

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Greenville County

Honorable John C. Hayes, Circuit Court Judge

RONALD BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002378

APPENDIX

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INDICTMENT55

1	STATE OF SOUTH CAROLINA	:	COURT OF GENERAL SESSIONS
		:	2013-GS-23-10617
2		:	
3	State of SC	:	TRANSCRIPT RECORD
4	vs	:	
5	Ronald Earl Brown	:	
6		:	
7		:	
8			October 7, 2014
			Greenville, South Carolina
9		----	
10	BEFORE:		The Honorable Edward Miller, Judge
11	A P P E A R A N C E S:		
12			Jeff Weston, Esquire
13			Assistant Solicitor
14			Chris Posey, Esquire
15			Attorney for the Defendant
16			
17			
18			
19			
20	Caroline Hiskell		
21	Thirteenth Circuit Court Reporter		
22			
23			
24			
25			

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I N D E X

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(No Witnesses or Exhibits admitted at this hearing.)

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State versus Brown

P R O C E E D I N G S

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THE CLERK: Your Honor, this is Case No. 2013-GS-23-10617, Ronald Earl Brown, indictment for assault and battery by mob, first degree. He is pleading to the same and it is a True Bill.

Would you raise your hand please.

RONALD EARL BROWN, having been duly sworn, testified as follows:

Thank you.

THE COURT: Alright, Mr. Brown, in the last 24 hours have had any drugs, alcohol or medication?

DEFENDANT BROWN: No, sir.

THE COURT: Have you ever been treated for substance abuse or mental illness?

DEFENDANT BROWN: No, sir.

THE COURT: You're up here on this indictment 2013-10617. It alleges that you did in Greenville County April 20th of 2013, willfully and unlawfully participate a part of a mob that inflicted death upon Dabron Harrison.

DEFENDANT BROWN: Yes, sir.

THE COURT: This carries, I believe, 30 years to life in prison. This is a Violent Offense which means no parole. This is a Most Serious Offense and if you get convictions for two or more Most Serious Offenses, you are eligible for life in prison without parole. Do you

State versus Brown

1 understand that?

2 DEFENDANT BROWN: Yes, sir.

3 THE COURT: Understanding the nature of the
4 charge against you and the maximum possible punishment,
5 how do you want to plead?

6 DEFENDANT BROWN: Guilty.

7 THE COURT: Is that your free and voluntary
8 choice?

9 DEFENDANT BROWN: Yes, sir.

10 THE COURT: You understand you have an
11 absolute right to a trial by jury where you would be
12 presumed to be innocent unless and until the State could
13 prove you guilty beyond a reasonable doubt of each and
14 every element of the offense that you're charged with.

15 DEFENDANT BROWN: Yes, sir.

16 THE COURT: You'd have a right to confront
17 and cross-examine the witnesses and the evidence put up
18 against you by the State. You'd have a right to compel in
19 court all relevant and competent evidence in your own
20 defense or you can remain silent. Your silence can not be
21 held against you and you can never be compelled to
22 incriminate yourself. Do you understand all those rights?

23 DEFENDANT BROWN: Yes, sir.

24 THE COURT: You want to give all of the
25 rights up to enter this plea?

State versus Brown

1 DEFENDANT BROWN: Yes, sir.

2 THE COURT: Are you guilty?

3 DEFENDANT BROWN: Yes, sir.

4 THE COURT: Are you totally and completely
5 satisfied with the representation of your attorney?

6 DEFENDANT BROWN: Yes, sir.

7 THE COURT: Has he done everything that you
8 think he should have done?

9 DEFENDANT BROWN: Yes, sir.

10 THE COURT: Has he done anything you think he
11 should have done?

12 DEFENDANT BROWN: No, sir.

13 THE COURT: Do you have any complaints about
14 the way you've been treated in the case?

15 DEFENDANT BROWN: No, sir.

16 THE COURT: And have you had enough time to
17 review the evidence the State has against you?

18 DEFENDANT BROWN: Yes, sir.

19 THE COURT: Okay. Listen while they tell us
20 about it.

21 MR. WESTON: If it please the Court, Your
22 Honor, if you may recall you heard the -- you presided
23 over the trial of two co-defendants approximately three
24 months ago in regard to this case. The events occurred
25 approximately 10:00 p.m., on the night of April 20, 2013

State versus Brown

1 at the Westend Community Center here in Greenville on
2 Vardry Street right across from Greenville High School.

3 The victim, Mr. Dabron Harrison, he is a
4 Columbia resident. He was here visiting his father and he
5 was acting as a chaperone at a sweet 16 birthday party for
6 his cousin.

7 The evidence would show that there were
8 approximately 100 to 150 people that ended up at the
9 party. The evidence will show this defendant came to the
10 party with some other friends. During the course of the
11 party this defendant and some of his friends began to,
12 what was referred to, throw up gang signs and were
13 chanting gang slogans. As a result the party had to be
14 shut down.

15 On the way out of the party, out in the foyer
16 of the community center and right out in front of the
17 community center, the victim's cousin and her friend got
18 into an altercation with this defendant, specifically, at
19 which point this defendant struck both the female 16 year
20 old victims. Mr. Harrison interceded and was then set
21 upon by this defendant and approximately at that point
22 five or six other co-defendants.

23 Mr. Harrison not being from Greenville, got
24 up, did not know these people. He was simply trying to
25 intercede, as I said, on behalf of his cousin, got up and

State versus Brown

1 tried to run away. He had no idea where he was running.

2 He ended up running across into a parking
3 lot, the Medical Center on Vardry Street.

4 The testimony would be at the time he ended
5 up running across the street into the parking lot, there
6 were at least 15 or as possible as many as 20 individuals
7 chasing him none of whom knew him and he knew none of
8 them. He had no idea where he was going.

9 He unfortunately ran into the parking lot and
10 the parking lot was enclosed by a 8 to 10 foot fence. He
11 attempted to scale the fence in order to get away and was
12 pulled down off the fence.

13 Testimony would be, Your Honor, if we had
14 gone to trial that this defendant was part of the group
15 that fought the victim in front of the community center.
16 This defendant was part of the group that chased him
17 across the street in to the parking lot, and this
18 defendant was part of the group that struck and eventually
19 killed the defendant.

20 The medical examiner would have testified the
21 victim had received numerous blows to his head, neck and
22 torso, and that his death resulted from either being
23 struck by an object or more than likely kicked in the
24 head.

25 The testimony of numerous co-defendant would

State versus Brown

1 have been that this defendant was one of the primary
2 aggressors, not the only one, but one of the primary
3 aggressors and that he had to be pulled off of the victim,
4 once the other perpetrators had recognized that the victim
5 had lost consciousness and was, as they put it, in
6 trouble.

7 The group of these individuals, this mob
8 broke up, police were called and an investigation ensued.

9 Investigator David Garrison and Collis Flavil
10 investigated the case. Investigator Garrison is here and
11 asked to be heard briefly at the appropriate time.

12 Your Honor, the Solicitor's Office would put
13 on the record and we'd like to commend Investigator
14 Garrison and Flavil as well as the Greenville City Police
15 Department for the job they did.

16 As I said they were over 100 to 150 juveniles
17 there and they over the next several weeks had to sift
18 through countless stories and alibis and minimization of
19 who was involved and what they did and were able to sort
20 out eventually 18 defendant who were charged. Eleven of
21 them were juveniles were under the age of 16 and they have
22 all pled guilty and are now in the Department of Juvenile
23 Justice.

24 Charges against two of the adults were
25 dismissed, two of the other adults went to trial, as I

State versus Brown

1 said, three months ago. One of the other adults pled
2 guilty and he was prepared -- his sentence has been
3 deferred. We were going to bring him up on Thursday. He
4 had just turned 16 at the time. As a result he was
5 charged as an adult and he pled guilty to assault and
6 battery by mob second degree. Is sentence is pending.

7 Those would be the facts that the State would
8 allege and establish at trial, Your Honor.

9 Both the mother and father of the victim are
10 present and would also like to be heard at the appropriate
11 time. And I would also like to put on the record that
12 there were three other charges that accompanied this
13 charge. There was a kidnapping charge and two counts of
14 assault and battery three degree with regard to the
15 assault on the females. Those charges are being dismissed
16 as part of this plea agreement.

17 There is no recommendation from the State
18 concerning sentence.

19 The defendant has no adult criminal record.

20 THE COURT: Mr. Brown, is all that
21 substantially true and correct?

22 DEFENDANT BROWN: Yes, sir.

23 THE COURT: I'll accept the plea as being
24 freely, voluntarily, and intelligently made with the
25 advice of a very competent attorney with whom he said he's

State versus Brown

1 well satisfied and there is a substantial factual basis
2 for the plea.

3 Yes, sir.

4 MR. GARRISON: The only thing I would like to
5 add is during the course of our investigation in speaking
6 with several of the juvenile co-defendants I'd like the
7 Court to know this was not a spur of the moment thing.

8 From what other co-defendants have told us is
9 that Ronald Brown and the other co-defendant left Falls
10 Park to walk to this community center for this birthday
11 party. He talked about going there to start a fight. He
12 was going there to start a fight.

13 The term he used was turn it up and I asked
14 them what that meant and it meant he was going there to
15 start a fight and we kept telling them no, don't do it,
16 but he went there to start a fight.

17 When he got pushed out of that community
18 center and they wouldn't fight then, they just wanted him
19 to leave, he chose to assault a female knowing that one of
20 her family members would step in to defend her. And when
21 that happened, when Dabron Harrison stepped in to defend
22 his 16 year old cousin, that's when they chased him down
23 and they killed them.

24 The first post that he made to Facebook when
25 he left that party was, "I turned it up tonight."

State versus Brown

1 Thank you.

2 THE COURT: Thank you, very much.

3 I'd be happy to hear from the victim's
4 family.

5 MS. BELTON: Good afternoon, Your Honor, I'm
6 LaKeisha Belton, Dabron's mother. For this last years,
7 six months and 11 days, has been pure (inaudible) to me.
8 I lost my only child for nonsense. I do not wish that
9 this adult to get out at any time. I feel as though you
10 took a life, you deserve life. This was my only child.
11 My only child. My only child. Why?

12 THE COURT: Thank you, Ma'am.

13 MR. HARRISON: Good afternoon, sir, my name
14 is Brian Harrison. I'm Dabron's father and I would like
15 to say that I feel like what she said he was my first born
16 son. This last year and a half has been rough and we done
17 everything together. We hiked and fished and done
18 everything. I feel like the other co-defendant has been
19 sentenced to 40 years and the bar has been set to 40
20 years. I feel like he done much more than the other
21 co-defendant. He took my son life and I feel that,
22 honestly, he should serve his life behind bars.

23 THE COURT: Thank you, very much.

24 MR. WESTON: Nothing further from the State.

25 THE COURT: Mr. Posey.

State versus Brown

1 MR. POSEY: If it please the Court, Your
2 Honor, as you already heard Ronald is 20 years of age. He
3 was 18 when this incident happened. Judge, it's a tragic
4 situation and there is nothing Ron would rather do is turn
5 back the hands of time and undo the situation which he
6 knows can't be done.

7 He also knows he stands before you today
8 having to pay a price for his actions in April of 13.

9 Judge, Ron is a young man and a lifelong
10 resident of Greenville. In some ways I would submit to
11 you he's never had the chance in a lot of ways. Not
12 strong parental guidance. He was kind of left on his own
13 and allowed himself to be brought into an environment
14 which is not conducive to conform with the norms of our
15 society.

16 He is an intelligent young man. In the last
17 18 months, I got to realize that. I think we met, and
18 I've counted as of yesterday, 19 times. We've had
19 numerous conversations over the past 18 months. I see his
20 intelligence. I seen a side of him that I don't know he's
21 ever showed a lot of people.

22 The last 18 months being in the Detention
23 Center has taught him a lot of things. He knows he's
24 going to spend a great many more days and months and years
25 in detention.

State versus Brown

1 What I would ask the Court is, when then
2 occurred he was not much more than a child himself, 18
3 years old and in many ways was still a child.

4 Judge, I would ask you and strongly ask you
5 to consider the minimum of 30 years. That would be a long
6 time in prison for anyone.

7 I think Ronald could do a lot of good for not
8 only himself I think he could do a lot of good for other
9 young people avoid the choices he made. I think he wants
10 to do that.

11 He doesn't have the skill set to do it right
12 now. He and I have talked about it and worked on it to
13 some degree. He wants to take advantage of any
14 educational opportunities being afforded to him while he
15 is in the Department of Corrections to help him develop
16 that skill set.

17 It's not a pure bad young man, Your Honor.
18 This is somebody who made a lifestyle choice that he is
19 going to pay a tremendous price for. I think there is a
20 side of him that now knows and is willing to accept his
21 punishment by standing here and not going through trial
22 like the other adult co-defendants did. He's admitted his
23 guilt.

24 He wants to try to make a difference not only
25 in his life but in the life of others down the road.

State versus Brown

1 There's nothing he can say to the Harrison family that
2 could bring back their son. He was part of that, he
3 admitted that, and he's accepted responsibility for it and
4 he is remorseful about it.

5 I would ask the Court to take into
6 consideration his age, his lack of any previous record,
7 the fact that he is standing before you, Your Honor,
8 admitted guilt and not forcing the State to prove through
9 trial and putting the family through yet another trial, I
10 would ask Your Honor for the minimum of the 30 year
11 sentence.

12 THE COURT: Alright.

13 What you want to tell me?

14 DEFENDANT BROWN: (No response).

15 THE COURT: Nothing.

16 Where does he stand with respect to
17 culpability wise to that other young man, Elijah Wilson?

18 MR. WESTON: The State would contend that
19 this defendant was the primary aggressor. Obviously, he
20 initiated the assault on this defendant.

21 I did not previously mention the State would
22 have put in at trial that the linchpin that connected the
23 parties that chased and beat Mr. Harrison to death was
24 local gang affiliations that this defendant, according to
25 his web site, is a member of, and according to the other

State versus Brown

1 juveniles, and a leader of a gang called the Hit Squad.

2 A search warrant at his home turned up a
3 bandanna that was introduced at the prior trial that had
4 hit squad on it. His Facebook page refers to himself at
5 Ronald "Lil Rue, Hit Squad" Brown and the juveniles are
6 members of this gang called Tough Moneys Boys, TMB, and
7 they consider themselves junior varsity to this gang's
8 varsity and where they led, these juveniles would follow.

9 Therefore, the State's position is that he is
10 the most culpable person in this case and in a broader
11 sense the leader of this group of miscreants.

12 THE COURT: Anything you want to say to
13 address that?

14 DEFENDANT BROWN: I'm not.

15 THE COURT: No.

16 DEFENDANT BROWN: I'm not the leader of that.

17 THE COURT: You're not.

18 DEFENDANT BROWN: No, sir.

19 THE COURT: Who is? You say it's not you
20 although you got some Facebook page that claims to be,
21 that says you are.

22 DEFENDANT BROWN: It's not me claiming to be
23 the leader of the group. It's me with another member of
24 the group. It's just me as the ---

25 THE COURT: But you're in the group, right?

State versus Brown

1 DEFENDANT BROWN: Yes.

2 THE COURT: Who is the leader?

3 DEFENDANT BROWN: It's between two top
4 people. I can't point it. It could be Brittany and
5 Scoop.

6 MR. POSEY: Just for clarification those the
7 two adults that were on trial before Your Honor.

8 THE COURT: Well, that's not the way it
9 appears to be. Anything else?

10 (There was no response.)

11 45 years.

12 MR. WESTON: Thank you, Your Honor.

13 ---END OF TRANSCRIPT RECORD---

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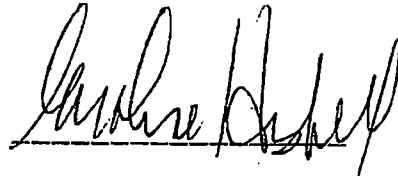
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State versus Brown

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I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions, Greenville County, this 7th day of October, 2014.

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



Caroline Hiskell

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of GREENVILLE)

RONALD EARL BROWN 00361682)
Full name and prison number (if any) of Applicant)

2015-CP-23- 05744

v.)

APPLICATION FOR)

State of South Carolina)

POST-CONVICTION RELIEF)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 SEP 8 AM 10 36

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 LEE CORRECTIONAL INSTITUTION
1204 EAST CHURCH STREET, BHISHOPVILLE, SC
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
GENERAL SESSIONS COURT, 305 E. NORTH STREET, GREENVILLE, SC
3. Name(s) of co-defendant(s) (if any) SEE ATTACHED LIST
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013-GS-23-10617, 45 years
(b) _____

(c) _____

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

(a) 45 YEARS, October 7, 2014

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

no

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

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

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) didn't know of rights until after (10) ten days had passed

(b) _____

(c) _____

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

(a) his trial attorney did not subpoena his witness and was not prepared to defend him

(b) _____

(c) defendant plea was a result of threats

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

(a) defendant and his Mother both gave attorney alist of witness and he never niteview or talked to them

(b) _____

(c) plea was mad after threats of getting life sentence

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

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

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

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

(d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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. CHRIS POSEY, 102 W. STONE AVE, GREENVILLE, SC 29609
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. guilty plea and sentencing
 - ii. _____
 - iii. _____

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

new trial

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

no

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Ronald Earl Brown 00361687, ^{by and through his Attorney, Richard H. Wade} 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.

Ronald E. Brown, by and through his attorney, Richard H. Wade

SWORN to and subscribed before me this 1st day of September, 2015

Wm Collins-Simpson (L.S.)
Notary Public

My Commission Expires: 9-25-23

Juvenile

Lamar I. Roges

Laquan Spann

Bryson T. Clay

Samson R. Groves

Christian Williams

Antonio D. Moss

Mykel Young

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Ronald Earl Brown,)
 S.C.D.C. No. 361682,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2015-CP-23-5744

RETURN

In response to the post-conviction relief application filed September 18, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2013 term of General Sessions for First-Degree Assault and Battery by Mob (2013-GS-23-10617). Christopher T. Posey, Esquire represented the Applicant.

On October 7, 2014, the Applicant pled guilty as indicted. The Honorable Edward W. Miller sentenced the Applicant to 45 years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Trial attorney did not subpoena witness and was not prepared to defend him.
2. Involuntary guilty plea.
 - a. Plea was a result of the threat of a life sentence.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v.

State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 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); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "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).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of

the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

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Senior Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

January 29, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2015-CP-23-5744

RONALD EARL BROWN, 361682)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

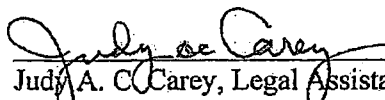
STATE OF SOUTH CAROLINA,)

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 by depositing same in the United States mail, postage prepaid:

Richard H. Warder, Esquire
Post Office Box 26133
Greenville SC 29616

DATED this 29th day of January, 2016.


 Judy A. C. Carey, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
Ronald Earl Brown,)	
)	TRANSCRIPT OF RECORD
Applicant,)	2015-CP-23-5744
-vs-)	
)	
The State,)	
)	October 24, 2016
Respondent.)	Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. HAYES, III, JUDGE

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

RICHARD H. WARDER, ESQUIRE
Attorney for the Applicant

PATRICK L. SCHMECKPEPER, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

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1 THE COURT: All right.

2 MR. SCHMECKPEPER: Thank Your Honor, may it please the
3 Court. This is Ronald Brown vs. the State of South Ca --
4 ready? This is Ronald Brown vs. the State of South Carolina,
5 2015-CP-23-5744. Mr. Brown was indicted in November of 2013
6 for first degree assault and battery by a mob, he was
7 represented by Chris Posey. On October 7th 2014 he pled
8 guilty as indicted, he was sentenced by Judge Miller 45 years
9 of imprisonment, did not appeal. This application was filed
10 on September 18th 2015, at this point I'll turn it over to his
11 PCR counsel so he can call the case.

12 THE COURT: All right.

13 MR. WARDER: Your Honor, we call as our first witness,
14 uh, Ronald Brown. Okay.

15 THE COURT: All right, while he's comin' up to be sworn,
16 I'm just now lookin' at the application, maybe it help me if
17 you tell me exactly what the issue is.

18 MR. WARDER: Pardon me?

19 THE COURT: What's what's the, what's his, I haven't
20 haven't had a chance look at the application so it help me if
21 you tell me what what what is his issue.

22 (Whereupon, the applicant came forward.)

23 MR. WARDER: His issue is that, uh, uh, he was, felt he
24 was, uh, his plea is involuntary 'cause he was promised the
25 sentence of 30 years if he pled and he pled thinking that he

RONALD EARL BROWN - DIRECT EXAMINATION BY MR. WARDER

1 would get that 30-year sentence and that that, uh, he got
2 45-year sentence which is very different.

3 THE COURT: Yes, it is. Okay, all right.

4 THE CLERK: Uh, Mr. Brown, please raise your right hand.

5 RONALD EARL BROWN, having been
6 first duly sworn, testified as follows:

7 THE CLERK: Thank you, you may be seated. Please state
8 your full name for the record.

9 THE APPLICANT: Ronald Earl Brown.

10 DIRECT EXAMINATION BY MR. WARDER:

11 Q. Mis -- Mr. Brown, you, uh, pled guilty here in the court
12 a general sessions, is that right?

13 A. Yes, sir.

14 Q. And at the time you plead guilty who represented you?

15 A. Chris Posey.

16 Q. Okay. Now you had met with Mr. Posey on, uh, you told me
17 four occasions ---

18 A. Yes, sir.

19 Q. --- and that on those occasions he spent about forty-five
20 minutes with you ---

21 A. Yes, sir.

22 Q. --- and that, uh, during that period a time did you you
23 talk about the the whether it would go to trial or a guilty
24 plea?

25 A. A guilty plea.

RONALD EARL BROWN - DIRECT EXAMINATION BY MR. WARDER

- 1 Q. Did ya do that on each a those sessions?
- 2 A. Yes, sir.
- 3 Q. Okay. And was your attorney advocating that you do one a
- 4 those things that ---
- 5 A. Yes, sir.
- 6 Q. And which one did he favor and advise you to do?
- 7 A. Take the plea.
- 8 Q. Okay. What did he tell ya or why did he tell you you
- 9 should take the plea?
- 10 A. Uh, he was basically sayin' if I didn't take the plea
- 11 that I would go to trial and they would give me life.
- 12 Q. Okay. Did he tell you what the sentence would be if in
- 13 fact you took the plea?
- 14 A. Thirty, yes, sir.
- 15 Q. What did he tell ya you could do to plead -- what he say
- 16 you'd get you pled guilty?
- 17 A. Thirty.
- 18 Q. Okay. Did he tell ya he talked with the solicitor and
- 19 that's what they were recommendin' and ---
- 20 A. No, sir.
- 21 Q. Okay. Did he tell ya how he knew you'd get 30 years?
- 22 A. He said that, um, if I took the plea I am gonna take the
- 23 family through it, that that that was the limit that they
- 24 would give me, they would go no higher.
- 25 Q. Okay. And, uh, did there come a point that you went to

RONALD EARL BROWN - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 court to do, to follow his advice and enter a plea?

2 A. Yes, sir.

3 Q. And what did ya think you would get when you went went
4 and agreed to plea and signed up that sheet?

5 A. Thirty.

6 Q. Okay. Did anybody ever mention to you that the judge
7 could give you more, would -- could give you more or might
8 give you more?

9 A. No, sir.

10 Q. We've talked over the the the rest a the case and this is
11 the the sole grounds you're basing your pro -- your, uh,
12 post-conviction relief on.

13 A. Yes, sir.

14 Q. Okay. Will you answer any questions the State might
15 have.

16 CROSS-EXAMINATION BY MR. SCHMECKPEPER:

17 Q. Morning, Mr. Brown.

18 A. Good mornin'.

19 Q. I I believe your testimony is that nobody ever told
20 you that you can get more than 30 years on this, is that
21 correct, ---

22 A. Yes, sir.

23 Q. --- that your attorney said you would get a 30-year
24 sentence?

25 A. Yes, sir.

RONALD EARL BROWN - CROSS-EXAMINATION BY MR. SCHMECKPEPER

1 Q. Uh, do you remember pleading guilty to this crime?

2 A. Yes, sir.

3 Q. Do you remember the judge telling you this carries I
4 believe 30 years to life in prison?

5 A. Uh, no, sir.

6 Q. Your Honor, may I, may I approach?

7 THE COURT: You may.

8 (Whereupon, counsel approached the witness stand.)

9 Q. If you could turn your attention to page 3, line number
10 21, would you agree the judge does in fact say that this
11 carries I believe 30 years to life in prison ---

12 A. Yes, sir.

13 Q. And then turning your pa -- attention to page 4, line 2
14 he asks, Do you understand that, and you say, Yes, sir, is
15 that a fair assessment?

16 A. Where at?

17 Q. I believe line or page 3, line 25, he starts, Do you, and
18 then on the next page, understand that, and you say, Yes, sir.

19 A. Yes, sir.

20 Q. So you're you're, what you're saying is even though your
21 counsel didn't say you can get a life sentence, the judge did
22 in fact tell you you can get 30 years to life?

23 A. Yes, sir.

24 Q. I have no further questions.

25 THE COURT: All right, any redirect?

DEBERIA FRANCES HARRISON - DIRECT EXAMINATION BY MR. WARDER

1 MR. WARDER: No redirect, Your Honor.

2 THE COURT: All right, you can step down, Mr. Brown,
3 thank you.

4 MR. WARDER: Your Honor, we would call Frances Harrison,
5 defendant's mother.

6 (Whereupon, the witness came forward.)

7 THE CLERK: Ms. Harrison, please place your left hand on
8 the Bible and raise your right hand.

9 DEBERIA FRANCES HARRISON, having
10 been first duly sworn, testified as follows:

11 THE CLERK: Thank you, you may be seated. Please state
12 your full name for the record.

13 THE WITNESS: My name is Deberia Frances Harrison.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION BY MR. WARDER:

16 Q. Uh, Ms. Harrison, uh, were you involved in in your son's
17 law -- working with his lawyer?

18 A. Yes, I was.

19 Q. Okay. Did, uh, uh, you meet with, uh, Mr. Posey when he
20 began to work for your son?

21 A. Yeah, I met with him several times, sir.

22 Q. And, uh, was he retained or was he appointed?

23 A. Was he ---

24 THE COURT: You need to speak up a little bit.

25 Q. Did you pay him or did the Court appoint him?

DEBERIA FRANCES HARRISON - DIRECT EXAMINATION BY MR. WARDER

- 1 A. Uh, that the Court appointed him.
- 2 Q. Okay. And did you discuss what sentences he might get?
- 3 A. Yes, sir, I did.
- 4 Q. Okay. Was there a point in time when Mr. Posey asked of
5 you to go down and talk with your son to get him to plead
6 guilty?
- 7 A. He kept, um, now the times I were going to speak with him
8 'bout my son situation he kept tellin' me to go and convince
9 him to take the plea, um, several times he told me to tell him
10 take the plea.
- 11 Q. Okay. Pursuant to that did you go down and, uh, uh, uh,
12 with the purpose of persuading your son plead guilty of ---
- 13 A. At in the beginning I I I didn't 'cause I didn't, I
14 didn't understand what what was really goin' on and we was
15 tryin' to do ---
- 16 THE COURT: All right, I I I'm ---
- 17 A. --- but anyway ---
- 18 THE COURT: --- I'm havin' awful hard time, ---
- 19 A. Okay.
- 20 THE COURT: --- you you got speak up.
- 21 A. Okay, I understand but, um, I did talk with my son about
22 pleading.
- 23 Q. Okay. And did Mr. Posey tell ya what your son would get
24 if he pled guilty?
- 25 A. Yes.

DEBERIA FRANCES HARRISON - DIRECT EXAMINATION BY MR. WARDER

1 Q. What did he tell ya his son would, your son would get if
2 he pled guilty?

3 A. He said that the the least, he he could could could be
4 sentenced for 30 years or he he may do 25 at the least, take 2
5 off what he already had did in 'tention 'tention center.

6 Q. Okay. He told ya that he'd get some time off of of the
7 the 30 years and wouldn't have to serve it all.

8 A. Right.

9 Q. Did he tell you 85 percent?

10 A. Yes, he told me.

11 Q. Okay. Uh, did you go down right before your son son pled
12 guilty and and persuade him, is that why he he pled guilty?

13 A. Yes 'cause he, I mean, he he was convinced plead guilty.

14 Q. Okay. And the information you gave him was the
15 information Mr. Posey gave ---

16 A. Yeah, ---

17 Q. --- you.

18 A. --- well he, well he he was telling me that could happen
19 to my son if he didn't.

20 MR. WARDER: That be all the questions I'd have this
21 witness, Your Honor.

22 MR. SCHMECKPEPER: Your H -- I don't have any questions,
23 Your Honor.

24 THE COURT: You can step down, we appreciate your time,
25 thank ---

LILLIAN DEBERIA SMITH - DIRECT EXAMINATION BY MR. WARDER

1 THE WITNESS: Thank ---

2 THE COURT: --- you, ma'am.

3 THE WITNESS: --- you, sir, all right.

4 (Whereupon, the witness left the stand.)

5 MR. WARDER: Your Honor, uh, -- Ms. Smith. Your Honor,
6 we would, we would call Lillian Smith as our next witness.

7 (Whereupon, a discussion was held off the record.)

8 (Whereupon, the witness came forward.)

9 THE CLERK: Ms. Smith, please place your left hand on the
10 Bible and raise your right hand.

11 LILLIAN DEBERIA SMITH, having been
12 first duly sworn, testified as follows:

13 THE CLERK: Thank you, you may be seated.

14 (Whereupon, a discussion was held off the record.)

15 THE CLERK: Please state your full name for the record.

16 THE WITNESS: Lillian Deberia Smith.

17 DIRECT EXAMINATION BY MR. WARDER:

18 Q. Ms. Smith, will you tell the judge how you're related to
19 Ronald.

20 A. I'm his sister.

21 Q. Okay. And were you involved in talking with his lawyer
22 about what would happen to your brother?

23 A. I did go once with my mom.

24 Q. Okay. And when you went the once did Mi -- was, did
25 Mr. Posey discuss sentences that might be available to him on

LILLIAN DEBERIA SMITH - DIRECT EXAMINATION BY MR. WARDER

1 a guilty plea?

2 A. He did.

3 Q. Okay. Did he tell you that any specific amount that your
4 son would have -- that your brother would have to serve if in
5 fact he pled guilty?

6 A. He said he would serve the 30 years but he wouldn't have
7 to do the whole time.

8 Q. Okay. Uh, and this was right before he entered the
9 plea?

10 A. Yes.

11 Q. Okay. And that did you ever have occasion to talk with
12 your brother about about what the ---

13 A. I did.

14 Q. Okay. And did you tell him and did you try and urge him
15 to to take that 30-year sentence?

16 A. Yes, because that's what Chris Posey was tryin' to get us
17 to do.

18 Q. Okay. And, uh, were you in essence told that he would
19 get a life sentence if he didn't do that?

20 A. What? Say what now?

21 Q. Wha'd he tell ya'd happen you didn't do that, if you
22 didn't -- if he didn't plead guilty?

23 A. Yeah, that he would get the life sentence.

24 Q. Okay, so then the choices with, that he was presented
25 with when you were talkin' to him about it was that that it

LILLIAN DEBERIA SMITH - DIRECT EXAMINATION BY MR. WARDER

1 was 30 years or life if he went to trial.

2 A. Okay, say that again now.

3 Q. You were, you were told that he could plead for 30 or get
4 life if he went to trial.

5 A. Yes.

6 MR. WARDER: That be all the questions I'd have a this
7 witness.

8 THE COURT: Your name again.

9 THE WITNESS: Lillian Smith.

10 THE COURT: Lilla?

11 THE WITNESS: Lillian.

12 THE COURT: Lillian Smith, okay, thank you. Any
13 questions?

14 MR. SCHMECKPEPER: None, Your Honor.

15 THE COURT: All right, Ms. Smith, thank you for your
16 time, you can step down.

17 THE WITNESS: All right.

18 (Whereupon, the witness left the stand.)

19 MR. WARDER: Your Honor, if it please the Court that
20 would be the applicant's case.

21 THE COURT: All right, any witnesses on behalf of the,
22 uh, State?

23 MR. SCHMECKPEPER: Your Honor, the State calls Chris
24 Posey, applicant's plea counsel.

25 (Whereupon, the witness came forward.)

CHRISTOPHER TODD POSEY - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 (Whereupon, a discussion was held off the record.)

2 CHRISTOPHER TODD POSEY, having
3 been first duly sworn, testified as follows:

4 THE CLERK: Thank you, you may be seated and please state
5 your full name for the record.

6 THE WITNESS: Christopher Todd Posey.

7 DIRECT EXAMINATION BY MR. SCHMECKPEPER:

8 Q. Mornin', Mr. Posey.

9 A. Mornin'.

10 Q. Just briefly, you go over your experience as a criminal
11 defense attorney.

12 A. Uh, been admitted to the bar since 1992 so four and a
13 half years the solicitor's office as a prosecutor and have
14 been criminal defense attorney since 1995 or ---

15 Q. And so ---

16 A. --- '96, excuse me.

17 Q. --- so criminal law on one ha -- one one form or
18 another ---

19 A. Yes.

20 Q. --- since 1992?

21 A. Yes.

22 Q. And let let's talk about this case a little bit. When
23 did you first get appointed?

24 A. Uh, I don't remember specific date, it was shortly after
25 Mr. Brown's arrest I was appointed, that he was one of think

CHRISTOPHER TODD POSEY - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 thirteen or fourteen defendants they were originally arrested
2 in the case.

3 Q. I know. Now the charge was, a charge of ultimate guilty
4 plea was for assault and battery by a mob first degree, ---

5 A. Yes.

6 Q. --- uh, what were the facts of that?

7 A. Uh, in short the allegations were Mr. Brown instigated a
8 incident at a birthday party, uh, was asked to leave, uh,
9 proceeded to assault, uh, that was alleged to assault two
10 females, uh, one a the females cousin's came and tried to
11 intervene, uh, he and Mr. Brown began an altercation, that
12 person ran from the scene. Uh, the allegations were Mr. Brown
13 along with several other individuals chased the defendant
14 down, uh, kinda trapped him in an area shor -- a short
15 distance away and proceeded to kick and strike him to the
16 point caused his death.

17 Q. Now you said there were roughly, oh, a dozen
18 co-defendants?

19 A. Somewhere, I I know there was ele -- ten or eleven
20 juveniles and there was two other adult co-defendants that
21 went to trial and then I think it was a few other adult
22 co-defendants as well, total number anywhere from twelve to
23 fifteen, ---

24 Q. And how ---

25 A. --- I hadn't seen the file in a while.

1 Q. How, and and if you remember, how abruptly were they,
2 were those charges resolved in?

3 A. Uh, the juveniles all pled guilty and all gave very
4 detailed statements about their involvement in the case, uh,
5 and ---

6 Q. And did ---

7 A. --- the ---

8 Q. --- did those statements implicate the applicant?

9 A. Yes, uh, basically it was you're dealin' with what was
10 alleged to be two two gangs, uh, believe the adult version was
11 called the "Hit Squad" and the juvenile version was "TMV" I
12 believe is how it was the moniker for it. Uh, the, all the
13 juveniles and some a the other individuals gave statements
14 indicating Mr. Brown was the leader of that particular gang.

15 Q. Now as as far as your advice to Mr. Brown, did you tell
16 him what the potential sentence was for these charges?

17 A. Uh, the, he understood the potential sentence was 30
18 years to life, uh, he, in fact, entered at one point into,
19 began cooperating with the State, uh, met with prosecutors on
20 two different occasions to, uh, give his version of events.
21 The first time it did not go very well with the prosecutors,
22 came back and gave a second version, uh, and at that point in
23 time they were prepared to use him against the people who went
24 to trial, right before the trial Mr. Brown backed out of his
25 cooperation agreement.

CHRISTOPHER TODD POSEY - CROSS-EXAMINATION BY MR. WARDER

1 Q. And what was the agreement for in terms of year, was
2 there a recommendation?

3 A. If he would have completed his cooperation and testified
4 against the other co-defendants, they were willin' to
5 recommend a 30-year sentence, uh, once he chose not to
6 cooperate any further, that was taken off the table.

7 Q. Now going into the guilty plea just just to, hate to
8 double tap on this, did you tell Mr. Brown that he could be
9 ultimately be sentenced to life even if he pled guilty?

10 A. Oh, yes, I'm all, I I told him I did not think he would
11 under a guilty plea but it was possible, I couldn't tell him,
12 I couldn't guarantee him he co -- wouldn't but . . .

13 Q. Thank you, I have no further questions, please answer any
14 Mr. Warder has.

15 CROSS-EXAMINATION BY MR. WARDER:

16 Q. When you, uh, had the guilty plea, you asked the judge
17 for specific sentence, didn't you?

18 A. Excuse me, I didn't, uh, ---

19 Q. You asked the judge for a specific sentence when you ---

20 A. Uh, I don't remember, I hadn't seen the transcript in a
21 little while. Uh, I think I did, I I may have asked for the
22 minimum or not. Uh, the co-defendant was sentenced to I
23 believe 40 years at trial, uh, I may have asked him if he
24 would not do the minimum not to exceed what the co-defendant
25 had ceive -- he received at trial I believe it's ---

CHRISTOPHER TODD POSEY - CROSS-EXAMINATION BY MR. WARDER

1 Q. Believe the transcript says just that you twice during
2 that that plea you asked the judge give him 30 years.

3 A. I I probably did 'cause I think I told Mr. Brown I would
4 ask for the minimum, I think I had explained to him I thought
5 the bar was probly set at the 40-year mark because that's what
6 his co-defendant had received at trial.

7 Q. Now and, uh, if I understand your testimony there was a
8 deal that he could -- would get 30 years or they'd recommend
9 30 years but that required some some further ---

10 A. It required him to testify against his co-defendants
11 which at the last minute he chose not to do.

12 Q. Well co-defendant wasn't even test -- tried until weeks
13 later, wasn't he?

14 A. Uh, the co-defendant was actually tried earlier, uh, the
15 co-defendant was tried back in I believe it was June. The
16 only reason Mr. Brown was not on that same docket is I was
17 protected from court, uh, from trial court, um, with reasons I
18 was not available for June or July. Uh, Mr. Brown's trial was
19 set after the, when guilty plea he had it was set to go to
20 trial in October had he not pled.

21 Q. Okay. Thank you, that's all the questions I have.

22 MR. SCHMECKPEPER: Nothing from -- further from the
23 State, Your Honor.

24 THE COURT: Okay, you can step down, be excused, we
25 appreciate ---

CHRISTOPHER TODD POSEY - CROSS-EXAMINATION BY MR. WARDER

1 THE WITNESS: Thank you.

2 THE COURT: --- your time.

3 THE WITNESS: Thank Your Honor.

4 MR. SCHMECKPEPER: And, Your Honor, that's the State's
5 case.

6 THE COURT: Any reply?

7 MR. WARDER: No, Your Honor.

8 THE COURT: All right, uh, I'm gonna take this one under
9 advisement, thank, uh, everybody.

10 MR. SCHMECKPEPER: Thank Your Honor.

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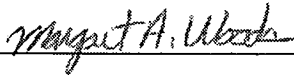
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3 CERTIFICATE OF REPORTER

4 I, Margaret A. Woods, Court Reporter in and for the State
5 of South Carolina at Large, hereby certify that I reported the
6 preceding case on October 24, 2016 at the time and place
7 heretofore set forth; and that the foregoing pages numbered
8 from 2 through 19, inclusive, constitute a true and accurate
9 transcription of my stenographic notes of the said proceeding.

10 I further certify that I am neither attorney nor counsel
11 for, nor related to or employed by any of the parties
12 connected to the action, nor am I financially interested in
13 the action.

14 May 25, 2017

15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2015-CP-23-5744

Ronald Earl Brown,
S.C.D.C. No. 361682,

Applicant,

vs.

State of South Carolina,

Respondent.

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NOV 28 2016

SC Court of Appeals ORDER

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIME
2016 NOV 4 PM 2

Applicant filed this post-conviction relief application on September 18, 2015. The matter came to be heard on October 24, 2016. The Applicant was represented by Richard Warder, Esq. The State was represented by Patrick Schmeckpeper, Esq.

The applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2013 term of General Sessions for First-Degree Assault and Battery by Mob (2013-GS-23-10617). Christopher T. Posey, Esquire represented the Applicant.

On October 7, 2014 the Applicant pled guilty as indicted. The Honorable Edward W. Miller sentenced the Applicant to 45 years imprisonment. The Applicant did not appeal.

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

1. Ineffective assistance of counsel.
 - a. Trial attorney did not subpoena witness and was not prepared to defend him.
2. Involuntary guilty plea.
 - a. Plea was a result of the threat of a life sentence.

RICHARD WARDER

NOV 09 2016

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However, at his hearing, Applicant confined his argument to entry of his plea was with his understanding he would receive a 30 year sentence.

The applicant's assertion is that his guilty plea was involuntary. I find this assertion to be without merit as further addressed below. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *See Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Roscoe v. State*, 345 S.C. 16, 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); *Bennett v. State*, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntary and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. *See Boykin v. Alabama*, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In *Boykin*, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. *Id* at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to jury trial, and the right to confront one's accusers. *Id*. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and

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any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “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).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

Applicant’s mother, Frances Harrison, and his sister, Lillian Smith, testified that applicant understood he was going to receive a 30 year sentence. Ms. Harrison went further and testified that the reason he pled guilty was because he understood he would receive a 30 year sentence. As to the latter testimony, Applicant’s mother is not competent to testify as to Applicant’s mental state or mental awareness leading up to his plea. Neither Ms. Harrison nor Ms. Smith’s testimony is of any value as to the applicant’s assertion as to his plea being involuntary. Additionally, as seen below, the record clearly reflects Applicant freely, voluntarily, knowingly, and intelligently entered his plea knowing he could be sentenced to a prison term of 30 years to life.

Applicant testified that he was represented by Chris Posey and met with counsel four times for approximately 45 minutes each visit. Applicant further testified trial counsel recommended that he plead guilty and told Applicant that he would receive a life sentence if he were found guilty at a trial. Finally, applicant testified that trial counsel did not indicate he had talked with the prosecuting solicitor. This latter point holds no value as seen below.

Handwritten initials/signature

Trial counsel testified that the Applicant understood he was facing a possible sentence of 30 years to life. Trial counsel told Applicant that he did not think Applicant would receive a life sentence at a plea. Trial counsel also testified that Applicant was offered a 30 year sentence in exchange for his cooperation against his co-defendants. Trial counsel testified that Applicant backed out of his deal and did not cooperate. While this was being orchestrated, Applicant and trial counsel met with the solicitor.

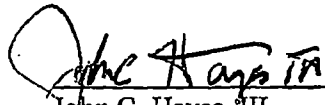
The record reflects Applicant was told he could be sentenced to 30 years to life at the time he entered his plea and that he understood (Plea Transcript at page 3, line 21 through page 4, line 6.)

Applicant has failed to prove by a preponderance of the evidence that his plea of October 7, 2014 was involuntarily entered. Therefore, his Application for Post-Conviction Relief is denied and dismissed with prejudice.

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

IT IS SO ORDERED.

October 25th, 2016
Greenville, South Carolina



John C. Hayes, III
Presiding Judge Hd

WITNESSES

D P Garrison

Greenville Police Department

4/26/2013

ARREST WARRANT NUMBER
2013A2320601180

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23- 010617
W.J.W

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2013

THE STATE

vs.

RONALD EARL BROWN

Indictment for

3431

ASSAULT AND BATTERY BY MOB FIRST
DEGREE

VIOLATION § 16-03-0210

**ENTERED
ACCT.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY BY MOB FIRST DEGREE

At a Court of General Sessions, convened on **NOV 26 2013** the Grand Jurors of Greenville
County present upon their oath:

That RONALD EARL BROWN did in Greenville County on or about the 20th day of April 2013,
willfully and unlawfully participate as part of a mob that inflicted death upon DEBRON HARRISON.
This is in violation of §16-03-0210 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR