know the sessions were broken up as to

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 morning session, afternoon session, but I can't remember
2 which session we were in, but it wasn't like hurry up and
3 sign this and let's go in the courtroom.

4 Q Okay. So, when you went in to enter the plea, did
5 anything change in that period of time as to whether it
6 was going to be the cap of five years, or was it going to
7 be now you're looking at almost ten years -- there was no
8 change in that?

9 A Well, I mean, as you can tell on page 1 at one point
10 in time it was going to be ten years suspended on a cap of
11 five years --

12 Q Okay and --

13 A -- but we changed that.

14 Q And why?

15 A Well, we changed it because one is, our intention was
16 we had spent six-and-a-half months to negotiate this thing
17 down and it didn't make sense to me that we spent all that
18 time negotiating it down to five years, to have it say ten
19 on five when he wasn't getting any probation after the
20 five. So I didn't understand why we were going to do the
21 split sentence. So I just told him -- I told him let's
22 just do a cap of five -- let's make it simple and do a cap
23 of five years, so that's the reason why it says -- the
24 "ten years suspended upon" was struck out on page 1. And
25 the "followed by probation" was struck out because we were

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 going do straight time not worry about probation

2 afterwards and keep on trucking.

3 Q Okay. And the restitution.

4 A I can't remember about the restitution. I know they
5 were asking for restitution, I don't know -- I can't
6 remember about that. I know we struck out that other
7 thing, but with the restitution I can't remember right off
8 the top of my head.

9 Q Okay. So there were some changes and you went before
10 the judge in entering the plea. So now you've heard
11 Mr. Mobley's testimony was that it was erroneous advice
12 and he thought he would get no more than five years? Can
13 you explain to the court was it a negotiated plea or was
14 it just a recommendation?

15 A The best way to explain it is this way. In the 20
16 some odd years I've been practicing law in this area, when
17 we take a cap of -- a sentence with a cap -- in front of
18 our judges, they generally treat it as a -- not generally
19 they almost always treat it as a negotiated plea. Whether
20 it says negotiated or recommendation on the sentencing
21 sheet, they treat it as okay y'all agreed not to go above
22 five --not for me to go above five, and you can argue for
23 whatever less than that. Now, that was the whole purpose
24 of that sentencing. So whenever I discussed that with him
25 I did tell him, here's what typically happens. We go in

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 and we say cap of five years. Here's the definition of
2 the cap. And I gave him the same definition I just gave
3 you about that scenario. Okay. And again, in the back of
4 my head I was thinking, you know, my local -- you know,
5 historically in front of my local judges not an issue.
6 Didn't think it was going to be an issue with Judge Mark
7 Hayes because historically he's been sentencing lightly.
8 And the present -- and he was told at the very beginning
9 that there was a cap of five years.

10 Q When you say "he," you're talking about Judge Hayes?

11 A Judge Mark Hayes was told there was a cap of five
12 years by the prosecutor. The presentation by the
13 Solicitor's Office was for him to give my client the
14 entire five years. My presentation was to get something
15 less, understanding there was probation violation sitting
16 in the background. That probation violation wasn't going
17 to get him -- if I remember correctly -- wasn't going to
18 get him the other five years, so we were going in trying
19 to argue for something less.

20 Q Okay.

21 A And both presentations were under the guise of the
22 negotiated, in my opinion, the negotiated cap.

23 Q Okay. So when you point to the -- well, when you
24 point to the presentation by the state and Mr. Newkirk
25 informs the Court, he calls the case before the Court and

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 he says, "Your Honor, he's pleading today with a
2 recommendation from the state of a cap of five years"?

3 A That's correct.

4 Q That's still in your mind that he's looking at no
5 more than five years, even though the judge on a
6 recommendation can go above or below whatever the
7 recommendation is?

8 A And I would submit it was in the prosecutor's mind
9 I'm not going beyond five years because he asked -- I
10 can't point out specifically in the transcript -- I'll
11 leave that up to y'all, but he asked the judge to give him
12 the entire five years.

13 Q Okay. But he didn't ask the judge to give him ten
14 years?

15 A No.

16 Q Okay. But, and so the judge decided to go above the
17 five years?

18 A I think Judge Mark Hayes's exact words were -- and
19 again, I may be wrong about how he said it in the
20 transcript but this is how I remember it because it
21 shocked me when he did it -- was he says that, "I'm
22 disagreeing with both parties, and based on the
23 presentation I'm going to give him the full ten years."
24 Now I'm paraphrasing that, but that's the intent of his
25 statement he made in the courtroom.

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 Q Okay. And so that takes us to he issues him the
2 sentence, and you -- what, if any, conversation did you
3 have with Mr. Mobley after he was sentenced?

4 A Immediately thereafter, I was in complete shock. I
5 had never had that happen to me before. Never. I had
6 defense attorneys coming up to me saying, What just
7 happened? Because they had never seen it before. I took
8 family outside and my first reaction was to appeal it, do
9 the notice of appeal. Then I did the notice of appeal,
10 did the affidavit of indigency to him get appointed to the
11 Office of Appellate Defense and the motion to have a free
12 attorney appointed to him. He had already been taken
13 downstairs, so I think it's within a day, because I had to
14 go back the office and type all that up, went downstairs
15 after I talked to the family, went back to the office
16 typed all that -- it was within a day, day-and-a-half I
17 went and saw him. He was already in one of the outlying
18 box, so I had to walk all the way down to get to him where
19 he could sign off, talk to him about his notice of appeal
20 and talk to him about the -- getting him an attorney out
21 of the Office of Indigent Defense and a motion to be filed
22 and sent in.

23 Q So when you -- so then you attempted to do all the
24 paperwork for the notice of appeal, you sent a letter to
25 the Court of Appeals and they indicated that you failed to

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 comply with the rule in filing the appeal?

2 A I resent -- the only thing I can figure out that was
3 serving Mr. Dunnick over at the public defender, I redid
4 all that. But they still said there was documentation
5 missing and I sent the notice of appeal, sent the request
6 for him to be appointed an attorney. The motion to be
7 appointed and then I did go and serve Mr. Dunnick at the
8 appellate defense.

9 Q Were they looking for a statement from you? A
10 statement of the appeal? So, like, when you say you filed
11 a notice of appeal you filed a notice that says you're
12 filing a notice after receiving the sentence, accounting
13 for the time limits of the appeal, and then there are your
14 certificates of service, I believe that's what you're
15 talking about --

16 A Yeah, the certificates of service, yes.

17 Q Okay. And I guess you filed those paperworks outside
18 with the Clerk of the Court office. You gave notice to
19 the state?

20 A Yes.

21 Q Okay. And then you stated the reasons or grounds
22 that you were appealing?

23 A That may be -- I'd have to go back and look. I don't
24 know if I stated the grounds of it. The only reason for
25 the notice of appeal was to appeal Judge Mark Hayes'

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 decision to treat it as a recommendation and do whatever
2 he wants to do. I found out later that -- this happened
3 November 2013 -- a case had come out earlier 2013, because
4 this issue had been brought up before the appellate court
5 on another case that actually said he could do that. So
6 that moment the whole issue to appeal it went up in smoke,
7 because the Court had already ruled a judge could treat a
8 cap, if it says recommendation, as a recommendation and do
9 whatever else he wanted to do. And that we should have
10 marked it down as negotiated. But that was after the fact
11 and after all the -- the one document I can't tell you
12 what they were looking for -- I'm telling you what I sent
13 in, if they were looking for the specific reason that
14 didn't get sent. But that specific reason would have been
15 what the judge did at the bench. And it turns out there's
16 a case that indicated he could.

17 Q So, in essence your testimony here today is that the
18 understanding going forward was that the cap was while
19 there was a recommendation of five years and it was a cap,
20 that it was understood that you were seeking less than the
21 five, or five or less, and that the state was seeking five
22 or less after y'all's negotiations?

23 A And I did tell him that in a cap situation, the judge
24 would not go above the five years.

25 Q And then the other issue would be the appeal that was

MICHAEL MATTHEWS -- DIRECT EXAMINATION BY MS. MOODY

1 not perfected -- I mean, I understand you're saying there
2 was something that came out in 2013, but the appeal was
3 never perfected on behalf of Mr. Mobley.

4 A Based on the letter I got back from the Court of
5 Appeals, I guess that would be a correct answer.

6 Q No further questions for this witness. Please answer
7 any questions the state has.

8 MR. JOHNSON: May it please the court. Your Honor.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON

11 Q Mr. Matthews, I understand your testimony, but will
12 you agree with me that the plea affidavit and in the
13 transcript, and on the sentencing sheets it states it's a
14 recommendation from the state?

15 A Yes, sir.

16 Q Okay. No further questions.

17 MS. MOODY: No questions for this witness.

18 THE COURT: Step down.

19 MS. MOODY: Your Honor, I'd ask that Mr. Matthews be
20 excused.

21 MR. JOHNSON: No objection from the state.

22 THE COURT: Okay.

23 MS. MOODY: That would be all from the petitioner,
24 Your Honor.

25 MR. JOHNSON: No witnesses from the state, Your

MICHAEL MATTHEWS - CROSS-EXAMINATION BY MR. JOHNSON

1 Honor.

2 THE COURT: All right. Well, you can prepare me some
3 proposed orders and I'll look at them.

4 MR. JOHNSON: Thank you, Your Honor.

5 MS. MOODY: Thank you, Your Honor.

6 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Jeremy Mobley,)
 S.C.D.C. No. 357960,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-3296

ORDER OF DISMISSAL

FILED-RECEIVED
 2017 MAR 21 AM 11:27
 DAVID HAMILTON
 S.C.C.P. & GS
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 6, 2014. Respondent made its Return on or about January 14, 2015. An evidentiary hearing into the matter was convened on April 15, 2015, at the Moss Justice Center in York, South Carolina before the Honorable J. Ernest Kinard, Jr. Applicant was present at the hearing and represented by Leah Moody, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Michael Matthews, Esquire, also testified. This Court also had before it a copy of the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript, and the transcript from the hearing before Judge Kinard.

The undersigned, pursuant to Rule 63 SCRPC, assigned this case to himself due to the death of Judge Kinard prior to his issuing an order in the case. The tardiness of this order is not due to fault of the undersigned, but rather the lapse of time before the hearing transcript was provided to the undersigned. The transcript was received by the undersigned March 8, 2017.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was charged with Hit and Run with Great Bodily Injury. Michael Matthews, Esquire, (hereinafter "Counsel") represented him. On November 19, 2013, the Applicant waived presentment of this charge to the grand jury and pled guilty before the Honorable J. Mark Hayes, II. He was sentenced to imprisonment for ten years on the charge.

A notice of appeal was filed on Applicant's behalf but the South Carolina Court of Appeals dismissed his appeal for failure to comply with SCACR Rule 203. The Remittitur was issued on August 25, 2014.

Allegations

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

1. "Counsel, Mr. Michael Matthews failed to send all documents in time for appeal."
 - a. "Letter from South Carolina Court of Appeals stating Counsel failed to comply with Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules and my case was dismissed"
2. "Conflicting statements from me and codefendant"
3. "My attorney and solicitor agreed on a cap of 5 years"
 - a. "I signed an agreement for a plea of a 5 year cap"
 - b. "Attorney and solicitor had different statements in the case"

II. SUMMARY OF EVIDENCE PRESENTED AT PCR HEARING

Applicant's Testimony

Applicant testified that he met with Counsel four times before his plea to discuss his case. He testified that they discussed the consequences of pleading guilty versus going to trial. He testified that they discussed that if he went to trial, he would face up to ten years on the charge.

Applicant testified Counsel negotiated a plea offer of a cap of five years, which was the State's last offer. He testified that he would have taken the case to trial, but wanted to accept the cap of five years. He testified that he pled guilty before Judge Hayes and was told to say "yes sir" to every question. Applicant testified that he understood the plea to be a cap of five years but the plea judge said he could go over five. He testified that Counsel said he could get no more than five years but he received ten years. Applicant testified that he thought he would get less time because of Counsel's advice. Applicant further testified that part of his plea hearing included a probation violation, where Applicant received ten years.

Applicant testified that he talked with Counsel after the plea and Counsel said they could appeal it. He testified that his appeal was dismissed because Counsel did not submit a Rule 203 explanation.

Applicant testified that he signed the plea affidavit, included next to the box that explains that the type of plea is a recommendation of a cap of five years.

Counsel Mike Matthews's Testimony

Counsel testified that he was retained to represent Applicant. He testified that there were issues about who was driving the vehicle. He testified that he and Applicant talked about the pros and cons of pleading guilty versus going to trial based on the investigation. Counsel testified that the solicitor would not negotiate a plea at first, but he was able to work out a plea deal. Counsel testified that he reviewed the plea affidavit with Applicant, one page at a time, and Applicant initialed each box the same day that he pled guilty.

Counsel testified that the offer was originally ten years suspended to a cap of five years. He testified that the ultimate offer was a recommended cap of five years. Counsel testified that usually local judges treat caps as negotiations that he did not think that a cap would be an issue.

Je # 7e 3

with Judge Hayes. Counsel further testified that both he and the State argued for a cap of five years but Judge Hayes said that he disagreed with both parties and sentenced Applicant to the full ten years.

Counsel testified that he filed the notice of appeal but the Court of Appeals dismissed it pursuant to SCACR 203(d)(1)(B)(iv) because of a lack of proper paperwork. He testified that the appeal was not perfected.

III. APPLICABLE LAW

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

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

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

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but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant alleges Counsel was ineffective regarding his guilty plea. This Court finds that Applicant failed to meet his burden of proving that his plea counsel was ineffective. This Court finds Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813.

An applicant 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 applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969).

This Court finds that the plea waiver form, signed and initialed by Applicant, clearly states that Applicant was agreeing to plead guilty to hit and run with great bodily injury, and that the offense carries a sentence ranging from thirty days to ten years imprisonment. The waiver form explains that the State was making a recommendation of a cap of five years. Applicant also initialed the box which stated that the Judge is not required to accept the recommendation given by the solicitor and may accept it, sentence below the recommendation, or sentence above the recommendation. Furthermore during the plea hearing, the following colloquy took place between Judge Hayes and Applicant:

THE COURT: Now, sir, do you understand that I'm not bound by recommendation that's made by the state?

APPLICANT: Yes, sir.

THE COURT: And that today I could sentence you up to 10 years on this charge?

APPLICANT: Yes, sir, I understand.

THE COURT: And you still wish to enter this plea?

APPLICANT: Yes, sir.

Trial Transcript, p. 9, ll. 4-11.

Additionally, Judge Haycs asked Applicant if anyone had made him any promises in order to get him to plead guilty and Applicant responded in the negative. Trial Transcript, p. 5, ll. 4-7.

This Court finds Counsel's testimony credible that he reviewed the plea affidavit with Applicant and that he argued for mercy on Applicant's behalf. This Court finds that Applicant's desire to receive a sentence of ten years does not change the fact that he was well informed from Counsel, the plea waiver form, and the plea judge that he was pleading to a charge that carried thirty days to ten years. See Wolfe v. State, 485 S.E.2d 367, 371, 326 S.C. 158, 165 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made). This Court also finds that Applicant was well aware that the plea judge did not have to accept the State's recommendation. See State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982) ("Further, when the State fulfills its agreement to recommend a specific sentence, the fact that the judge does not accept the recommendation does not affect the validity of the plea."). This Court finds that Counsel was not ineffective regarding his advice for Applicant to plead guilty because Counsel argued for the plea judge to accept the State's recommendation.

Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's actions because Applicant has failed to show that he otherwise would have elected to go to trial, and has not shown any error in Counsel's assistance that led him to plead guilty instead. Therefore he cannot prove any prejudice. Accordingly, this allegation is denied and dismissed with prejudice.

Applicant also alleges that Counsel was ineffective for failing to perfect his direct appeal. This Court finds that Counsel filed the notice of appeal but the appeal was ultimately dismissed for failure to follow Appellate Court Rule 203(d)(1)(B)(iv), which requires that an appeal from an Alford plea be accompanied by "a written explanation showing that there is an issue which can be reviewed on appeal." The Rule states that the "explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." Rule 203 SCACR.

This Court finds that Counsel was deficient for not filing the Rule 203(d)(1)(B)(iv) letter since he was required by the Appellate Court rules to do so and because the Court of Appeals subsequently instructed him to file the letter. However, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's deficiency. This Court finds that Applicant was well informed of the consequences of his plea through discussions with Counsel, the initialed and signed plea waiver form, and his colloquy with the plea judge. A review of the plea transcript shows that Applicant did not raise any issues or concerns or make objections at any point during the plea hearing. Applicant has not shown that any specific issue was raised and ruled upon at the plea hearing or would be otherwise preserved for direct appeal. Accordingly, Applicant has failed to meet his burden of showing that he was prejudiced by Counsel's actions, and this allegation must be dismissed.

Involuntary Guilty Plea

To the extent that Applicant alleges that his plea was given involuntarily, this Court finds this allegation must be dismissed. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274

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

This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty and therefore waiving any challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the consequences of pleading guilty and the potential sentence he could receive. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds credible Counsel's testimony regarding his preparation and advice concerning the case. The record reflects Applicant fully admitted his guilt to the plea court and agreed with the State's version of the facts. See Trial Transcript, p. 9, ll. 1-3, 12-15. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the

criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). After a full review of the guilty plea transcript, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Additionally, this Court finds that the plea judge's rejection of the State's recommendation does not affect the voluntariness of Applicant's plea. See Lambert v. State, 260 S.C. 617, 621, 198 S.E.2d 118, 119-20 (1973) (holding that the voluntariness of the defendant's plea was not affected when the court did not accept the solicitor's recommendation). Accordingly, this allegation must be dismissed.

All Other Allegations

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

V. CONCLUSION

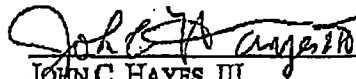
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16th day of March, 2016.


 JOHN C. HAYES, III
 Presiding Judge
 Sixteenth Judicial Circuit H/11

Vin, South Carolina

DOCKET NO. 2013-GS-46- 04149

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

x Jeremy Molley
Defendant

WITNESSES

RHPD\Rowe

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

December 12, Term 2013

I Jeremy Cordera Mobley hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

jwg

ARREST WARRANT NUMBER

2013A4620302360

THE STATE

vs.

x Jeremy Molley
Defendant

ACTION OF GRAND JURY

JEREMY CORDERA MOBLEY

Witness: Shay Childers Cowell
C.C.C. P.S. AND G.S. Special J

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

TRAFFIC / HIT AND RUN WITH GREAT BODILY INJURY

Foreperson of Petit Jury
Date:

SC Code: 56-5-1210
CDR Code: 2462

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

CERTIFIED TRUE COPY
INDICTMENT
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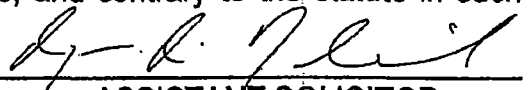
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on December 12, 2013, the Grand Jurors of York County present upon their oath:

TRAFFIC / HIT AND RUN WITH GREAT BODILY INJURY

The Defendant, Jeremy Cordera Mobley, did in York County, South Carolina, on or about May 8, 2013, being the driver of a vehicle involved in an accident resulting in great bodily injury, wilfully and unlawfully failed to stop and remain at the scene of the accident and fulfill the requirement of Section 56-5-1210 of the Code of Laws of South Carolina (1976 as amended).

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


ASSISTANT SOLICITOR