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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

TERRANCE MCCALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002285

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Terrance McCall,) 2010-GS-42-2091-2093
7 Defendant.) January 31, 2011
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

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16 Attorney for the State

17 ANDREA PRICE, ESQUIRE
18 Attorney for the Defendant
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22 Linda D. Moffitt
23 Circuit Court Reporter
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25

ATTORNEY GENERAL'S OFFICE

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1		<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	Incident report		4
4	S-2	Incident report		4
5	S-3	Supplemental report		4
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1 (Proceedings January 31, 2011).

2 (Incident report marked State's Exhibit No. 1;
3 incident report marked State's Exhibit No. 2; supplemental
4 report marked State's Exhibit No. 3; supplemental report
5 marked State's Exhibit No. 4; patient care report marked
6 State's Exhibit No. 5; letter marked State's Exhibit No.
7 6.)

8 MR. BARNETTE: May it please the Court, Your Honor.

9 This is the case of the State vs. Terrance McCall.
10 Your Honor, he's pleading guilty to four indictments with
11 five counts, Your Honor.

12 First one is 10-GS-42-2090, Your Honor, and this is
13 for assault and battery of a high and aggravated nature,
14 Your Honor, ABHAN. This is prior to June 2nd of 2010.

15 Then 2010-GS-42-2089, Your Honor, is pointing and
16 presenting a firearm.

17 Your Honor, 2010-GS-42-2092, which is listed as
18 assault and battery of a high and aggravated nature, Your
19 Honor, we've got an assault and battery in the first
20 degree, which is the charge that occurred after June, I
21 mean, that's being used after June 2nd of 2010.

22 Then we have Indictment 2010-GS-42-2093. We have two
23 counts on that, Your Honor. We have an armed robbery
24 count, which is count one. Then we have a possession of
25 weapon during a violent crime as count two, Your Honor.

1 And on top of it, Your Honor, the indictment numbers
2 is wrong, so we changed them. And we had -- I initialed
3 the defendant, showing Ms. Price initialed that too, Your
4 Honor.

5 On these, Your Honor, this is a negotiated sentence.
6 All of these have been true billed by the grand jury. The
7 negotiated sentence is a 20-year sentence, Your Honor. So
8 we would ask for 20 years to be placed on the armed robbery
9 and five years concurrent on possession of a weapon during
10 a violent crime, which is count two in that indictment, ten
11 years concurrent, to run concurrent. All of these to run
12 concurrent with the armed robbery -- 20 years, Your Honor.
13 Ten years on the assault and battery first degree.

14 The pointing and presenting, five years concurrent,
15 Your Honor, with the armed robbery.

16 Then 2010-GS-42-2090, which is the assault and battery
17 of a high and aggravated nature, Your Honor, ten years
18 concurrent, to run concurrent with the armed robbery also,
19 Your Honor.

20 I do have exhibits to hand up at the appropriate time
21 to the Court also. And the victims are present, Your
22 Honor, in the courtroom.

23 THE COURT: And they are all in agreement with the
24 negotiations entered into?

25 MR. BARNETTE: Yes, sir.

1 I've talked with Detective-Investigator, I mean,
2 Deputy Jeff Strickland, Your Honor. He's in agreement with
3 this, Your Honor. He was the victim of the armed robbery
4 in this case.

5 Mr. Mark Giambins was the victim on the ABWIK or
6 ABHAN, Your Honor. He's in agreement. And also Chris
7 Wilbanks, which is the deputy which is on the pointing and
8 presenting, he's also in agreement with this also, Your
9 Honor. And they're all present here in the courtroom if
10 you need to ask them.

11 THE COURT: All right. You are Terrance Darnell
12 McCall.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Ms. Price is your lawyer.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And how long has she been representing you
17 on these charges?

18 THE DEFENDANT: Close to a year.

19 THE COURT: And during that year have you had plenty
20 of time and opportunity to talk with her about the nature
21 of these charges as well as the consequences of your being
22 found guilty of them?

23 THE DEFENDANT: Yes.

24 THE COURT: Has she been over each of these
25 indictments with you and explained to you what the state

1 claims that you did?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did she explain to you what would have to
4 be proven in court before you could be found guilty of
5 armed robbery?

6 THE DEFENDANT: Yeah, yes, sir, yes, sir.

7 THE COURT: Did she explain to you what would have to
8 be proven in court before you could be found guilty of
9 possession of a firearm during the commission of a violent
10 crime, the violent crime being the armed robbery?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has she explained to you what would have
13 to be proven in court before you could be found guilty of
14 assault and battery of a high and aggravated nature?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has she also explained to you what would
17 have to be proven in court before you could be found guilty
18 of assault and battery in the first degree?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did she also explain to you what would
21 have to be proven in court before you could be found guilty
22 of pointing or presenting a firearm at another person?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand each of the elements
25 of those offenses as she has explained them to you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And did you tell her everything you know
3 about the allegations that are set forth in each of these
4 indictments?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you and she discuss whether or not you
7 have some defense to any one or more of the charges to
8 which you've offered to plead guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did you and she determine whether or
11 not you had a defense to any charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you know of any defense that you have
14 to any of these charges to which you've offered to plead
15 guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you had plenty of time to talk with
18 her about your decision or your apparent decision to plead
19 guilty?

20 THE DEFENDANT: Not as much as I'd like to, but
21 enough, yes, sir.

22 THE COURT: Well, do you need some --

23 THE DEFENDANT: Yes, sir, yes, sir.

24 THE COURT: Do you need some additional time to spend
25 with her?

1 THE DEFENDANT: No, sir, I just, no, sir.

2 THE COURT: Did she explain to you each of the
3 constitutional rights that you must give up if you want to
4 plead guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand your right to remain
7 silent?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And what that means is, it's that you don't
10 have to testify in the trial of this case. You don't have
11 to make any statement that relates to these allegations.
12 You don't have to answer any questions that relate to these
13 charges, even the questions I'm asking you right now,
14 unless you want to plead guilty. If you want to plead
15 guilty, then you have to give up your right to remain
16 silent because I'm going to be asking you questions.

17 The purpose of the questions is for me to determine
18 whether or not your decision to plead guilty is freely and
19 voluntarily made. And so I have some questions that I have
20 to ask you in order for me to make that determination. And
21 some of those questions are going to necessarily require
22 that you admit any guilt that you have in these cases and
23 admit that you have committed these offenses as they are
24 described if that's what you propose to do.

25 Do you understand that you do have the right to remain

1 silent if you wish to?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand you have to give that
4 right up if you want to plead guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you wish to give that right up?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did Ms. Price also explain to you that you
9 have a right to confront any witness that would offer
10 evidence against you?

11 In other words, anybody that would offer testimony or
12 other evidence tending to prove your guilt as it relates to
13 any of these charges would ordinarily have to come to court
14 and take the witness stand and testify in your presence
15 under oath so that you could see who they are, you could
16 hear what they have to say and your lawyer could examine
17 each of those witnesses on that testimony in order to test
18 the witness' credibility and the reliability of the
19 information that they're providing.

20 Now, when you plead guilty the witnesses or some of
21 the witnesses may come to court, and they may even make a
22 statement to the Court, but you don't get to cross-examine
23 them on that statement.

24 And they're not going to tell me anything under oath.
25 They're not going to take the witness stand. They won't be

1 subjected to an examination like they would be if your case
2 were to be tried before a jury.

3 Do you understand your right to confront any witness
4 offering evidence against you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that when you plead
7 guilty you give that right up?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you wish to give that right up in
10 order to plead guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did Ms. Price also explain to you that you
13 have a right to have a jury trial and for a jury of 12
14 people to determine whether or not you are guilty of any
15 crime the state claims you committed?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And if you elect to have a jury trial you
18 and your lawyer help pick the jury.

19 Twelve are selected from a larger panel or pool of
20 jurors. And once those 12 are selected they sit over there
21 in the jury box.

22 They listen to all of the testimony. They consider
23 all of the evidence in the case. Their function and
24 obligation is to decide what they believe to be the true
25 facts as they relate to this event.

1 Once they decide the facts, then they apply the law
2 that the Court instructs them as to. So I'll instruct them
3 on the law as it relates to the criminal law generally and
4 as it relates to the crimes of armed robbery, possession of
5 a firearm during the commission of a violent crime,
6 aggravated assault and battery, assault and battery in the
7 first degree, and pointing or presenting a firearm. And
8 I'll tell them what the law is.

9 They decide the facts. They then take that law and
10 they apply it to the facts as they find them to be. They
11 determine whether or not you are guilty of any of the
12 crimes to which you stand trial for and the state claims
13 you have committed.

14 Now, before a jury could find you guilty of any of
15 these crimes all 12 jurors have to be convinced of your
16 guilt beyond a reasonable doubt.

17 That means the state because they brought the charge
18 has the burden of proving to the jury's satisfaction beyond
19 a reasonable doubt that you committed a particular crime.
20 They have to prove all of the elements of that crime.

21 Before a jury could find you guilty all 12 jurors have
22 to be convinced beyond a reasonable doubt of your guilt.
23 As I say, the burden is on the state to convince them of
24 that fact.

25 So you can have a jury trial and still not take the

1 witness stand, still not answer any questions, still not
2 make any statement. You don't have to call any witnesses;
3 you don't have to produce any evidence. The burden is not
4 upon you to prove anything. The burden is on the state to
5 prove your guilt.

6 Now, during the trial if you want to testify, you can.
7 If you want to call some witness, you may. If you want to
8 introduce evidence, you're permitted to do so. But you
9 can't be required to do so. You're just simply given that
10 opportunity if you wish to.

11 Do you understand your right to have a jury determine
12 whether or not you're guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And understanding that right do you wish
15 to give it up in order to plead guilty as you've indicated?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Has anybody promised you anything that
18 induced you to make that decision to plead guilty?

19 THE DEFENDANT: No, sir.

20 THE COURT: Well, they've agreed to some negotiations
21 as far as at least the sentencing goes. Is that true?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And were you going to plead guilty whether
24 they agreed to those negotiations or not?

25 THE DEFENDANT: Well, if they agree to them.

1 THE COURT: I said were you going to plead guilty even
2 if they didn't make any sort of recommendation or they
3 didn't agree to any outcome or sentence.

4 THE DEFENDANT: No, sir.

5 THE COURT: Okay. So then they did promise you
6 something --

7 THE DEFENDANT: Yes, sir.

8 THE COURT: -- that induced you to make your decision
9 to plead guilty.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. What did they promise you that
12 induced you to make that decision?

13 THE DEFENDANT: A 20-year sentence that by, by law,
14 something that passed last summer, I will only have to do
15 16 years or something.

16 THE COURT: Well, they can't promise you that. They
17 can agree to a sentence in this case. You tell me it's 20
18 years.

19 Parole eligibility, if any, is determined by state
20 law, and that is at least minimum terms of imprisonment.
21 But even if you are under the law eligible to be released
22 on parole, do you understand the parole board actually
23 makes any decision as to whether or not you will be
24 released?

25 In other words, if you receive a 20-year sentence and

1 the law provides that you are eligible for parole after
2 having served 80 percent of that sentence that doesn't mean
3 that you'll be released after 80 percent. That means the
4 parole board will decide whether or not you should be
5 released. So the parole board always makes that decision.

6 I don't make it; the solicitor doesn't make it; your
7 lawyer doesn't make it; you don't get to make it. The
8 parole board is vested with that discretion and
9 responsibility. Do you understand that?

10 THE DEFENDANT: Yes, sir, but what is -- what's --
11 Ms. Price, what you telling me about?

12 MS. PRICE: The 80 percent max-out, Your Honor.

13 THE DEFENDANT: About like if I just -- like you said,
14 if I pleaded guilty to the 20 years, she said something
15 about a law that passed during the summertime, during last
16 summer.

17 THE COURT: Are y'all in agreement that the state of
18 the law is that once you do the 80 percent you're
19 automatically --

20 MR. BARNETTE: No, sir. I don't think that -- I think
21 you stated the law correctly.

22 I think he's eligible at that point and could be
23 released but it'd be up to another --

24 MS. PRICE: That's right.

25 THE COURT: Well, that was my understanding if -- you

1 become eligible after service of a percentage.

2 THE DEFENDANT: My understanding when I came up here
3 it was going to be 16 years.

4 MS. PRICE: That, that would be the required under the
5 law.

6 THE COURT: Yeah. In other words, that's what you
7 have to do. You've got to serve at least that.

8 If I give you a 20-year sentence you have to serve at
9 least 16, but you may have to serve 20. The parole board
10 is what I'm trying to tell you is the body that makes a
11 determination as to whether or not you are to be released
12 after serving the percentage of the sentence that the law
13 requires you to serve.

14 In the case of armed robbery you have to serve
15 80 percent of any sentence that is imposed before you are
16 eligible to be released early. So if I give you 20 years
17 you've got to do at least 16. The parole board still
18 decides if you are to be released.

19 THE DEFENDANT: So you get still get parole with a
20 violent crime?

21 THE COURT: Well, apparently I'm not making myself
22 very clear.

23 THE DEFENDANT: I might have misunderstood.

24 THE COURT: Although I can't say it any simpler than I
25 am. I thought maybe you and your lawyer talked about it,

1 and I'm sure she has tried explain it to you. But I'll try
2 again.

3 If I go along with -- you apparently -- you and your
4 lawyer and the solicitor have negotiated a sentence in this
5 case.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: That sentence is 20 years. In the case of
8 armed robbery the law requires a person who is convicted of
9 a no-parole sentence who receives a 20-year sentence to do
10 80 percent of it.

11 THE DEFENDANT: Okay.

12 THE COURT: Eighty percent of 20 is 16, so you have to
13 do that much. Then the law provides that you are eligible
14 to be released from custody.

15 In other words, you're being released early because
16 you're receiving a 20-year sentence. But I don't get to
17 decide if you're released earlier than the 20 years. Your
18 lawyer doesn't get to decide; the solicitor doesn't get to
19 decide it; you don't get to decide it.

20 The parole board in South Carolina is the body that
21 makes that decision. By law they are vested with that
22 discretion.

23 You'll have hearings before them, and they will
24 determine after you've served the mandatory minimum that
25 you have to serve, which would be 16 -- once you serve that

1 16, then there'll be a hearing, and the parole board will
2 receive information from you if you wish to present it and
3 from the state if they wish to present it. And they'll
4 hear from any victim if they wish to be present and provide
5 information.

6 Based upon receipt of that information the parole
7 board decides if you ought to be released on parole or if
8 you should not be released on parole.

9 THE DEFENDANT: Okay.

10 THE COURT: Okay.

11 THE DEFENDANT: I got you.

12 THE COURT: Now, understanding that fact, do you still
13 wish to go forward with your guilty plea?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, they've agreed to a
16 20-year sentence.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Were there any -- was there anything else
19 that the state agreed to do for you in return for your
20 pleading guilty?

21 THE DEFENDANT: Well, I asked Ms. Price will they give
22 me credit for the year that I already done.

23 MS. PRICE: We are going to get to that.

24 THE DEFENDANT: Oh, okay.

25 MS. PRICE: The state has agreed that the companion

1 charges would run concurrent to the negotiations on the
2 armed robbery.

3 THE COURT: All right. So all of the charges, any
4 sentences to be imposed, will all run concurrent.

5 MS. PRICE: Yes, sir.

6 THE COURT: All right. Anything else?

7 MS. PRICE: No, sir.

8 THE COURT: Were there any other additional charges
9 that's not going to be pursued?

10 MR. BARNETTE: Yes, sir. There was a kidnapping, and
11 there was also a count two on possession of weapon during a
12 violent crime. That's 10-GS-42-5791 which will be
13 dismissed. And there was a resisting arrest with deadly
14 weapon, 10-GS-42-2091, that's also being dismissed. And
15 the victims are in agreement with that too, Your Honor.

16 THE COURT: All right. Now, Mr. McCall, listen to me
17 carefully.

18 As I understand it what's being agreed to in your case
19 is that you are to plead guilty to armed robbery,
20 aggravated assault and battery, assault and battery first
21 degree, and pointing and presenting a firearm.

22 In return for your pleading guilty to those
23 indictments -- and possession of a firearm during the
24 commission of a violent crime, that being the armed
25 robbery. In return for your pleading guilty to those

1 offenses the state has agreed to dismiss a charge of
2 kidnapping, an additional charge of possession of a firearm
3 during the commission of a violent crime and a charge of
4 resisting arrest. They have also agreed to the imposition
5 of a 20-year sentence.

6 Now, that's what I'm told are the sole sum of the
7 negotiations entered into. Is that your understanding of
8 them?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is there anything else that you thought
11 was supposed to be included in those negotiations that has
12 not been stated?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. So there's nothing else that
15 you relied upon in making your decision to plead guilty.

16 THE DEFENDANT: No, sir.

17 THE COURT: And you still wish to go forward and plead
18 guilty as you've indicated?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, I believe you've indicated that you
21 are aware -- and I'll ask you if your lawyer has explained
22 it to you -- the crime of armed robbery is a no-parole
23 offense. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You've got to do 80 percent before you're

1 eligible for parole. The crime of armed robbery is also
2 classified in the law as a violent crime. Did you
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you understand the significance of
6 that designation?

7 THE DEFENDANT: No, sir.

8 THE COURT: Well, what that means is that in the
9 future if you're ever convicted of another violent crime
10 any sentence imposed on that offense is a no-parole
11 offense.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. And did you also know that or were
14 you also informed that armed robbery is also classified as
15 a most serious offense?

16 MS. PRICE: This goes to the two strikes, three
17 strikes we talked about.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you understand that armed robbery
20 is a most serious offense under the law?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand the significance of that
23 designation?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Ms. Price has explained that fully to you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And understanding those do you still wish
3 to plead guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anybody forced you in any way that
6 caused you to make that decision?

7 THE DEFENDANT: No, sir.

8 THE COURT: Has anyone threatened you in any fashion
9 that caused you to make that decision?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has anyone put any pressure upon you of
12 any kind from any source that caused you to make that
13 decision?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you pleading guilty freely and
16 voluntarily?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Was it your decision, and your decision
19 alone?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, Indictment 2010-2093 charges you with
22 armed robbery and possession of a firearm during the
23 commission of a violent crime.

24 The state alleges that on or about February the
25 19th of 2010 that you did while armed with a deadly weapon

1 commit the crime of robbery in that you did take, steal and
2 carry away a .40 caliber handgun and a taser from Jeff
3 Strickland by the use of force and/or intimidation and that
4 you took those items intending to deprive him of use and
5 possession of his property permanently.

6 The second count of that same indictment alleges that
7 you did possess a firearm during the commission of a
8 violent crime, the violent crime being described as the
9 armed robbery which I've just described in count one.

10 Now, are you pleading guilty to each of those offenses
11 as they are described in that indictment?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And are you pleading guilty because you
14 did commit those offenses as described?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Indictment 2010-2092 charges you with
17 aggravated assault and battery. You are pleading guilty to
18 the crime of assault and battery in the first degree.

19 The state alleges that on or about February the
20 19th of 2010 you did commit an assault and battery upon
21 Jeff Strickland accompanied by some circumstance of
22 aggravation.

23 They allege that you did, in fact, use a deadly weapon
24 in the commission of that assault and battery, or that you
25 did inflict serious bodily injury upon Deputy Strickland,

1 or there was a beating of the victim or a striking of the
2 victim with a handgun, those being circumstances of
3 aggravation. Do you understand the allegations there?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you pleading guilty to that crime as
6 it's described?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Because you did commit the crime as it is
9 described?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Indictment 2010-2089 charges you with
12 pointing and presenting a firearm.

13 This indictment alleges that on or about February the
14 19th of 2010 you did unlawfully and not in self-defense
15 point or present a firearm at Chris Wilbanks. Do you
16 understand the allegations?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you pleading guilty to that offense as
19 it is described?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And are you pleading guilty because you
22 committed that crime as it is described?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And the remaining indictment is 2010-2090
25 which charges aggravated assault and battery. And that

1 indictment alleges that on or about February the 19th of
2 2010 you did commit an assault and battery upon Mark
3 Giambins and that it was accompanied by some circumstance
4 of aggravation, that circumstance of aggravation being the
5 use of a deadly weapon, or the infliction of serious bodily
6 injury, or a disparity between the physical conditions of
7 the parties, or a beating of the victim. Do you understand
8 those allegations?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you pleading guilty to the crime as it
11 is described?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And is that because you did commit the
14 crime as it is described?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Armed robbery carries a potential sentence
17 of up to 30 years in jail. It requires a mandatory minimum
18 sentence of not less than ten years in jail.

19 Possession of a firearm during the commission of that
20 violent crime -- the violent crime of armed robbery -- also
21 carries a potential sentence of -- a mandatory sentence of
22 up to five years in jail. That sentence may be run
23 concurrently or consecutively to any other.

24 The indictment for assault and battery in the first
25 degree carries a potential sentence of up to ten years in

1 jail.

2 The indictment charging pointing and presenting a
3 firearm carries a potential sentence of up to five years in
4 jail.

5 And the remaining indictment, the aggravated assault
6 and battery indictment, carries a potential sentence of up
7 to ten years in jail.

8 Do you understand each of the potential sentences that
9 could be imposed upon a conviction for each of these
10 offenses?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you are pleading guilty freely and
13 voluntarily to each?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You are 45 years old.

16 THE DEFENDANT: Yes, sir.

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

18 THE DEFENDANT: Eleventh.

19 THE COURT: Are you married?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you have children?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And did you work before you were
24 incarcerated?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: What kind of work did you do?

2 THE DEFENDANT: Paper recycling.

3 THE COURT: Have you ever been treated for any type of
4 substance abuse or addiction?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you suffer from any such condition
7 today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you ever been treated for any type of
10 mental illness or emotional disturbance?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you suffer from any such condition
13 today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you have any questions you need to ask
16 me about your decision to plead guilty or about this
17 process?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you need to discuss it further with
20 your lawyer?

21 THE DEFENDANT: No, sir.

22 THE COURT: Listen to what the solicitor tells me
23 about the facts that relate to each of your cases.

24 MR. BARNETTE: Thank you, Your Honor.

25 This occurred on February 19th of 2010, Your Honor.

1 Officer Harold and Officer Strickland, along with other
2 units of the Spartanburg County Sheriff's Department, Your
3 Honor, was on patrol.

4 They had received a complaint on Williams Street, of
5 about a house selling, drug activity going there, Your
6 Honor. They were observing the house, Your Honor.

7 During that time they saw a Toyota Celica, Your Honor,
8 bearing the tag of Your Honor. Officer Wilbanks
9 was the first one. He was in an unmarked Buick. It was
10 silver in color, Your Honor. He was wearing a coat.
11 That's typical of these things.

12 He saw that car come up with the driver in there. It
13 came up to the house. He reported back to his units. They
14 lost him on Wofford Street.

15 The car came back, Your Honor, a second time to the
16 house in the same day. Again they -- he called it out.
17 Officer Wilbanks saw it the second time.

18 Officer Harold went behind him, Your Honor. He saw
19 that he had a tinted tag and the tag had a round violation
20 of the South Carolina Code of Laws, Your Honor, in this
21 case.

22 He pulled him over. Kenneth Woodruff was the driver,
23 Your Honor. Terrance McCall was the passenger.

24 Officer Strickland pulled in behind Officer Harold,
25 Your Honor. Officer Harold then went to the left side, the

1 driver's side, and was talking to him. Officer Strickland
2 went to the right side talking to Mr. McCall.

3 He asked the driver, Mr. Woodruff, to get out. Being
4 a high drug area, he said he came through and was very
5 nervous. He said when he handed the driver's license to
6 him he was shaking. He said he just didn't act like he was
7 a person that was being stopped for a license point.

8 So he asked him just to pat him down for his
9 protection and everything. As he patted him down he felt
10 something in his pocket. He asked him for consent to
11 search and searched his car. Mr. Woodruff gave that to
12 him.

13 In the meanwhile he went around to the passenger side
14 and asked the passenger, Mr. McCall, to come out. Mr.
15 McCall came from the back of the car. Officer Strickland
16 went back with him.

17 Officer Harold went back to Mr. Woodruff. As he
18 searched him he did find marijuana in his pocket. He asked
19 him to place his hands behind his back and went for his
20 handcuffs.

21 Mr. Woodruff ran. As he ran a city officer that was
22 working -- what happened was when he made the traffic stop,
23 when he started his lights, the individual had several
24 times to stop. He finally stopped at Wofford and North
25 Forrest Street, Your Honor, in the old Smith's Drugs

1 parking lot after having several opportunities to stop.

2 He ran. There was an officer on security, Officer
3 Edwards, from the city. They both gave chase, and Officer
4 Strickland initially gave chase, but he decided to go back
5 because he saw the other two was going back. So he went
6 back to Mr. McCall. Mr. Woodruff was apprehended. Officer
7 Harold called on his mike and was checking with them to see
8 what happened to Officer Strickland.

9 Officer Strickland went to Mr. McCall and said -- says
10 what happened with all the activities, the drugs being
11 found, them coming from that house, he decided to put him
12 in investigative detention. He was going to put handcuffs
13 on him.

14 He got one handcuff and went back to get another set
15 because of the individual being so large -- Mr. McCall. He
16 put it on his left hand. And when that happened he went
17 around and they got in a fight.

18 As they was fighting Mr. Giambins stopped by and saw
19 that the officer was fighting with Mr. McCall. He tried to
20 help. He was thrown off, and then he jumped in the car to
21 call and say officer needs help.

22 Meanwhile, Mr. McCall had a weapon, had a 380 Bersa on
23 his ankle, on his right ankle; pulled it out and put it
24 into the neck area of Officer Strickland. He told him I
25 want your gun. Officer Strickland would not comply. He

1 put the hammer back and said I want your gun or I'm going
2 to kill you.

3 He -- they went back and forth. Officer Strickland
4 said basically I don't want to give you my gun, will you
5 promise not to do anything. He said I want your gun, so he
6 gave him his weapon.

7 Meanwhile, the fight -- his mike had been tore off of
8 him. His taser was also torn off too, Your Honor.

9 He took the officer's gun afterwards, and then he
10 pointed it at Mr. Giambins inside the car. He stayed in
11 there. He -- Officer Strickland went to get his rifle or
12 his shotgun in the police car. The defendant had both
13 weapons. He ran.

14 Officer Wilbanks was coming. He saw the individual
15 run, saw Mr. McCall run, across the field. He drove up to
16 him in his unmarked Buick.

17 Basically, Mr. McCall pointed the weapon at him. He
18 drew his gun and pointed it at Mr. McCall, and he said
19 Mr. McCall finally nodded his head and went down.

20 He went down and was placing him under arrest. He
21 struggled at that time. Other officers was coming on the
22 scene, and he was arrested in this case, Your Honor.

23 And the gun -- Officer Strickland did get his gun back
24 afterwards. The Bursa was found and the ankle holster was
25 still on his leg. All of that was collected and put into

1 evidence, Your Honor.

2 Your Honor, I do have several exhibits I'd like to
3 make a part of the record and a part of the facts.

4 State's Exhibit 1, Your Honor, is the incident report
5 from Officer Harold in this case. It consists of three
6 pages. And Investigator Bryant, which was the detective
7 called to the scene, was page four, his writeup.

8 State's Exhibit 2, Your Honor, is the city officer,
9 John Feliciano. He was the one. He drew up behind Officer
10 Wilbanks and saw Mr. McCall throw the gun down, Your Honor,
11 and also helped in apprehending him, Your Honor. His
12 report consists of three pages.

13 State's Exhibit 3, Your Honor, is Officer Strickland's
14 report, one page.

15 State's Exhibit 4 is Chris Wilbanks' report. I'll
16 make that State's Exhibit No. 4.

17 State's Exhibit 5, Your Honor, afterwards medical
18 treatment was given to the defendant. Your Honor, it
19 consists of four pages.

20 When E.M.S. came up to him Todd Shields and Heather
21 Pleasant was checking him. They asked him what happened.
22 He said in the report, he said, "I pulled a gun on the
23 police," to them. I'd like to make that a part of the
24 record and the facts, Your Honor.

25 State's Exhibit 6, Your Honor, is a letter that the

1 defense sent Investigator Bryant at the sheriff's
2 department. We just received this from the sheriff's
3 department. It was mailed out January the 24th from the
4 D.O.C. And we'd like to make that a part of the record.
5 It consists of three pages, Your Honor, the front page
6 being the copy of the envelope, and two being the letter,
7 Your Honor. We'd like to make that all a part of the
8 record and a part of the facts in the case, Your Honor.

9 THE COURT: What about any prior criminal history?

10 MR. BARNETTE: Your Honor, in 1989 he had a fraudulent
11 check; 1992, driving under suspension; 2000, driving under
12 suspension; 2006, criminal domestic violence, Your Honor.
13 And I believe he's picked up a failure to stop, Your Honor,
14 and is currently serving time in the D.O.C. for that at
15 this point.

16 THE COURT: All right. Mr. McCall, you've heard what
17 the solicitor told me about the facts that relate to each
18 of the charges.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you agree or disagree with his version
21 of those facts?

22 THE DEFENDANT: I agree.

23 THE COURT: You've heard what he told me about your
24 prior criminal history.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you agree or disagree with his
2 recitation?

3 THE DEFENDANT: I agree.

4 THE COURT: Now, he's explained the facts to me.

5 Do you understand that any time a person is placed
6 under arrest that a defendant always has an opportunity to
7 contest any stop, any search and any seizure of evidence in
8 a case that might be used against a defendant during a
9 trial?

10 When you plead guilty, as I told you earlier, I
11 believe, but I'll tell you again if I didn't -- when you
12 plead guilty you give up your right to assert any defense
13 that you might have to a charge. And so when you plead
14 guilty you also give up your right to contest the legality
15 of any stop, any search or any seizure of evidence by law
16 enforcement that they intend to use against you in a trial.
17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you still wish to give up your
20 right to assert any defense and give up your right to
21 contest the legality of any stop, search and seizure?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you still wish to enter your plea
24 of guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. I'll accept your pleas of
2 guilty and hear from you and Ms. Price.

3 MS. PRICE: Thank you, Your Honor.

4 We would just request that Your Honor accept the
5 negotiations in this matter.

6 Mr. McCall has been incarcerated continuously since he
7 was arrested last February 19th.

8 We would also ask that you give him credit for the
9 time he has served, that he's currently serving, in the
10 department of corrections.

11 THE COURT: Well, he was arrested on February the
12 19th?

13 MS. PRICE: Yes, sir.

14 THE COURT: He never made bond on these charges?

15 MS. PRICE: No, Your Honor.

16 THE COURT: But he has received a -- I understood he
17 was doing a sentence for failure to stop.

18 MS. PRICE: Your Honor, that was actually a probation
19 violation.

20 THE COURT: All right. So when did he receive the
21 probation violation?

22 THE DEFENDANT: About March, somewhere the first of
23 March.

24 THE COURT: Well, a couple of weeks or so, or a couple
25 or three weeks after you were arrested on these charges?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Well, Mr. McCall, now, you also need to
3 understand -- and this you'll have to decide if it changes
4 your mind -- but you're always entitled to receive credit
5 for time that you're spending in jail on charges to which
6 you come forward and plead guilty or are convicted of. But
7 my understanding of the law is you do not receive credit
8 for time on those -- on a sentence on those charges if you
9 are serving a sentence.

10 In other words, I'm told that you are serving a
11 sentence as a result of a probation revocation occurring in
12 March of 2010. So because you're serving that sentence
13 you're not being held on these charges.

14 THE DEFENDANT: I understand.

15 THE COURT: You're serving a sentence for something
16 else.

17 So you can get credit from February the 19th up until
18 you received your probation revocation. You're entitled to
19 that. And of course you received -- you begin serving the
20 sentence today. But I'm not authorized to give you credit
21 for time that you are serving after the imposition of a
22 sentence. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you still want to go forward?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Do you have anything you want
2 to add to what Ms. Price has told me?

3 THE DEFENDANT: No, sir.

4 MR. BARNETTE: Your Honor, there is one thing I need
5 to put on the record for one second.

6 This occurred at Wofford and Forrest Street here in
7 Spartanburg County. I think that was in the incident
8 report. So I wanted to make sure that was part of the
9 record also.

10 THE COURT: Mr. McCall, I mean -- excuse me --
11 Ms. Price and Mr. McCall, on the armed robbery indictment
12 I'm going to check -- they're not checked. I'm checking
13 the fact that armed robbery is a violent offense and it's a
14 most serious offense.

15 MS. PRICE: Yes, sir.

16 THE COURT: Do you understand that, Mr. McCall?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: On Indictment 2010-2093, an indictment for
19 armed robbery and possession of a firearm during the
20 commission of a violent crime, count one of the indictment,
21 armed robbery, Sentence of the Court is you, Terrance
22 Darnell McCall, be confined to the South Carolina
23 Department of Corrections for a period of 20 years.

24 The defendant is to be given credit for any time he's
25 entitled to pursuant to 24-13-40.

1 Count two of the indictment, possession of a firearm
2 during the commission of a violent crime, Sentence of the
3 Court is five years concurrent. Credit where applicable.

4 Indictment 2010-2092, assault and battery first
5 degree, Sentence of the Court is ten years concurrent.
6 Credit for any applicable time.

7 2010-2089, pointing and presenting a firearm, five
8 years concurrent. Credit for any applicable time.

9 2010-2090, assault and battery of a high and
10 aggravated nature, ten years concurrent. Credit for any
11 applicable time. Okay.

12 MS. PRICE: Thank you, Your Honor.

13 MR. BARNETTE: Thank you, Your Honor.

14 END OF REQUESTED TRANSCRIPT OF RECORD

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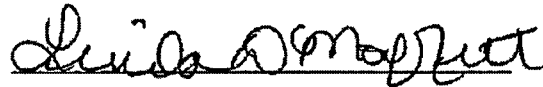
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 31st day of January 2011.

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

March 16, 2012



Linda D. Moffitt
Circuit Court Reporter

FORM.5

STATE OF SOUTH CAROLINA

County of

Spartanburg:

Terrence Cornell MSc, LL 339911

Full name and prison number (if any) of Applicant

v

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-CP-42-5495

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (either 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 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
200 Prison Rd Enoree S.C 29335
2. Name and location of Court which imposed sentence Spartenburg county
Court house in Spartenburg S.C.
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) "2010GS4202093"-2010GS4202089-2010GS4202090
(b) "2010GS422093"-2010GS4202092

200 Ftison Rd Enoree S.C 29335

2. Name and location of Court which imposed sentence Spartanburg county
court house in Spartanburg S.C.
3. Name(s) of co-defendant(s) (if any) N/A

Court house in Spartanburg S.C

3. Name(s) of co-defendant(s) (if any)

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2010GS4202093-2010GS4202089-2010GS4202090-
(b) 2010GS422093-2010GS4202092

(b) 2010GS422093-2010GS422092

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2-31-10
- (b) 20 years
- (c) on my sentence sheet the Judge sign 2-31-11 (the wrong date)
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?
- yes — Both
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. Rule 203(d)(1)(B), SCACR
- ii. I was never notified that my appeal was
- iii. dismiss. I wrote the Appeal clerk and ask about my APPEAL
- (c) the date of each such result:
- i. until this day i still have not been notified
- ii. but i wrote the clerk and she wrote back on 11-4-11
- iii. and told me my appeal was dismiss on 4-28-11
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Rule 203(d)(1)(B), SCACR
- ii. dismiss
- 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) "Ineffective Assistance of Counsel"
- (b) This was not Armed Robbery
- (c) The Sheriff lied about why he stop us / racism / desecration
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) My lawyer didn't do nothing to defend me look on the back + 7 more PAGES
- (b) That Sheriff told me to run (look on the back and other pages)
- (c) The Sheriff stop us because to block men in what they call a drug Area.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

FILED
CLERK OF COURT
SPRING ARBOR COURT
DEC 12 PM 11:11
J. HOPE BLACKLEY

11-A- Ms. Price didn't follow rule 1.4. communication or rule 407

Preamble: A lawyers responsibilities. Ms. Price did not do nothing i ask her to or did she try to defend me the best she could. she didn't investigate why the sheriff "stopping" it was because he was with sheriff and was leaving what there was a drug area and he call out and the sheriff pull us over because of that, he told and said because of dark tint on the car tag, the tag had a clear cover on it, he just said that so we couldn't find out why he really stop us, it was not a legal stop. the case could have been dismiss because of that alone. Also i kept showing Ms. Price the inconsistencies of five different reports. Example: how they said the gun had yellow jacket bullets in it but they lost them. The gun didn't even have bullets in it. In the evidence sheet, it tells about the amount of money, but in my pocket, 1 \$100 bill 3 \$10.00 bills 2 \$5.00 bills even down to a ink pen i had in my pocket. then it state one 380 handgun one 380 magazine and then it states nothing else follows meaning no bullets. but later they come up with a picture of the 380 clip with bullets in it but they are not hollow points like they said. they find those bullets in that clip this would of put doubt in the jury at the trial but Ms. Price said that wouldn't help me at all. then or at less 8 more (lies) inconsistencies that i bring to Ms. Price attention but she just kept telling me to take the plea deal and that was with the kidnapping.

11-B- Sheriff Strickland told me to run and he would catch me later.
Yes i had a gun but when sheriff Strickland told me to put my hands behind my back so he could cuff me, i got the gun and tried to toss it in the big crowd of onlookers hoping some one would get it and hide it but Mr. Strickland had his arm and the gun fell on the trunk of the car and we both were trying to get it but i happen to get it and when i turn around Mr. Strickland had his hands in the air i had the gun pointing at the ground. Mr. Strickland told me to run and he would catch me later so i turn around to run but before i could get turn around i saw him going for his gun so i turn around and took his gun so he wouldn't shoot me, i didn't point the weapon at him. he lied and said i did. i ask for the car video but they say it was not on.

11-C- The Sheriff lied about stopping us for dark tint on the tag.
in the court transcript it say the real reason he stop us is because sheriff wilbanks call out and said we just left a drug house, the first thing he ask us is if there drugs in the car.

This arrest warrant say i armed robbery deff Strickland with a 40 caliber hand Gun. This is wrong, the Gun they have in evidence, that they took from me is a small 380 caliber hand Gun. these 2 Guns are very different in size". I ask ms.

Price if we go to trial can they use the 380 Gun i had as evidence against me even thow the arrest warrant say i had a 40 caliber hand Gun. She told me that they was going to give me life in Prison and that i was going to leave Prison in a wooden box dead if i did not take the Plea. I still dont understand what Ms. Price was saying about the jury, I was told that we was going to pick the jury but when i was in that waiting room she told me that the court room was full of Sheriffs from the Sheriff department and they was out for blood, then she ask me one more time did i still want to take a jury trial, said yes and she got piss off and stomped her feet and tell at me WHAT do i WANT. i told her to try to get me 5 years none violent she said they wont even think about that, then she left and 5 min later she said they would drop the kidnapping if i Plea to armed robbery, she said if i dont take it then i would die in Prison. I didnt no what to do because ms. Price Never, not one time ~~she~~ tried to help me so i just said yes. but when we went in the court room less than 3 min later there was only 4 Police men in the court room she led to put fear in my heart and it work. The lady Shouldnt even be A lawyer, i want my days in court.

Question # 11-A

ARREST WARRANT

M-421780

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Spartanburg

THE STATE
against

Terrance Darnell McCall

Address: **Highland Ave.
Spartanburg, SC 29301-**

Phone: **SSN: [REDACTED]**

Sex: **M** Race: **B** Height: **5 11** Weight: **240**

DL State: **DL #:**

DOB: **Agency ORI #: SC0420000**

Prosecuting Agency: **Spartanburg County Sheriff**

Prosecuting Officer: **Jason Bryant - 0487**

Offense: **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

Offense Code: **0139**

Code of Offense Sec: **16-11-0930(A)**

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge _____

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____
on _____

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg SC 29304

AUDIT CO.

AUDIT COPY

AUDIT COPY

AUDIT JPY

AUDIT COPY

AUDIT COPY

AL COPY

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Spartanburg

AFFIDAVIT**AUDIT COPY**

1000 APPROVED BY
S.C. JUDICIAL BRANCH
April 21, 2003
SCCA 21A

Personally appeared before me the affiant **Jason Bryant** who
being duly sworn deposes and says that defendant **Terrance Darnell McCall**
did within this county and state on or about **02/19/2010** violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Spartanburg**)
in the following particulars:

DESCRIPTION OF OFFENSE **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
That on February 19, 2010, in the County of Spartanburg, defendant **Terrance Darnell McCall** was armed with a deadly weapon, a handgun, and he was in the vicinity of being Jeff
Strickland, with intent to deprive him of his property, and he was armed with a deadly weapon, a handgun.

AFFIANTS BELIEF BASED POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Spartanburg

Affiant's Address **8045 Howard Street
Spartanburg, SC 29303-**

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about **2/19/2010** defendant **Terrance Darnell McCall**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **Spartanburg**) as set forth below:

DESCRIPTION OF OFFENSE: **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Affidavit is to be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me
on **02/19/2010**

Signature of Issuing Judge
Dwight Smith
Judge Code: **7151**

Judge's Address **Spartanburg County Judicial Center
Spartanburg, SC 29306-**

Judge's Telephone **(864) 598-9300**

☐ County/ ☐ Municipality ☐ Circuit

Look on the back

this warrant set i armed robbery strickland for his gun, which is for
no caliber handgun with his own gun, the same no caliber handgun.
this should of never been Armed robbery and MS FRIED. he's it but
didn't even try to prove it.

Question # 11-A

Price, Andrea

From: Barnette, Barry
 Sent: Monday, October 25, 2010 2:48 PM
 To: Price, Andrea
 Cc: 'Barry Barnette'
 Subject: State v. Terrance McCall

Andrea,

On the Terrance McCall case- here is the offer:

The State will dismiss the Armed Robbery (Ind. No.: 10-GS-42-2093) and the ABWITK (Ind. No.: 10-GS-42-2092) if the Mr. McCall pleads straight up to the other five charges: Kidnapping- Count One (Ind. No.: 10-GS-42-5791); Possession of a Weapon during a Violent Crime- Count Two (Ind.No.: 10-GS-42-5791A); Resisting Arrest (Assault of a Police Officer)(Ind.No.: 10-GS-42-2091); ABHAN (Ind. No.: 10-GS-42-2090); and Pointing and Presenting a Firearm (Ind. No.: 10-GS-42-2089) by October 29th, 2010. If Mr. McCall does not take the offer, we will schedule a trial on all seven charges within the next couple of months. If you need any additional information or have any questions, please let me know.

Thanks,

Barry

Barry Barnette
 Principal Deputy Solicitor
 Seventh Judicial Circuit

PRIVACY NOTICE: This communication is intended only for the use of the individual or entity to which it is addressed and may contain confidential information that is private and protected from disclosure by applicable federal and/or state law. If the reader of this message is not the intended recipient or responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication or the information containing within it, is strictly prohibited and may subject the violator to civil and/or criminal penalties. If you have received this communication in error. Please notify us immediately by telephone, reply e-mail, or fax using the phone number or address identified in this communication and destroy or delete all copies of this communication and all attachments. Thank you.

Ms. Price kept telling me to take this Plea deal. I can't tell her of not one time when she tried to help me. I ask her how she Plea her. he said no. I showed Ms. Price many of inconsistencies in my case. I told her about the wrong gun on the Arrest warrant, and many others but she did nothing to defend me. I have included in the next few Pages a small amount of evidence and etc. that would have had this case dismiss or a sentence less than 5 years. I never new about the Kidnapping until 10-26-10 the day i was bring to the county jail. I ask Ms. Price how ~~was~~ could they do this and she said they can do what ever they want to. I ask Ms. Price how much time do Kidnapping carry and she told me that she didn't no.

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 CLERK OF COURT
 ST. TAMM COUNTY
 NOV 12 PM 1:15
 MOBILE

Question # 11-B

Sheriff Strickland told me to run and that he would catch me later. as i turn to run the sheriff went for his gun so i took it from him and not as a robbery but in self defense. I ASK that the car video be use as evidence to Prove what am saying is true but they said or should i say my Lawyer send they told her that both cars that was 5 feet ~~away~~ did not have there videos on but i found out when ~~the~~ ~~cars~~ Police cars blue lights or on the video is on, and both Police cars blue lights was on.

Question # 11-C

This should of not of happen, if Mr. Strickland would of not stop us unlawfully i would not be down 20 years. Mr. Strickland lied about stopping us for dark tint on the tabs, the tab has a clear cover on it but the windows have dark tint that is not legal, if he was truly out to do his job he would of notice that the window tint was not legal but he wasn't stopping us for ANY thing that has some thing to do with a traffic stop. he stop us because a undercover told him to stop us because to black men just last year that they say was in a drug area. this is clearly of racial desecration.

M. HOPE L. ACKLEY

2016 DEC 12 PM 1:11

CLERK OF COURT
SPARLAND COUNTY

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Ineffective Assistance of Counsel:

Question # 11-A State concisely and in the same order the facts which support each of the grounds set out in question 10.

There are a few facts or inconsistencies that I bring to Ms. Price attention but she never look in to it. First of All I should of never been stop by the Sheriff, it was not a legal stop and the stop is in the court transcript. The Sheriff said he pull us over for dark tint on car tag. The tag has a clear cover on it look at the pictures. The Sheriff ask us is there drugs in the car, why would he ask that if he stop us for tint on the tag. I found out that Sheriff Wilbanks saw us leaving a house that they say was in a drug area and he call out and ask the other Sheriff to stop us so the Sheriff lied about the dark tint on the tag. This would of never have happen if the Sheriff would of ~~not~~ did a legal stop. And Also I ask Mrs. Price to look in to the fact that on my arrest warrant #M-421780 they say I did a Robbery with a 40 CAL. hand Gun, this is not true, the Gun I had is a 380 hand Gun, this is the Gun they have in evidence. I told Mrs. Price how can they arrest me for a Gun I didn't have and Put me in Prison using another Gun as evidence. I also told Mrs. Price about the Gun didn't have bullets in it but the cops lied and said it had hollow Point Yellow Jacket bullets but they lost them, then ~~afterwards~~ they had a Pictures of the Gun magazine with bullets in it but they was not hollow Points. And on the evidence sheet on page 44 in my discovery it clearly state that one 380 ~~hand Gun~~ ^{magazine} and it end by saying nothing else follows, meaning ~~no bullets at all~~ ^{nothing at all}. She kept saying it don't matter because the New Solicitor ~~was not going to~~ ^{was not going to} lose his first case in the new year. I told her it would ~~be~~ ^{be} a duty that the cops lied and they planted bullets in the Gun, this ~~could be~~ ^{could be} Put out in the jury minds or this could of been dismiss for tampering with evidence. She always seem dumfounded and would say this is robbery and you should ~~take~~ take the Plea deal. I told Mrs. Price what happen at the traffic stop. I tried to toss the 380 in to the crowd that was looking, hoping some one would get the Gun and hide it but the Sheriff hit my arm and the Gun fell on the trunk of the car and we both was trying to get it. And I end up with the 380 in my hand and the Sheriff Put his hands in the air and told me to run and he will get me another day so I turn to run but before I got turn around I saw the Sheriff going for his Gun so I stop and took his Gun in self-defense not Armed robbery. I had over 200.00 in my wallet.

LOOK on the back →

I ask Mrs Price to send me the court transcript but she did not do it. In the court room when the solicitor was telling his case he said why the Sheriff stop us and it wasn't because of dark tint on the tabs. Mrs. Price has not once tried to help me with this case, I ask to have her replace but her boss said NO. I have included A copy of that letter

// Just to be ~~sure~~ sure you understand what I told Mrs. Price about the Arrest warrant. This is what the warrant say. That on February 19 2010 in the city/county of Sparta, the defendant did take a weapon from the victim, being Jeff Strickland, with intent to deprive while armed with a deadly weapon, being a 40 caliber hand gun. //

Ms. Price should of Notice this if she was trying to defend me. The warrant say that I rob Strickland with his own gun, in other words I took his gun and told him to give me his gun. This is clearly not armed robbery. For one, I had a unloaded 380 hand gun that the Police took from me, but on the arrest warrant they say I had a 40 CAL. hand gun. The indictment for armed robbery should be dismiss and I should be release from Prison. They indicted me on action of Grand Jury on evidence from a warrant that has the wrongs gun on it. I ~~ask~~ Mrs. Price that when we go to trial and they pull out that 380 hand gun as evidence could she have the case dismiss because they have on the arrest warrant I use a 40 cal. hand gun. I ask her dont they have to show a 40 cal as the evidence in the robbery. She told me that they could change the Paper work and set a new court date. I ~~fill~~ fill like such a fool for allow that woman to cause me to spend my life in Prison. I could of dont that Year for Probation and been at home with my Grand Kids.

(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 State or Federal, in any petition, motion or application which you have filed?

NO, The Appeal board wouldn't let me.

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. _____

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SPARTANBURG COUNTY
2011 DEC 12 PM 1:12
M. HOPE BLACKLEY

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) had A Appeal but it was dismiss.
 (b) until this day i still have not been notified.
 (c) wasn't allow to present issues

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? Both
 (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. MS. Andrea L. Rice
366 North Church Street
 ii. Suite 3000
Spartanburg, S.C. 29303

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Appeal / MS. Andrea Rice

ii. _____

iii. _____

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 M. HOPE BLACKLEY

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

I want Armed robbery drop to A lesser Non-violent charge
or have my sentence lower to 10 years Non-Violent
or go back to court and have a jury trial

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

NO

STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

SCDCH#
339911

I, Terrance Darnell McCall, 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.

Terrance D. McCall

SWORN to and subscribed before me this 7th
 day of DECEMBER, 2011.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 12/14/2019

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 SPARTANBURG COUNTY
 2011 DEC 12 PM 1:12
 M. HOPE BLANKNEY

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

I, Terrance D. McCall SCDC# 339911, 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.

Terrance D. McCall
Applicant

SWORN or affirmed to and subscribed before me this
17th day of DECEMBER 2011.

[Signature]
Notary Public of SC

My Commission Expires: 1-14-2019

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SPARTANBURG COUNTY
2011 DEC 12 PM 1:12
M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

Post Conviction Relief (PCR) applications are processed in the following manner:

1. Applicant completes the form and returns it to the Clerk of Court office.
2. We cannot furnish copies of the transcript from your trial or plea. The court reporter that was present at the trial or plea will have to furnish the transcript.
3. This office will make certified copies of warrants and indictments that are sent to the Attorney General's Office along with copy of your PCR.
4. The Attorney General's Office will send a copy of your transcript to our office only for the Judge's reference. The Attorney General's Office will also instruct us to appoint an attorney for you. You will be notified by mail when our office has made that appointment. Your appointed attorney will have unlimited access to your PCR file.
5. All PCR hearings including motion hearings will be scheduled through the Attorney General's Office. The Clerk of Court does not schedule any PCR hearings.
6. Please make sure you have pages 6 and 7 notarized. We will not be able to accept the PCR without these notarized pages.
7. Please include a self addressed stamped envelope so we can return a clocked copy of the PCR to you.

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SPARTANBURG COUNTY
2011 DEC 26 PM 11
M. HOPE BLACKLEY

Ineffective Assistance of Counsel

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG, SC 29303TELEPHONE (864) 596-2561
FAX (864) 596-2284
FAX (864) 582-4412

January 19, 2011

COPY

Terrance D. McCall
33991
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland, SC 29936-2039Page # 3
Question # 11 ARe: State v. Terrance D. McCallWarrant/Ticket No(s): M421780; M421781; M421782; M421783; M421784;
M421785; M421786; M421787

Dear Mr. McCall:

I have received your letter dated January 10, 2011. I am well aware that you were transported to the Spartanburg Detention Center because you were on the trial docket for the week of January 4. I did not come to see you at the jail because I was trying a case Tuesday, Wednesday, Thursday, and Friday. I asked Mr. Cheek to come see you that week because you had stated in your previous letter to me that you wished to have him assist you with your cases.

You have been placed on the standby trial docket for the week of January 31. This docket will be used in case the civil docket that week is disposed. Although you are on this docket, there is no guarantee that your case will be heard. I am attempting you have you brought back to Spartanburg so that we may discuss your cases prior to that week.

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SPARTANBURG COUNTY
JAN 20 2011
11:11
HOPE BECKLEY

"Look on the back of the letter"

Sincerely yours,

Andrea Price
Assistant Public Defender

turn over please

I ask to have MR. Cheeks as MY Lawyer but as you can see i was told no. Then they send MR. Cheeks to talk to me. at that time i was thinking he was MY Lawyer so we talk and went over my Paper work for about an hour. MR. Cheeks told me that he didnt see how they got armed robbery or kidnapping. we talk and he told me to tell MS Price to ~~tell~~ them that i would Plea to Assault - ARTHUR - resisting arrest - Possession of a Gun. At that time i ask him was he my lawyer and he said no. then i ask him why or we spending all this time ~~on~~ going over my case. he told me because MS Price ask him to. After that, i told ~~him~~ him thanks for coming and i will tell MS Price what you said.

The few times i talk to MS. Price we only talk for about 5 min and when she came to see me with Mr. Allen we talk about 30 min and they told me they was working on why the Sheriff stop us in the first place. i was told because the cop that saw us at this so call drug location call out and had some one pull us over so the Sheriff tied about stopping us because of dark tint on the tns. the tns had a clear cover and also the window tint was not legal so why not say because dark window tint. And why would he ask us when he came to the car if there was drugs in the car. he ask because MR. Bryant - Sheriff Bryant ask him to stop us. so the Sheriff that pull us over told a lie about why he stop us. if the Sheriff wouldnt of stop us on a fake traffic stop. then none of this would of happen.

Ineffective Assistance of Counsel

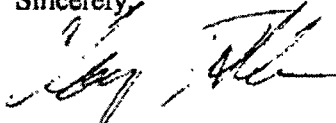
Mr. Terrance D. McCall
December 3, 2010
Page 2

who are serving prison sentences because they are not eligible to be released, even if they make bond. Therefore, I generally advise my attorneys not to ask for bond hearings, even if they have a change of circumstances, until the client has finished his or her term of incarceration. For these reasons, I will not ask for a bond hearing.

I will forward your request for a speedy trial motion to Ms Price for her consideration. You seem to believe that you are entitled to a dismissal if a speedy trial is not granted; however, such is not necessarily the case. I will let Ms Price discuss this issue with you in more detail, if necessary. I am sure that if Ms Price believes a speedy trial motion is in your best interest, then she will take the appropriate steps to make that request.

I am sure that Ms Price will investigate and do all that is necessary to prepare for trial. I do not believe that it is necessary to assign you another attorney, and I ask you to continue to cooperate with Ms Price as she continues to represent you.

Sincerely,



Clay T. Allen
Circuit Public Defender

COPY

page # 3
Q-10-A

CTA:

cc: Andrea L. Price, Esquire

" Ineffective Assistance of Counsel "

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SPRINGFIELD COUNTY
2011 DEC 12 PM 1:11
M. HOPE BLACKLEY

This Prove I ask for another attorney

This is my first time dealing with this type of trouble, and when I ask Mr. Allen to replace Ms. Price and he told me no, I thought I had to deal with it. I did not know that I could release Ms. Price as my lawyer in the court room in front of the judge, it would of been that I would have done just that. dismissing her

Ineffetive Assistance of Counsel

59

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER

366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG, SC 29303



TELEPHONE (864) 596-2561
FAX (864) 596-2284
FAX (864) 562-4412

November 30, 2010

COPY

Terrance D. McCall
33991
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland, SC 29936-2039

Page #3
Question 11-A

Re: State v. Terrance D. McCall
Warrant/Ticket No(s): M421780; M421781; M421782; M421783; M421784;
M421785; M421786; M421787

Dear Mr. McCall:

I have received your letter dated November 22, 2010. To date, this is the third letter that I have received from you.

1 → I will not be filing a bond hearing request for you. Your bond has already been denied by Judge Cole. That hearing was held in March, and I am not aware of any change in circumstance to justify another hearing. Additionally, you are currently incarcerated, and I doubt any judge would grant a bond for someone currently in prison. We can address this again when you are transported to the Spartanburg County Jail in March.

2 { Your request for a Speedy Trial is also premature. I need some sort of grounds to present to the court, and I currently do not know of any reason that you would be prejudiced by not having a speedy trial. I will not be filing a Motion to Dismiss, again because I have no legal grounds to do so.

When your cases are placed on the court docket, I will contact you.

Sincerely,

Andrea L. Price
Assistant Public Defender

look on back of Bao

I ask to have her replace i was told "NO"

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SPARTANBURG COUNTY
NOV 30 2010
M. HOPE BLACKLEY

#1- I told Ms. Price the reason why i want it to try to get a bond is because i only had a few months left on that Probation sentence, my family was going to bond me out so i could get a Bail Attorney. Ms. Price just said NO

#2 I ask her to file for a Speedy trial but she said NO she said she need some sort of grounds to Present to the court. I told her to look at all the inaccuracies in my discovery & Per work, the lies about the Gun had bullets in it but they lost the so call Yellow jacket bullets, so they say (There was no bullets in the Gun) even on the evidence sheet it say one hand Gun - one magazine for the hand Gun then it say nothing else follows meaning no bullets. i found many more lies that i pointed out to Ms. Price but she still would not Put in for a Speedy trial as i Request by her not doing so is 8 months in to my one year sentence they added kidnapping.

I went my day in court with a different Lawyer

This is A COPY of A letter i mail MR. Allen

Terrance D. McCall, 339911
RCI, PO Box 2039, GB-3
Ridgeland, SC 29936-2039

Clay T. Allen
Circuit Public Defender
Seventh Judicial Circuit
Spartansburg, SC

November 22, 2010

Re: State v. McCall, several indictments and current representation.

Dear Mr. Allen:

I hope this letter finds you well and in good spirits. I am writing concerning my assigned counsel from your office, Andrea L. Price.

During the time that she has had my case I have wrote her Nine (9) letters, over a nine month period. She had wrote back not one time. When I came up there to go to Court she brought me my discovery, and preliminary hearing paperwork, telling me this is what I requested. This was on October 25, 2010. At that time she only gave me the paperwork, but did not spend the time to talk with me about it, or to flush out the inaccuracies. Neither did she explain to me, nor consult with me on what is the current status or what to expect down the road.

What she did do is give me a plea deal from the solicitor telling me to plea to Kidnapping, whereas I wasn't even aware that I had been charged with Kidnapping. When I asked where the warrant was for that charge, she seemed dumbfound. When I asked how much time the charge carried, since they wanted me to plea to an open plea, minus two charges, she said she did not know. How can this be competent counsel, whereas all she had to do was refer to a book or say I will get back with you, but to say I don't know. The charge of Kidnapping is not that rare.

Since I had no accurate information upon which to form a decision, I rejected the plea deal, now I am at the mercy of a jury. What I mainly want from Ms. Price is to investigate the facts, and the inconsistencies of the

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SPARTANBURG COUNTY
SOUTH CAROLINA
NOV 23 2010
11:11 AM

Service of Process:

3:08-cv-02445-DCN-JRM Hendricks v. Cohen
PRISONER

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered by Zelenka, Donald on 7/14/2008 at 12:21 PM EDT and filed on 7/14/2008

Case Name: Hendricks v. Cohen

Case Number: 3:08-cv-2445

Filer: Levern Cohen

Document Number: 7

Docket Text:

ACKNOWLEDGMENT OF SERVICE Executed as to [6] Order 2254,, Terminate Motions, Acknowledgment filed by Levern Cohen. (Attachments: # (1) Certificate of Service)(Zelenka, Donald)

3:08-cv-2445 Notice has been electronically mailed to:

Donald John Zelenka agdzelenka@ag.state.sc.us, aglbrawley@ag.state.sc.us

3:08-cv-2445 Notice will not be electronically mailed to:

Larry Edward Hendricks
254256
Ridgeland Correctional Institution
PO.Box 2039
Ridgeland, SC 29936

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=7/14/2008] [FileNumber=2545104-0]
][a2a02397ae71119345a21fd32b92f41dc0bd40d290101790df95c65690648b7c8c9
b4dbe3b4ff5528585a73e9a7d9e139a10132deaf5676f83f021406bf8e858]]

Document description: Certificate of Service

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=7/14/2008] [FileNumber=2545104-1]
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4130ba972632d75bdf6d24f6365852498768172684665da7bf6f7b88c44f9]]

different reports, from the Discovery and help me put up a defense, because I am taking this to trial. I also want a bond hearing, that I have been requesting in the previous nine letters.

Mr. Allen, if you could request a bond hearing, then ~~when~~ I can have my security lowered and can get closer to home, while we await the outcome of the trial. I also would like to have a Motion for a Speedy Trial submitted, and if they fail to do it in a timely fashion, a Motion to Dismiss filed.

Mr. Allen, I wanted to put you on Notice and make you aware of the representation I am receiving from Ms. Price. I am sure you can check your database and see that the only letter I have received from Ms. Price was when I was in the County jail, on March 1, 2010. It doesn't take much to answer a letter, and the Rules of Professional Conduct requires counsel to communicate with their client. If she does not wish to do so, then replace her with Mr. James Cheeks, from your office. But I am fighting for my life and need supportive counsel.

I appreciate your time and attention regarding this matter and look forward to positive results. Have a Good Day!

Yours Sincerely;

Terrance D. McCall

cc: File

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SPARTANBURG COUNTY
2011 DEC 12 PM 1:11
M. HOPE BLACKLEY

must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition to identify the cases to which the petition applies and to avoid companion cases proceeding to mandate during the pendency of a petition for rehearing in the lead case. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this Court, or another Court of Appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 15 pages. Copies are not required unless requested by the Court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this Court, there is no mandate. Unless the Court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

1 of 2

Terrance D. McCall, 339911
 RCI, PO Box 2039, GB-3
 Ridgeland, SC 29936-2039

Copy of
 A letter to Mrs. Price

Andrea L. Price
 Assistant Circuit Public Defender
 Seventh Judicial Circuit
 Spartansburg, SC

November 22, 2010

Re: State v. McCall, several indictments and your current representation.

Dear Ms. Price,

I hope this letter finds you well and in good spirits. I am writing concerning your representation in this matter. During the time that you have had my case I have wrote Nine (9) letters, over a nine month period. You wrote back not one time. When I came up there to go to Court you brought me my discovery, and preliminary hearing paperwork, telling me this is what I requested. This was on October 25, 2010. At that time you only gave me the paperwork, but did not spend the time to talk with me about it, or to discuss out the inaccuracies. Neither did you explain to me, nor consult with me what is the current status or what to expect down the road.

What you did do is give me a plea deal from the solicitor telling me plea to Kidnapping, and other charges, whereas I wasn't even aware that I had been charged with Kidnapping. When I asked where the warrant was for that charge, you seemed dumbfound. When I asked how much time the charge carried, since they wanted me to plea to an open plea, minus two charges, you said you did not know? How can this be, all you had to do was refer to a book or say I will get back with you, but to say I don't know. The charge of Kidnapping is not that rare.

Since I had no accurate information upon which to form a decision, I rejected the plea deal, and am now at the mercy of a jury. What I mainly want from you is to investigate the facts, and the inconsistencies of the different reports, from the Discovery and help me put up a defense, because I am taking

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 SPARTANBURG COUNTY
 SOUTH CAROLINA
 2010 DEC 12 PM 1:13
 M. HOPE BLAKE

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

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2012

this to trial. I also want the bond hearing, that I have been requesting in the previous nine letters. I also would like to have a Motion for a Speedy Trial submitted, and if they fail to do it in a timely fashion, a Motion to Dismiss filed.

Ms. Price, the only letter I have received from you was when I was in the County jail, dated March 1, 2010. It doesn't take much to answer a letter, and the Rules of Professional Conduct requires counsel to communicate with their client. If you do not wish to do so, then remove yourself, and allow Mr. James Cheeks, from your office, to represent me. But I am fighting for my life and need supportive counsel.

I appreciate your time and attention regarding this matter and look forward to a positive response. Have a Good Day!

Yours Sincerely;

Terrance D. McCall

cc: File

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M. HOPE BLACKLEY

Allaah the Almighty said: "Turn to your Lord (in repentance) and submit to Him (in Islaam)." [39:54].

And He said: "Who can be better in religion than one who submits his whole self to Allah and is a well-doer." [4:125].

He also said: "Whoever submits his whole self to Allah and is a well-doer of good has grasped indeed the most Trustworthy handhold. [31:22];

And He also said: "But no by your Lord they can have no (real) Faith until they make you (Muhammad) judge in all disputes between them and find in their souls no resistance against your decisions but accept them with the fullest submission. [4:65].

The Prophet (saw) said: "None of you can be a true Muslim until his desire is submissive to what I have brought." This is indeed the perfect submission and its purpose.

Evidence of Acceptance:

Allaah the Almighty said: "Just in the same way whenever We sent a Warner before you (O Muhammad) to any people, the wealthy ones among them said: 'We found our fathers following a certain religion and we will certainly follow in their footsteps.' He said: 'What! Even if I brought you better guidance than that which ye found your fathers following?' They said: 'For us We deny that you (prophets) are sent (on a mission at all).' So We exacted retribution from them: now see what was the end of those who rejected (Truth)! [43:23-25].

And He said: "For they when they were told that there is no Ilah except Allah they would puff themselves up with pride. And say: 'What shall we give up our gods for the sake of a mad Poet?' [37:35-36]

Narrated Abu Musa [r] the Prophet (p) said, "The example of guidance and knowledge with which Allah has sent me is like abundant rain falling on the earth, some of which was fertile soil that absorbed rain water and brought forth vegetation and grass in abundance. (And) another portion of it was hard and held the rain water and Allah benefited the people with it and they utilized it for drinking, making their animals drink from it and for irrigation of the land for cultivation. (And) a portion of it was barren which could neither hold the water nor bring forth vegetation (then that land gave no benefits). The first is the example of the person who comprehends Allah's religion and gets benefit (from the knowledge) which Allah has revealed through me (the Prophets) and learns and then teaches others. The last example is that of a person who does not care for it and does not take Allah's guidance revealed through me (He is like that barren land.)" [Bukhaaree]

Foundations of the Creed

The Deen of Islaam as is described above is a Deen that comprises the matters of Aqeedah and Sharee'ah.

The Islaamic Aqeedah includes: The Belief in Allaah (aj); His Angels; His Books; His Messengers; the Last Day, and Al-Qadar wal Qadaa, its good and its bad. These matters are verified in the Qur'aan and the Sunnah. The Statement of Allaah concerning this is: "It is not righteousness that you turn your faces toward East or West; but it is righteousness to believe in Allah and the Last Day and the Angels and the Books and the Messengers. (5)

And the statement of Allaah (aj) is: "Verily all things have We created in proportion and measure. And Our command is but a single (Act) like the twinkling of an eye. (6)

The Prophet (p) said: Eemaan is to believe in Allaah (aj) His Angels; His Books; His Messengers; the Last Day, and Qadar wal Qadaa its good and bad. (7)

Belief in Allaah (aj)

The belief in Allaah (aj) comprises four matters:

First: the belief in the existence of Allaah (aj). The evidence for this is established by: 1. Fitrah; 2. Reasoning; 3. Ash- Shar'ah; 4. Al-Hiss.

1. Fitrah -the proof of Fitrah: every creature is created in a state of belief in his creator without preceding thought or education. No one changes from what is necessitated by this Fitrah, except one whose heart

12-7-11

To Whom it may concern:

I have done the best i could in filling out this Paper work. I Pray that i Prove my Point on the matter of Ineffective Assistance of counsel and tampering with evidence and Prove that this deal with racial desecration. Ms Rice never took time to talk to me, she NeVer said what she was trying to do or what i should ^{be} expecting. all she kept saying is take the Plea deal with the Kidnapping. Mr. Cheeks toll me that this was a scare tactic and they would drop kidnapping & Armed robbery at the Plea deal. He said this is clearly not Armed robbery nor kidnapping. Now both of these Public defenders work for the same office, and both have my case files so why or both of the ~~not~~ them saying the same thing. one say am looking at 5 years and the other say am looking at life. I just want my charge change or my time cut or go back to trial. I also would like to let you no that me and the Sheriff, Mr. Strickland or in a on going law suite. when i was handcuff and lying on the ground 20 minutes after i was arrested he came and Punch me in the face and broke my top dentures and i had 6 stitches in my face. I have a written statement from a city Police saying that he witness Mr. Strickland hitting me in the face for

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REHOE BACKLEY

no reason. we was set for a hearing on november
29th but they put it off until December 29th.

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2011-CP-42-5495
Terrance Darnell McCall, #339911,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on December 12, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the May 2010 term of General Sessions for armed robbery and possession of firearm during commission of a violent crime (10-GS-42-2093, counts one and two), two counts of assault and battery of a high and aggravated nature (ABHAN) (10-GS-42-2090, -2092), pointing and/or presenting firearms at persons (10-GS-42-2089), kidnapping and possession of firearm during commission of a violent crime (10-GS-42-5791, counts one and two), and resisting arrest with a deadly weapon (10-GS-42-2091). The Applicant was represented by Andrea Price, Esquire.

The charges of resisting arrest with a deadly weapon, kidnapping and possession of a firearm during the commission of a violent crime (10-GS-42-5791, counts one and two) were nolle prossed as a result of the defendant pleading guilty as indicted to the other charges on January 31, 2011. On

the same day, the Honorable J. Derham Cole sentenced the Applicant, pursuant to a negotiated sentence, to confinement for a period of twenty (20) years for armed robbery, ten (10) years each for both counts of ABHAN, and five (5) years each for pointing and/or presenting firearms at a person and possession of a weapon during commission of a violent crime. All sentences to run concurrent.

A timely Notice of Appeal was filed on behalf of the Applicant. Pursuant to Rule 203(d)(1)(B)(iv), SCACR, the South Carolina Court of Appeals dismissed the appeal by written Order filed April 18, 2011. The Remittitur was issued May 18, 2011.

Attached herewith and incorporated herein are the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections' records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel; in that,
 - a. Counsel failed to investigate the case,
 - b. Counsel failed to challenge the initial traffic stop,
 - c. Counsel failed to challenge the gun listed on the warrant,
 - d. Counsel "did nothing to defend me," and
 - e. Counsel said "the courtroom was full of sheriffs from the Sheriff Department and they [were] out for blood . . . but when we went in the courtroom less than 3 minutes later there [were] only 4 policemen in the courtroom. She lied to put fear in my heart and it work[ed]."
2. Insufficient evidence, in that;
 - a. "This was not Armed Robbery,"
 - b. "The sheriff lied about why he stop us / racism descration."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges

ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's 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, Id.

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, Id. 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). Further, Respondent submits that "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

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.

Respondent interprets Applicant's remaining allegations as a claim that there was insufficient evidence. Respondent moves to dismiss Applicant's second allegation as improper for post-conviction relief. S.C. Code Ann. § 17-27-20(a) states:

(a) Any person who has been convicted of, or sentenced for, a crime and who claims:

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. ***Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.***

(emphasis added). It is clear under the statute that post-conviction relief is not the proper avenue to attack the sufficiency of evidence. Accordingly, the Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Sept. 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH CIRCUIT

2011-CP-42-5495

Terrance Darnell McCall, #339911

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:

John C. Gutierrez, Esquire
413 Garden Grove Court
Spartanburg, SC 29302

DATED this 25th day of September, 2012


Troyeshi Brailey, Legal Assistant
For Respondent

COURT OF COMMON PLEAS

2011-CP-42-5495

Terrence Darnell McCall,

Applicant,

-VS-

The State of South Carolina,

Respondent.

TRANSCRIPT OF RECORD

January 22, 2014
Spartanburg, South Carolina

Ordered: November 7, 2014

Delivered: January 6, 2015

BEFORE:

The Honorable Roger L. Couch, Presiding Judge.

APPEARANCES:

Ms. Leah B. Moody, Esquire
Attorney Appearing for the Applicant

Ms. Suzanne H. White, Esquire
Assistant Attorney General Appearing for the State

Pamela Faucette
Circuit Court Reporter

Pamela S. Faucette, CVR-M - (home)

(cell)

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E X H I B I T S**Applicant's Exhibits:****Marked:****Received:**

1 - (Photographs)	48	48
2 - (SC DOC Printout)	48	48

Respondent's Exhibits:**Marked:****Received:**

(None)

Court's Exhibits:**Marked:****Received:**

(None)

Reporter's Certification:..... 85

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

January 22, 2014

2:11 P.M.

(Off-the-Record Comments)**THE COURT:** All right. We're on the record in the case of*Terrence Darnell McCall vs. The State of South Carolina*. Mr. McCall is

present with his attorney, Ms. Moody. The State is represented by Ms. white.

Ms. Moody, is Mr. McCall ready to go forward?

MS. MOODY: Yes, sir, he is.**THE COURT:** And can you tell me the grounds on which he is

going forward?

MS. MOODY: Yes, sir, I can. He has — beg the Court's

indulgence.

THE COURT: That's all right.**(Off-the-Record Comments)****MS. MOODY:** Your Honor, he has two specific — well, not two

specific — two issues; ineffective assistance of counsel, as well as he's

alleged insufficient evidence as to the armed robbery charge.

I think the strongest one would be the ineffective assistance of counsel.

THE COURT: And, in what respect, is he alleging that his counsel

was ineffective?

MS. MOODY: Yes, sir. He's alleged counsel failed to investigate

the case. Counsel failed to challenge the initial traffic stop. Counsel failed to

challenge the gun listed on the warrant. Counsel did nothing to defend him.

And, then, he indicates that one of her description — I would

summarize it, Your Honor, as that he challenges her investigation and

research on the case, as well as her legal advice given that I guess brought

1 him to the point of pleading to the actual charges.

2 **THE COURT:** All right. So this was a guilty plea; is that correct?

3 **MS. MOODY:** Yes, sir. It was a negotiated plea for 20 years. And
4 there were some charges that were dismissed by the State, three charges
5 exactly; kidnapping, possession of a firearm during the commission of a
6 violent crime, and resisting arrest with a deadly weapon.

7 **THE COURT:** All right. Is the State ready to proceed?

8 **MS. WHITE:** Yes, Your Honor. And I'll just note that Ms. Price
9 was also scheduled apparently at the same time for a plea. So she's going to
10 try to let them know that she needs to be over here.

11 **THE COURT:** Okay.

12 **MS. WHITE:** But I think we can go ahead and proceed.

13 **THE COURT:** All right. You may call your first witness, Ms.
14 Moody.

15 **MS. MOODY:** Thank you, Your Honor. I'd like to call Mr. Terrence
16 McCall.

17 **(Off-the-Record Comments)**

18 **(The witness stepped forward to be sworn.)**

19 **(Whereupon,**

20 **Terrence D. McCall**

21 **having been duly sworn, testified as follows:)**

22 **THE COURT:** You may proceed.

23 **MS. MOODY:** Thank you, Your Honor.

24 **THE COURT:** You may proceed, Ms. Moody.

25 **MS. MOODY:** Thank you.

1 Direct Examination by Ms. Moody:

2:16 P.m.

2 Q. Mr. McCall, could you, please, state your full name for the record?

3 A. Terrence Darnell McCall.

4 Q. And where are you currently residing?

5 A. Perry Correctional.

6 Q. And you're at Perry Correctional for what charges?

7 A. Armed robbery.

8 Q. Any other charges?

9 A. No, ma'am.

10 Q. Were you charged with possession of a firearm during a violent crime?

11 A. Oh, yes, yes. I'm sorry, yes.

12 Q. All right. So there's actually ----

13 A. Yes, yes.

14 Q. ---- five charges that you are incarcerated for?

15 A. Yes, yes, ma'am, run — yeah, run concurrently; run concurrent with the
16 five — with the 20 years.

17 Q. Okay. So I'm going to ask you again. And do you recall those
18 charges?

19 A. Possession of a firearm and a violent crime — is it resisting arrest?

20 Q. No, sir. It's — do you recall an ABHAN, two ABHANS?

21 A. Two ABHANS.

22 Q. Okay. And, then, pointing and presenting ----

23 A. Pointing and presenting a firearm.

24 Q. Okay. And you allege — you just stated here it's a 20-year sentence?

25 A. Yes, ma'am.

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1 Q. Running concurrent?

2 A. Yes, ma'am.

3 Q. And they were the result of a negotiated plea?

4 A. Yes, ma'am.

5 Q. Okay. Who was your attorney during that time?

6 A. Ms. Andrea Price.

7 Q. Okay. And, when was Ms. Price -- when did you first meet Ms. Price?

8 A. I think around about the first week in March of 2010.

9 Q. Okay. Was she your first and only attorney?

10 A. Yes, but I spoke with Mr. Cheeks [sic] on her behalf -- I mean, at her
11 request I mean.

12 Q. Okay. So, when you talked to Mr. Cheeks [sic], was that because you
13 were going to plead to your charges?

14 A. No, I wanted Mister -- I wanted him because I wasn't satisfied with the
15 representation I was getting from Ms. Price.

16 Q. Okay. So, when you spoke with Ms. Price, did you have opportunity for
17 her to give you the in -- you know, the penalties on your charges?

18 A. What she told me was -- at the time I believe was the -- the truth. I
19 mean, she told me I was facing a maximum of life for kidnapping and ----

20 Q. Okay. So, let's back up. I'm sorry. At the beginning, when you were
21 first appointed Ms. Price --

22 A. Yes, ma'am?

23 Q. ---- okay, did you have an opportunity to speak with her regarding your
24 case?

25 A. Yes, ma'am.

1 Q. Okay. And, at that time, what were your charges?

2 A. Armed robbery, kidnapping, pointing and presenting a firearm, and — it
3 was — it was like seven of them. I can't quite remember all of them.

4 Q. Okay. So you had a number of charges?

5 A. Yes, ma'am.

6 Q. You mentioned kidnapping. Were you originally arrested for
7 kidnapping?

8 A. No, ma'am, I wasn't.

9 Q. Okay. And that s was some time later in the representation?

10 A. Eight (8) months later.

11 Q. Okay. So, when you spoke with her initially, did you have an
12 opportunity to tell her what happened as it relates to your charges?

13 A. Yes, ma'am, I did.

14 Q. Okay. And what, if anything, did you ask her to do with regard to
15 research?

16 A. Well, I asked her to investigate the initial traffic stop. I asked her to
17 investigate the — the gun on the warrant. I mean, and I asked her to investigate —
18 try to get the video of — the investigator, the — the alleged assault the officer said I
19 — I did upon him.

20 Q. Okay. And did you have an opportunity to discuss those issues with
21 her?

22 A. No, not — not as I would like to.

23 Q. What do you mean by that?

24 A. I mean, well, I only spoke to Ms. Price about three times about five
25 minutes each time. I mean, it was basically her just asking me to take the plea; you

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1 know, we didn't really discuss the facts of the case.

2 Q. Okay. And, when you said you spoke to her a couple of times, did you
3 write her regarding your concerns on your case?

4 A. Yes, I wrote her numerous times, around about 17 times.

5 Q. Okay. And did you get any responses from her on those issues?

6 A. No, just — I got about three letters from Ms. Price. And they was
7 referring to the reason she didn't show up when I was brung from the — from the
8 correctional institution to the county. She responded me letters why she couldn't
9 make it. She had other engagements or was in court during the time.

10 Q. Okay. And so did you ask Ms. Price, you know, what she thought about
11 your case?

12 A. Yes, I did.

13 Q. And what did she tell you?

14 A. She continued to tell me I should take the plea.

15 Q. And the basis was?

16 A. (No response)

17 Q. What was her basis for stating you needed to take the plea?

18 A. Well, she really just — we didn't — we didn't discuss the basis. She
19 just said I needed to take the plea and if I — if I didn't, I was going to end up with a
20 life sentence on them.

21 Q. Okay. So how many plea offers did you receive from the State?

22 A. Well, the first was the 20 years, which I initially turned down. And, then,
23 they — they came back and they added the kidnapping eight months later.

24 And, then, the day I was going to trial, they told me they would drop the
25 kidnapping.

1 **Q.** Okay. So you mentioned the day that you were going to trial. By the
2 time you were going to trial, did you have an opportunity to prepare for trial with Ms.
3 Price?

4 **A.** No. We just was in a room over there just waiting to pick the jury. And
5 I asked her what kind of defense we was going to use because we had never
6 discussed a defense as far as taking a trial.

7 She was just continuing to tell me to take a plea. And, at that time, she
8 mentioned that I was facing life in prison for kidnapping if I didn't take the plea. And,
9 at that time, was my first time hearing about a life — a life sentence.

10 So it was at that time that I decided to take it because I didn't know I
11 was — I didn't want to be taking no chances, you know, risking the rest of my life in
12 prison.

13 **Q.** Okay. So, when you decided to take the plea, what, if anything, did
14 you discuss about the charges, the five charges, that you were pleading to?

15 **(Brief Pause)**

16 **A.** Excuse me. Say that again.

17 **Q.** When you decided to take the plea ----

18 **A.** Uh-huh (affirmative).

19 **Q.** ---- what, if anything, did you decide — did you discuss about these
20 charges you were pleading to?

21 **A.** Well, we only discussed about the — the amount of time I would have
22 to serve of the sentence. I mean, she told me that I would serve no more than 16
23 years if that much. And basically that was it. I mean, she just told me it was a nego
24 — a negotiated plea.

25 **Q.** Okay. What did you understand about a negotiated plea?

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1 A. I didn't understand. I just — I don't know, it was just a court term to me.
2 I just — she just said a negotiated plea and I just assumed it was a plea; you know,
3 just something between the Court and herself or something.

4 Q. And so you went forward and — on that day? Who was your
5 sentencing judge?

6 A. I believe it was Mr. Cole [sic].

7 Q. Judge Cole?

8 A. Yes, ma'am.

9 Q. And, when you went before Judge Cole — after you decided to take the
10 plea, how long was it before you went to Judge Cole before ----

11 A. Excuse me. Say it again?

12 Q. I'm sorry. I keep messing up (phonetic). When you decided to take
13 the plea, how long after you made that decision did you go before the judge?

14 A. Oh, about five minutes I guess. I didn't decide to take the plea till the
15 last — till the last minute. I mean, initially we came to pick the jury to go to trial.

16 Q. Uh-huh (affirmative).

17 A. I wasn't aware of the life sentence at that time, or the alleged life
18 sentence.

19 **MS. MOODY:** Beg the Court's indulgence.

20 **THE COURT:** Yes, ma'am.

21 **(Brief Pause)**

22 Q. (By Ms. Moody) Do you recall speaking with the Court or — or going
23 before the Court to enter your plea?

24 A. Yes, ma'am, I do.

25 Q. And what do you recall from that plea?

1 A. Well, the judge was telling me about the sentencing and telling me how
2 much time I would serve on the sentence. And he was telling me I had to do — only
3 had to do 80% of the sentence. And that they was dropping the kidnapping as part
4 of a negotiated plea.

5 Q. Okay. I ---

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

7 **THE COURT:** You may.

8 Q. (By Ms. Moody) I'm going to hand you that document. Do you
9 recognize that document?

10 A. Excuse me just a second.

11 Q. Okay.

12 **(Brief pause while the witness examines document.)**

13 A. Yes. Excuse me, this is my court transcript.

14 Q. Okay. And the date on that transcript is...?

15 A. January 31st, 2011.

16 Q. And you were before?

17 A. Excuse me?

18 Q. You were before Judge Cole?

19 A. Yes, ma'am.

20 Q. Okay. Now you just mentioned that you remember going before the
21 judge and he discussed with you some information regarding how much time you
22 would serve?

23 A. Yes, ma'am.

24 Q. Can you turn to Page 13?

25 **(The witness complied with the request.)**

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1 A. Okay.

2 Q. Okay. So the judge on line 20 talks to you about "They've agreed to
3 some negotiations as far as at least the sentence goes"? Do you see that line —

4 A. Yes, ma'am.

5 Q. --- Line 20?

6 A. Yes, ma'am.

7 Q. Okay. And, in the next comment by the Court, could you read that
8 statement on Line 23?

9 A. Okay. "The Court: Are you going to plead to guilty or agree to those
10 negotiations or not?" (Phonetic)

11 Q. And your response to the Court was what?

12 A. Yes.

13 Q. Now, look at the —

14 A. Oh, no, no, not.

15 Q. Read Line 25. What was your response to the Court?

16 A. "What did they agree to?"

17 Q. And the Court goes on to say to you, "I said were you going to plead
18 guilty even if they didn't make any sort of recommendation or that they didn't agree in
19 — to any outcome on the sentence — excuse me — and your reply to him was
20 what?

21 A. "No, sir."

22 Q. Okay. So you discussed with the judge whether you intended on
23 pleading?

24 A. Yes, ma'am.

25 Q. And basically what you told the judge, if they were not going to agree to

1 that term, you would have gone —

2 A. I would have gone — gone to trial, that's right.

3 Q. So your own intent that day that you entered that plea was to go to
4 trial?

5 A. Yes, ma'am.

6 Q. Okay. And what changed your mind from going to trial?

7 A. Right before we — me and Ms. Price — well, my attorney, Ms. Price,
8 was going to pick the jury, she told me that it would be in my best interest to take the
9 plea because if I didn't, I was facing life in prison on the kidnapping.

10 Q. So, on that day, you were going to go — on all the charges that were
11 presented to you, seven charges, you would have been tried on all those charges
12 that day?

13 A. Yes, ma'am.

14 Q. Okay. And, as a result of the negotiations, some charges were
15 dismissed?

16 A. Yes, ma'am.

17 Q. Okay. And your lawyer told you that you would be facing life on
18 kidnapping?

19 A. Yes, ma'am.

20 Q. Now, when you talked to the judge further on Page 14, it starts at Line
21 11.

22 (Brief Pause)

23 A. Yes, I see.

24 Q. Okay. And he says — Judge Cole says to you, "All right. What did they
25 promise you that induced you to make that decision?"

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1 A. That's right.

2 Q. And you respond to him that they gave — they offered you 20 years
3 that by law something that has last summer (phonetic) "I will only have to do 16 years
4 or something"?

5 A. Yes, ma'am.

6 Q. Okay. Now, in the next — on the next line, Line 16, the Court
7 discusses with you certain things. Would you, please, read what the Court discusses
8 with you?

9 A. On Line 16 it says, "Well, they can't promise you that. They can't agree
10 to any — to a sentence in this case. You tell me it's 20 years." Go on?

11 Q. Yes.

12 A. Okay. "Parole eligible if any, is determined by state law and that is at
13 least the minimum term of imprisonment, but even if you are under the law el —
14 eligible, to be released on parole, do you understand the parole board actually
15 makes any decision as to whether or not you will be released?"

16 "In other words, if you receive a 20-year sentence, the law provides that
17 you are eligible for parole after having served only 80% of that sentence. That
18 doesn't mean that you'll be released after 80%; that means that the parole board will
19 decide whether you should be released.

20 "So the parole board always makes that decision. I don't make it. The
21 solicitor doesn't make it. Your lawyer doesn't make it. You don't get to make it. The
22 parole board is vested with that — with that description [sic] and response — and
23 responsibility. Do you understand that?"

24 Q. And you indicated to the Court that you did?

25 A. Yes.

1 Q. Okay. And you asked the Court a question?

2 A. Yes. I asked the Court what was Ms. Price telling me about.

3 Q. And Ms. Price speaks up and tells the Court 80% max out?

4 A. Yesah, she said, "80% max-out, Your Honor."

5 Q. Okay. Now, as far as this 80% max-out, what, since you've been in the
6 department of corrections, have you understood as to the percent that you have to
7 serve before you can max out?

8 A. Well, since my stay in the correction, I find that there is no such
9 sentence as 80%. I have to do 85% of my sentence and it's non-parole able.

10 Q. So — and who did you — how did you come about that information?

11 A. What, about ----

12 Q. About the 85%.

13 A. Oh, when I was going to Perry Correction, they told me how to go
14 before a parole — I mean, before my caseworker and they — they alert me, then, at
15 that time that I was — that my release date. And I was un-eligible for parole and I
16 had to do 85%.

17 Q. Okay. So how long, since you've been at the department of
18 corrections, did it take you to find that information out?

19 A. Well, from the day I was sentenced in 2011, all the way until 2013, I
20 was — I was under the sentence of 65% non-violent. So I was in about almost —
21 almost two years before I found out it was 85%.

22 Q. And, when you filed your PCR application, did you understand — did
23 you have knowledge of that?

24 A. No, ma'am. I have papers that stated that I was under non — non-
25 violent sentence and I was only serving ----

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1 Q. You were only serving...?

2 A. The 65%. I wasn't serving 85%, I was only serving 65% at that time.

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

4 THE COURT: You may.

5 Q. (By Ms. Moody) I'm going to enter that. Can you identify what that
6 document is?

7 A. It's a South Carolina Department of Correction record, summary report,
8 dated 2/15/12.

9 Q. Okay. And, on that report, what information does it give you with regard
10 to your projected max-out date?

11 A. Here it says my projection [sic] max — max-out date is 1/1/2021.

12 Q. Okay. And is there any parole eligibility on there?

13 A. Yes, ma'am. It say my projected parole date is 1/30/2016.

14 Q. Okay. And what level of custody were you're serving?

15 A. At that time, I was under 10 years, so I was Level II custody.

16 Q. Okay. And so, after you received that document, you indicated that you
17 are at a different — well — well, let me go back. On that document, does it indicate
18 that you were receiving any kind of credit for any work, education?

19 A. Yes, it does.

20 Q. Okay. And so you were receiving credits towards your sentence then?

21 A. Yes, ma'am.

22 Q. Okay. Do you have a document — is there any other information that
23 indicates that you are now located somewhere else?

24 (Brief Pause)

25 A. Not on this document it doesn't.

1 (Brief Pause)

2 Q. On that — on the second sheet of the document you have ----

3 A. Uh-huh (affirmative).

4 Q. ---- what level of custody are you considered to be held in currently?

5 A. Still — still at Level II.

6 Q. Okay. I'm sorry. Are you currently held at a different ----

7 A. Yes, ma'am.

8 Q. ---- custody level?

9 A. I'm now at a Level III custody.

10 Q. Okay. And at Level III, what kind of information do you have regarding
11 a parole date?

12 A. At Level III, I'm not — I'm not eligible for parole. There's no — when
13 you have 10 years — armed robbery carries — it's a non — it's a violent offense, so,
14 it's non-parole able. And you have to do 85% of your sentence. So, at this time, I
15 have — I don't have a parole date.

16 Q. And so how did you learn that it was non-parole able, with 85 — well,
17 excuse me. You learned it was non-parole able, but when did you learn that it was
18 85%?

19 A. On March the 3rd, 2013, when I was moved from a Level II to a Level III.

20 Q. So, when they moved you, that's when you learned that you were ----

21 A. A Level III and had to do 85% of my sentence and I wasn't eligible for
22 parole.

23 Q. Okay. Now, when you entered your plea, did your attorney ever object
24 to or state otherwise that it was 85%?

25 A. No — no, she did not.

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1 Q. Okay. On Page 16 of the transcript, you specifically give a comment to
2 the Court that you understand — your understanding — well, repeating it just like you
3 said --- "My understanding when I — when I came up here, it was going to be 16
4 years."

5 A. Yes, ma'am.

6 Q. Okay. You understood that you would be — the most that you would
7 be serving was 16 years?

8 A. Well, there was a possibility I can get out before 16 years, but I would
9 do no more than 16 years.

10 Q. Okay. And that was based off of what percent?

11 A. Eighty percent (80%).

12 Q. Okay.

13 (Brief Pause)

14 Q. On Line 14, can you read that sentence that is stated from the Court?

15 A. On Line 14, "In the case of armed robbery, you have to serve 80% of
16 any sentence that is imposed before — before you are eligible to be released early.
17 So, if any — so, if I give you 20 years, you've got to do at least 16. The parole
18 board will decide if you are eligible to be released — if you are to — if you are to be
19 released."

20 Q. Okay. All right. Now, at any point, again, did your attorney object to
21 that instruction from the Court?

22 A. No, she didn't.

23 Q. And, before you went to plea before Judge Cole, did your attorney tell
24 you 85% as far as your charges were concerned?

25 A. No, she did not.

1 (Brief Pause)

2 Q. Okay. If you could, turn to Page 17.

3 (The witness complied with the request.)

4 Q. At Line 7, where the Court is addressing you again.

5 A. Okay.

6 Q. Would you, please, read the statement from the Court on Line 7?

7 A. Okay. "The Court: That sentence is 20 years. In a case of armed
8 robbery, the law requires a person, who is convicted of a no-parole sentence, will
9 receive a 20-year sentence and go through to do 80% of it."

10 Q. And your response to the Court was?

11 A. "Okay."

12 Q. On Page 20, at Line 22, the Court asked you or discusses with you
13 that, "The crime of armed robbery is a no-parole offense; do you understand that?"

14 A. "Yes, sir."

15 Q. Well, that is what the Court asked you.

16 A. Yeah, I know, I was just answering "yes." I'm sorry.

17 Q. You replied to the Court and said, "Yes, sir."

18 A. Yes. I'm sorry.

19 Q. Okay. And, at that time, the information or the instructions that the
20 Court gave you, was it different from anything your lawyer said?

21 (Brief Pause)

22 A. Excuse me. Say that again.

23 Q. Okay. When you replied to the Court and said, "Yes, sir," ----

24 A. Uh-huh (affirmative).

25 Q. ---- responding in the affirmative, was that because it was -- there was

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1 nothing different from what your lawyer ----

2 A. No, it wasn't different, no.

3 Q. Okay.

4 (Brief Pause)

5 Q. Okay. If you could, turn to Page 21.

6 (The witness complied with the request.)

7 Q. On Line 13 — well, actually, Line 8. The Court is discussing with you
8 convictions of another violent crime. And, then, he says, "Well, any sentence
9 imposed on that offense is a non-parole able offense," you indicated "Yes, sir."

10 He goes into explaining to you about most serious offenses on the next
11 line, on Line 13?

12 A. Yes, ma'am, he do. Shall I read that?

13 Q. Yes, please.

14 A. "The Court: Okay. And did you also know that — that — were you
15 also informed that armed robbery is also classified as a most serious offense?"

16 Q. And before you respond to him, your lawyer replies...?

17 A. "This goes — this goes to the two-strike, three strike we talked about."

18 Q. And you replied to the Court in the affirmative?

19 A. Yes.

20 Q. Did you have a conversation with your attorney as to what the strikes —
21 two strikes mean?

22 A. No, we never discussed that.

23 Q. Well, did she ever mention strikes to you?

24 A. No, ma'am.

25 Q. So what was your understanding of strikes?

1 A. I — I just — really, I didn't know. I just thought it was part of the — the
2 negotiated plea. I didn't know — I didn't know what the strikes meant. I just thought
3 it was in the sentencing range. I didn't — I didn't know.

4 Q. Well, do you — did you, at the time that you pled, did you understand
5 what serious or most serious meant?

6 A. No, ma'am. I just thought it was because if you use a weapon. I
7 figured that's what they call serious.

8 Q. So you — did you discuss serious or most serious with your lawyer?

9 A. No, ma'am.

10 Q. Okay. So, when you were answering to the Court in the affirmative that
11 you understood, did you believe that you were telling the Court the truth?

12 A. I thought — I thought I was. I mean, I — I just — to my knowledge, I — I
13 thought I was telling the truth. I mean, from the information I got from Ms. Price,
14 which was very little, I assumed that everything that was being told was truthful.

15 Q. Okay. So when — going back to, when you made the decision to
16 accept the negotiated plea, ---

17 A. Yes, ma'am.

18 Q. --- you guys talked about what you would be risking, if you went to trial
19 and were unsuccessful on being acquitted of your charges?

20 **(Brief Pause)**

21 A. Say that again.

22 Q. Meaning the range of range of sentences that you could get?

23 A. Yes. Before — like I said, I was dressed out to pick jury to go to trial,
24 but, when Miss — that's when Ms. Price informed me that I was looking at life. I
25 mean, she — that sentence.

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1 I mean, if she wasn't telling me to take the plea, then, she was telling
2 me — she told me that, if I didn't take the plea, that I could possibly get life in prison.
3 And that I would leave prison in a wooden box.

4 Q. And, based on that...?

5 A. I decided to take the plea.

6 Q. So, when the Court asked you, on Page 22, at Line 5, "Has anybody
7 forced you in any way that caused you to make that decision," and your response
8 was, "No, sir" ----

9 A. Yes, ma'am

10 Q. ---- were you telling the Court the truth then?

11 A. I mean, I didn't — I mean, as far as know it was the truth. I didn't know
12 that I was given erroneous advice by my attorney. So, at that time, I thought it was
13 the truth.

14 Q. So did you ever learn how much kidnapping actually carries?

15 A. Yes, after I got to prison I did.

16 Q. Okay. And what was that?

17 A. I think the maximum is 30 years. It didn't — kidnapping doesn't have a
18 life sentence.

19 Q. Okay.

20 A. I mean, the — the kidnapping range that I was in doesn't have a life
21 sentence.

22 Q. Okay. So do you know what the — you said — how much time did you
23 say you could get for kidnapping?

24 A. Life.

25 Q. No.

1 A. Oh, you talking about the 30 years?

2 Q. Yes.

3 A. Yes, ma'am.

4 Q. Okay. So had you known that it was 30 years, would you have
5 proceeded to trial?

6 A. Yes, I -- I would have took that chance, yes, ma'am; I sure would have,
7 yes.

8 Q. So, when the Court asked you also, on Line -- excuse me, on Page 22,
9 Line 8, "Has anyone threatened you in any fashion that caused you to make the
10 decision?" And your reply was, "No, sir."

11 Then, the Court asked you, again, "Has anyone put any pressure upon
12 you, of any kind from any source, that caused you to make that decision," and your
13 reply was "No, sir," was that the truth?

14 A. No, it wasn't true.

15 Q. And is that based on -- well, what is that based on?

16 A. It was -- it was based on because the fact that I know now that
17 kidnapping does not carry a life sentence, but I was told that it was. So I assumed
18 that, that was pressuring me to take the plea.

19 Q. Were you assuming or was that the reason why you decided to take the
20 plea?

21 A. That's the reason I decided to take the plea because I didn't want to be
22 facing a life sentence.

23 Q. Now, when the Court asked you, on Line 15, on Page 22, "Are you
24 pleading guilty freely and voluntarily," and you say, "yes," ----

25 A. Yes, ma'am ----

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1 Q. Okay.

2 A. --- I said yes.

3 Q. --- is it your opinion today that you were pleading freely and
4 voluntarily?

5 A. No, I wasn't.

6 (Brief Pause)

7 Q. Now, if you'll flip over to Page 37.

8 (The witness complied with the request.)

9 A. I'm there.

10 Q. So, as it relates to you getting signed up to enter your plea in front of
11 the judge, you signed the sentencing sheet?

12 A. Yes, ma'am.

13 Q. Okay. And your lawyer signed the sentencing sheet?

14 A. Yes, ma'am.

15 Q. Okay. At Line 10 on Page 37, can you, please, read what the Court
16 states?

17 A. "The Court: Mr. McCall — I mean, excuse me, Ms. Price and Mr.
18 McCall, on the armed robbery indictment I'm going to check — they're not checked
19 — I'm checking the fact that armed robbery is a violent offense and it's a most
20 serious offense." Go on?

21 Q. No.

22 A. Okay.

23 Q. So, when you signed that sentencing sheet, did you sign the sentencing
24 sheet when you were talking with your lawyer about you entering your plea?

25 A. When we — when we went into the courtroom, the sentencing sheets

1 was spread out on the table. And Ms. Price advised me to go ahead and sign them.

2 And I had a question or two, "Well, do I sign them before — before the
3 plea?" She said, "Go ahead and sign it now."

4 Q. Okay. So did you ask her any questions with regard to what you were
5 actually pleading related to those sheets?

6 A. No, ma'am, I didn't.

7 Q. Did you understand what those sheets were used for?

8 A. Not — no, ma'am.

9 (Brief Pause)

10 Q. So basically, when you entered your plea, you went in and the Court
11 advised you that you would have to do 80% of your sentence?

12 A. Yes, ma'am.

13 Q. And you learned that's not correct?

14 A. No, it isn't.

15 Q. Okay. And, prior to going before the Court, your attorney gave you a —
16 a number of years that you would serve before being released?

17 A. Yes, ma'am.

18 Q. And that was 16 years?

19 A. No more than 16 years, yes, ma'am.

20 Q. And you understand that to be 80%?

21 A. Yes, ma'am.

22 Q. Okay. And, since you have been at the department of corrections, you
23 now know you have to do 85% on that charge?

24 A. Yes, ma'am. There's no such thing as an 80% sentence.

25 Q. Okay. Now, as to the investigation or — of the actual charges, are you

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1 aware of any investigation that your lawyer did on your behalf?

2 A. I haven't seen anything.

3 Q. Okay. What kind of information did you give your lawyer to perform her
4 investigation?

5 A. Well, you know, I asked her to investigate the initial traffic stop because
6 I was — we were stopped for a tag violation. And there was a dark tint tag on the
7 vehicle that I was in.

8 I wasn't driving at the time, but it clearly showed the vehicle did not
9 have a tint on the tag or no violation on it. And I asked her to question the stop.

10 Q. Was there anything else?

11 A. I asking her — I asked her also to investigate the — the officer claimed
12 that — that I put a pistol to his throat and punched him in the face. I asked her to
13 investigate that.

14 But I — I never heard — I never did get no response from either one,
15 neither of the requests.

16 Q. Okay. So did you get a copy of the discovery in this case?

17 A. Yes, ma'am.

18 Q. Okay. And did you have an opportunity to discuss the discovery in this
19 case with your lawyer?

20 A. No, I did not. On October the 25th is when Ms. Price came. That's how
21 I was brung to Spartanburg County. She laid the — the discovery on the — on the
22 desk. And that's when I first noticed it was kidnapping.

23 And I — I said, "Well, this is not mine. This has got a kidnapping on it."
24 And she said they added kidnapping.

25 And I said, "I don't understand." She said by direct indictment. And I

1 said, "Well, how much time kidnapping carry?" And she told me at that time she did
2 not know.

3 Q. Now, when you talked about the kidnapping, did you talk — or any of
4 your charges, did you talk to any of the lawyers about your charges?

5 A. Yes. I had wrote the public defender office asking to have Ms. Price
6 removed because I feel like that she wasn't doing her best in my behalf. So I asked
7 for Mr. James Cheeks. And he came and spoke with me for about an hour.

8 Q. Okay. And what all did you all discuss?

9 A. We discussed the fact that — well, you know, I can't really speak for
10 him, but me told me that he don't see this as a kidnapping. It was just something to
11 — they would drop it later on with a plea.

12 And we discussed the facts that the warrant that has the — the officer
13 — the warrant where they say I have an armed robbery on the officer, it was the
14 officer's gun on the warrant that say I robbed him with the wrong gun.

15 And he was telling me a little something about that. But mostly we just
16 discussed about the traffic stop and the kidnapping. And he just looked over — he
17 just went and — he talked to me about my paperwork and just explained a few things
18 to me and gave me some stuff to ask Ms. Price.

19 Q. So, now, when — after you finished talking to him, was it still your intent
20 to go to trial?

21 A. Yes, ma'am.

22 Q. Okay. Now, did you have an opportunity to speak with Mr. Clay Allen?

23 A. Yes, he showed up with Ms. Price.

24 Q. And what — did you all go through the discovery then?

25 A. Yes. They laid the paperwork down. First, he — he say he came to

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1 talk to me because he said he felt Ms. Price was doing a decent job and she didn't
2 —he didn't feel like she needed to be removed from the case.

3 And they spread some papers out on the desk. And the first thing Ms.
4 Price asked me was, "Why do they have two pair of handcuffs on you?" And I'm
5 asking her "What do two pair of handcuffs got to do with the traffic stop? I mean, I
6 just wanted you all to investigate the traffic stop," because I — I could prove that the
7 traffic stop was — was an illegal stop, then, everything else that followed that would
8 be dismissed.

9 But we just ----

10 Q. So you all discussed — did you have an in-depth discussion of your
11 charges and the likelihood of you being successful at trial?

12 A. No, we never did discuss no defense at a trial.

13 Q. Okay. Now, was there anything else that you asked Ms. Price for that
14 you felt would help you on your case?

15 A. Oh, I really can't think now; let me see. I asked her to investigate the
16 stop, investigate --- I asked her to subpoena the videotape from — from the police
17 car ----

18 Q. And what did you all discuss about the videotape?

19 A. Well, the — the incidents were — were I was resisting arrest. And the
20 police said I put a gun to his throat and — and punched him in the face.

21 The police car was running — you know, the lights was running and the
22 engine was running. So I assumed that the video would show because it was right in
23 front of his car. So I asked her to get the video and it would prove that what he was
24 saying wasn't true.

25 Q. Did you obtain any video?

1 A. No, ma'am. I never did get a response on it. To this day, she never did
2 give me nothing about no video.

3 Q. Did you have an opportunity to review any photos in your case?

4 A. Through a civil suit lawyer. I — I had a civil suit lawyer in the case and
5 he brought me some videos — I mean, not video. He brought me some pictures of
6 the tag and of the officer's face. And it was a clear tag and the officer didn't have no
7 bruise on his face.

8 He also subpoenaed for the video. But all six officers at the crime
9 scene said the video was missing at the time of the incident.

10 MS. MOODY: Beg the Court's indulgence.

11 THE COURT: Yes.

12 (Brief Pause)

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

14 THE COURT: You may.

15 Q. (By Ms. Moody) Mr. McCall ----

16 A. Yes, ma'am?

17 Q. ---- I just handed you a stack of photos.

18 A. Yes, ma'am.

19 Q. Okay. And, upon my being appointed to represent you, did you request
20 any documents or photos from me?

21 A. Yes, ma'am.

22 Q. Okay. And who was I supposed to get those photos from?

23 A. Ms. Price.

24 Q. Okay. But, when you asked me to obtain those photos, what did you
25 tell me to get them from?

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1 A. Oh, from my civil suit attorney.

2 Q. Okay. So, when you said you had a civil suit, and you went forth in
3 that case ----

4 A. Yes, ma'am

5 Q. ---- okay. Did you have an opportunity to see those pictures?

6 A. No, ma'am, I did not.

7 Q. Okay. So, when you asked for anything from Ms. Price, did you see
8 any pictures?

9 A. When I had written her, I had a few pictures that was in black-and-
10 white. I couldn't see what they was. It was just like a white piece of paper with like, I
11 don't know, like a carbon copy, but I couldn't -- I couldn't see what it was.

12 Q. Okay. So can you look through those pictures -- don't say what they
13 are -- but can you look through those pictures?

14 (The witness complied with the request.)

15 A. Okay.

16 Q. Do you recognize any of those pictures?

17 (Brief pause while the witness reviews documents.)

18 A. Yeah, I had done saw these before. I mean, the -- the one on the front
19 page I've seen before, but the rest of them -- I mean, I don't know if the one that she
20 gave me, I couldn't tell if they was -- if it was these pictures or not because I couldn't
21 see them. They was in black and white.

22 Q. Now, on any of those pictures, do you see yourself on those pictures?

23 A. Yes, ma'am.

24 Q. Okay. Do you see the officer on those pictures?

25 A. Yes, ma'am.

1 Q. Okay. Can you see people that you recognize from that incident?

2 A. Yes, ma'am.

3 Q. Okay. So, when you asked Ms. Price to get photos on your behalf, you
4 didn't get to see any color photos?

5 A. No, ma'am. No, I did not.

6 Q. And the photos that you were able to see, that you say were black-and-
7 white ----

8 A. Yes, ma'am.

9 Q. ---- were they that size?

10 A. Yes, ma'am, they were just like these, about this size here.

11 Q. And so did you all sit down and discuss those black-and-white photos?

12 A. No, no, ma'am.

13 Q. Okay.

14 A. They were just in my discovery on October 25th when she handed me
15 my paperwork. I told her I wasn't accepting the plea. So she responded, "Well,
16 okay," and left.

17 Then, she came back about 30 minutes later with — because I had
18 asked her how — how did they indict me for kidnapping without due process. She
19 came back with some direct indictment papers or something. Then, she asked me
20 again did I want to take the plea and I told her no again and she left.

21 Q. Okay. So, if I'm understanding you correctly — correctly, you asked
22 Ms. Price to do certain things and get certain evidence for you?

23 A. Yes, ma'am.

24 Q. And she provided you some discovery from the solicitor's office?

25 A. Yes, ma'am.

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1 Q. Okay. But you did not discuss that discovery with her?

2 A. No, ma'am.

3 Q. The only person you discussed that discovery was with Mr. Cheeks?

4 A. Yes, ma'am.

5 Q. Okay. And, then, you all were noticed for trial?

6 A. Yes, ma'am.

7 Q. Okay. And, then, that's when you received the information about
8 kidnapping carrying life?

9 A. Yes. I was preparing to take the trial. I — Ms. Price had brung me an
10 outfit to put on. I put the outfit on and just — she said in a few minutes we're going to
11 pick the jury they're going to pull for the trial.

12 Then, I spoke to Ms. Price.

13 Q. You spoke to Ms. Price and....?

14 A. And asked her could she get me a better plea or get me a nice plea
15 deal or something because, after she told me about the kidnapping carried life, I
16 asked her to speak to the solicitor or somebody.

17 She left for about two or three minutes, came back and said, "Well,
18 they'll drop the kidnapping and they'll drop everything except the armed robbery

19 Q. Well, no, you pled to five charges?

20 A. Yes, but she told me that I would only be charged with kidnapping — I
21 mean, with -- with armed robbery. She said they would drop everything else, but
22 they ran everything concurrent, which ----

23 Q. So are you saying that you went into the courtroom and you didn't know
24 that you were pleading to the ABHAN?

25 A. No, ma'am, I'm just — the only thing I was supposed to be pleading to

1 was the kidnapping — I mean, was the armed robbery. I didn't — I didn't — I didn't
2 know they were going to run the rest of it concurrently. She told me they were going
3 to drop everything but the armed robbery.

4 Q. So, when you went in and signed the sentencing sheets, you didn't
5 realize that you were signing sentencing sheets for the two ABHANs, the possession
6 of a firearm during the commission of a violent crime, and pointing and presenting?

7 A. I just thought that was part of the process. I didn't know I was agreeing
8 to, you know, those charges. I — she just said I was going to be sentenced for the —
9 for the armed robbery. And I thought that was all.

10 Q. Okay. So, if you — as far as you're feeling that your lawyer was
11 ineffective in assisting you, how would you say that you were prejudiced by her
12 performance on your case?

13 A. Oh, one about the — the erroneous advice on the sentencing of the
14 kidnapping. That was the main one.

15 Like I say, I was prepared to go to trial, but once she told me that I was
16 facing life in prison, it was at that time that I — I really decided, you know, not to even
17 take the risk. I mean, because we hadn't even discussed no defense, no strategies,
18 or nothing.

19 I mean, I didn't know how we was going to go at it. I didn't know if I was
20 going to in the courtroom and come out with a life sentence.

21 Q. So one thing that you think is prejudiced shown to you is that she told
22 you that the kidnapping carried life?

23 A. Yes, ma'am.

24 Q. What is the second or is there a second?

25 A. Yes. The 16 years, I mean, she said I would do no more than 16 years.

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1 And I was figuring maybe with parole, or something like that, I'd probably get out
2 sooner than that. But I was under the impression that 16 years was the max if I had
3 to go that far.

4 Q. Okay. And, then, is there anything else you felt prejudiced you as it
5 relates to your case?

6 A. Yes. As I did some studying on my own, when I — when I found out
7 about that it wasn't 80% — eighty — there was no such thing as 85% [sic] ---

8 Q. Excuse me, 80 or ---

9 A. I mean, there was no such thing as — no such sentence as 80%. She
10 did not object to it when the judge was telling me that I only had to do 80%.

11 She not only didn't object, but she agreed with him that I would have to
12 do only 80% and I maybe possible for parole.

13 Q. And what are you asking the Court for in terms of relief?

14 A. Oh, well, really if I could have my case overturned so I can have a
15 chance to go to trial.

16 (Brief Pause)

17 A. Or what I put in my application, either — either 10 years non-violent
18 sentence.

19 Q. Well, do you realize the judge can't grant you that type of relief?

20 A. No, I didn't know that. I didn't.

21 Q. You understand that this judge is only allowed to determine whether or
22 not your counsel was ineffective assistance of counsel?

23 A. No, I didn't know. I just — I — I just — I figured he could overturn the
24 case. I didn't know.

25 Q. He can't change your sentence is what I'm ---

1 **A.** Oh, okay. I didn't understand that. I mean, you know...

2 **Q.** That's okay.

3 **THE COURT:** Let's be sure we're clear of what — what you're
4 asking for.

5 **MR. MCCALL:** Yeah.

6 **THE COURT:** The only — if I were to grant your post-conviction
7 relief request, you would go back to where you were before the guilty plea was
8 entered, which means all the charges would be reinstated.

9 **MR. MCCALL:** Yes, sir, I understand.

10 **THE COURT:** And you would be subject to trial on all of those
11 charges.

12 **MR. MCCALL:** Yes, sir, I understand that.

13 **THE COURT:** And you would be subject to be sentenced on all of
14 those charges as allowed by law.

15 **MR. MCCALL:** Yes, sir, I understand that.

16 **THE COURT:** And that could be consecutively.

17 **MR. MCCALL:** I — I understand that.

18 **THE COURT:** So you understand I — I don't have the authority to
19 amend the sentence or to grant you any relief from the sentence or order that
20 you receive parole at any particular time?

21 **MR. MCCALL:** Okay, I understand.

22 **THE COURT:** I can only grant you a return to where you were
23 before the error was made.

24 **MR. MCCALL:** Yes. That's — that's all I'm asking for, Your Honor.

25 **THE COURT:** Okay. I just want to be sure you understand ----

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- 1 **MR. MCCALL:** Okay. I understand.
- 2 **THE COURT:** ---- that moving forward.
- 3 **MR. MCCALL:** Yes, sir. I just thought ----
- 4 **THE COURT:** Do you have any questions about that?
- 5 **MR. MCCALL:** No, sir, not at all.
- 6 **THE COURT:** All right. Thank you. Counsel, I want to be sure he
- 7 understands where he is.
- 8 **MR. MCCALL:** I understand.
- 9 **THE COURT:** And what he's asking for.
- 10 **MS. MOODY:** Yes, sir.
- 11 **THE COURT:** All right.
- 12 **MR. MCCALL:** Thank you, Your Honor. No further questions for
- 13 this witness. Please answer any questions the State may have for you.
- 14 **THE COURT:** Ms. White, your witness.
- 15 **MS. WHITE:** Thank you, Your Honor.
- 16 **THE COURT:** Yes, ma'am.
- 17 **MS. WHITE:** And I apologize for sneezing.

18 **Cross Examination by Ms. White:**

2:54 P.m.

- 19 **Q.** Mr. McCall ----
- 20 **A.** Yes, ma'am?
- 21 **Q.** ---- you said you weren't aware of any defense you were going to offer
- 22 at trial or whether or not your attorney had investigated anything?
- 23 **A.** Yes, ma'am.
- 24 **Q.** So you have not — you had not discussed that day you were going to
- 25 trial whether or not you all were going to have a motion to suppress the — the search

1 of the car or the stop?

2 A. No, ma'am, we never discussed the evidence.

3 Q. Okay. Now, this was January 31st, 2011. Is your testimony that you
4 always wanted to proceed to trial on this?

5 A. Yes, ma'am.

6 Q. Okay. Do you recall writing Ms. Price ever in Sep — around September
7 of 2010 asking her to get a plea deal from Mr. Trey Gowdy for you?

8 A. Probably so. I mean, after I had contacted her numerous times, I can't
9 quite remember. I — I wrote 17 letters so I mean....

10 Q. Okay. So you wouldn't have — you wouldn't argue with me that you
11 might have written Ms. Price back, in September of 2010, asking for her to get a
12 good plea deal for you?

13 A. It's a possibility, yeah.

14 Q. Okay.

15 A. I was in prison at the time and I had gotten frustrated.

16 Q. Okay. And, during that time, you did receive discovery materials from
17 Ms. Price?

18 A. Yes, in October, yeah.

19 Q. Okay. And you discussed you said some black-and-white pictures?

20 A. Yes.

21 Q. I'm going to....

22 **(Off-the-Record Discussion)**

23 Q. I just want to walk up and show you this and you tell me if this is
24 what ----

25 **THE COURT:** You may approach the witness.

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1 MS. WHITE: Thank you.

2 Q. (By Ms. White) Okay. Is this — are these the black-and-white photos
3 you referenced? Do these look like the same ones?

4 A. Not that many. I mean, there was — they looked like that.

5 Q. Okay. And you see this is an affidavit of discovery of
6 *The State vs. Terrence McCall*?

7 A. Yes, ma'am.

8 Q. And it includes Pages 1 through 16 of photographs?

9 A. Yes, ma'am.

10 Q. And that they were accepted on November 19th, 2010?

11 A. I see that, yes, ma'am.

12 Q. Okay. So you testified that you saw some photographs but not this
13 many?

14 A. Yes, ma'am.

15 Q. Okay.

16 (Brief Pause)

17 Q. In regards to the 80% and the 16 years, the judge went over with you
18 the fact that you would have to do at least 16, did he not?

19 A. Yes, ma'am.

20 Q. Okay. And so is your testimony here that, even though the judge told
21 you that, on the day of your plea, you didn't believe him or you were confused or you
22 thought that you would — that would be the maximum you would do?

23 A. Well, seeing that it was an 85%, I was under the impression that, you
24 know, I might be paroled before the 16 years.

25 Q. Okay. But — but you do recall and you testified earlier today that the

1 judge told you that armed robbery was a no-parole offense?

2 A. Yes, but before that he had said several times that it was a possibility of
3 parole.

4 Q. Okay. He said, though, that this was a 20-year and he can't tell you if
5 you're going to be able to get parole; that's up to the parole board?

6 A. Yes, ma'am, but before that, he also said that — that I could possibly —
7 probably make parole, even went in depth — so in depth that he told me that the
8 parole board would meet, bring witnesses, and question me and, then, decide on
9 parole.

10 Q. Okay. And I guess my — I'm trying to figure out. Obviously, there's a
11 difference. You're saying, you know, you thought you could get parole. The judge
12 talked about at least what would be required at a minimum for you to do is that you're
13 eligible for parole possibly, but that he can't guarantee that?

14 A. Well, in some parts of my transcript, it was almost like he was almost
15 guaranteeing it. He was saying, after doing 80% of the sentence, I was el — eligible
16 to be released early.

17 Q. Okay.

18 A. So I'm assuming that I had a possibility to make parole. He said this
19 three or four different times.

20 Q. Okay. But that wasn't a guarantee, was it?

21 A. I mean, parole is never a guarantee.

22 Q. Okay. All right. So the judge asked you, if you agreed with the facts as
23 the — the Court had — as the solicitor had read them out; is that right?

24 A. At that time, yes, ma'am.

25 Q. Okay. He also, as we talked about earlier, informed you that it was a

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1 serious offense. And you said that, even though Ms. Price said, "This is about the
2 two strikes/ three strikes that we talked about," you testified that she never discussed
3 that with you?

4 A. No, ma'am. This was during the — when Ms. Price explained to me
5 about the — when she said the negotiated pleas, and, you know, I'm just going to the
6 courtroom on this and yes and yes, and, then, I'm ready to get on with it.

7 Q. Okay. So, when the Court asked you, if Ms. Price had fully explained to
8 you the designation as a most serious offense you said, "yes, sir," ----

9 A. Yes, ma'am.

10 Q. ---- that was just you automatically answering, not ----

11 A. Yes — yea, Ms. Price told me to say yes since I was already agreeing
12 to the negotiated plea.

13 Q. Okay. But there were some times that you said, "No, sir," right? So
14 how did you know to say "no, sir" instead of "yes, sir"?

15 A. Because, at that time, Ms. Price was telling me — she had mentioned
16 something about a law had passed during the summertime and I didn't understand
17 that. So that's when I said, "no, sir."

18 Q. And —

19 A. I just ----

20 Q. ---- and I guess I'm saying you're — you're testifying here today that Ms.
21 Price told you to answer "yes, sir" to all the questions?

22 A. Yes, ma'am.

23 Q. Okay. But, for example, Page 22, when the judge said, "Have you —
24 has anybody put any pressure on you or threatened you," you said, "No, sir." "Has
25 anybody forced you to make that decision," "No, sir." "Are you pleading guilty," "Yes,

1 sir." So you answered appropriately to each of the questions, did you not?

2 A. Yes, ma'am, at that time, I did.

3 Q. Okay. And the judge asked you, if there was anything else in the
4 negotiations or if you still wanted to go forward based on everything he had told you,
5 and you said, "yes, sir"?

6 A. Yes, I did.

7 Q. Okay. And you were aware — the judge went over with you and the ---
8 the State reviewed that they had dropped the kidnapping or nolle prossed the
9 kidnapping, possession of a weapon, and resisting arrest charges; is that right?

10 A. Yes, ma'am.

11 Q. And they went over with you each of the charges you were pleading to,
12 the five charges, and the potential sentences you faced on each?

13 A. Yes, ma'am.

14 Q. Okay. And you testified that Ms. Price told you that kidnapping carried
15 life?

16 A. Yes, she did.

17 Q. Did you ever have any discussions with her about the fact that some of
18 these charges could be run consecutively if you went to trial and were found guilty?

19 A. No, ma'am.

20 Q. Okay. Now, you testified ----

21 A. Oh, when you say consecutively, that's — as far as just — as far as I
22 can recollect, we just discussed the negotiated plea. I mean, she never did — I can't
23 recall if she told me that I would be sentenced --- I would be sentenced separate for
24 each one?

25 Q. Yes, where they would be on top of each other, in addition to?

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1 A. I don't recall discussing that with Ms. Price, no.

2 Q. Okay. Because you were 45 at the time of the plea; is that right?

3 A. Yes, ma'am.

4 Q. And armed robbery faced up to 30 years?

5 A. Yes, ma'am.

6 Q. Kidnapping you said you thought life, but you now know it's 30 years?

7 A. Yeah. Ms. Price told me it was life.

8 Q. If they had run those consecutively, you were facing probably about 80
9 or so years; is that right?

10 A. Yes, ma'am.

11 Q. Okay. And so you talked about that, did you not?

12 MS. MOODY: Objection, Your Honor.

13 A. No, no, ma'am, we ----

14 THE COURT: Ma'am, what is the objection?

15 MS. MOODY: I believe she asked him that question and he —
16 and he replied to her no.

17 THE COURT: Well, she asked it a different way. I believe she
18 asked if they — if they had added them up and whether or not it added up to
19 about 80 years.

20 MS. MOODY: That's not what I'm objecting to. I'm objecting to
21 her saying that it carries life.

22 THE COURT: She didn't say that I don't think. Just re — rephrase
23 your question.

24 MS. MOODY: I — okay.

25 THE COURT: I don't think she said it that way.

1 **MS. WHITE:** Okay.

2 **Q.** (By Ms. White) I said, at the time you're testifying here today that you
3 thought it carried life, but you've now said you understood it carried 30?

4 **A.** After — after I did my own reading in the law library in prison, I know
5 kidnapping only carried 30.

6 **Q.** Okay. And my question was, did you ever discuss the charges that
7 you're facing; the armed robbery, two ABHANS, possession of a weapon, pointing
8 and presenting, what sentence you would get if the judge had run them all
9 consecutively?

10 **A.** I don't recall discussing that with Ms. Price.

11 **Q.** Okay.

12 **(Brief Pause)**

13 **Q.** Your testimony today is that you would have preferred to go to trial and
14 face a potential however many years at — in prison rather than take this negotiated
15 plea where they dropped the charges based on the simple fact — or based on the
16 fact that you thought kidnapping carried life and that you thought you might get out
17 before 16 years?

18 **A.** Yes, ma'am.

19 **Q.** Okay.

20 **A.** And I didn't feel it carried life. Ms. Price told me it carried life.

21 **Q.** Okay.

22 **MS. WHITE:** I think that's all I have, Your Honor.

23 **MS. MOODY:** May I?

24 **THE COURT:** Yes, ma'am.

25 **MS. MOODY:** Okay.

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Redirect Examination by Ms. Moody:

3:09 P.m.

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Q. Mr. McCall, you've already testified about this. On Page 13, when the judge specifically asked you whether or not you would — you wanted to plea guilty whether they agreed to those negotiations or not, on Line 23 on Page 13, the Court specifically asked about did you want to plead guilty?

A. Yes, ma'am.

Q. Okay. And he specifically asked you if you wanted to plea — you wanted to plead — you were going to plead guilty whether they agreed to the negotiations or not?

A. Yes, he asked me that.

Q. Okay. And your reply to him was what?

A. "Well, they agreed to them."

Q. And, then, he rephrased it and said, on Page 14, "I said were you going to plea guilty even if they did not — didn't make any sort of recommendation or they agreed — didn't agree to any outcome — outcome or sentence." What did you tell the judge that day?

A. "No, sir."

Q. Okay. So, when the State asked you whether or not you were going to plea or not, and whether you preferred to go to trial on the charges that you were facing?

A. That's right.

Q. The armed robbery carried 30 years?

A. Yes, ma'am.

Q. Okay. And the day that you were going to trial, you were informed that kidnapping, which was one of the charges ----

1 A. Yes, ma'am.

2 Q. ---- carried life?

3 A. Yes, ma'am.

4 Q. Okay. So, when you learned that it carried life, that changed your
5 decision to accept the 20 years?

6 A. Yes, ma'am, most definitely.

7 Q. Okay. So had you known that it carried the same as armed robbery,
8 would you have gone to trial?

9 A. Yes, ma'am, I would have.

10 Q. So that's thirty (30) and 30?

11 A. Yes, ma'am.

12 Q. You wanted to go to trial?

13 A. That's better than life.

14 **MS. MOODY:** No further questions, Your Honor.

15 **THE COURT:** Yes, ma'am, you may ----

16 **MS. WHITE:** Nothing further, Your Honor, for this witness.

17 **(Brief Pause)**

18 **THE COURT:** Let me be sure the Court understands the situation
19 here. He was facing armed robbery, possession of a firearm during the
20 commission of a violent crime, two counts of assault and battery of a high and
21 aggravated nature. Now, was that under the old law that carried 10 years
22 each ----

23 **MS. MOODY:** Ten years ----

24 **THE COURT:** — or was that under the new law that carries 20
25 years for occurrence?

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1 **MS. MOODY:** Yeah, it's the old law.

2 **THE COURT:** Okay.

3 **MS. WHITE:** Yeah, he was indicted May of 2010.

4 **THE COURT:** Right. I didn't know when the indictments were
5 issued.

6 **MS. WHITE:** Yes, sir, Your Honor.

7 **MS. MOODY:** Yes, sir.

8 **THE COURT:** Kidnapping, another possession of a firearm during
9 the commission of a violent crime, and resisting arrest with a deadly weapon.
10 Now, what does resisting arrest with a deadly weapon carry?

11 **MS. MOODY:** Two (2) to ten (10) years.

12 **THE COURT:** Up to ten (10) itself. So, if he was looking at,
13 before the plea — let me see if I've got this right — armed robbery, which is
14 up to 30; two counts of assault and battery high and aggravated nature, which
15 is 20 total, so that's fifty (50).

16 Pointing and presenting of a firearm, another five (5), so, that's 55.

17 And kidnapping, which is another 30, that's 85.

18 **MS. MOODY:** Eighty-five (85) years. I totalled it up —

19 **THE COURT:** Have you totalled it all up?

20 **MS. MOODY:** I've totalled it all up, Your Honor. And, if it was run
21 consecutively, it would have been 105 years.

22 **THE COURT:** Does that include the extra five years for using a
23 firearm, which would have to be mandatory; would have to be run
24 consecutive?

25 **MS. MOODY:** Well, I just totalled them up as all consecutive.

1 **THE COURT:** Well, I understand that, but does that include the
2 possession of a firearm — the consecutive counts on ----

3 **MS. MOODY:** Oh ----

4 **THE COURT:** ---- two of the charges ----

5 **MS. MOODY:** Yes, sir.

6 **THE COURT:** ---- which is possession of a firearm during the
7 commission of a violent crime? Unless the underlining crime carries life, that
8 carries a mandatory five (5) years ----

9 **MS. MOODY:** Uh-huh (affirmative).

10 **THE COURT:** ---- that has to be added on. I mean, it's a no-
11 parole offense.

12 **MS. MOODY:** So 110?

13 **THE COURT:** Yeah, so it even goes up a little higher.

14 **MS. MOODY:** I think I might have ----

15 **THE COURT:** Is he aware that, that's what he's — he's facing if
16 this is aged (phonetic) today?

17 **MR. MCCALL:** Yes, sir, I am.

18 **THE COURT:** Okay. I wanted to be sure we covered that on the
19 record. Thank you, sir. And you may step down.

20 **MR. MCCALL:** All right. Thank you.

21 **MS. MOODY:** Your Honor, if I may, I would like to move those
22 pictures in. They might be in the record; I'm not sure if they're already in.

23 **MS. WHITE:** We — we don't have them because we don't have
24 the — we don't have all of the ----

25 **(Off-the-Record Comments)**

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1 **MS. WHITE:** But I don't have any objection. Those are from
2 discovery I think ----

3 **THE COURT:** Okay. They'll be admitted then. Just hand them to
4 the lady right there as you walk by.

5 **(The witness complied with the request.)**

6 **THE COURT:** An Applicant's exhibit.

7 **(Whereupon, Applicant's Exhibit Number 1 was marked and**
8 **admitted into evidence without objection.)**

9 **MS. MOODY:** Your Honor, I think there's one other document is
10 the Department of Corrections printout — the Department of Corrections
11 printout.

12 **THE COURT:** Any objection to that document?

13 **MS. WHITE:** No. That's the one that — that is in the record.

14 **MS. MOODY:** Oh, okay.

15 **MS. WHITE:** Yes, yes, Your Honor.

16 **THE COURT:** All right.

17 **MS. WHITE:** Unless there's something else ----

18 **MS. MOODY:** I was just making sure it was all in the record.

19 **MS. WHITE:** Okay. Yes, yeah.

20 **(Whereupon, Applicant's Exhibit Number 2 was marked and**
21 **admitted into evidence without objection.)**

22 **THE COURT:** The Applicant may call its next witness.

23 **MS. MOODY:** No other witnesses, Your Honor.

24 **THE COURT:** All right. The State may call its next — its witness.

25 **MS. WHITE:** Thank you, Your Honor. We would call Andrea

1 Price to the stand.

2 **THE COURT:** Come forward, ma'am, to be sworn.

3 **(The witness stepped forward to be sworn.)**

4 (Whereupon,

5 **Andrea Price, Esquire**

6 having been duly sworn, testified as follows:)

7 **(Off-the-Record Comments)**

8 **THE COURT:** Your witness, Ms. White.

9 **MS. WHITE:** Thank you, Your Honor.

10 **Direct Examination by Ms. White:**

3:19 P.m.

11 **Q.** Ms. Price, do you recall representing Mr. McCall on these charges?

12 **A.** I do.

13 **Q.** It's his recollection that you met with him maybe three times. Is that
14 accurate to your recollection?

15 **A.** I can tell you exactly when I met with him. I met with him when I first
16 became representing him in March of 2010. We had a bond hearing.

17 I went to see him twice again in October of 2010. I also went to see
18 him in January when he was transported back up here when he was on the trial
19 docket.

20 I saw him actually twice before we went to court, and, then, the day we
21 did went to court, of course, I saw him in the jail room.

22 **Q.** Okay. And what is your memory I guess, or based on your review of
23 the file, as to your discussions with him in regards to plea versus trial?

24 **A.** As you've heard, he has — was charged with seven counts that carried
25 some pretty substantial time if the judge did choose to run those con —

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1 consecutively.

2 He did receive a plea offer back in October of 2010, which I took to him
3 at the jail, on the 26th of October according to my notes, which is the day after I got
4 it.

5 He made the decision to reject that offer. I took him his discovery that
6 morning and he also wanted a copy of his indictments. And I got those and went and
7 took those to him in the afternoon.

8 Q. And, at the time, did you have a chance with him to talk to him about —
9 or, excuse me, did you have a chance to talk to him about the facts of the case and
10 his side, I guess, of everything that had happened?

11 A. Yes. And he also wrote me. He was — unfortunately got a probation
12 violation in between that — those — from the time he got — from the time I met him
13 in March until the time that he came back up here in October.

14 But he was in the department of corrections and he did write me from
15 the department of corrections and gave me some information about his case.

16 Q. So he was during that time — between March 2010 and January 2011,
17 he was not here in the local detention center the whole time?

18 A. No, I don't think he was.

19 Q. Okay. And, in regards to discussing the charges, did you ever tell him
20 that kidnapping carried a sentence of life?

21 A. No. What I did tell him was that, if we went to trial and the judge chose
22 to run it consecutively — which that is always his or her choice — that, that carried
23 30 years, as well as his other charges, which were very substantial, and if those were
24 run consecutively, it could amount to a life sentence for him at his age, as I was —
25 he was in his early 40s when I began representing him.

1 **Q.** Okay. In preparation for going to trial, once he had turned down this,
2 did you do any — any investigation into the search or the stop of the vehicle?

3 **A.** I did and it's here in my file.

4 **Q.** And what kind of research did you do?

5 **A.** I did some search and seizure research and some traffic stop research,
6 and as well as the — as well as the statute about the tag covers, which has since
7 been removed since this this case happened.

8 **Q.** Okay. And, in regards to a video, he's mentioned that he asked you to
9 try to get the video, was there, to your knowledge, a video?

10 **A.** There was not a video to my knowledge.

11 **Q.** And, if you could, just kind of give a brief overview of the facts of the
12 case as the State was going to — intended to present to your knowledge.

13 **A.** To my knowledge, there was a traffic stop. Mr. McCall was the
14 passenger in the vehicle that was stopped. The stop was made.

15 The officer made contact with them. He is talking to these two
16 gentlemen, and, at some point, Mr. McCall runs from him. An officer followed him.

17 As I recall, it was in the night time I believe. And the officer and Mr.
18 McCall, at some point — Mr. McCall, as — as I recall, pulled a — a weapon on this
19 officer and said, "Give me your weapon."

20 And, at that point, he did from — from what I recall. And that — that's
21 what arose to these charges.

22 **Q.** And so the armed robbery arose from him asking for the gun ---

23 **A.** Yes.

24 **Q.** --- or taking the gun from him?

25 **A.** Yes, that's correct.

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1 Q. And what was the kidnapping related to? Is that also from him holding
2 the officer at gunpoint?

3 A. Yes, as I recall.

4 Q. Okay.

5 (Brief Pause)

6 Q. Did you ever know or talk with James Cheek about the case? He
7 mentioned that he talked James some.

8 A. He wrote me a letter actually from the DOC asking to talk to Mr. Cheek.
9 He did — was transported up here as — back in, as I recall, the fall of 2010.

10 I was unable to talk to him that week because I was in a jury trial. And I
11 wrote a letter to Mr. McCall telling him this. And — but that I did ask Mr. Cheek to go
12 see him since he had requested him.

13 And I — and as he said, he — he did go speak with him. But I never —
14 I don't remember speaking with Mr. Cheek about the contents of what they talked
15 about.

16 Q. Okay. Do you recall any conversations with him that you had about
17 whether or not these charges were non-parole, parole, most serious, serious, or — or
18 anything you might have discussed about the charges outside of just the sentences?

19 A. Well, when I take — when I do sign up my clients, I do explain to them
20 everything that's on the sentencing sheet. I go over their information with them that's
21 on the — in the top left-hand corner.

22 And, of course, the blanks are filled in with what they're pleading to. I
23 tell them what he's pleading to and what the State has recommended.

24 Q. You heard his testimony about the fact that he would not have pled
25 guilty if he knew he had to potentially serve more than 16 years or more than 80%.

1 What is your recollection as to any discussions or to anything he expressed to you
2 about that?

3 A. I don't recall any of those discussions other than what is in the record
4 as was presented today.

5 Q. Do you generally, in your practice, talk with your clients about parole
6 eligibility or what time they would have to — to spend based on the percentages?

7 A. I do. And what I always leave them with is ultimately it is up to the
8 parole board.

9 There's, as you know, a — a lot of factors that go into the determination
10 of sentences; work credits, education credits, pre-trial detention, other — other
11 sentences that they may be serving when they get re-arrested on other things, that —
12 that sort of thing.

13 Q. And, although Mr. McCall didn't have a lengthy record, he did have a
14 little bit of a criminal history; is that right?

15 A. As I recall, yes.

16 Q. Do you recall going to meet with him with Clay Allen?

17 A. I do. That was on January the 25th of 2011.

18 Q. Okay. And that was about a week prior to the actual guilty plea; is that
19 right ----

20 A. There was ----

21 Q. ---- on January 31st (phonetic)?

22 A. Uh-huh (affirmative).

23 Q. Okay. And do you recall anything that happened or any discussions
24 there that — that were odd or — or that anything that affected — you know, that
25 seemed to change with Mr. McCall's concept of what was going forward or...?

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1 A. No, I don't have anything to indicate that in my notes except that I went
2 with Mr. Allen to see Mr. McCall in the county jail. We visited him for about two
3 hours, at that point, and talked about his case. It was on the docket for the next
4 week.

5 Q. And is it true, to your memory, that you all were here for trial; that he
6 was dressed for trial and you had not started picking a jury yet, but that, that was
7 probably the next step?

8 A. That was the next step, yes.

9 Q. Can you explain to me or tell how it changed from that to the plea on
10 that day?

11 A. I asked Mr. Barnette if there was — if there were any last offers in the
12 case. And he did approach me with the negotiated plea. And I took it back to Mr.
13 McCall.

14 Q. And, in your discussions with him, did you feel that he was
15 understanding the difference in the negotiated sentence and what — what was
16 happening with what charges?

17 A. Yes. He had — Mr. Barnette had initially given me the first plea offer,
18 which he rejected. And he brought this one back to me with the negotiated 20.

19 And I felt that, under the circumstances, with all the time he could
20 potentially face, that the negotiated 20 was a — an excellent option for him. And I
21 urged him to accept the offer.

22 Q. And ultimately, what was his decision?

23 A. Ultimately, he entered a plea.

24 MS. WHITE: All right. Thank you. That's all I have at this time,
25 Your Honor.

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1 everything and the 80 versus 85 did not click with me at that point.

2 Q. So, when he discussed it at the beginning, he said it a couple of times,
3 it didn't click with you?

4 A. No, apparently not.

5 (Brief Pause)

6 Q. Do you have a copy of the transcript?

7 A. I do. It's right here (indicating).

8 Q. So, Page 15, when the judge was talking to the Defendant, he indicated
9 — the Defendant indicated on Line 10, to the response to the judge, "Do you
10 understand that?" The Defendant says, "Yes, yes, sir, but what is — was Ms. Price
11 — what — what you telling me about?" And you indicate 80% and max-out, Your
12 Honor, on Line 12.

13 A. Okay.

14 Q. It didn't click on — click, then, that it should have been 85%?

15 A. Apparently not.

16 Q. Okay. And later on down, when the judge repeated 80% on Line 17 —
17 Line 18, it didn't click there either?

18 A. Apparently not.

19 Q. How did you come up with the 16 years?

20 A. Twenty (20) years, 80% of that is 16.

21 Q. So knowing that the law is that you have to do 85%, where did the 80
22 come from?

23 A. I don't know.

24 Q. Okay. But you calculated, prior to him going into his plea, that it would
25 be 16 years?

1 A. Eighty percent (80%) of 20 was 16, yes.

2 **(Brief Pause)**

3 Q. So today what is it that you advise your clients on non-parole?

4 A. I advise all of my clients that ultimately the discretion of how much time
5 they will serve is determined by the department of corrections.

6 Q. Do you talk about 85% at all?

7 A. Usually not. I just tell them to be prepared to serve their entire
8 sentence.

9 **(Brief Pause)**

10 Q. Okay. As to the facts of the case, you indicated that Mr. McCall pulled
11 his — well, excuse me. Mr. McCall took the officer's gun?

12 A. That's what I recall, yes.

13 Q. Okay. And where in the incident report did you get that information?

14 **(Pause while the witness reviews documents.)**

15 A. I got that from Officer Strickland's (phonetic) report that was in
16 discovery.

17 Q. And would that be the incident report from Spartanburg County Sheriff's
18 Office or is that his statement?

19 A. Well, that looks like the incident report to me.

20 Q. Okay. And what page — well, excuse me.

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

22 **THE COURT:** You may.

23 Q. (By Ms. Moody) So this is his statement as to the incident?

24 **(Document shown to the witness.)**

25 A. Well, it's on the supplemental report.

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Q. Okay.

A. So I considered it a report.

Q. Okay. So, on the incident report I'll hand to you ----

(Document shown to the witness.)

A. Uh-huh (affirmative).

Q. ---- do you see anything that discusses Mr. McCall?

(Pause while the witness reviews document.)

A. Yes.

Q. Okay. And what does it say about Mr. McCall?

A. It says, "Deputy Strickland advised the other sus — suspect, Mr. McCall, had his duty weapon."

Q. Okay. Was there some question asked as to whether Mr. McCall took the weapon from the officer or the events could have happen differently from what Mr. McCall responded to you on?

A. (No Response)

Q. Did Mr. McCall relay to you a different story?

A. No.

Q. And so he agreed with — that he took the weapon from the officer?

A. Yes, he did.

Q. Standing at the car?

A. Standing at the car?

Q. Uh-huh (affirmative). They were — it was a traffic stop, right?

A. Right.

Q. Okay. So, when he was the passenger in the car, he took the weapon from the officer?

1 A. Okay.

2 Q. I'm asking you, is that what he informed you of?

3 A. Yes.

4 Q. Okay. And so, when he took the weapon or whatever occurred, did it
5 lead into a chase with Mr. McCall?

6 **(Brief Pause)**

7 A. No, that was the driver running from him. I'm sorry.

8 Q. Well, where did they — how did they get custody of Mr. McCall if he
9 took the weapon from the officer?

10 **(Brief Pause)**

11 A. He ran away.

12 Q. Okay. And so, when Mr. McCall relayed to you the incident, and he
13 discussed with you that he didn't harm the officer, did you look at the pictures
14 regarding this officer?

15 A. I did. I had those in discovery and gave them to Mr. McCall also.

16 Q. Did you look at color photos?

17 A. No, I had black-and-white photos. I also had a CD, but I don't recall if
18 they're in color on there or not. But I do have those pictures, yes.

19 Q. Okay. So, when you did research for Mr. McCall, what did you come
20 back with and discuss with Mr. McCall on his theory of the events?

21 **(Brief Pause)**

22 A. I recall advising him of what he was charged with and what the
23 discovery showed. And, as I tell all of my clients, regardless of — they — they have
24 a version of events and the police have a version of events.

25 And a lot of times my clients disagree with the police's version of

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1 events. But I always tell them we still have to deal with what they have to say,
2 whether you agree with it or not.

3 Some agree with it, some parts of it, some don't agree with some parts
4 of it, but that's what we have to deal with. And so this — this is what the officer said
5 happen, so, this is what — this is what we have to deal with.

6 Q. And so the versions of — or the points — parts that Mr. McCall dealt
7 with indicated to you that he did not agree with, did you go back and research those
8 matters?

9 I know you said you researched the traffic stop. And you keep a very
10 detailed file, but you notated there were some cases that address the traffic stop —

11 A. Yes.

12 Q. ---- correct? What other investigation did you do with regard to this
13 case on behalf of Mr. McCall?

14 A. Primarily I — I looked into the traffic stop because, upon speaking with
15 Mr. McCall, and his letters to me, that's primarily what he was interested in as well.

16 Q. Okay. Did — when he got charged or directly indicted on the
17 kidnapping ----

18 A. Uh-huh (affirmative).

19 Q. ---- did you look up the research on the kidnapping or ----

20 A. The — the kidnapping I thought was a weak case, but it — I thought
21 that they — as you know, it's relatively easy to get an indictment because they only
22 look at what the aggrieved party has to say.

23 But I thought the kidnapping was — was the weaker of the cases
24 between the kidnapping and the armed robbery.

25 Q. So, when you were discussing with Mr. McCall whether or not to go to

1 trial, what was your theory on what cases would stick? Which charges would stick if
2 he went to trial?

3 A. By "stick," do you mean would go to the jury ----

4 Q. Meaning get a conviction?

5 A. ---- or go to — I advised him never — that it is always hard to
6 determine what a jury is going to say or do, but that, if they believed the officer, then,
7 Mr. McCall was looking at some very substantial time.

8 Q. And I believe you were going to go into possibly, after the State
9 presented its case in chief, did you have any kind of theory as to what you could
10 move for a directed verdict on?

11 A. Well, we, of course, didn't get to trial, so we didn't get that far. But I
12 do have a — I always move for a DV on — on my cases based on the sufficiency of
13 evidence.

14 Q. Right, I'm just saying —

15 A. Particularly in this case I would have gone after the traffic stop.

16 THE COURT: Ms. Moody, this was a plea.

17 MS. MOODY: Yes, sir. And my client testified that he would have
18 gone forward with a trial. He was — he pled on the date that he was
19 supposed to be going to trial.

20 THE COURT: Well, you're asking her questions, though, about
21 what she generally does with her clients. I would be more interested in what
22 specifically happened in this case with her client.

23 MS. MOODY: I think that's what I said, but that's her response
24 what she generally does. I asked her what was her theory in this case. What
25 was ----

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1 THE COURT: Had was told to your client or ----

2 MS. MOODY: I'm sorry?

3 THE COURT: I'd rather be more specific as to what was told to
4 your client about her theory of the case.

5 MS. MOODY: Okay.

6 Q. (By Ms. Moody) Well, what was told to my client about your theory of
7 the case?

8 THE COURT: I'm not sure what effect it had on his plea if it wasn't
9 communicated to him. I don't know whether it was or wasn't.

10 MS. MOODY: Okay.

11 THE COURT: I don't know if they discussed trial strategy at this
12 point in time.

13 MS. MOODY: Okay.

14 THE COURT: Okay. Thank you.

15 Q. (By Ms. Moody) So I'll ask you the question, did you discuss trial
16 strategy with Mr. McCall on the day of the plea?

17 A. I don't recall doing that, no.

18 Q. Okay. Did you discuss trial strategy prior to going with Mr. Allen to
19 meet with Mr. McCall?

20 A. That's not something I typically do with clients.

21 Q. But with this client, did you? Is it notated in your file?

22 A. I — I don't have anything to note that I told him what I was going to do
23 at trial, no.

24 Q. Okay. And, when you talked with him, with Mr. McCall, I believe it was
25 — excuse me, with Mr. Allen --- you talked with Mr. McCall on December 3rd, 2010?

1 A. (No Response)

2 Q. I believe you testified that you went to meet with Mr. McCall with Clay
3 Allen?

4 A. On January 25th, 2011.

5 Q. Okay. So, on that date, do you have what — did you notate what you
6 all discussed?

7 A. I just have that we talked about his case. I don't have anything
8 specifically that we talked about.

9 Q. Okay. And I believe you discussed the amount of time that you spoke
10 with him. Is that written somewhere in your file?

11 A. It is.

12 Q. And what is that?

13 A. Two hours.

14 Q. Okay. Now, when you talked with — when you wrote Mr. Allen, you
15 wrote him several times as well, correct?

16 A. Mr. McCall?

17 Q. I'm sorry, Mr. McCall?

18 A. Yes, ma'am.

19 Q. Okay. So you wrote him on 11/30/2010, correct?

20 **(Brief pause while witness reviews documents.)**

21 A. Yes, ma'am.

22 Q. Okay. And, in that letter, what did — what were you discussing with Mr.
23 McCall?

24 A. I was discussing Mr. McCall's request to have a bond hearing and a
25 speedy trial or a — and a motion to dismiss.

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1 Q. And, when you discussed that with him, did you explain to him why his
2 case could not be dismissed?

3 A. Because I had no legal grounds to do so.

4 Q. Okay. So, after you indicated that you had no legal ground, did you try
5 to talk to him any more about why he thought his case should be dismissed?

6 A. (No Response)

7 Q. Did you have a face-to-face contact with him?

8 A. At this time? No. He was at Lee Correctional (phonetic) at the time.

9 Q. Okay. So, when was the next time that you saw him again?

10 A. I saw him again in January.

11 Q. Okay. And, at that time, was he still requesting a trial or a motion to
12 dismiss?

13 (Brief Pause)

14 A. I don't recall that he did or not.

15 Q. Okay. His plea date was January 31st, 2011.

16 A. Okay.

17 Q. Okay. And, in November of 2010, he was requesting that his charge be
18 dismissed or a speedy trial?

19 (Brief Pause)

20 A. Okay.

21 Q. Okay. And, between November and January 31st, other than meeting
22 with Clay Allen, did you sit down and discuss Mr. McCall's case with him and all the
23 information that you had researched?

24 A. Between November and January?

25 Q. Yes, ma'am, November 30th, 2010 till the date of the plea?

1 A. No, I don't think so. I don't have that in my notes.

2 Q. Okay. Did you do any research about the officer who obtained injury in
3 this case? Did you find out the extent of his injuries?

4 A. No.

5 Q. Did Mr. McCall tell you that he had injuries?

6 A. Yes, he did.

7 Q. Okay. Did he tell you that the officer could not have had that many
8 injuries?

9 A. Not that I recall, no.

10 **(Brief Pause)**

11 Q. So earlier you testified that you did not inform Mr. McCall that
12 kidnapping carried life.

13 A. Okay. I recall that.

14 Q. Okay. What exactly did you tell him about kidnapping?

15 A. What exactly did I tell him about kidnapping specifically?

16 Q. The — I'm saying the penalty range.

17 A. The — the penalty range on kidnapping is a maximum of 30 years.

18 Q. But the first time ---

19 A. But the first time I ever met him, I told him that I could not remember
20 right off the top of my head what it carried because I — I went — I got the indictments
21 and went straight to the jail, but that I could get back to him on that.

22 And that — but I do — I do recall telling him, you know, when — when
23 we came back and when I looked all of his of charges up, that it was very substantial
24 penalty he could face on those if they were stacked on top of the armed robbery and
25 the subsequent charges.

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1 Q. But did you specifically tell him that kidnapping carried 30 years?

2 A. Yes.

3 Q. And how did you go about telling him that it carried 30 years?

4 A. I told him that when he went back up here in January.

5 Q. For the plea?

6 A. No, for his trial date.

7 Q. Well, no, that's what I mean. He pled on January 31st.

8 A. Uh-huh (affirmative).

9 Q. It ultimately turned into a plea?

10 A. Right.

11 Q. Okay. So you told him on that day?

12 A. No, I told him when I went back and told him — when I went back and
13 visited him in the jail on this particular day. That's something that we talked about —
14 we tend to talk about.

15 MS. MOODY: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 (Brief Pause)

18 Q. (By Ms. Moody) Ms. Price, do you remember having a conversation
19 with me when I first got appointed on this case?

20 A. I believe we talked on the phone.

21 Q. Do you recall ever telling me that Mr. McCall was looking at life on the
22 kidnapping?

23 A. No, I don't.

24 Q. Okay. Do you recall informing me about Mr. McCall's and your friction
25 during the rep — your representation of Mr. McCall?

1 A. I do recall that. He tried to fire me several times.

2 Q. Okay. But you don't recall telling me that kidnapping, you negotiated 20
3 years and that kidnapping carried life?

4 A. No, I don't remember that.

5 Q. Okay. Do you recall telling me that Mr. McCall was lots of trouble?

6 A. No.

7 Q. Do you recall telling me you investigated; there were no defenses. He
8 was caught on the traffic stop and the officer pulled a gun?

9 A. No.

10 Q. Do you recall discussing whether or not he had a preliminary hearing
11 and that your boss wrote Mr. McCall?

12 A. No.

13 Q. What do you remember about our conversation?

14 A. I remember that you called me and told me —

15 **MS. WHITE:** Your Honor, I would object to relevance of this.
16 This —

17 **THE COURT:** I would like to know the relevance of this myself.

18 **MS. MOODY:** That is what I'm saying is from my notes after
19 talking to her.

20 **THE COURT:** I don't doubt that.

21 **MS. MOODY:** Okay.

22 **THE COURT:** I'm not sure that it has relevant as to whether or not
23 your client entered a voluntary guilty plea or not. That's what this issue is
24 about.

25 **MS. MOODY:** Yes, Your Honor. My client testified earlier that the

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1 reason why that he took the plea of 20 years is because he was informed that
2 kidnapping carried life.

3 **THE COURT:** Well, I understand that, but you're asking whether
4 or not she said that he was trouble. I'm not sure what that has to do with her
5 advice concerning the sentence on kidnapping.

6 **MS. MOODY:** In terms of her summary of the case and what led
7 to the plea and why it took so long for him to decide to plea. Well, I'll withdraw
8 the question, Your Honor.

9 **THE COURT:** Thank you.

10 **MS. MOODY:** I ----

11 **THE COURT:** Again, the question is whether or not he entered a
12 voluntary guilty plea or not and whether or not she gave him adequate
13 assistance.

14 **MS. MOODY:** I think --

15 **THE COURT:** And -- and I don't mind you asking as many
16 questions as you'd like to ask about that, but if you and she had a
17 conversation about your representation of him in a PCR ----

18 **MS. MOODY:** My -- my representation.

19 **THE COURT:** ---- she may have related -- you said you called her
20 after you were appointed ----

21 **MS. MOODY:** Right.

22 **THE COURT:** ---- in your question. And you asked if -- did she
23 say that he was trouble. I'm -- that's interesting, but it's not -- I'm not sure
24 what that has to do with this case. That's the question I object to.

25 **MS. MOODY:** Okay.

1 **THE COURT:** Let's stick to the point.

2 **MS. MOODY:** Okay. You're correct; the question about whether
3 he was trouble has nothing to do whether or not the guilty plea ----

4 **THE COURT:** That's — that's my position and that's my ruling.

5 **MS. MOODY:** Okay. But I would ask — respectfully ask the Court
6 to consider if she told him whether his kidnapping carried life, the reason
7 being ----

8 **THE COURT:** You asked about that several times and I've let you
9 ask about it. I didn't stop you.

10 **MS. MOODY:** I understand, Your Honor, but that was one of the
11 things I asked. I was trying to clarify ----

12 **THE COURT:** Ma'am, I've made my ruling. Proceed.

13 **(Brief Pause)**

14 **Q.** (By Ms. Moody) At the time that Mr. McCall decided to plea, you didn't
15 — he had no understanding — well, excuse me. I take that back.

16 **(Brief Pause)**

17 **Q.** As to the advice that you provided Mr. McCall, on the record before the
18 judge, did you object to his percentage that he gave to the client in terms of what he
19 would serve?

20 **A.** No.

21 **Q.** Did you object to any information provided about him being eligible for
22 parole?

23 **A.** No.

24 **Q.** And the record as it stands is — your testimony as it stands is that, on
25 that day, it just didn't catch your ear when the judge repeatedly used 80% as to his

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1 sentence?

2 A. That's right.

3 Q. Okay. And, on that day, Mr. McCall came to court prepared to go to
4 trial?

5 A. He did, yes.

6 Q. Okay. And, on that day, you're saying there were no defenses?

7 A. I --- after my research, I did not believe there were any, no.

8 Q. Did you relay that to Mr. McCall?

9 A. I'm sure I did.

10 Q. Is there anything written in your notes?

11 (Brief Pause)

12 A. No.

13 Q. Had you prepared a closing and an opening for trial?

14 A. I typically don't prepare closings in afternoons (phonetic).

15 Q. Well, in this case, what did you prepare? How did you prepare for trial?

16 A. I was prepared to go forward on the first suppression motion on the car
17 stop, which I thought we would lose; but, I was going to try anyway.

18 MS. MOODY: No further questions for this witness, Your Honor.

19 THE COURT: Ms. White?

20 MS. WHITE: Thank you, just briefly. May I approach, Your
21 Honor?

22 THE COURT: Yes, ma'am.

23 Redirect Examination by Ms. White:

24 Q. And, Ms. Price, I'm going to show you --- this is -- was in the packet and
25 you should have received it ---

1 A. Yes.

2 Q. --- the copy of the application that Mr. McCall filed.

3 (Document shown to the witness.)

4 Q. He's written a good bit on his own. And I'm just going to read and I
5 want you to tell me if this is accurate from what he said on his application.

6 MS. MOODY: Your Honor, I would like to know what she's reading
7 from, exactly where she's reading from.

8 THE COURT: She said it was from his application.

9 MS. WHITE: His application.

10 MS. MOODY: I got the application, but it's multiple pages.

11 MS. WHITE: The third page where he started writing an answer
12 to it looks like (11)© continued on (phonetic).

13 Q. It is true, "She told me they were going to give me life in prison. I was
14 going to leave prison in a wooden box dead if I don't take the plea."

15 A. Oh, I see that.

16 Q. Okay. That's what he wrote. And, then, he says, "I told her to try to get
17 me five years non-violent. She said they wouldn't think about that"; is that right?

18 A. That's what it says.

19 Q. Okay. And, then, if you'll flip over to the next page.

20 (The witness complied with the request.)

21 Q. He included the document of the plea offer, the original plea offer?

22 A. That's right.

23 Q. Is that right?

24 A. Uh-huh (affirmative).

25 Q. If you'll read the last sentence for me that he handwrote on that?

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1 A. "I asked Ms. Price how much time do kidnapping carry and she told me
2 she didn't know."

3 Q. Okay. And this was in his application that was filed on December 12th,
4 2011; is that right?

5 A. Yes.

6 Q. Okay. Thank you.

7 MS. WHITE: That's all I have, Your Honor.

8 THE COURT: You may recross.

9 (Brief Pause)

10 Re-cross Examination by Ms. Moody:

11 Q. Going back to that same page, Ms. Price —

12 A. Uh-huh (affirmative).

13 (Brief Pause)

14 Q. Earlier you testified that you told — I guess you told Mr. Price — Mr.
15 McCall, on the day of the trial, that — how much kidnapping carried?

16 A. Okay.

17 Q. Okay. So was that the first time you told him?

18 A. No.

19 Q. So when did you tell him how much kidnapping carried?

20 MS. WHITE: Your Honor, I think this has been asked and
21 answered. I believe she's testified that, at one point, she told him initially that
22 she did not know, but, then, she came back and told him it carried a maximum
23 of 30.

24 THE COURT: Well, I'm going to let her examine it — her
25 thoroughly about this, but it's my recollection the testimony was she said that,

1 when she first saw him, she didn't know and she would get back to him.

2 And, then, later on she advised him that it was 30, when he was
3 brought up for trial the day before; my recollection of the testimony was that,
4 she said when he was brought back up on the 30th — I believe the plea was
5 the 31st — that, that's when she told him.

6 But I -- you have the right to examine her on that. And I'll allow you to
7 do that. It has been asked and answered, but I'll let you ask again.

8 **MS. MOODY:** Okay.

9 **Q.** (By Ms. Moody) She gave — well, Ms. Price, what day did you give him
10 the indictment for the kidnapping? Isn't it correct that you gave him the indictment on
11 10/26/2010?

12 **A.** Yes, that's right.

13 **Q.** Okay. So based on how it's understood, you told him what kidnapping
14 carried in January, on the 30th, 2011?

15 **(Brief Pause)**

16 **A.** I don't know exactly when I told him that. But he at least knew when we
17 had the plea on the 31st.

18 **(Brief Pause)**

19 **MS. MOODY:** Okay. No further questions.

20 **THE COURT:** You may step down,

21 **(The witness complied with the request.)**

22 **THE COURT:** Does the State wish to call additional witnesses?

23 **MS. WHITE:** No, Your Honor.

24 **THE COURT:** Does the Defense wish to call any — does the
25 Applicant wish to call any witnesses, reply/rebuttal?

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1 MS. MOODY: No, sir, Your Honor.

2 THE COURT: All right. Ms. Moody, I'll hear from you.

3 MS. MOODY: Your Honor, it's our position that, as it relates to
4 whether or not Mr. McCall entered into his plea voluntarily and intelligently, we
5 would argue that his Counsel's representation fell below the accepted
6 standard of reasonableness and as well as he — there was testimony about
7 the client, which was contained in the transcript, that he would have
8 proceeded in trial had he been given appropriate advice from his client [sic].

9 And that, if he had known that the kidnapping carried 30 years, he
10 would have gone forward with the trial. I recognize there might be testimony
11 that was rep — represented to the Court that he asked for a plea offer, but he
12 also asked for the charges to be dismissed.

13 He asked for a speedy trial. And that was in response to my question
14 to Ms. Price that she responded to him on 11/30/2010 where he therein asked
15 for a trial — a speedy trial or a dismissal.

16 I believe the transcript, Your Honor, is the — is very correct as to what
17 Mr. McCall's intent was on that day. They prepared — excuse me — they
18 prepared for a trial.

19 He came to the court ready to proceed on a trial on all his charges.
20 And it wasn't until he understood, from his lawyer, that kidnapping carried life.

21 On Page 11, the Court asked the Defendant specifically whether or not
22 he was going to plead regardless had the State not offered him any kind of
23 negotiations. He was going to plead regardless. And Mr. McCall replied, "No."

24 I believe on other pages within the transcript he was — he discussed
25 whether or not he was eligible for parole and how much time he was facing.

1 He was facing 16 years that was calculated by his Counsel, which is
2 incorrect, as well as he was told that the max-out time would be 80%. And I
3 believe the judge in this case also cites 16 years.

4 This amount of time that he was going to serve is throughout the
5 transcript. And it takes up most of the transcript, where repeatedly 80% is
6 used; 80%, 16 years. And there's no objection by his lawyer.

7 Your Honor, in *Roscoe v. State* (phonetic), the Court talks about
8 whether or not a — sentencing advice can cause a client to enter into a plea
9 unknowingly and involuntarily and what the standard is.

10 Your Honor, the Court specifically, in *Roscoe v. State* — it is a case ---
11 2001 case. It discusses what a Defendant must show. They must show both
12 error and prejudice.

13 I believe based on this transcript, it shows that there's error as to what
14 the Defendant was facing. And he relied on that.

15 I believe that my client's testimony, with regard to his kidnapping, what
16 he would have been ultimately facing on kidnapping, life — and I would say
17 that my client made a decision on the day of trial based on what his lawyer
18 told him that he was facing life, that, that determined whether or not he went
19 into the trial or whether he accepted the 20 years negotiated plea.

20 That information was erroneous. Under the statute, kidnapping carries
21 — when it's not along with a murder, carries 30 years.

22 So the Defendant goes forward and he enters this plea. And it seems
23 from his transcript, when read in full, that there is some level of confusion.

24 And there are points where Ms. Price does discuss or speaks up
25 before the Defendant can answer the judge, such as on Page 15, where she

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1 does talk about 80% max out. And she — I would imagine based on her
2 testimony that she is aware that it's 85%.

3 They discussed — as Mr. McCall talked about his conversation with the
4 judge, they talked about parole; whether he would be eligible and whether
5 parole would be determined by the parole board.

6 And, then, there is a point where it seems to be a bit confusing on Page
7 20 where Mr. McCall is asked by the Court or told by the Court that armed
8 robbery is a no-parole offense and did he understand that. And the judge
9 repeats 80% again.

10 So, when Mr. McCall gets to the point that he is addressing the Court
11 on whether he is understanding the information about his plea and what the
12 Court is talking to him about, he answers in the affirmative.

13 He does answer in the affirmative as to whether anybody forced him or
14 whether anybody threatened him. I would argue, Your Honor, that telling the
15 client that his sentence he is facing on a kidnapping charge is — it carries up
16 to life, I would argue that does amount to some level of force because that
17 determined whether or not he went forward on his right to a trial.

18 Whether he was looking at 110 or 105 — or five years, he wanted to go
19 forward on his trial. He felt strongly about his trial. He asked his lawyer to
20 investigate certain things;

21 Whether or not they were grounds for him to go forward in a trial and
22 they would be grounds for a jury to find him not guilty, he asked his lawyer to
23 investigate.

24 As to the pictures that were presented, Your Honor, there are pictures
25 that give the perception that the officer who was injured did not have much

1 injury to him. They are colored photographs. Ms. Price testified that she
2 received the discovery from the State, which is clocked in with the clerk of
3 court's office.

4 And there is no denying that she received the documents, but at — at
5 no time does it appear that she sat down with Mr. McCall and went through
6 those pictures.

7 Nor did she try to look at the color photos. It's — I don't know whether
8 there is a disk with those photos on it, but that would have discussed what Mr.
9 McCall indicated with her.

10 Based on the letters that they had — and he was not here at some
11 point in time — he asked for a speedy trial. I'm still not clear about how much
12 discussion they had as to each individual charge that he had.

13 He did have a discussion with Mr. James Cheeks [sic] where Mr.
14 Cheeks, as the Defendant testifies, to that he did not believe that there was a
15 kidnapping charge. Of course, Ms. Price has indicated that she thought the
16 kidnapping was a weak charge.

17 When they directly indicted him, it is unclear as to whether she
18 discussed that kidnapping charge with him other than she did not know what
19 the penalty carried. She did not know — excuse me — she did not know what
20 the penalty carried and she would get back to him.

21 Earlier I was trying to figure out what exact date did she tell him that the
22 kidnapping carried 30 years. The reason being is because the indictment as
23 — as it is — the day that she gave him the direct presentment indictment was
24 10/26.

25 If it wasn't a strong case, if it carried life or 30 years, I think that it was

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1 significant — that it would be significant for her to tell the Defendant before he
2 decides to plea — to go to trial, if he's been saying he wants to go to trial all
3 along and there was no offer on the table and he rejected any other offers that
4 there were. They were prepared to go to trial on that day.

5 I also submit to you, Your Honor, what the Defendant's decision was in
6 terms of whether he needed to go into a plea was that he was told that it
7 carried life. I think that, if he was told that it was 30 years, due to the fact the
8 armed robbery carried 30 years, there is no guarantee that he could get a
9 consecutive sentence on that.

10 But there's no prohibition from him getting a concurrent sentence to 30
11 years on the armed robbery. He was willing to go forward on the armed
12 robbery facing 30 years.

13 Also, Your Honor, in *Roscoe v. State*, it's not automatic that a client or a
14 Defendant's plea is overturned or reversed because there's an error by the
15 judge. The distinction here is was he provided effective, correct advice? We
16 submit to the Court that he was not.

17 He did not know each individual charge. His testimony as to what
18 exactly he was charged with, you can see from his testimony he could not
19 state all those charges.

20 He testified ----

21 **THE COURT:** You're saying today he doesn't even know his
22 charges?

23 **MS. MOODY:** Yes, sir. He doesn't recall the exact charges.

24 **(Brief Pause)**

25 **MS. MOODY:** I understand, Your Honor, maybe it has no bearing

1 on whether or not he knew on that day, but I'm saying to the Court that he was
2 presented with a negotiated sentence. And, in the transcript, based on the
3 discussion with the judge, there was extensive discussion about 80%.

4 There was extensive discussion about the possibility of him receiving
5 parole. And, then, there is discussion that's he's not going to — to receive
6 parole.

7 He answered affirmative to what the judge says. He knows going in
8 that he's getting 20 years.

9 My argument, Your Honor, is that he was not properly advised as to the
10 extent of the sentence that he could get. And I would argue, Your Honor, that,
11 that is ineffective assistance of counsel, along with the research that was
12 never discussed with him as to whether he had a viable motion to suppress or
13 what have you.

14 I would suggest that he did not receive effective assistance of counsel.

15 **THE COURT:** Ms. White?

16 **MS. WHITE:** Thank you, Your Honor. The State would submit
17 that the application should be denied based on his failure to meet his burden
18 of proof.

19 I think the credibility of the Applicant's testimony is called into question
20 with the documents he filed, as well as documents that are in the record
21 somewhat contradict.

22 His letters, his other documents, state that he requested a five-year
23 non-violent plea deal numerous places or for the charges to be dismissed. I
24 know he said that he would have gone to trial and, at the plea, he made a
25 statement he would have gone to trial. But I think that credibility has to be

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1 called into question.

2 Additionally, the Court went over with him the fact that he was giving up
3 the ability to contest any of the evidence, the sufficiency of the evidence, or
4 attack the search or seizure or the stop or anything. When he was pleading
5 guilty, he agreed to do that.

6 Further, I think the difference between 16 years and 17.8, which is the
7 80 and 85%, I think *Roscoe* is pretty clear on that as well that it's hard to find
8 that credible that he would have proceeded to trial and risked 110 years on
9 the fact that it was a difference of — of 1.8 year possibility.

10 So we just ask that you deny the application.

11 **MS. MOODY:** Your Honor?

12 **THE COURT:** Yes, ma'am?

13 **MS. MOODY:** If I may?

14 **THE COURT:** May what?

15 **MS. MOODY:** Respond to her issue?

16 **THE COURT:** Sure, why not?

17 **MS. MOODY:** Well, Your Honor, I guess my issue is the
18 credibility. It is credibility. There is a certain level of credibility that is given to
19 lawyers when they come into court and they're officers of the court. Their
20 level of ethics, they're presumed to like relay to the Court certain information.
21 And they're supposed to be candid with the Court.

22 I think, when a Defendant comes into the courtroom and talks about
23 what he thought it was, I guess his credibility would be called into question. I
24 don't think that Mr. McCall on that day was able to determine whether it was
25 17.8 years.

1 The bottom line is, when advised by his Counsel, he is able to rely on
2 that information and that his lawyer should be objecting to any information that
3 incorrectly comes from the bench, just like the judge can correct or cure any
4 erroneous advice that a lawyer can give.

5 And *Roscoe* specifically talks about whether or not the — the
6 Defendant ----

7 **THE COURT:** I can assure you I'll read *Roscoe*.

8 **MS. MOODY:** Okay.

9 **(Brief Pause)**

10 **MS. MOODY:** And the last thing I'd say, Your Honor, he answered
11 the questions as — as presented to him by the Court. And I think the judge
12 asked him twice and his response to whether he would have gone to trial was
13 that.

14 I think, based on this document, based on him thinking that his lawyer
15 was telling him properly, that, if taken — you know, if — if you look at the
16 questions and you look at the information, he would not say that it was
17 different from what the judge said. So he responded that he wanted to go
18 forward.

19 In order for him to get a plea through, for the judge to even be able to
20 accept the plea, he does have to accept the response — the — the facts that
21 the State presents.

22 That doesn't necessarily mean that everything that the State presents
23 in their summation of what happened in this particular case is what happened.
24 There are negotiations (phonetic) and the State does not have to go forward
25 on a trial or call witnesses to the stand. And the Defendant is being given the

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1 benefit a possible 20 years versus I guess 110 years that he could have
2 possibly received or whether they were concurrently ran together, he receives
3 a benefit.

4 So it's a benefit to both sides. Everybody isn't getting everything that
5 they want, but it is a benefit to both the State and the Defendant. Thank you.

6 **THE COURT:** One question that I have because it's — it's a
7 question that's in my mind and I'll just ask it.

8 You inquired of Ms. Price as to whether or not — whether she had the
9 information that your client took the gun?

10 **MS. MOODY:** Yes, sir.

11 **THE COURT:** Can you explain to me what relevance that may
12 have had other than, in reading his application for post-conviction relief, I
13 located maybe three times he indicated that he did take the gun.

14 **MS. MOODY:** He did take the gun. But it was not —

15 **THE COURT:** Maybe I misunderstood the point of the question.
16 And if — if — if — it was your client — I got the feeling it is your client's
17 position that he didn't take the gun and that there was nothing in the report
18 that said he did.

19 And — but, then, I read his own documents and it says he did. So I — I
20 have a little problem with that and I didn't understand the relevance of that as
21 to our inquiry.

22 **MS. MOODY:** Well, I was going down a different line of
23 questioning. I changed and mis-stated it, okay? And so, when I was trying
24 to ----

25 **THE COURT:** Well, I don't want to hold that against your client,

1 but I kind of have a feeling in my mind that maybe he was taking the position
2 that he didn't take the gun and that's the reason you were questioning along
3 those lines.

4 But, then, I read his own documents and he says he did take the gun.
5 He said he didn't take it to rob him; he took it for self defense. I read that.

6 So I read what he said. But, then — but I do read that he did take the
7 gun. And that's what ----

8 **MS. MOODY:** Well, based on ----

9 **THE COURT:** ---- concerns me a little bit.

10 **MS. MOODY:** Excuse me. Based on some of the information I've
11 read, in the actual case file, the incident as it occurred, it seemed to say that
12 he did give chase. He was threatened or there was some kind of verbal
13 exchange between he and the officer.

14 He took off running. He ends up down the street in a field. And, on the
15 pictures, I felt like those pictures would have been relevant as to any kind of
16 assault on a police officer or resisting arrest.

17 When he was outside the car, he wasn't under arrest at that time.
18 When he apparently committed assault and battery of a high and aggravated
19 nature ----

20 **THE COURT:** Well, ma'am, we're — we're not here to try the
21 case.

22 **MS. MOODY:** I understand.

23 **THE COURT:** I'm just trying to see — find out if your client is
24 taking the position today that he didn't take the gun. And it's just — that goes
25 to credibility. It has nothing to do I don't think with ----

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1 MS. MOODY: It's not ----

2 THE COURT: ---- a slight thing to do with the plea, whether it was
3 voluntary, but —

4 MS. MOODY: He's not taking that position, Your Honor.

5 THE COURT: Okay. That answers my question.

6 MS. MOODY: It's just I changed my line of ----

7 THE COURT: You've — you've answered my question. Thank
8 you, ma'am.

9 All right. That concludes the hearing. I'll take it under advisement.

10 Thank you very much.

11 MS. WHITE: Thank you, Your Honor.

12 (Whereupon, the hearing concluded at 4:04 p.m.)

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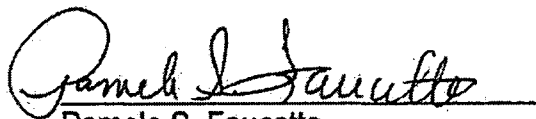
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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 84, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

January 6, 2015

A handwritten signature in cursive script, reading "Pamela S. Faucette", written over a horizontal line.

Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Terrance Darnell McCall, #339911,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2011-CP-42-5495

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 12, 2011. The Respondent made its Return on or about September 25, 2012. An evidentiary hearing into the matter was convened on January 22, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Andrea L. Price, Esquire, testified on behalf of the State. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and plea transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the May 2010 term of General Session for armed robbery and possession of firearm during commission of a violent crime (10-GS-42-209).

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one and two), two counts of assault and battery of a high and aggravated nature (ABHAN) (10-GS-42-2090, -2092), pointing and/or presenting firearms at persons (10-GS-42-2089), kidnapping and possession of firearm during commission of a violent crime (10-GS-42-5791, counts one and two), and resisting arrest with a deadly weapon (10-GS-42-2091). The Applicant was represented by Andrea Price, Esquire.

The charges of resisting arrest with a deadly weapon, kidnapping and possession of a firearm during the commission of a violent crime (10-GS-42-5791, counts one and two) were *nolle prossed* as a result of the defendant pleading guilty as indicted to the other charges on January 31, 2011. On the same day, the Honorable J. Derham Cole sentenced the Applicant, pursuant to a negotiated sentence, to confinement for a period of twenty (20) years for armed robbery, ten (10) years each for both counts of ABHAN, and five (5) years each for pointing and/or presenting firearms at a person and possession of a weapon during commission of a violent crime. All sentences to run concurrent.

A timely Notice of Appeal was filed on behalf of the Applicant. However, pursuant to Rule 203 (d)(1)(B)(iv), SCACR, the South Carolina Court of Appeals dismissed the appeal by written Order filed April 18, 2011. The Remittitur was issued May 18, 2011.

ALLEGATIONS

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

1. Ineffective assistance of counsel; in that,
 - a. Counsel failed to investigate the case,
 - b. Counsel failed to challenge the initial traffic stop,
 - c. Counsel failed to challenge the gun listed on the warrant,
 - d. Counsel "did nothing to defend me," and
 - e. Counsel said "the courtroom was full of sheriffs from the Sheriff Department and they [were] out for blood . . . but when we went in the courtroom less than 3 minutes later there [were] only 4 policemen in

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- the courtroom. She lied to put fear in my heart and it work[ed]."
2. Insufficient evidence, in that;
 - a. "This was not Armed Robbery,"
 - b. "The sheriff lied about why he stop us / racism descration."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.16, SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this

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prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. 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).

Applicant testified that he first met with Counsel the week of March 2010, after being arrested on the charges in February 2010. Applicant testified that he asked Counsel to investigate the initial traffic stop and warrant listing the gun, and to obtain the video of the traffic stop. However, Applicant testified that he was unaware of any investigation that Counsel did on Applicant's behalf. Applicant testified that he spoke with Counsel approximately three times and each time, Counsel encouraged Applicant to accept a plea. Applicant testified that he wrote Counsel seventeen times, but only received three responses. Applicant testified that he is not aware of any investigation performed on his behalf by Counsel. Applicant also testified that although he did receive a copy of the discovery materials in this case, he did not have a chance to review or discuss those materials with Counsel. Counsel never obtained a copy of the video of the traffic stop and only showed Applicant a black and white photo. Applicant introduced a packet of photos as Applicant's Exhibit #1, which were obtained by PCR Counsel from Applicant's counsel for his civil suit¹.

Applicant testified that he originally turned down a plea offer for twenty years, but was advised by Counsel that if he did not take the plea, he could receive a life sentence for

kidnapping. Applicant testified that he decided to plead because he did not want to face life. Applicant testified that Counsel and he discussed the fact that Applicant would likely serve sixteen of the twenty years. However, Applicant then testified that he only learned that he was serving an 85% sentence that was not parole eligible when his level of custody changed in the Department of Corrections. Although the record reflects that he informed the court that Counsel had reviewed with him the fact that the charge was not parole eligible and considered most serious, Applicant said Counsel failed to review those issues with him prior to his plea. (Tr. p. 20). Further, Applicant testified that his plea was not freely and voluntarily given, even though he informed the plea court that it was. (Tr. p. 22). Applicant testified that he would have proceeded to trial on the charges if he knew that kidnapping was a maximum of thirty years instead of life.

Counsel testified that she first met Applicant in March 2010 at his bond hearing and then her notes reflect that she met with him twice in October 2010, twice in January 2011, and the day of court. Counsel testified that she received a plea offer October 26, 2010, which she conveyed to the Applicant at the same time she reviewed the indictments and discovery materials with him in the Detention Center. Counsel testified that she did research current case law regarding illegal traffic stops and searches, as well as the statute regarding license tag covers in preparation for the case. Counsel testified that she never informed Applicant that he could receive a sentence of life for kidnapping, but she did inform him that if his charges were to run consecutive he would essentially be facing a life sentence. Counsel also testified that her normal practice is to advise clients that the parole board has discretion regarding early release and the client should be prepared to serve the entire sentence.

¹ The traffic stop resulted in Applicant taking the officer's gun and assaulting both officers who were present at the scene. Upon information and belief, the Applicant has filed a civil suit against Spartanburg County because of

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Counsel testified that she did not recall ever discussing a possible trial strategy with the Applicant, but Counsel testified that she did approach the Solicitor on the day of the plea and ask for a final offer, at which point the twenty year negotiated sentence was offered. Counsel testified that the offer included dismissal of the charges of kidnapping, resisting arrest with a deadly weapon and possession of a weapon during commission of a violent crime. This Court notes that the record reflects that these three charges were dismissed in accordance with the plea. (Tr. p. 19).

This Court finds that the Applicant has failed to meet his burden of proof as to all allegations of ineffective assistance of counsel. The Applicant alleged that Counsel failed to fully investigate the case and failed to challenge the traffic stop and warrant. The Applicant failed to produce any evidence or testimony to demonstrate what Counsel could have discovered had there been additional investigation or pre-trial motions filed. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 86, 708 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation at trial, an Applicant challenging his conviction must show specific prejudice resulting from

injuries he received in the altercation.

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counsel's alleged lack of time to prepare. United States v. Cronig, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

The Applicant also alleged that he received incorrect advice from Counsel regarding his possible exposure, based predominantly on claims that Counsel advised that kidnapping carried a life sentence and that Applicant would only serve sixteen years of the twenty year sentence. At the evidentiary hearing, there was conflicting testimony on whether the Applicant was properly advised as to the sentence that kidnapping would carry. Based on this Court's observation of the witnesses and weighing the parties' interests in the matter, this Court finds Counsel's testimony to be more credible.

Applicant also alleged that he was misadvised as to whether he would serve 80% or 85% of his sentence. The plea court informed the Applicant that parole eligibility is determined by state law and the parole board makes the decision if there is to be an early release. (Tr. p. 14-5; p. 17-8). However, as to the issue of 80% versus 85% for parole eligibility, after reviewing Griffin v. Martin and Hunter v. State in addition to other case law, this Court finds that this is a collateral matter and would not constitute an error such that a PCR should be granted. Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983) (affirming the denial of post-conviction relief because appellant failed to prove his attorney's erroneous advice concerning parole eligibility induced guilty plea); Hunter v. State, 316 S.C. 105, 109, 447 S.E.2d 203, 205 (1994) abrogated by Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998).

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. This Court finds that Applicant's testimony that he would not have pled guilty, but for Counsel's advice regarding his sentencing exposure, is not credible. The Applicant faced serious charges and substantial time resulting from an altercation with police in which Applicant took an

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officer's gun. This Court finds that Counsel properly advised Applicant to take the plea offer of a negotiated twenty years with the dismissal of the kidnapping charge, especially in light of the fact that the victims were police officers and the victims were present at the plea.

This Court finds that the Applicant's allegation that he was denied effective assistance of trial counsel is without merit. When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the Applicant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. This Court finds that the Applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Id. The record is clear that the Applicant was advised of his constitutional rights, the charges and negotiated sentence offered, as well as some of the collateral consequences of his plea by the plea court. The Applicant chose to voluntarily proceed with the plea.

Because the Applicant has failed to meet the first prong of establishing ineffective assistance of counsel, these claims are denied and dismissed.

Insufficient Evidence

This Court finds that any claims related to the sufficiency of the evidence is dismissed as improper for post-conviction relief. S.C. Code Ann. § 17-27-20(a) states:

(a) Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

(2) That the court was without jurisdiction to impose sentence;

(3) That the sentence exceeds the maximum authorized by law;

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

(emphasis added). It is clear under the statute that post-conviction relief is not the proper avenue to attack the sufficiency of evidence.

Furthermore, a guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. See Rivers v. Strickland, 264 S.C. 121, 124, 213

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

S.E.2d 97, 98 (1975) (a plea of guilty constitutes a waiver of non-jurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). Therefore the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. "Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." State v. Allen, 261 S.C. 448, 200 S.E.2d 684, 686 (1973). This is because the guilty plea "admits all matter of fact averments of the accusation." Id. The defendant admits all circumstances described in the indictment, leaving only sufficiency of the indictment for review and waiving all other defenses. State v. Thomason, 341 S.C. 524, 534 S.E.2d 708, 709 (2000). As a result, PCR is not a proper avenue to challenge the sufficiency of evidence. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); S.C. Code Ann. § 17-27-20(a)(6). The record reflects that the Applicant agreed with the Solicitor's recitation of the facts and reaffirmed his desire to give up the right to contest the legality of the search and seizure. (Tr. p. 34).

Accordingly, this Court summarily dismisses this claim as improper for post-conviction relief.

CONCLUSION

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

This Court cautions Applicant that he must file and serve a notice of appeal within the (30) days from the receipt by counsel of written notice of entry of judgment to secure the

Page 10

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M. HOPKINS BLACKLEY

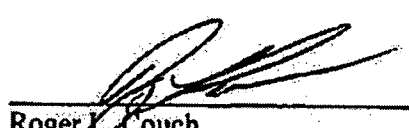
appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1st day of October, 2014.

Spartanburg SC


Roger L. Couch
Presiding Judge

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CLERK OF COURT
SPARTANBURG COUNTY
2014 OCT -1 PM 3:46
M. HOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Department

T. K. [Signature]

ARREST WARRANT NUMBER

M421785

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 5/25/10

VERDICT

1. SENTENCE MADE ☒2. REPORT ENDED ☒3. CARD FILED ☒4. INDEXED ☒5. CHECKED WARRANTS ☒6. Foreperson of Petit Jury
Date: ☒7. ASSESSMENT AND
FINE CARD MADE ☒8. OFFENSE VIOLATIONS COPY ☒

Computer

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DOCKET NO. -

10-GS-42-2089
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 24 2010

TERM

THE STATE

vs.

Terrance McCall

Indictment for

WEAPONS/POINTING AND/OR PRESENTING
FIREARMS AT PERSONS

SC Code: 16-23-410

CDR Code: 122

Class FEL-F

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 APR -1 PM 3:40

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 7 - 2010

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

WEAPONS/POINTING AND/OR PRESENTING FIREARMS AT PERSON

That the defendant, Terrance McCall, did in Spartanburg County on or about February 19, 2010, unlawfully and not in self-defense, point or present a pistol at Chris Wilbanks, in violation of §16-23-410, 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.


DEPUTY SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

WARRANT NUMBER

M421784

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

A. JURY VERDICT

B. GUILTY

C. DISMISSED WARRANT

D. CHECKED SIGNATURE

E. ASSESSMENT AND

F. THE CARD INDEX

Foreperson of Petit Jury

Date: 3/23/10

Computer

DOCKET NO.

10-GS-42-2090

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 23 2010

TERM

THE STATE

vs.

Terrance McCall

Indictment for
ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE

SC Code: 17-25-30

CDR Code: 0013

Class MIS/UNC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF SPARTANBURG)

MAR 25 2010

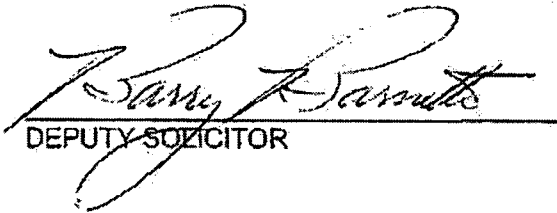
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY OF HIGH AND AGGRAVATED NATURE

That the Defendant, Terrance McCall, did in Spartanburg County on or about February 19, 2010, commit an assault and battery upon the victim, Mark Giambias, constituting an unlawful act of violent injury to the victim, Mark Giambias accompanied by circumstances of aggravation either to-wit: the use of deadly weapon and/or the intent to commit a felony; and/or the infliction of serious bodily injury and/or use of a deadly weapon; and/or great disparity in the physical conditions of the parties and/or beating the victim, by striking the victim on the head with a pair of handcuffs, in violation of §17-25-30, *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.


DEPUTY SOICITOR

WITNESSES

SCSO

1. *T. McCall* ☒
2. REPORT ENDED *Callahan* ☒
3. CARD FILLED ☒
4. *Computer* ☒
5. *Computer* ☒
6. *Computer* ☒
7. ARREST WARRANT NUMBER *M421782* ☒
8. TRAFFIC VIOLATIONS COPY ☒

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *3/25/10*

VERDICT

Foreperson of Petit Jury
Date:

DOC 102 **10-GS-42-2091**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 24 2010

TERM

THE STATE

vs.

Terrance McCall

NP - dismissed per ~~agreement~~ the defendant pleading to other charges in front of Judge Bertram Cole on 1-31-2011. The Defendant pled to ARMED ROBBERY - COUNT ONE (IND. No. 2010-GS-42-) and received a twenty (20) years sentence; POSSESSION OF A WEAPON DURING A VIOLENT CRIME - COUNT TWO (IND. No. 2010-GS-42-) received a five (5) year sentence concurrent. ABHIAN and ASSAULT AND BATTERY 1ST DEGREE charge on IND. Nos. (2010-GS-42-) and received ten (10) year concurrent sentences and Posing and Presenting a weapon (2010-GS-42-) and received a five (5) year concurrent sentence from Judge Cole on 1-31-2011 - Terry Barnett

SC Code: 16-03-0625

CDR Code: 2352

Class FEL/E

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SPARTANBURG COUNTY
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SPARTANBURG COUNTY
2011 FEB -1 AM 8:48
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

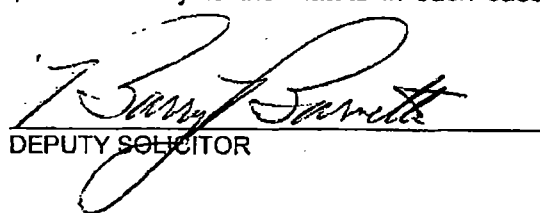
INDICTMENT

At a Court of General Sessions, convened on MAR 25 2010 the
Grand Jurors of Spartanburg County present upon their oath:

RESISTING ARREST--DEADLY WEAPON

That Terrance McCall did in Spartanburg County on or about February 19, 2010, willfully and knowingly resist the efforts of a law enforcement officer of this State, to make a lawful arrest with the use and threat of use of a deadly weapon, to-wit: a pistol, against the officer, when the said defendant was in possession and/or claimed to be in possession of the said deadly weapon., in violation of §16-3-625, 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.


DEPUTY SOLICITOR

WITNESSES

SCSO

WARRANT NUMBER

M421781

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3/25/10

REPORTED BY

VERIFIED

Computer

APPROVED BY

FILED

CHARGED WARRANTS

OFFICER SIGNATURE

Foreperson of Petit Jury

CARD MADE

Date:

Computer

DOCKET NO.

10-GS-42-2092

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 29 2010

TERM

THE STATE

vs.

Terrance McCall

Indictment for
 ASSAULT AND BATTERY OF A
 HIGH AND AGGRAVATED NATURE

SC Code: 17-25-30

CDR Code: 0013

Class MIS/UNC

FILED
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 SPARTANBURG COUNTY

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

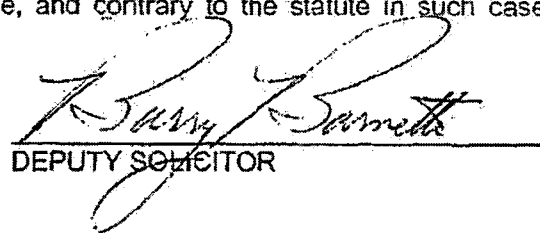
At a Court of General Sessions, convened on MAR 25 2010 the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY OF HIGH AND AGGRAVATED NATURE

That the Defendant, Terrance McCall, did in Spartanburg County on or about February 19, 2010, commit an assault and battery upon the victim, Jeff Strickland, constituting an unlawful act of violent injury to the victim, Jeff Strickland accompanied by circumstances of aggravation either to-wit: the use of deadly weapon and/or the intent to commit a felony; and/or the infliction of serious bodily injury and/or use of a deadly weapon; and/or great disparity in the physical conditions of the parties and/or beating the victim, by striking the victim in the throat with a handgun, in violation of §17-25-30, *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.


DEPUTY SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

T. & T. T. T.

ARREST WARRANT NUMBER

M421780 (Count One)

M421786 (Count Two)

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3/25/10

SENTENCE MADE VERDICT

REASON FOR

Computer

DAD FILED

COURT

CHECKED SIGNATURE

Foreperson of Petit Jury

ASSESSMENT AND

FINE CARD MADE

Computer

TRAFFIC VIOLATIONS COPY

DOCKET NO.

10-GS-42-2093
(A)

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 29 2010

TERM

THE STATE

vs.

Terrance McCall

Indictment for

ARMED ROBBERY AND
POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490

CDR CODE: 139; 0549

CLASS: FEL/A; FEL/F

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CLERK OF COURT
SPARTANBURG COUNTY
2010 APR -1 PM 3:40

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAR 25 2010, the
Grand Jurors of Spartanburg County present upon their oath:

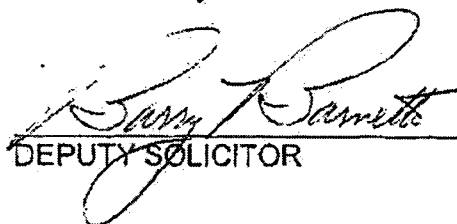
COUNT ONE-ARMED ROBBERY

That the Defendant, Terrance McCall, did in Spartanburg County on or about February 19, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Jeff Strickland by means of force or intimidation goods or monies of Jeff Strickland, described as follows: a 40 caliber handgun and taser, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Terrance McCall did in Spartanburg County on or about February 19, 2010, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §16-23-490. 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.


DEPUTY SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

1. *[Signature]* ☒
2. REPORT MADE ☒
3. CARD FILLED ☒
4. *[Signature]* ☒
5. *[Signature]* ☒
6. *[Signature]* ☒
7. *[Signature]* ☒
8. *[Signature]* ☒
- ARREST WARRANT NUMBER ☒
- TRAFFIC VIOLATIONS COPY ☒

Count One & Two-Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 1-31-2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

10-GS-42-5791

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

VS.

NP-COUNT ONE (KIDNAPPING) and COUNT TWO (POSS. OF FIREARM DURING COMMISSION OF A VIOLENT CRIME) - the Defendant pled guilty to five (5) charges on 1-31-2011 in front of Judge Berhan Cole. The Defendant pled to ARMED ROBBERY - COUNT ONE (IND. No.: 2010-GS-42-Terrance McCall and received a twenty (20) year sentence),

POSSESSION OF A WEAPON DURING A VIOLENT CRIME - COUNT TWO (IND. No.: 2010-GS-42-) received a

five (5) year sentence concurrent. ABHIAN AND ASSAULT AND BATTERY 1ST DEGREE charges on IND. Nos.:

Indictment for

COUNT ONE-KIDNAPPING

COUNT TWO- POSSESSION OF FIREARM DURING COMMISSION OF A VIOLENT CRIME

SC Code: 16-03-910, 16-23-490

CDR Code: 0095, 549

Class FEL-A, FEL/F

(2010-GS-42-) and received ten (10) year concurrent sentences and Pleading and Presenting a weapon (2010-GS-42-) and received a five (5) year concurrent sentence from Judge P. H. on 1-31-2011 - Case # 11-1.

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SPARTANBURG COUNTY
2011 FEB 1 AM 8:48
M. HOPE BLACKLEY
FILED
CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

OCT 22 2010

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-KIDNAPPING

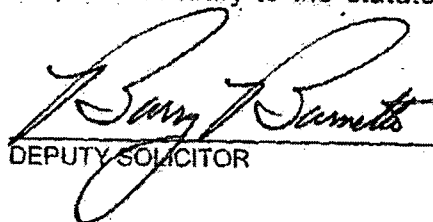
The Defendant, Terrance McCall, did in Spartanburg County, on or about February 19, 2010, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Jeff Strickland, without authority of law, all in violation of Section 16-3-910, Code of Laws of South Carolina (1976, as amended).

COUNT TWO-POSSESSION OF FIREARM DURING

COMMISSION OF A VIOLENT CRIME

That the defendant, Terrance McCall, did in Spartanburg County on or about February 19, 2010, possess a pistol, during the commission of a violent crime as defined in Code §16-1-60, to wit: KIDNAPPING, in violation of Code §16-23-490. 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.


DEPUTY SOLICITOR