

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable William H. Seals, Circuit Court Judge

RECEIVED

MAY 18 2018

S.C. SUPREME COURT

ANTAVIUS GADSDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002294

APPENDIX

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STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON)	
State of South Carolina)	
)	
v.)	Case No. 14-GS-10-1212
)	
Antavius Gadsden,)	
)	
Defendant)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 5, 2014, before The Honorable R. Markley Dennis in Courtroom 4D of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Lindsey McClair, Assistant Solicitor
 9TH CIRCUIT SOLICITOR'S OFFICE
 100 Broad Street, 4th Floor
 Charleston, South Carolina 29401
 Appearing for State

Robert Howell, Esq.
 Charleston, South Carolina 29402
 Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

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Hearing of May 5, 2014

Before The Honorable R. Markley Dennis

1 THE COURT: If you'll stand with
2 your lawyer. Has he explained these charges
3 to you, sir?

4 DEFENDANT: Yes, sir.

5 THE COURT: Has he explained to
6 you the possible punishment in each case?

7 DEFENDANT: Yes, sir.

8 THE COURT: Indictment 2014-1212
9 charges you with the offense of strong arm
10 robbery; you understand that?

11 DEFENDANT: Yes, sir.

12 THE COURT: Your lawyer's
13 explained to you that I can sentence you up
14 to fifteen years in jail for that?

15 DEFENDANT: Yes, sir.

16 THE COURT: Understanding that,
17 how do you plead?

18 DEFENDANT: Guilty, sir.

19 THE COURT: Indictment 2014-1213
20 charges you with assault and battery in the
21 first degree; you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: You're pleading to the
24 lesser included offense of assault and
25 battery second; is that correct?

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DEFENDANT: Yes, sir.

THE COURT: And your lawyer has explained the difference between the two?

DEFENDANT: Yes, sir.

THE COURT: You understand that for that I could sentence you up to three years in jail?

DEFENDANT: Yes, sir.

THE COURT: How do you plead?

DEFENDANT: Guilty, sir.

THE COURT: Are you satisfied with your lawyer?

DEFENDANT: Yes, sir.

THE COURT: Solicitor, other than permitting him to plead to the lesser included offense on indictment 2014-1213, any other agreement?

SOLICITOR MCCLAIR: No, Your Honor.

THE COURT: Or recommendation?

SOLICITOR MCCLAIR: No, the State has no recommendation.

THE COURT: Mr. Howell, is that your understanding?

MR. HOWELL: Correct, Your Honor.

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1 THE COURT: Have you had the
2 opportunity to discuss this matter fully with
3 your client?

4 MR. HOWELL: Yes, sir.

5 THE COURT: You have shared the
6 results of your investigations with him?

7 MR. HOWELL: Correct, Your Honor.

8 THE COURT: And after discussing
9 it with you he indicated his desire to enter
10 the guilty pleas?

11 MR. HOWELL: Correct, Your Honor.

12 THE COURT: Did you advise him of
13 the rights that he would be relinquishing as
14 well as the consequences of his plea?

15 MR. HOWELL: Yes, sir, the right to
16 go to trial, the right to remain silent.

17 THE COURT: All right, sir. Do
18 you concur with this decision to enter the
19 guilty plea based on your investigation?

20 MR. HOWELL: Yes, I do, Your Honor.

21 THE COURT: Mr. Gadsden, is that
22 correct, sir?

23 DEFENDANT: Yes, sir.

24 THE COURT: Then you understand
25 and you realize if I accept your plea, you

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1 will not have a jury trial, you'll not
2 confront the witnesses against, you're giving
3 up your right to confront the witnesses at a
4 trial?

5 DEFENDANT: Yes, sir.

6 THE COURT: And you're giving up
7 the right to remain silent.

8 DEFENDANT: Yes, sir.

9 THE COURT: No threats or promises
10 have been made to you to get you to plead
11 guilty?

12 DEFENDANT: No, sir.

13 THE COURT: This is your choice?

14 DEFENDANT: Yes, sir.

15 THE COURT: And because you're
16 guilty?

17 DEFENDANT: Yes, sir.

18 THE COURT: Okay. Tell me the
19 facts, please?

20 SOLICITOR MCCLAIR: Thank you,
21 Your Honor. And may it please the Court. On
22 November 16th of 2013 the victim, Ms. Sandra
23 Williams, who is present in the courtroom in
24 the first row on the right-hand side, was at
25 a storage unit facility located at [REDACTED]

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1 [REDACTED] [REDACTED] in Charleston County.

2 While she was at that location, she
3 was approached by a black male suspect who
4 came on foot from a path behind the property
5 from Rochelle Drive; in Charleston County
6 also.

7 The suspect then struck her in the
8 face, told her to shut up, and threatened to
9 kill her. She fell to the ground and the
10 suspected continued to strike Ms. Williams in
11 the face and began choking her with both
12 hands to the point where she almost lost
13 consciousness. The suspect then went through
14 Ms. Williams' pockets and demanded her purse.

15 He fled back towards the cut behind
16 the property, going towards Rochelle Drive,
17 but with Ms. Williams' iPhone valued at four
18 hundred dollars (\$400), a hundred and twenty
19 dollars in cash (\$120), miscellaneous credit
20 cards ---

21 DEFENDANT: I'm sorry. How much?

22 THE COURT: A hundred and twenty
23 dollars (\$120) in cash

24 SOLICITOR MCCLAIR: Miscellaneous
25 credit cards and papers, as well as Ms.

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1 Williams' car keys. Ms. Williams was able to
 2 describe the suspect to law enforcement
 3 officers on the scene and even included a
 4 description and an illustration of a tattoo
 5 the suspect had on his forearm.

6 She stated that she thought she'd
 7 seen the suspect earlier that day in the area
 8 and he had approached on a bike.

9 With the help of surveillance
 10 footage from the scene of the incident,
 11 officers were able to locate a bicycle that
 12 met the description that the suspect had been
 13 seen on previously in front of [REDACTED] [REDACTED]
 14 [REDACTED] [REDACTED], and at that location located
 15 the Defendant, who also matches Ms. Williams'
 16 description of the suspect, right down to the
 17 tattoo on his arm.

18 During a subsequent interview with
 19 the Defendant, he identified himself as the
 20 person on the surveillance footage from the
 21 incident location. And Ms. Williams was also
 22 able to positively identify him from a six-
 23 pack photo lineup.

24 The Defendant's prior record
 25 includes convictions in:

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1 1997 for criminal sexual conduct,
2 third degree;

3 1998 two counts of receiving stolen
4 goods, false information and resisting
5 arrest;

6 2002, failure to appear, a parole
7 violation and malicious injury to property;

8 2005, failure to register for the
9 sex offender registry and a hit and run;

10 2009, driving under suspension as
11 well as false information.

12 And, again, Your Honor, Ms. Williams is
13 present and would like to address the Court
14 at the appropriate time.

15 THE COURT: All right. Are those
16 facts correct, sir?

17 DEFENDANT: Yes, sir.

18 THE COURT: Are you under the
19 influence of any alcohol or any medication
20 here today, sir?

21 DEFENDANT: No, sir.

22 THE COURT: And your decision to
23 enter this plea is one that you made freely
24 and voluntarily?

25 DEFENDANT: Yes, sir.

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1 THE COURT: I find there's a
2 sufficient factual basis to support the plea.
3 I find Mr. Gadsden has had the benefit of
4 very competent counsel with whom he's
5 indicated he's totally satisfied. I,
6 therefore, accept the plea.

7 Before hearing from you, Mr. Howell,
8 I'll be happy to hear from the victim at this
9 point.

10 Yes, ma'am?

11 MS. WILLIAMS: Thank you, Your
12 Honor. I appreciate the opportunity to
13 address the Court. And I also want to say
14 that it doesn't -- because he's in here
15 because of choices he made. That was my
16 office. I was closing it up and cleaning it
17 out because I work from home now.

18 He rode his bike by that morning
19 about 8:00 A.M., and back and forth, sized up
20 the situation. He knew I was there alone.
21 And then about 11:00 later that morning, I
22 was coming back from the dumpster, coming
23 back in the door, and I heard footsteps
24 behind me. I turned and looked. He had
25 changed his clothes. He had put on gloves

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1 and a hat and tied a towel around his face.

2 He attacked me.

3 He should have just said 'give me
4 your money' if he wanted my money. I would
5 have given it to him. But he attacked me.

6 A battle ensued that lasted for some
7 four minutes and had me down on the ground
8 and sat on my back, strangling me, and I
9 thought that was it for me. I really thought
10 I was seeing the last sight of my life from
11 the ground to the pavement, the driveway of
12 my office.

13 And I just, you know, -- taking all
14 that into consideration, like I said, it was
15 a very deliberate, conscious choice to behave
16 like he did. And sentencing should take into
17 consideration punishment. And then, also,
18 you know, keeping everybody safe.

19 So anyway, that's all I have to say.
20 Thank you, Your Honor.

21 THE COURT: Thank you for being
22 here. I'm glad that you're here.

23 MS. WILLIAMS: Thank you.

24 THE COURT: I certainly am sorry
25 for the circumstances, but glad you're here.

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1 MS. WILLIAMS: Me too.

2 THE COURT: I'm sure of that.

3 All right. Mr. Howell, I'll be glad
4 to hear from you now.

5 MR. HOWELL: Yes, sir. This is a
6 letter from Able Contractors, Incorporated
7 that's showing that he did work for the five
8 months before he was incarcerated -- six
9 months. He's been incarcerated for five
10 months.

11 THE COURT: All right. Thank you,
12 sir.

13 MR. HOWELL: Yes, sir. Your Honor,
14 my wife's got a fancy car that I paid a lot
15 of money for. And I don't love anybody
16 better than my wife, anybody. And somebody
17 tried to steal it. They scared her.

18 And I immediately went out and
19 bought a pistol, which means we can all
20 overdo. I'm trigger-happy. I've got no
21 business with a pistol. I went and looked
22 for the people that tried to steal her car
23 and scared her, just like this lady. I
24 wasted three hundred eighty-seven dollars
25 (\$387) on a pistol.

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1 Now, the reason I tell you that
2 story is I totally understand this lady's
3 upset. But there's always two sides.

4 Now, his side is -- he needs to be
5 punished. The question is, how much
6 punishment does he need? He can't say that
7 'I slipped up and assaulted this woman.' He
8 could say 'I have two children', one of which
9 is over eighteen, one of which stayed stays
10 with him, Shaquinta. And this job is open
11 for him.

12 And, you know, I used to make long
13 speeches, but I've been doing this thirty-
14 eight years and the crime and the punishment
15 should fit each other. He's looking at zero
16 to three on the assault. The strong arm
17 robbery, I know Your Honor takes that
18 seriously. I take it seriously, but it sort
19 of matches with the other. He assaulted her
20 and he took some money and he shouldn't have
21 done it.

22 Now, I have had clients tell me, "I
23 don't do drugs. I sell drugs." So I've been
24 the gamut. But he's been in five months.
25 He's got a job. If he was put on a short

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1 sentence and/or probation, he would go back
2 to that job.

3 And I've got something -- I want
4 Your Honor to help me with this. The man
5 who said to "do justice, love mercy and walk
6 humbly with God." Now, was that Oliver
7 Wendell Holmes or is that ---

8 THE COURT: That's Micah.

9 MR. HOWELL: Huh?

10 THE COURT: That was Micah.

11 MR. HOWELL: Micah.

12 THE COURT: The prophet.

13 MR. HOWELL: Okay. Well, see, you
14 beat me. Because I told him it was Learned
15 Hand. My daddy had ---

16 THE COURT: It was Micah.

17 MR. HOWELL: And he had two learned
18 handbooks. And one of them four more pages
19 than the other. And when he drew that
20 handbook, he'd -- probably again he would go
21 crazy because he give a hundred dollars to
22 the first secretary who acquired his learned
23 handbook.

24 Now, I know that sounds rambling,
25 Your Honor, but what this man needs is to get

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1 his attention. We've got his attention.
2 He's been in jail five months. And we need
3 something that lets him go back to work.
4 Now, I know probation is on one hand and jail
5 is on the other hand, but if Your Honor would
6 give him the three years, he'd do another six
7 months to eight months. If Your Honor was to
8 give him probation, you'd have to give him --
9 you could define probation as you wanted to.
10 But he does have a job.

11 You know, you get to a point with
12 these things where we can't say we're sorry
13 and that's enough. But I've been in jail.
14 I've been to jail overnight. I was arrested
15 -- it was a black and white man problem.
16 Because I went to, you know, North Myrtle
17 Beach with a black man and he worked with me.
18 And he had a gun under his seat. And they
19 arrested us as the black and white bank
20 robbers. So I know what it is to be in jail.
21 Now, y'all might think that's silly, y'all
22 might think that's comical, but I know you
23 only stay in jail in Myrtle Beach for a
24 couple of days, they let you out. I looked
25 on the wall and it said -- and I didn't want

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1 a phone call. And it said, I have been in
2 jail fifteen years, two months and three
3 days. I said, "I want my phone call." And
4 my daddy came and got me and I walked out
5 because of who I was.

6 But this man needs a punishment that
7 fits the crime. And that's all I want,
8 Judge. You know, I'm not asking you do
9 anything that is impossible.

10 I have -- his mother here. You want
11 to stand. I've got his godmother and his
12 aunt.

13 FEMALE: His grandmother.

14 MR. HOWELL: And they all-- they
15 can talk, but they all just want him home.
16 They just want him home. That's all they
17 want. If he was picked up yesterday and you
18 would have seen him the next day, five months
19 might be enough. It might not be enough.
20 But fifteen years is too much. And that's
21 where we are. That's where we are.

22 THE COURT: All right. Mr.
23 Gadsden, anything you wish to say?

24 DEFENDANT: Yes, sir. I apologize
25 to the victim and I apologize to my family.

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1 THE COURT: All right, sir. Let
2 the record reflect that I've reviewed a
3 letter from Stephanie Fuller dated March 18th,
4 2014 concerning Mr. Gadsden's employment.

5 Would you tell me his record again,
6 please, Solicitor?

7 SOLICITOR MCCLAIR: Yes, Your
8 Honor:

9 1997, criminal sexual conduct third
10 degree;

11 1998, two counts of receiving stolen
12 goods, false information, and resisting
13 arrest;

14 2002, failure to appear, parole
15 violation, and malicious injury to property;

16 2005, failure to register as a sex
17 offender and a hit and run; and,

18 2009 driving under suspension and
19 false information.

20 THE COURT: Okay. Mr. Gadsden, I
21 agree, the punishment needs to be -- and it's
22 one of the reasons I, for one, wish we had
23 eighty-five percent sentencing in everything.
24 Then we'd know what we could compute. The
25 problem is, is -- and there are lots of

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1 problems. One of the problems that I have as
2 a judge imposing a sentence -- we hear
3 sometimes people say -- and I don't
4 understand where they get their knowledge.
5 When somebody's sentenced to twelve years and
6 then they're released within three years, and
7 they blame the judge. And I didn't put this
8 label, the Legislature did. I don't fault
9 them, but somebody needs to look at some
10 things. How in the world strong arm robbery
11 and assault and battery in the second degree
12 are considered non-violent offenses is a
13 baffling thing to me. I don't understand it
14 but I didn't do it. I have to deal with. And
15 therein lies the problem. It goes back to
16 when I first started before we had eighty-
17 five percent -- you know, when I first
18 started in '94, the maximum sentence that
19 wasn't a life sentence was ten years was as
20 long as they could keep you in jail. It
21 doesn't matter what sentence you imposed.
22 But when I practiced law, ten years life
23 meant ten years, and then you were eligible
24 for parole.

25 This sentence, so in order to give

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1 you the amount of punishment that I think you
2 deserve, this is what I'm going to impose.
3 The sentence of the Court is -- you're going
4 to end up serving about a fourth of it, maybe
5 a fourth or a little more. The sentence of
6 the Court on 2014-1212 is ten (10) years. I
7 give you credit for five (5) months jail
8 time.

9 This is the part where -- that
10 punishes him to some extent for the crime for
11 what he did. And I hear you, and I hear --
12 and Mr. Gadsden I hope hears you too. I
13 don't know what prompted you to do that. I
14 understand you're sorry and you say you are,
15 but "sorry" is an easy word. If you've
16 changed your attitude towards people.

17 DEFENDANT: Yes, sir.

18 THE COURT: And you've already
19 demonstrated in history that you kind of
20 decide what you want to do. And that's what
21 the criminal sexual conduct case was all
22 about, notwithstanding somebody else's
23 decision. But you've been -- and there's no
24 way in the world to justify what you did to
25 this woman. So in order to protect society,

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1 I'm going to impose a sentence on 2014-1213
2 and I'm going to sentence you to three (3)
3 years on that. But that sentence is
4 suspended in its entirety. And I'm going to
5 place you on probation for five (5) years.

6 DEFENDANT: yes, sir.

7 THE COURT: Now, you'll earn good
8 time credit in probation and I don't fault
9 probation for that, but that means that after
10 you finish serving, we've got you for an
11 additional five years, where you're going to
12 have some supervision. That's additional
13 punishment in addition to the ten.

14 DEFENDANT: Yes, sir.

15 THE COURT: And that'll also give
16 them a chance to do anything that you may
17 need, such as random drug and alcohol
18 testing. If you test positive, then
19 substance abuse counseling.

20 DEFENDANT: Yes, sir.

21 THE COURT: Also, the probation is
22 suspended until he satisfies his active
23 sentence on 2014-1212. Good luck, to you,
24 sir.

25 MR. HOWELL: Okay. Your Honor, I'm

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1 sorry. His probation is suspended until he
2 serves his time?

3 THE COURT: Yeah. He doesn't
4 start his probation until he gets out on the
5 ten-year sentence. Thank you.

6 MR. HOWELL: Thank you, Your Honor.

7 SOLICITOR MCCLAIR: Thank you,
8 Your Honor.

9 THE COURT: Good luck, sir.

10 (HEARING CONCLUDED)

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FORM 5

STATE OF SOUTH CAROLINA)
County of Charleston)

2015-CP-10-419
IN THE COURT OF COMMON PLEAS

ANTHONY GADSON)
Full name and prison number (if any) of Applicant)

v.

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2015 JUN 21 PM 12:24
JULIE HENSTRONG
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Allendale Correctional Institution
2. Name and location of Court which imposed sentence Charleston County
100 Broad St. Charleston, S.C. 29401
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013A1010206326, 2013A1010206327

(b) _____

(c) _____

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

(a) May 5, 2014

(b) TEN NON-VIOLENT

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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

(a) My Defense Lawyer never informed me of my rights
Paintings of Africa

- (b) _____
- (c) _____

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

- (a) IN THE ASSISTANCE OF COUNSEL
- (b) INVOLUNTARY
- (c) _____

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

- (a) COUNSEL FAILED TO APPEAL COURT DECISION
- (b) COUNSEL FAILED TO ABIDE BY THE AGREEMENT
- (c) DISCUSSED WITH CLIENT

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

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

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

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

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

NO

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

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

- (a) Counsel never informed client of
- (b) right to appeal per file 12R.
- (c) _____

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

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

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. Robert G. Howe
715 St Andrews Blvd
Charleston S.C. 29407
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. At Plea and sentencing
 - ii. _____
 - iii. _____

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

CONVICTION OVERTURNED AND/OR NEW HEARING

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of CHARLESTON)

VERIFICATION

I, x Andarius Gadsden, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

x Andarius Gadsden

SWORN to and subscribed before me this 9th day of JANUARY, 2015.

Debbie L. McCarty (L.S.)
Notary Public

My Commission Expires: 7/10/24

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

I, Antavious Gadsden, 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.

x Antavious Gadsden
Applicant

SWORN or affirmed to and subscribed before me this

9th day of January, 2015.

Debbie L. McCarty
Notary Public

My Commission Expires: July 10, 2025

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
)
)
 Antavius Gadsden, #253537,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

2015-CP-10-0419

RETURN

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed January 21, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the October 2012 term of the Charleston County Grand Jury for Strong Arm Robbery (2014-GS-10-1212) and Assault and Battery First Degree (2014-GS-10-1213). Robert G. Howe, Esquire, represented the Applicant. On May 12, 2014, the Applicant pled guilty before the Honorable R. Markley Dennis to Strong Arm Robbery and Assault and Battery Second Degree, as a lesser included offense. Judge Dennis sentenced the Applicant to ten (10) years for Strong Arm Robbery and three (3) years for Assault and Battery Second Degree.¹ The Applicant did not appeal his conviction or sentence.

¹ The sentence for Assault and Battery Second Degree was suspended in its entirety with five (5) years' probation to begin upon completion of the ten year sentence.

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

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to appeal court decision"
2. "Involuntary Guilty Plea"
 - a. "Counsel failed to abide by plea agreement discussed with client"

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

III.

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

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

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

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

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

IV.

The Applicant further alleges his guilty plea was not voluntarily made. The Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 28, 2015.

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STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF CHARLESTON)	Case No. 2015-CP-10-0419
_____)	
ANTAVIUS GADSDEN,)	
)	
Applicant,)	
)	
vs.)	Transcript of Record
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	DATE: January 12, 2017
_____)	

B E F O R E:

THE HONORABLE WILLIAM SEALS

A P P E A R A N C E:

RODNEY DAVIS
Attorney for the Applicant

ALICIA OLIVE
Attorney for the Respondent

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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1 MR. DAVIS: Thank you very much, Your Honor. If you
2 are prepared for Mr. Gadsden, I've had a moment to speak with
3 him. We will be ready for that one.

4 THE COURT: I'm ready when you are.
5 Re-call the case.

6 MS. OLIVE: This is Antavius Gadsden,
7 2015-CP-10-419. Mr. Gadsden was indicted in March of 2014
8 for strong-arm robbery and assault and battery in the first
9 degree. He was represented by Robert Howe on these charges.
10 On May 12th, 2014, he pleaded guilty to strong-arm
11 robbery as indicted and to the lesser-included offense of
12 assault and battery second. That was before Judge Dennis.
13 Judge Dennis sentenced him to 10 years on the strong-arm
14 robbery and consecutive term of three years suspended to five
15 years of probation on the assault and battery second degree.
16 Mr. Gadsden did not appeal his conviction or sentence.

17 He filed an application for post-conviction relief
18 on January 21st, 2015, alleging ineffective assistance of
19 counsel and involuntary guilty plea. The basis of his
20 allegation for ineffective assistance of counsel was counsel
21 failed to appeal the court's decision. And the basis of the
22 involuntary guilty plea is that counsel failed to abide by
23 the plea agreement discussed with client.

24 Mr. Gadsden is present in the courtroom today and
25 represented by Rodney Davis. And I will turn it over to

1 Mr. Davis at this time.

2 THE COURT: All right. Mr. Davis.

3 MR. DAVIS: Thank you, Your Honor. A couple of
4 things, and forgive me if the State said it correctly and I
5 misunderstood. I just wanted to be clear. The Department of
6 Corrections is holding him on the ten-year sentence on
7 strong-arm robbery. That is the active sentence that's
8 holding him. And then there is a probationary sentence
9 running consecutive. Of course, won't be tolled until he's
10 released. We obviously listed both in the application. We
11 would ask for relief on both charges. But just to be clear,
12 the charge that is holding him at Department of Corrections
13 currently is ten-year sentence on the strong-arm robbery.

14 Finally, Judge, I saw you a few times this week
15 already. This is the first official hearing to start in
16 front of you. I always review with my clients certainly the
17 hopefully benefits of going forward on a PCR, also remind
18 them of the potential risks. I would ask respectfully if you
19 can put that on the record with Mr. Gadsden.

20 He originally was charged with strong-arm robbery
21 and assault and battery first. If we are successful, those
22 charges could come back.

23 THE COURT: Strong-arm would carry how much?

24 MR. DAVIS: 0 to 15. And I have 0 to 10 on the
25 assault and battery first. He'd be facing a possible

1 punishment of 25 years if we would be successful and the
2 charges came back.

3 THE COURT: Mr. Gadsden, I just want to go over with
4 you what you are doing today, just so you will have some idea
5 what we are doing today and what my role is. This is a
6 post-conviction relief hearing. The only thing that could
7 possibly happen, two things, one, I could deny your
8 post-conviction relief and just finish out your sentence, or
9 I can grant your post-conviction relief. And if I grant your
10 post-conviction relief, you simply start over.

11 In other words, I can't reduce your sentence. I
12 can't change your sentence. I have nothing to do with that
13 at all. You would simply go back to ground zero and start
14 over.

15 Now, with that being said, there's nothing that
16 would prevent the solicitor, if he or she wanted to, going
17 forward on both of them again. They could go forward. They
18 could go to trial. They could take you before a judge and
19 allow you to plead guilty. But it's possible that you could
20 get up to 25 years. In other words, you could end up worse
21 off than you are now. That's a possibility. And I just want
22 you to understand that.

23 THE WITNESS: Yes, sir.

24 THE COURT: Some people do not understand that. In
25 fact, I had a lady in Florence, and I can't remember the

1 specifics, but it was some sort of assault, murder,
2 involuntary, or something like that. And she had gotten --
3 she pled guilty and started an eight-year sentence and was
4 well into it when the PCR was up. And it was in front of me.
5 And post-conviction relief was granted. She started back at
6 ground zero, had a trial and was found guilty, and is serving
7 a 30-year sentence, which is a shame. But, anyway, as long
8 as you know what you are doing.

9 Do you got any questions for me or your lawyer?

10 THE WITNESS: No, sir.

11 THE COURT: You want to go forward?

12 THE WITNESS: Yes, sir.

13 MR. DAVIS: Judge, final thing, we approached the
14 bench about this. There was some issue of potentially trying
15 to hold the record open. It's my understanding we are both
16 deciding to go forward today.

17 MS. OLIVE: That is correct, Your Honor.

18 THE COURT: Sounds good.

19 MR. DAVIS: Thank you, Your Honor. We would call
20 Mr. Gadsden to the stand.

21 ANTAVIUS GADSDEN,

22 having been duly sworn, testifies as follows:

23 THE CLERK: Sir, for the record, if you will please
24 state your name, spelling your last name.

25 THE WITNESS: Antavius Gadsden, G-a-d-s-d-e-n.

1 DIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. Mr. Gadsden, just a little background about you,
4 sir. Can you tell the judge how old you are?

5 A. 38 years old.

6 Q. And did you graduate high school?

7 A. Yes, sir.

8 Q. And when was that?

9 A. 1997.

10 Q. And prior to being incarcerated, what kind of
11 employment did you have?

12 A. Say that again.

13 Q. Prior to your incarceration, what kind of employment
14 did you have?

15 A. I worked for a place called Claycor in Walterboro.

16 Q. What kind of work was that?

17 A. Construction.

18 Q. You're a father as well?

19 A. Yes, sir.

20 Q. Two daughters?

21 A. Yes, sir.

22 Q. Now, you do have some medical issues, but is there
23 anything about your medical issues that would cause you to
24 not understand what we are doing today?

25 A. No, sir.

1 Q. Any medication you are taking that would affect what
2 you are doing here today?

3 A. No, sir.

4 Q. Can you tell the judge -- do you remember the two
5 charges you were originally arrested on? What were they?

6 A. Assault and battery and strong-arm robbery.

7 Q. Now, after you were first arrested, was an attorney
8 appointed to you?

9 A. Yeah, Benjamin Lewis.

10 Q. And was Mr. Lewis with the public defender's office?

11 A. Yes.

12 Q. Now, are you -- first of all, was Mr. Lewis with you
13 when you entered your guilty plea on May 5th, 2014?

14 A. No, sir. My family got a paid lawyer called Robert
15 Howe.

16 Q. So are any of your complaints today about Mr. Lewis?

17 A. No, sir.

18 Q. All right. Can you tell the judge, first of all,
19 there was some point when you decided to no longer work with
20 Mr. Lewis and work with Mr. Howe. Can you tell the judge a
21 little bit about that decision?

22 A. The reason why they got Robert Howe, because they
23 figured I was facing a bunch of time. Instead of going with
24 a public defender, they decided to get a paid lawyer, would
25 probably be better. So that's what my mother did. She went

1 and got Robert Howe.

2 Q. And if you resolved the case May 5th, 2014, can you
3 tell the judge approximately when it was prior to that that
4 your family hired Mr. Howe?

5 A. I don't know exactly what month, but I know he had
6 enough time to go for my case to know what was going on.

7 Q. Do you think it was a matter of days or weeks or
8 months?

9 A. He had over little less than three months or better.

10 Q. Now, in that approximately three months, however,
11 first of all, did you make bond after your arrest or did you
12 stay in jail?

13 A. I never made bond.

14 Q. So you were at the Charleston County jail from
15 arrest up until May 5th, 2014; is that right?

16 A. Yes, sir.

17 Q. And let's say that it's some time in June, about
18 three months before you plead, some time in June, Mr. Howe
19 was hired. In those three months, June, July, August, how
20 many times did he visit you at the jail?

21 A. I saw Mr. Howe one time.

22 Q. And during that one meeting, how long did that
23 conversation last?

24 A. Probably about 10 to 15 minutes.

25 Q. During that meeting, was Mr. Howe talking to you

1 about going to trial? Did he talk about going to trial
2 during that meeting?

3 A. He never talked to me about going to trial. All he
4 said, on these charges, I could get you probation and
5 probably get you out of jail. He never came across no
6 evidence or nothing, showed me no evidence or anything.

7 Q. Let's talk about that for just a second. You are
8 familiar with this term Rule 5 or discovery? You know what
9 that means?

10 A. Yes, sir.

11 Q. Some paperwork, right?

12 A. Yes, sir.

13 Q. Now, let's be clear to the judge. You had a public
14 defender prior to Mr. Howe, right?

15 A. Yes.

16 Q. Did you get the Rule 5 from Mr. Lewis, or not?

17 A. Yeah, I got my Rule 5 from Mr. Lewis.

18 Q. But in the three months that Mr. Howe represented
19 you, did he ever provide you any paperwork or evidence?

20 A. He never showed me anything.

21 Q. Now, other than paperwork, is there something else
22 that you knew existed, some evidence that you wanted to look
23 at?

24 A. No, sir.

25 Q. Let me ask you more specifically. Was there ever a

1 video or tape shown to you?

2 A. I never saw a video or tape shown to me.

3 Q. Did one exist?

4 A. Not that I know of.

5 Q. You may have answered this earlier, but I had asked
6 about whether or not Mr. Howe talked about going to trial in
7 the meeting, and you said he did not?

8 A. Never did.

9 Q. Did he talk to you during that 10- or 15-minute
10 meeting about plead guilty?

11 A. Yes, sir.

12 Q. What was his advice about pleading guilty or not?

13 A. To get probation, if I plead guilty, I get some
14 probation and go home.

15 Q. And was it his advice that you plead guilty or not
16 guilty?

17 A. Plead guilty.

18 Q. I'm going to go over a few different things here.
19 And all of these pertain to that one meeting you had with
20 him. Okay? Did he ever discuss what the elements were of
21 strong-arm robbery?

22 A. No, sir.

23 Q. Did he ever tell you what the State would have to
24 prove to convict you in front of a jury of strong-arm
25 robbery?

1 A. No, sir.

2 Q. Did he ever talk to you about how we conduct trials
3 in South Carolina state court?

4 A. No, sir.

5 Q. Did he ever talk to you about the elements of
6 assault and battery in the first degree?

7 A. No, sir.

8 Q. Did he ever tell you what the State would have to
9 prove to convict you of assault and battery in the first
10 degree?

11 A. No, sir.

12 Q. In that 10- to 15-minute meeting, did you and
13 Mr. Howe ever discuss defenses to these charges?

14 A. No, sir.

15 Q. And you already said that Mr. Howe didn't provide
16 you any paperwork, any Rule 5. Did he already review with
17 you what you already had from Mr. Lewis, your public
18 defender?

19 A. No, sir.

20 Q. You had a chance to review that paperwork,
21 correct?

22 A. Yes, sir.

23 Q. First of all, let me ask. Did the accuser make a
24 statement to police that you are aware of?

25 A. Yes, sir.

1 Q. Did you review that from the paperwork you received
2 from Mr. Lewis?

3 A. Yes, sir.

4 Q. Were there some issues about those accusations?

5 A. Yes, sir.

6 Q. Did the story seem to match up or not?

7 A. No, sir.

8 Q. It didn't match up?

9 A. No, sir.

10 Q. Did you have a chance to talk about those
11 inconsistencies with Mr. Howe?

12 A. No, sir.

13 Q. Did Mr. Howe tell you what type of sentence you --
14 did Mr. Howe tell you what sentence the law allows a judge to
15 give someone convicted of strong-arm robbery?

16 A. Yes, sir.

17 Q. Do you remember what he told you on that?

18 A. He said carry up to 0 to 15 years.

19 Q. Did Mr. Howe talk to you about what the law would
20 allow someone to be sentenced to assault and battery first?

21 A. Yes.

22 Q. And what did he tell you on that?

23 A. He said carried like 0 to 10.

24 Q. Now, ultimately, you pled guilty to something
25 smaller; is that right?

1 A. Yes.

2 Q. Assault and battery second?

3 A. Yes, sir.

4 Q. And I'm going to go back now, ask about the other
5 charges. Did Mr. Howe ever discuss with you the elements of
6 assault and battery second?

7 A. No, sir.

8 Q. Did he ever tell you what the State would have to
9 prove to a jury to convict you of assault and battery second?

10 A. No.

11 Q. On the other hand, did he tell you the range of what
12 a sentence -- what a judge could give someone convicted of
13 assault and battery second?

14 A. Yes.

15 Q. What did he tell you on that?

16 A. You have to, like, five years, something like that.

17 Q. Now, given that you knew you were originally facing
18 up to 15 and then up to 10 on the original charges, when
19 Mr. Howe talked to you about the smaller or the offer of 0 to
20 15 on the strong-arm robbery and 0 to 5 on assault and
21 battery second, what did you think that you would get if you
22 pled guilty to those two charges?

23 A. That I would get probation and go home.

24 Q. Why is that?

25 A. Because I pled to lesser charges.

1 Q. What did Mr. Howe say about potential sentences?

2 A. He said plead to lesser charges, I guarantee you
3 will get probation and go home.

4 Q. That was the language he used, guaranteed
5 probation?

6 A. Yes, sir.

7 Q. Now, did he say anything else about why he was so
8 sure he could get you probation from the solicitor's office?

9 A. No, sir.

10 Q. Did he give you some reasons on why he was so
11 confident he could get you such a great deal?

12 A. Because he had known the solicitor and they were,
13 like, good friends. So he guaranteed she will go with what
14 he said.

15 Q. Did he indicate any other actions he had taken to
16 try to persuade her to give the probation deal?

17 A. No, sir.

18 Q. Okay. Do you feel that Mr. Howe had done anything
19 to prepare to fight this case at trial?

20 A. No. He didn't do his job.

21 Q. Did you ultimately follow his advice and plead
22 guilty to strong-arm robbery and assault and battery
23 second?

24 A. Yes, sir.

25 Q. So let me ask you this. If he had talked to you

1 about what the State had to prove to convict you of
2 strong-arm robbery, would you have pled guilty, or you were
3 going to trial?

4 A. I would have gone to trial.

5 Q. If he had talked to you about what the State would
6 have to prove to a jury to convict of assault and battery
7 first or even assault and battery second, would you have pled
8 guilty or gone to trial?

9 A. I would have went to trial.

10 Q. If he had spent more than 10 to 15 minutes with you
11 discussing your case, would you have pled guilty or gone to
12 trial?

13 A. I would have gone to trial.

14 Q. If he had not guaranteed you probation if you
15 accepted this plea, would you have pled guilty or gone to
16 trial?

17 A. I would have gone to trial.

18 Q. If he had taken time to review any of the evidence
19 with you, would you have pled guilty or gone to trial?

20 A. I would have gone to trial.

21 MR. DAVIS: If I could have just a moment.

22 THE COURT: Sure.

23 MR. DAVIS: Your Honor, this is a bit out of order,
24 but we had spoke at the bench about this. Judge, I have here
25 from the judicial department website an order pertaining to

1 Mr. Howe. I believe you reviewed it briefly. I would ask
2 the Court to take judicial notice of this and make it a
3 court's exhibit at this time, if the Court would.

4 THE COURT: Any objections?

5 MS. OLIVE: I have no objection.

6 THE COURT: So taken.

7 MR. FALK: Thank you, Your Honor. With that, I do
8 not have any questions for Mr. Gadsden. The attorney general
9 may have some questions.

10 (Court's Exh. 1, Order, was marked for
11 identification.)

12 CROSS-EXAMINATION

13 BY MS. OLIVE:

14 Q. Good morning, Mr. Gadsden.

15 A. Good morning.

16 Q. The judge did go over with you at your guilty plea
17 hearing the charges against you and the punishment that you
18 were facing on those charges?

19 A. Yes, ma'am.

20 Q. And the State indicated also that there were no
21 other agreements in place other than the agreement to reduce
22 the assault and battery first charge to an assault and
23 battery second charge?

24 A. That's right.

25 Q. And there were no recommendations in terms of

1 sentencing in place, right?

2 A. Not that I know of. I mean, I signed some papers.

3 Q. So you knew going into this plea that you could get
4 up to 15 years --

5 A. Yes, ma'am.

6 Q. -- on the strong-arm robbery? Are you sure that
7 your attorney didn't just talk to you about the possibility
8 of receiving probation instead of an active sentence rather
9 than actually promising you that you were going to receive
10 probation?

11 A. No, ma'am.

12 Q. You are not sure?

13 A. I mean, when he talked to me, he told me, plead
14 guilty to these charges, lesser charges, guaranteed you will
15 get probation and you will go home. That's what I did. He
16 told me to sign some papers. And that's what I did.

17 Q. Are you sure he wasn't just talking about the
18 assault and battery second?

19 A. No, ma'am.

20 Q. So he promised you -- your testimony today is that
21 he promised you that you were going to get probation?

22 A. Guaranteed I would get probation and go home.

23 Q. But the judge advised you at the beginning of your
24 plea that you were exposed to up to 15 years, right?

25 A. Yes.

1 Q. And you said that you understood that? And there
2 were no -- is that a yes? Is that a yes?

3 A. Yes, ma'am.

4 Q. And there were no agreements in place as far as
5 sentencing?

6 A. I never heard that part, no agreement. Never heard
7 that.

8 Q. The solicitor told the judge that there were no
9 recommendations?

10 A. I can't recall.

11 Q. Do you recall the Court asking your attorney whether
12 he had had an opportunity to discuss the charges with you?
13 The judge asked: Have you had an opportunity to discuss this
14 matter fully with your client?

15 And your attorney said: Yes, sir.

16 Do you remember that? Okay.

17 THE COURT: You need to answer yes or no.

18 A. Oh, yes, ma'am.

19 Q. The Court asked Mr. Howe if he had shared the
20 results of his investigation with you. And he agreed that he
21 had?

22 MR. DAVIS: Objection, Your Honor. This is pitting
23 witnesses. And the transcript is part of the record.

24 THE COURT: Just go ahead and ask the question.

25 MS. OLIVE: Well, Your Honor, I don't have Mr. Howe

1 here, so I can't really pit him against the witness.

2 THE COURT: Just ask him. And if he gets an
3 inconsistent answer, you can use that answer.

4 MS. OLIVE: Thank you, Your Honor.

5 BY MS. OLIVE:

6 Q. The judge asked -- do you recall the judge asking
7 your attorney a series of questions? Your attorney stated
8 that he had advised you of your right to remain silent. And
9 he agreed with the decision to enter -- your decision to
10 enter a guilty plea based on his investigation; do you
11 remember that?

12 A. Yes, ma'am.

13 Q. The judge asked him also if he had advised you that
14 you would be relinquishing your rights, the rights that you
15 would be relinquishing as a consequence of the plea?

16 A. Yes, ma'am.

17 Q. And then following that questioning, the judge asked
18 you if all of that was correct?

19 A. Yes, ma'am.

20 Q. And you said yes, sir?

21 A. Yes, ma'am.

22 Q. Okay. So you didn't tell the judge at that time
23 that you never had an opportunity to fully discuss your case
24 with your attorney?

25 A. No, I didn't.

1 Q. And the judge went over your constitutional rights
2 with you, including those rights you would be waiving by
3 plead guilty?

4 A. Yes.

5 Q. Okay. And then the solicitor, she provided the
6 judge with a factual basis for the guilty plea; do you
7 remember that?

8 A. I think so.

9 Q. She basically told the judge what evidence that the
10 State had against you in this case?

11 Let me rephrase. She basically told the judge what
12 happened that gave rise to these charges, what the State's,
13 more or less, theory of their case was, right?

14 A. Yes.

15 Q. The facts of the case?

16 A. Yes.

17 Q. And you agreed with those facts?

18 A. Yes, ma'am.

19 Q. And she stated that there was a surveillance video
20 and that also that the victim had identified you in a
21 photographic lineup?

22 A. I don't recall that, ma'am.

23 Q. You don't recall that? But you do recall that you
24 agreed with the facts that were presented?

25 A. Yes.

1 Q. Did you ever tell your attorney that you wanted to
2 go to trial?

3 A. Yes.

4 Q. Okay. But you entered a guilty plea and you
5 admitted your guilt?

6 A. I entered a guilty plea because they said I would
7 get the lesser charge and I would get probation to go home.

8 Q. He told you you were going to get a lesser charge as
9 to the assault and battery?

10 A. And the strong-arm robbery.

11 Q. But you did get a probationary sentence on the
12 assault and battery conviction, right?

13 A. Yes, ma'am.

14 Q. And your attorney did ask for probation?

15 A. Yes, ma'am.

16 Q. And you gave a statement at the end of your plea
17 apologizing?

18 A. Yes, yes, ma'am. That's what he told me to say.
19 That's what I said.

20 Q. So you had an opportunity to tell the judge that you
21 did not want to plead guilty, but you went forward with your
22 guilty plea?

23 A. Yes, ma'am.

24 Q. And you told the judge that you were satisfied with
25 your attorney?

1 A. Yes, ma'am.

2 Q. Did you tell your attorney that you wanted him to
3 work out a plea deal for you?

4 A. No, ma'am.

5 Q. So you never told him that you were interested in
6 plead guilty?

7 A. No, because when he came and saw me, I asked him, do
8 they have any evidence or anything? And he said he don't
9 have nothing. But he said, I guarantee I can get you
10 probation and some lesser charges to go home. So I was like,
11 okay.

12 Q. Did you -- didn't you testify that Mr. Lewis had
13 provided a Rule 5?

14 A. Yes, Mr. Lewis gave me my Rule 5.

15 Q. So you received your discovery from Mr. Lewis?

16 A. From Mr. Lewis.

17 Q. Okay. And included in that was the State's evidence
18 against you?

19 A. Yes, ma'am.

20 Q. So you are aware of that?

21 A. Yes, ma'am.

22 Q. So are you really just upset that you got more time
23 than you thought you were going to get?

24 A. No, I'm just upset that I pled guilty and I had a
25 lawyer who, no evidence or nothing, showed me no tape or

1 anything to see whether or not I was guilty. I was just
2 going off what he told me to do. And I did what he said,
3 which I shouldn't do. I should have waited out until he got
4 some type of paperwork or anything to show me, so I could
5 know whether to plead or not.

6 Q. Well, so now you know what evidence the State had
7 against you?

8 A. In my Rule 5.

9 Q. And you understand there's a video as well as an
10 identification that was made by the victim?

11 A. They said there's a video, but I never saw it.

12 Q. Okay. But that's what the solicitor told the judge
13 at your guilty plea hearing, that there was surveillance
14 footage and a photo lineup and the victim had provided a
15 description as well. That was what the solicitor told the
16 judge that the evidence was, right?

17 A. I guess so. I mean, I don't recall her bringing up
18 any evidence about any video camera or anything, video
19 surveillance, I mean.

20 Q. Ultimately, it was your decision to plead guilty?

21 A. Yes, ma'am.

22 Q. And you told the judge that you were entering the
23 plea freely and voluntarily?

24 A. Yes.

25 MS. OLIVE: Beg the Court's indulgence.

1 BY MS. OLIVE:

2 Q. Mr. Gadsden, you have two prior convictions for
3 giving false information?

4 MR. DAVIS: Objection, Your Honor. Relevance.

5 THE COURT: What was the question again?

6 MS. OLIVE: I'm asking if he had two prior
7 convictions for false information. The relevancy is it's
8 impeachment.

9 THE COURT: Overruled. Go ahead.

10 BY MS. OLIVE:

11 Q. Do you have two prior convictions for giving false
12 information?

13 A. What year?

14 Q. One from 1998 and one from 2009.

15 A. Probably did.

16 Q. It's still your testimony today that you would
17 rather -- you want a new trial at this time? You want to go
18 to trial on these charges?

19 A. Yes.

20 MS. OLIVE: Thank you. That's all the questions I
21 have.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. DAVIS:

25 Q. You touched on this briefly to some of the questions

1 the attorney general had, but I want the judge to understand.
2 Did you meet with Mr. Howe before you came in to the
3 courtroom to do the guilty plea? Did you meet with him in
4 the courthouse the day of your plea?

5 A. Yes. And I signed some papers.

6 Q. During -- how long did that meeting last?

7 A. That might have last about two or three minutes.

8 Q. Long enough to sign the paperwork?

9 A. Long enough to sign the paperwork and say he will
10 see me in court.

11 Q. What, if anything, did Mr. Howe tell you about what
12 you needed to tell Judge Dennis at your plea?

13 A. All he told me is, if the judge ask you if you want
14 to say anything, just say you apologize, you are sorry for
15 what happened.

16 Q. Was there any discussion about if there was a
17 problem during the plea, that you could stop the plea?

18 A. No, he never discussed none of that with me.

19 Q. Did you know that during your plea in front of Judge
20 Dennis, you could stop it if you wanted to? You need to
21 answer out loud so she can take it down.

22 A. No, sir.

23 Q. After the guilty plea, when you got actual time in
24 prison, did Mr. Howe come see you?

25 A. He never came see me. Told me he would come down

1 and talk to me. He never came down and talked to me.

2 Q. So was the sentence from Judge Dennis sending you to
3 prison, was that expected or was that a surprise?

4 A. That was a surprise to me.

5 Q. Prior to the judge giving you that sentence, the
6 attorney general asked you, there were questions earlier in
7 the plea about whether you've talked to Bobby enough. Do you
8 remember that?

9 A. Yes.

10 Q. Whether you were satisfied with him or not, do you
11 remember that?

12 A. Yes.

13 Q. Did you answer those questions before or after you
14 didn't get what Mr. Howe promised?

15 A. I did it after.

16 Q. Finally, do you remember the day you were arrested?
17 Do you remember the date?

18 A. I was arrested November the 16th, 2013.

19 Q. Okay.

20 A. I want to say.

21 Q. And so from that date up until sometime in the
22 summer of 2014, you had Mr. Lewis, right?

23 A. I had Mr. Lewis up until, I want to say, like, the
24 end of -- I want to say January, I want to say.

25 Q. So the beginning of the year, not the summertime?

1 So Mr. Howe was on your case more than three months?

2 A. Yes, more than three months.

3 Q. Okay. Okay. Final question, Mr. Howe never showed
4 you or played for you any videos?

5 A. He never showed me nothing.

6 MR. DAVIS: Thank you, Mr. Gadsden.

7 No other questions, Your Honor.

8 THE COURT: Any recross?

9 MS. OLIVE: No recross, Your Honor.

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

11 MR. DAVIS: Can I have just one moment?

12 THE COURT: Sure.

13 MR. DAVIS: Your Honor, we would call Lindsey Byrd
14 to the stand.

15 LINDSEY BYRD,

16 having been duly sworn, testifies as follows:

17 THE CLERK: Ma'am, for the record, if you will
18 please state your name, spelling your last name.

19 THE WITNESS: Lindsey Byrd, B-y-r-d.

20 DIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q. Ms. Byrd, were you working at the solicitor's office
23 and prosecuting Mr. Gadsden on these charges?

24 A. Yes, I was.

25 Q. We just had a brief conversation. For the purpose

1 of the next couple of questions, was there -- did they assign
2 you, for the purpose of your file and other documents,
3 initials that would identify your cases from other
4 solicitors?

5 A. Yes. When you start, you get a series of three
6 initials. They are pretty random, but that did identify you,
7 along with your case file and any documentation that went
8 along with your case file.

9 Q. When you first started with the solicitor's office,
10 you were Lindsey McClain. You are now married to Mr. Byrd?

11 A. Yes.

12 Q. And initials assigned were LMC?

13 A. That's correct.

14 Q. Do you recall there being evidence in Mr. Gadsden's
15 case that was contained on a compact disk, computer disks?

16 A. Yes, there was.

17 Q. You recall that Mr. Lewis was originally
18 Mr. Gadsden's attorney?

19 A. That's correct.

20 Q. Do you recall sending four different disks to
21 Mr. Lewis pertaining to this case?

22 A. I do. That would have been sent about mid-January,
23 I believe, of 2014.

24 Q. Most important question, this may be the last
25 question, would you have done the same when Mr. Howe filed

1 his notice of rep and Rule 5 request?

2 A. Absolutely. And we did, I believe, February 24th of
3 that year.

4 Q. Okay. Do you recall that it contained interviews,
5 video surveillance and some photographs, among other things,
6 on these disks?

7 A. Yes, I do. That's correct.

8 Q. And you reviewed your file prior to testimony today,
9 your original solicitor's file?

10 A. I reviewed the printed documents in the file. I did
11 not have an opportunity to review the disk, but that does
12 sound right as far as the content of the disk, from what I
13 recall.

14 Q. You are working with the City of Charleston. You
15 are no longer with the Ninth Circuit solicitor's office; is
16 that right?

17 A. Right.

18 MR. DAVIS: Your Honor, can I have just one moment?

19 Ms. Byrd, no other questions. Thank you very much.

20 THE COURT: Cross.

21 MS. OLIVE: Your Honor, I don't have a cross, but I
22 had plan to call Ms. Byrd as a witness.

23 THE COURT: Why don't we go ahead and do that. Do
24 you have any other witnesses?

25 MR. DAVIS: We do not. That would be the

1 applicant's presentation.

2 THE COURT: Then start with your witness.

3 LINDSEY BYRD,

4 having been previously sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MS. OLIVE:

7 Q. Ms. Byrd, did you have discussions with Mr. Howe
8 regarding any plea offers in this case?

9 A. I did.

10 Q. Do you know how many discussions? Would it have
11 been one or more?

12 A. We would have had at least one based on the
13 scheduling of the plea in this case. I don't know that we
14 had more than two. I was pretty adamant about the offer, the
15 only plea offer I was willing to make in the case. We got it
16 scheduled on a docket pretty quickly after Mr. Howe had been
17 retained. It was schedule on a couple of plea dockets due to
18 scheduling conflicts with the victim and then again with
19 Mr. Howe. But it did resolve within six months. So I'm sure
20 we would have had numerous conversations about it.

21 Q. Do you recall, did he approach you to ask for a plea
22 deal, or did you extend an offer? How did the conversations
23 come about?

24 A. He called me after having been retained on the case.
25 I can't remember if that phone call happened before or after

1 he received discovery in the case, but he did call. We
2 talked about it. I expressed, you know, the fact that I
3 had -- really wasn't anything else I could do with the
4 strong-arm robbery. That would probably have been the lowest
5 of the low in that type of crime. I was willing to lower the
6 assault and battery second, but given his client's criminal
7 history and the facts surrounding the incident, I was looking
8 for active time. However, I do believe that I agreed to
9 basically make no recommendation on the sentence, 'stay quiet
10 on the matter, and let him argue for whatever he wanted for
11 his client.

12 Q. Can you briefly describe the evidence that you would
13 have presented against Mr. Gadsden at trial, if he had
14 elected to go to trial?

15 A. Yes. There were, I would say, three, possibly four
16 things that I felt made it a very strong case. The first of
17 which was the storage facility at which the robbery happened
18 had surveillance footage. That surveillance footage captured
19 the subject leaving the immediate area through a cut-through
20 in a wooded area that then went to a residential area next to
21 the storage facility property.

22 The victim had described the suspect leaving on a
23 particular type of bicycle. That surveillance footage not
24 only caught the suspect, but also caught him on that same
25 bicycle. And investigators located a bicycle matching the

1 victim's description, matching the bicycle on the
2 surveillance footage at one of the specific residences in
3 that residential area neighboring the storage facility.

4 The other piece of evidence that I thought was very
5 strong was the victim's ability to confidently identify the
6 subject in a six-pack photo lineup. In addition to that, she
7 was also able to describe a very unique tattoo that he had on
8 his forearm. I can't remember if it was the right or the
9 left. But she drew an illustration of it. And it very
10 closely matched a tattoo that investigators found Mr. Gadsden
11 to have on his forearm. I thought that gave credibility to
12 all of her identification, given how specific she was in that
13 description.

14 Finally, investigators, after detaining Mr. Gadsden
15 as a suspect, interviewed him. And according to their
16 information, he -- and that interview was recorded. He
17 identified himself as the subject on the video surveillance
18 during that interview with law enforcement.

19 Q. Were you prepared to offer the victim as a witness
20 at trial?

21 A. I was.

22 Q. And you stated that you were unwilling to make any
23 other offers besides the offer that was extended and that he
24 actually pleaded to?

25 A. That's correct.

1 Q. Do you have any personal knowledge about whether
2 Mr. Howe would have reviewed discovery with Mr. Gadsden?

3 A. I don't.

4 Q. And you stated that this had been on the plea docket
5 a number of times.

6 A. Yes. I believe it was on the docket for a plea
7 three different times. The first time was in March. And the
8 victim maybe -- shortly before the plea, was instructed by
9 her employer to attend some business matter out of town. If
10 I recall correctly, that was quite common for her. She did
11 travel a lot for her job. So we had to reschedule for a date
12 in April.

13 On that April date, Mr. Howe was late to court. And
14 so we had to continue for a date in May, at which time
15 Mr. Gadsden did enter his plea.

16 Q. So at the time it was first on the docket, which you
17 said would have been in March, Mr. Howe was already
18 representing him at that time?

19 A. He was.

20 Q. And how confident were you in your ability to prove
21 him guilty at trial if he had gone to trial?

22 A. I mean, as a prosecutor, I'm always skeptical to
23 quantify my confidence in it, but I certainly felt very
24 confident and comfortable putting that case before a jury. I
25 did not have any doubts about our ability to meet our burden,

1 had that gone to trial.

2 MS. OLIVE: Thank you. That's all the questions I
3 have.

4 MR. DAVIS: If I can have just a moment, Your Honor.

5 THE COURT: Sure.

6 MR. DAVIS: No questions, Your Honor. Thank you.

7 THE COURT: You have a good day.

8 THE WITNESS: Thank you, sir.

9 MS. OLIVE: Thank you, Your Honor. No further
10 witnesses for the State.

11 THE COURT: I will take the matter under advisement
12 and let you know something very soon.

13 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

2014-09-05-01

The Supreme Court of South Carolina

In the Matter of Robert G. Howe, Respondent

Appellate Case No. 2014-001875

Appellate Case No. 2014-001876

ORDER

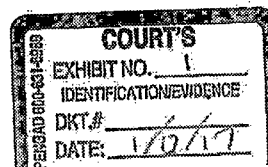
The Office of Disciplinary Counsel petitions the Court to transfer respondent to incapacity inactive status pursuant to Rule 28 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver, Peyre T. Lumpkin, and the appointment of attorneys to assist the Receiver pursuant to Rule 31, RLDE. Respondent consents to the issuance of an order transferring him to incapacity inactive status and to the appointment of the Receiver and attorneys to assist the Receiver.

IT IS ORDERED that respondent is transferred to incapacity inactive status until further order of this Court.

Respondent is hereby enjoined from taking any action regarding any trust, escrow, operating, and any other law office account(s) respondent may maintain at any bank or other financial institution, including, but not limited to, making any withdrawal or transfer, or writing any check or other instrument on the account(s).

IT IS FURTHER ORDERED that Mr. Lumpkin is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment. Respondent shall promptly respond to Mr. Lumpkin's requests for information and/or documentation and shall fully cooperate with Mr. Lumpkin in all other respects.

Further, this Order, when served on any bank or other financial institution maintaining trust, escrow, operating, and/or any other law account(s) of respondent, shall serve as notice to the



bank or other financial institution that Peyre T. Lumpkin has been duly appointed by this Court and that respondent is enjoined from making withdrawals or transfers from or writing any check or other instrument on any of the account(s).

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that the Receiver, Peyre T. Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

The Court appoints Donald H. Howe, Sr., Esquire, and James Kevin Holmes, Esquire, to assist the Receiver in performing the duties imposed by Rule 31, RLDE.

The appointments shall be for a period of no longer than nine months unless an extension of the period of the appointments is requested.

s/ Jean H. Toal

C. J.

FOR THE COURT

Columbia, South Carolina
September 5, 2014

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STATE OF SOUTH CAROLINA)
County of Charleston Berkeley)
Antavius Gadsden)
Applicant / Petitioner)
vs.)
State of South Carolina,)
Respondent.)

COURT OF COMMON PLEAS
Case No. 2015-CP-10-0419

ORDER

FILED
2017 JAN 18 AM 9:42
JULIE J. HANCOCK
CLERK OF COURT

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein:

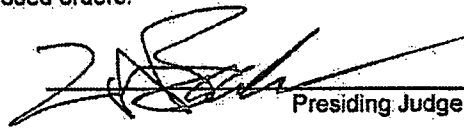
- 1. The application for post-conviction relief is hereby: denied granted under advisement; a formal order will be filed (see below - No.6)
- 2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby: granted denied under advisement, based upon the statute of limitations and/or the successive nature of the application or other reason as follows:

- 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
 Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
 The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
- 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed with prejudice without prejudice.
- 5. Other: _____

- 6. The court further orders:
 The Attorney General Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within _____ days. A REASONABLE AMOUNT OF TIME.
 Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.
 The court does not request proposed orders.

IT IS SO ORDERED.

Date: Jan 12 2017
Charleston, S.C.


Presiding Judge

Court Reporter: Karen Anderson
Attorney for Plaintiff: Rodney Davis
Attorney for Defendant: Alicia Olive

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
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Antavius Gadsden, SCDC No. 253537,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-0419

ORDER OF DISMISSAL

2017 SEP 20 PM 3:35
JULIE S. ...
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed January 21, 2015, by Antavius Gadsden (Applicant), alleging ineffective assistance of counsel and involuntary guilty plea. Respondent made its Return on July 28, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened January 12, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its March 2014 term of court, the Charleston County Grand Jury indicted Applicant for strong arm robbery (2014-GS-10-1212) and first-degree assault and battery (2014-GS-10-1213). Robert G. Howe, Esquire, represented him. Assistant Solicitor Lindsey McClain Byrd prosecuted the case on behalf of the State.

On May 5, 2014, Applicant appeared in the Charleston County Court of General Sessions before the Honorable R. Markley Dennis, circuit court judge, and pled guilty as indicted to strong arm robbery and to the lesser-included offense of second-degree assault and battery. Applicant told the plea court he understood he could receive a sentence of up to fifteen years for strong arm robbery and up to three years for second-degree assault and battery. (Plea Tr. 2-3). The State and counsel informed the plea court the plea was without any negotiations or recommendations as to sentencing. (Plea Tr. 3). Applicant told the court he was satisfied with counsel's services. (Plea Tr. 3). Counsel informed the plea court that he and Applicant had fully discussed the case, the results of counsel's investigation, the rights he was waiving by pleading guilty, and his decision to plead guilty; Applicant informed the plea court he agreed and wanted to give up his constitutional rights and plead guilty. (Plea Tr. 4-5). Applicant told the plea court he had not been threatened or coerced to plead guilty. (Plea Tr. 5). He told the plea court he was pleading guilty because he was guilty and it was solely his decision to plead guilty. (Plea Tr. 5).

The plea court sentenced Applicant to ten years imprisonment for strong arm robbery and a consecutive three years imprisonment suspended upon the service of five years of probation for second-degree assault and battery. Applicant did not appeal his guilty plea or sentence.

FACTUAL HISTORY

These charges arise from the attack and robbery of a female victim at a storage facility in Charleston County on November 16, 2013. Applicant spent the morning monitoring the facility and eventually approached the victim, struck her in the face, told her to shut up, and threatened to kill her. The victim fell to the ground and Applicant continued to strike the victim in the face and began choking her with both hands until she nearly lost consciousness. Applicant then went

through the victim's pockets and purse, eventually fleeing with her iPhone, cash, and credit cards. The victim provided a detailed description of Applicant, including a tattoo on his forearm, and identified him from a six-pack lineup. Applicant was also identified on surveillance footage from the storage facility and when confronted with the video, acknowledged it was him. (Plea Tr. 5-7, 9).

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of ineffective assistance of counsel for failure to file an appeal and involuntary guilty plea for "counsel fail[ing] to abide by plea agreement discussed with client."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he is 34 years old, previously worked in construction, and has two daughters. (PCR Tr. 7). He testified he was arrested for strong arm robbery and first-degree assault and battery and was originally appointed Benjamin Lewis, Esquire, from the Charleston County Public Defender's Office, to represent him. (PCR Tr. 8). He testified his family retained Robert Howe, Esquire ("counsel"), to represent him because he was "facing a bunch of time" and it would be better to get a "paid lawyer." (PCR Tr. 8-9). He testified counsel was retained approximately three months before his guilty plea and they met once. (PCR Tr. 9). He testified counsel never discussed a trial with him and advised him to plead guilty because he would get a probationary sentence. (PCR Tr. 10). Applicant testified he had already received a copy of his discovery materials from former counsel Lewis. (PCR Tr. 10-11, 23-24). He testified counsel only showed him paperwork and never showed him the surveillance video from the storage facility. (PCR Tr. 10-11, 24). He

testified counsel never reviewed the elements of the offenses, possible defenses, or what would occur during a trial. (PCR Tr. 11-13). He testified he did review potential sentences and the victim's statement, including inconsistencies with it, with counsel. (PCR Tr. 13). He testified he pled guilty because counsel advised him he would get a probationary sentence and go home. (PCR Tr. 14-15, 18). Applicant testified counsel promised he was good friends with the solicitor and he would only get probation if he pled guilty. (PCR Tr. 15). He testified he does not think counsel did anything to prepare to challenge the charges. (PCR Tr. 15). He testified he would have gone to trial if counsel had explained what the State would have to prove at trial, reviewed the evidence with him, and not promised him a probationary sentence. (PCR Tr. 15-16).

Applicant acknowledged the plea court reviewed the charges and potential punishments with him. (PCR Tr. 17). He also acknowledged the State told the plea court there was no negotiation or recommendation other than reducing the first-degree assault and battery to the lesser-included offense of second-degree assault and battery. (PCR Tr. 17-18). He testified despite counsel guaranteeing him probation, he heard the plea court advise him he could receive a sentence of up to fifteen years for strong arm robbery. (PCR Tr. 18-19). He denied hearing the plea court or solicitor say there was no negotiation or agreement for sentencing. (PCR Tr. 19). He acknowledged counsel told the plea court he had advised Applicant of all of his rights and that he agreed with counsel's statements to the plea court. (PCR Tr. 20). He also acknowledged he agreed with the solicitor's recitation of facts. (PCR Tr. 21). He testified he told counsel he wanted to go to trial and only entered a guilty plea because he was promised probation. (PCR Tr. 22). He testified he only apologized at the end of his plea because counsel advised him to do so. (PCR Tr. 22, 26). He also acknowledged he told the plea court he was satisfied without counsel's

representation. (PCR Tr. 23). He testified counsel never advised him he could stop the plea at any time during the proceeding. (PCR Tr. 26). He testified he was surprised by his sentence. (PCR Tr. 27). He testified counsel never visited following his plea. (PCR Tr. 27).

Assistant Solicitor Lindsey McClain Byrd also testified. She testified she provided four different discs with discovery to Applicant's initial counsel Lewis and also provided the discovery to counsel when he was retained. (PCR Tr. 29-30). She testified she made a plea offer to allow Applicant to plead to the lesser-included offense of second-degree assault and battery early on and it was the best plea offer she was going to make. (PCR Tr. 31-32). She elaborated she told counsel she was not going to be able to make a recommendation or negotiation to a lower sentence based on Applicant's criminal record. (PCR Tr. 32-33). She testified this was a "very strong case" and the evidence she would have presented at trial included surveillance footage from the storage facility, the victim's testimony, statement, and identification of Applicant, and Applicant's identification of himself on the surveillance footage. (PCR Tr. 33).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or

she must prove “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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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 (1985).

“A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to

trial.” Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011) (citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009)). “In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” Holden, 393 S.C. at 573, 713 S.E.2d at 615 (citing Suber, 371 S.C. at 558, 640 S.E.2d at 886). The post-conviction relief court must consider both the transcripts from a guilty plea and testimony provided at an evidentiary hearing when determining if a guilty plea was voluntarily entered. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel.

Applicant alleges counsel was ineffective for failing to file an appeal on his behalf. However, Applicant failed to present any testimony or evidence that he wanted an appeal following his guilty plea or that he ever requested counsel file one on his behalf. Therefore, Applicant has failed to meet his requisite burden of proof and this allegation is denied and dismissed with prejudice.

Applicant also alleges trial counsel failed to “abide by plea agreement.” At the evidentiary hearing, Applicant testified counsel assured him he would receive a probationary sentence if he entered a guilty plea. He testified he was surprised by his sentence and would not have pled guilty if he had known he would receive anything more than a probationary sentence. However, this allegation is refuted by the record from the plea colloquy, including where Applicant told the plea court he understood he could receive up eighteen years total for these two offenses and that he was guilty and wanted to plead guilty. This Court finds this allegation must be denied and dismissed with prejudice.

Ultimately, this Court finds plea counsel was competent in his representation of Applicant and in his advice to Applicant that a guilty plea was in his best interest. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 is denied and dismissed with prejudice.


This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the 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 post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

- 1. This application for post-conviction relief must be denied and dismissed with prejudice; and
- 2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 14 day of Sept., 2017.



 WILLIAM H. SEALS, JR.
 Presiding Judge
 Ninth Judicial Circuit

Marion, South Carolina

LMC20131108800

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1318690

ARREST WARRANT NUMBER

2013A1010206326

DATE OF ARREST

November 20, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury Date: MAR 18 2014

VERDICT

Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2014GS1001212

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2014

THE STATE

vs.

ANTAVIUS ANTAWAN GADSDEN

DOB: 1979- [REDACTED]

B/M

Indictment for
Strong Arm Robbery

FILED

3/24/2014 10:12:12 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 10, 2014 the Grand Jurors of Charleston County present upon their oath:

Strong Arm Robbery

That in Charleston County, South Carolina, on or about November 16, 2013, the Defendant, ANTAVIUS ANTAWAN GADSDEN, did take and carry away personal property from the person or presence of Sandra Williams, by means of force, threats or intimidation and with the intent to deprive Sandra Williams, permanently of such property. Such property is described as: a Iphone, one hundred and twenty dollars in US currency, car keys, and miscellaneous credit cards and papers. This is in violation of the Common Law of South Carolina and Section 16-11-325, of the Code of Laws of South Carolina (1976) as amended.

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



 LINDSEY BYRD
 ASSISTANT SOLICITOR

LMC20131108800

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1318690

ARREST WARRANT NUMBER

2013A1010206327

DATE OF ARREST

November 20, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury Date: MAR 10 2014

VERDICT

Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2014GS1001213

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2014

THE STATE

vs.

ANTAVIUS ANTAWAN GADSDEN

DOB: 1979

B/M

Indictment for

Assault And Battery First Degree

FILED

3/24/2014 10:12:12 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 10, 2014 the Grand Jurors of Charleston County present upon their oath:

Assault And Battery First Degree

That in Charleston County, South Carolina, on or about November 16, 2013, the Defendant, ANTAVIUS ANTAWAN GADSDEN, did commit an assault and battery in the first degree constituting an unlawful act injuring the victim, Sandra Williams, and the act either: involved nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or occurred during the commission of a robbery, burglary, kidnapping, or theft; or the defendant offered or attempted to injure another person with the present ability to do so, and the act was accomplished by means likely to produce death or great bodily injury; or occurred during the commission of a robbery, burglary, kidnapping, or theft; all in violation of Section 16-3-600(C)(1) of the South Carolina Code of Laws (1976) as amended.

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



LINDSEY BYRD
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2014GS1001212

AKA: Antavius Antawan Gadsden

A/W#: 2013A1010206326

Race: BLACK Sex: M Age: 34

Date of Offense: 11/16/2013

DOB: 1979 SS#: [redacted]

S.C. Code §: 16-11-0325

Address: Brown Smith Lane

CDR Code #: 0137

City, State, Zip: Charleston, SC 29412

DL#: [redacted] SID#: SC0110281

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Strong Arm Robbery

CONVICTED OF or PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST: [Signatures] Byrd, Lindsey SC Bar# 7824 Defendant [Signature] Attorney for Defendant SC Bar# 02701

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 5 months. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS

PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

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

Clerk of Court/ Deputy Clerk Court Reporter: [Signatures]

Presiding Judge [Signature] Judge Code: 2060 Sentence Date: 5/5/14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2014GS1001213

Antavius Antawan Gadsden

A/W#: 2013A1010206327

AKA:

Date of Offense: 11/16/2013

Race: BLACK Sex: M Age: 34

S.C. Code §: 16-03-0600(C)(1)

DOB: 1979 SS#: [redacted]

CDR Code #: 3412

Address: 2102 Brown Smith Lane

City, State, Zip: Charleston, SC 29412

DL#: [redacted] SID#: SC01110281

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Assault / Assault & Battery 2nd degree

in violation of § 16-03-0600(D)(1) of the S.C. Code of Laws, bearing CDR Code # 3413
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Lindsey Byrd, SC Bar# 78241, Defendant; James [redacted], Attorney for Defendant, SC Bar# 02711

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

CONCURRENT or CONSECUTIVE to sentence on: 2014 GS 10 1212
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP days/hours Public Service Employment

Obtain GED
Attend, Voc. Rehab. or Job Corp.
May serve W/E beginning

Substance Abuse Counseling iB rest. period
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund
Other: suspended probation until he is released from active sentence

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUJ Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.48, TOTAL \$133.90

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

Clerk of Court/ Deputy Clerk: Sarah Cursey
Court Reporter: Deborah Garrison
SCCA217 (03/2011)

Presiding Judge: R. H. [redacted]
Judge Code: 2000
Sentence Date: 5/5/14