

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

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S.C. SUPREME COURT

Certiorari to Darlington County

Roger E. Henderson, Circuit Court Judge

CLEVELAND MCNEAL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002064

APPENDIX

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ATTORNEYS FOR RESPONDENT

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INDICTMENT 69

State of South Carolina)
County of Darlington)

In the Family Court
Fourth Judicial Circuit
2014-GS-16-0512

The State,
Plaintiff,
vs.
Cleveland Shenard McNeal,
Defendant.

Transcript of Record

Darlington, South Carolina
July 20, 2015

B E F O R E:

The Honorable Paul M. Burch

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

Mr. Adam Foard, Esquire
Attorney for Plaintiff

Mr. Paul Neely, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

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I N D E X

WITNESSES

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EXHIBITS

NO.

DESCRIPTION

EV.

(NO EXHIBITS INTRODUCED DURING HEARING)

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1 MR. FOARD: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. FOARD: Your Honor, before you is Cleveland
4 McNeal, 2014-GS-16-0512. He is pleading to the offense of
5 assault and battery of a high and aggravated nature. As,
6 Your Honor, knows that's classified in our system as a
7 violent and, I believe, is a most serious crime - - -

8 MR. NEELY: Serious.

9 MR. FOARD: - - - serious, excuse me, a serious rather
10 than a most serious.

11 Your Honor, he is pleading guilty. We have a
12 negotiated sentencing recommendation of ten (10) years,
13 Your Honor, which we believe is appropriate in this case.

14 I do have standing to my right, Your Honor, the victim
15 in this matter as well as, I believe, his mother and father
16 who I believe will want to address the Court at the
17 appropriate time. I will - - I do want to prepare the
18 Court to state ahead of time that the victims family is not
19 in agreement with the sentencing recommendation that the
20 State is making in this matter. I've spoken with them
21 about this ahead of time. I've explained to them why I'm
22 making the recommendation. Why I feel that it's
23 appropriate. We do have a difference of opinion on that
24 and they're going to address the Court on that matter and I
25 just wanted to make sure that, that was clear from the

1 outset. I do respect their position and I respect their
2 wishes, however, I do believe this is in the best interest
3 of resolution on this case, Your Honor.

4 THE COURT: Okay. Everybody including Mr. McNeal
5 needs to understand on a negotiated plea I either accept or
6 reject but I have no wiggle room as far as modifying what
7 is agreed upon so if y'all have negotiated ten (10) years
8 and I accept the plea then it has to be ten (10) years.
9 You understand?

10 MR. McNEAL: Yes sir.

11 THE COURT: Everybody understand?

12 MR. FOARD: Yes, Your Honor.

13 THE COURT: We'll hear it out and see where we stand.
14 I'll be glad to hear from everybody but you need - -
15 everybody needs to know that, that's how negotiated
16 sentences work as far as the Court, as far as the Judge, it
17 locks us in either to accept or reject but no wiggle room.

18 All right, Mr. McNeal, you are twenty-seven years of
19 age?

20 MR. McNEAL: Yes, sir.

21 THE COURT: From?

22 MR. McNEAL: Darlington County.

23 THE COURT: Where did you last work?

24 MR. McNEAL: Preacher.

25 THE COURT: And what is your education?

1 MR. McNEAL: None.

2 THE COURT: None?

3 MR. McNEAL: Yes, sir.

4 THE COURT: You never went to school?

5 MR. McNEAL: Yes, I went to school, tenth grade.

6 THE COURT: Tenth grade. All right, Mr. McNeal, you
7 have discussed this charge with Mr. Neely?

8 MR. McNEAL: Yes sir.

9 THE COURT: You satisfied with his help and advice?

10 MR. McNEAL: Yes sir.

11 THE COURT: Answered all of your questions?

12 MR. McNEAL: Yes sir.

13 THE COURT: He's contacted everybody you've asked him
14 to contact, if any?

15 MR. McNEAL: Yes, sir.

16 THE COURT: The charge as I'm looking at the
17 indictment alleges that in Darlington County on or about
18 November 25, 2013 - - the original charge was attempted
19 murder when you attempt to kill Nobias Holloway with malice
20 aforethought, either expressed or implied, and that you did
21 shoot the victim numerous times with a handgun and he was
22 hospitalized for life-threatening injuries. The sentencing
23 sheet indicates it's a negotiated plea that you will be
24 entering into a plea to assault and battery of a high and
25 aggravated nature which would carry up to twenty (20) years

1 and that is classified as a serious and violet offense,
2 correct, counsel?

3 MR. FOARD: Yes, Your Honor.

4 MR. NEELY: Yes, Your Honor.

5 THE COURT: And you understand I don't get into
6 discussions about prison credits or parole eligibility and
7 how all this effects, if you've got any questions about
8 that you need to resolve that with your attorney before we
9 finalize this plea, okay?

10 MR. McNEAL: (Shaking of the head, yes)

11 THE COURT: All right, how do you plead to the assault
12 and battery of a high and aggravated nature?

13 MR. McNEAL: I plead guilty.

14 THE COURT: And you know by pleading guilty that you
15 would be waiving your constitutional rights to a jury
16 trial?

17 MR. McNEAL: Yes, sir.

18 THE COURT: If you had a trial the State would have to
19 prove your guilt beyond a reasonable doubt. They would
20 have to convince twelve (12) jurors unanimously of your
21 guilt. You would have the right through your attorney to
22 cross-examine the states witnesses and put up your own
23 defense of witnesses. You could testify at your own
24 defense but you'd also have the constitutional right to
25 remain silent. If you elected not to testify it couldn't

1 be held against you and I would even tell the jury that.
2 That's your Fifth Amendment rights of the United States
3 Constitution. You are presumed innocent or you are
4 presumed innocent and that perception would last or stay
5 right with you throughout any trial. It would only end if
6 the jury convicted you. If the jury did convict you, you'd
7 have the right to appeal just as you can appeal a guilty
8 plea as long as you file a notice of appeal within ten (10)
9 days of sentence.

10 Those are your basic rights. Any questions?

11 MR. McNEAL: No sir.

12 THE COURT: You understand them?

13 MR. McNEAL: Yes, sir.

14 THE COURT: You do not want a trial?

15 MR. McNEAL: No sir.

16 THE COURT: Are you under the influence of any drugs
17 alcohol or medication?

18 MR. McNEAL: No sir.

19 THE COURT: Do you suffer from any condition, mental
20 or physical or a combination of both that could be
21 affecting your understanding?

22 MR. McNEAL: Repeat that again, sir?

23 THE COURT: Do you suffer from any condition that
24 could be affecting your understanding?

25 MR. McNEAL: Mentally, sir.

1 THE COURT: Pardon?

2 MR. McNEAL: Mentally.

3 MR. NEELY: Judge may we approach?

4 (Whereupon, a bench conference was held)

5 THE COURT: All right, you met with an evaluator after
6 I discussed and you understand they found competent?

7 MR. McNEAL: Yes sir.

8 THE COURT: So what I'm asking you - - just let me
9 simplify it, do you understand what you're doing today?

10 MR. McNEAL: Yes sir.

11 THE COURT: Okay. Are you on any kind of medication?

12 MR. McNEAL: Yes sir.

13 THE COURT: And have you taken your prescribed dosage?

14 MR. McNEAL: Yes sir.

15 THE COURT: Okay. Has anybody promised you anything
16 or threaten you in any way - - -

17 MR. McNEAL: No, sir.

18 THE COURT: - - - in order to get you to plead?

19 MR. McNEAL: No sir.

20 THE COURT: You're entering this plea of your own free
21 will and accord?

22 MR. McNEAL: Yes, sir.

23 THE COURT: I find his plea is freely, voluntarily,
24 and intelligently entered into and he's had the services of
25 competent attorney with whom he says he's satisfied. I'm

1 going to accept the plea but I can always modify that later
2 on.

3 MR. FOARD: Thank you, Your Honor. If it pleases the
4 Court?

5 This incident did occur on November 25, 2013. On that
6 day Mr. Holloway who is standing here, was driving his 2005
7 Ford automobile and at a local, I believe, a convenient
8 store Mr. McNeal approached him, sought a ride, Your Honor.
9 Mr. Holloway allowed him to ride in his car and
10 unfortunately that proved to be his, to his detriment
11 because during that ride, Your Honor, and while in that car
12 at some point, Mr. McNeal did fire upon Mr. Holloway
13 striking him with bullets and causing injuries that left
14 him in the condition that he's in today which I'm going to
15 let the mother speak more to as she is his primary care
16 giver and provide more information to the Court as far as
17 that goes.

18 With regard to prior history, Your Honor, Mr. McNeal
19 does have a prior criminal record. He - - for general
20 sessions offenses he's been previously convicted of
21 defrauding the lottery. Your Honor, I imagine that was
22 some kind of ticket scam. He was also convicted in general
23 sessions court of burglary second-degree which he did
24 receive a sentence for back in 2009. I believe that was a
25 YOA sentence. And then in 2012, he was convicted of an

1 assault battery first-degree, Your Honor, but that is the
2 extent of his general sessions criminal record.

3 I would yield to the representative of the sheriff's
4 office for any additional information and to the family at
5 the appropriate time.

6 THE COURT: Sheriff?

7 MR. HODGES: Yes, sir, Your Honor. If it pleases the
8 Court? This incident, like counselor said, happened on
9 November 25, 2013 where Mr. Holloway did pick up Mr. McNeal
10 from Kangaroo gas station, Mr. McNeal wanted a ride.
11 Attempted to take - - Mr. Holloway took him to Brunson
12 Street and Mr. McNeal getting out of the vehicle, he shot
13 Mr. Holloway several times. Since this has happened Mr.
14 Holloway hasn't been the same as far as his communication
15 skills and vision and other things. I'll let his mother
16 tell you more about that. But Mr. McNeal was identified by
17 the clerk at the store. He was identified by some other
18 people. We recovered the hand gun. The clothes that he
19 was wearing. Mr. McNeal also gave a video statement
20 admitting his involvement in this case.

21 THE COURT: All right. Thank you, sheriff. Ms.
22 Holloway?

23 MRS. HOLLOWAY: Thank you, Your Honor, for allowing me
24 to speak. We do know the McNeal family. We go to the same
25 church. My son is now - - we're having a time getting into

1 with the Vets and I have to take him to the doctor. I have
2 to pay for his doctor visits. He have to go tomorrow. He
3 can't - - he have a problem with his vision. He have to
4 get glasses. When you talk to him you have to tell him who
5 this person is and we have to get up - - he has PTSD and
6 he's just not the same. And he constantly be in pain and
7 I'm his care giver so it's a load on me. It's been taken a
8 toll on me. He's not able to actually do for his children
9 like he would want to. I have to go and I have to be back
10 home at a certain length of time because he has this excess
11 fears, just like they say, about the PTSD and this has gone
12 on - - like he said, we thought we was coming here for a
13 bond - - a bond hearing. We didn't know we was coming
14 here for a plea - - a plea - - for a plea - - a plea deal
15 and I don't feel like he needs to get out. My son is still
16 going through with it. We just don't know if we go
17 someplace he's constantly, "whose this, mama?" He's just
18 so in fear and it's taken a toll on me just as well as it
19 is him and trying to give his children to be around and
20 like the doctor said, they won't like for him to drive and
21 he still got the bullet and he went through like six (6)
22 surgeries and if they tried to take the bullets out him
23 they said that's going to take life. And here's a guy
24 that's standing here for the plea for ten (10) years I
25 totally disagree with that but just like he say it's not -

1 - it's not our power as he's the solicitor and you're the
2 judge and that's all I have to say. That's me as his
3 mother.

4 THE COURT: Thank you for being here. Yes, sir?

5 MR. HOLLOWAY: I want to say something to. What
6 bother me the most - - -

7 COURT REPORTER: State your name for the record.

8 THE COURT: We need your name?

9 MR. HOLLOWAY: Robert Holloway.

10 THE COURT: Okay.

11 MR. HOLLOWAY: I'm his father.

12 THE COURT: All right.

13 MR. HOLLOWAY: And what bother me the most is the
14 ideal that he is going by the store and picking him up. He
15 was nice enough to give him a ride. Pay for stuff that he
16 had in the store. Ask him to borrow the money. Then take
17 the gun and shoot my son. My son says, "why he keep
18 shooting me?" "Why he keep shooting me?" He continued
19 shooting him and then when we go to court, he's going to
20 get in front of the judge and tell the judge he had a drug
21 problem. His intention was to get somebody that day.
22 That's why he was hanging around the store, you know. That
23 kind of bothered me a little bit because if he hadn't got
24 my son, he was going to get somebody. Now, my son after he
25 got shot I took a leave out of work to be down there with

1 him because he went through a lot of major surgery. As a
2 matter of fact, when they first got him there the first
3 bullet went through the artery of his heart so right then
4 they had to shock him back because we like to have lost
5 him. Do you know what I mean? And that just - - it just
6 bothers me the way that I talked with this guy here about
7 it. I asked him how he would feel about it if that was his
8 son. You know, that just bother me a lot to take somebody
9 that just - - he know he did wrong and that he supposed to
10 get off on it easy, you know, that just - - that just
11 bother me a lot, Your Honor.

12 THE COURT: I understand. Mr. Neely?

13 MR. NEELY: Thank, Judge. May it please the Court?
14 Your Honor, Mr. McNeal has told you that he is twenty-seven
15 years old. He is a lifelong resident of Darlington County.
16 He has a tenth grade education but that entire time he was
17 in school was spent in the learning-disabled classes. He
18 was evaluated by both the Department of Mental Health and
19 the Department of Special Needs. He is competent to stand
20 trial but both evaluators noticed that in the presence of
21 intellectual disability and mental illness Mr. McNeal
22 suffers from PTSD, from anxiety and mood disorder, bipolar,
23 depression.

24 Your Honor, this is --- Mr. McNeal is up here pleading
25 guilty. He's admitting that he's wrong because he is

1 wrong. He's throwing himself on the mercy of the Court.
2 Mr. McNeal has not had an easy life. From a very young age
3 his father was not in the picture. His mother was an
4 alcoholic and threw him out. He's bounced around from
5 foster home to foster home. He was abused and I think
6 that's where the mental illness stems from. That's no
7 excuse for what he did. He's up here admitting that guilt
8 but I would ask that the Court keep that in mind and go
9 along with the negotiation.

10 Mr. McNeal has served five hundred and ninety-five
11 (595) days to this point and he has expressed that he is
12 remorseful for his actions.

13 THE COURT: All right, thank you. Mr. McNeal?

14 MR. McNEAL: I'm sorry. I'm sorry for what I did and
15 I throw myself on the mercy of the Court.

16 THE COURT: All right, I have some mixed emotions
17 about this as I certainly understand the trauma he has
18 caused this family.

19 This case is getting some age on it, it needs to be
20 moved. Correct me if I'm wrong now, the charge he's
21 pleading to, of course, is violent, it carries the same
22 possible penalty as if he were to plea or get convicted of
23 the original charge, right or is it thirty?

24 MR. FOARD: It's - - the original one is thirty.

25 THE COURT: Up to thirty.

1 MR. FOARD: Yeah.

2 THE COURT: Okay. And this - - -

3 MR. FOARD: They both start at zero, Your Honor.

4 THE COURT: - - - up to twenty? They both are
5 violent?

6 MR. FOARD: Yes, Your Honor.

7 MR. NEELY: Yes, Your Honor.

8 THE COURT: I have qualms about it but I think it's
9 probably the best thing to do based on that it is
10 classified as a violent and he will be serving substantial
11 time.

12 Mr. McNeal, I am going to recommend that you be placed
13 for mental health counseling and treatment. The sentence
14 is ten (10) years. Credit for your jail time.

15 MR. FOARD: Thank you, Your Honor.

16 MR. NEELY: Thank you, Judge.

17 THE COURT: Thank y'all for getting it to this point.
18 I'm sorry that it wasn't resolved to everybody's
19 satisfaction but that's the way most things are now days.
20 Read the book of Matthew everybody it helps you in
21 situations like this.

22 MR. FOARD: Thank you.

23 (CONCLUSION OF THE HEARING ON JULY 20, 2015)

24

25

CERTIFICATE

1
2
3 I, the undersigned Lisa S. Carter, Official Court
4 Reporter for the Fourth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete excerpt of
7 transcript of record of all the proceedings had and
8 evidence introduced in the hearing of the captioned
9 cause, relative to appeal, in the Fourth Circuit Court
10 for Darlington County, South Carolina, on the 20th
11 day of July, 2015.

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

14
15
16 *Lisa S. Carter*

17 Lisa S. Carter

18 Circuit Court Reporter

19 December 10, 2015
20
21
22

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS

Cleveland McNeal #322191
Full name and prison number (if any) of Applicant.

15 CP 160863

v.

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Tyger River Corr. Inst
2. Name and location of Court which imposed sentence Darlington, S.C. 29532
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) 2014-GS-16-512; Assault & Battery H & A
 - (b) N/A
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 7 Jul 15; 10 (Ten) yrs.
 - (b) N/A

2015 NOV 17 AM 10:22
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

FILED

TRUE CERTIFIED COPY,
Paul B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

- (c) N/A
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty Yes
 - (b) after a plea of not guilty N/A
 - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) No knowledge of appeal process
 - (b) N/A
 - (c) N/A
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Insufficient Assistant of Counsel
- (b) Involuntary Guilty Plea
- (c) N/A

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

- (a) Counsel misadvised me on the nature of offense &
- (b) possible defenses.
- (c) Plea did not meet the Boykin standard

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

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

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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?

N/A

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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) Did not appeal plea; no knowledge of legal process

(b) N/A

(c) N/A

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? N/A
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
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. Paul Neely 4th Judicial Circuit
 - ii. N/A 300 Russell Street
 - iii. N/A Derlington, SC 29532
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea & Sentencing
 - ii. N/A
 - iii. N/A
19. State clearly the relief you seek in filing this application:
Sentence vacated; New trial
20. Are you now under sentence from any other court that you have not challenged?
N/A

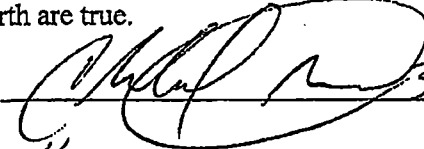
STATE OF SOUTH CAROLINA)

VERIFICATION

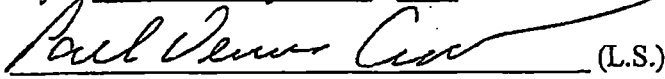
County of Darlington)

Cleveland McNeal

I, Cleveland McNeal, 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.


322191

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


(L.S.)
Notary Public

My Commission Expires: Dec. 10, 2021

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

Cleveland McNeal
I, _____, 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.

 322191
Applicant

SWORN or affirmed to and subscribed before me this
9 day of November, 2015.


Notary Public

My Commission Expires: Dec. 16, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON)	
Cleveland McNeal,)	Case No.: 2015-CP-16-00863
S.C.D.C. No. 322191,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
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In response to the Applicant’s post-conviction relief application filed November 17, 2015, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the April 2014 term of the Darlington County Grand Jury for attempted murder (2014-GS-16-0512). Paul Neely, Esquire, represented the Applicant, and Adam M. Foard, of the Fourth Circuit Solicitor’s Office, prosecuted the case. On July 20, 2015, Applicant pled guilty to the lesser included crime of assault and battery of a high and aggravated nature. Consistent with terms negotiated with the State, the Honorable Paul M. Burch sentenced Applicant to 10 years imprisonment. Applicant did not appeal his plea or sentence.

II.

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

1. Ineffective Assistance of Counsel and Involuntary Guilty Plea, in that;
 - a. "Counsel misadvised me on the nature of offense & possible defenses"
 - b. "Plea did not meet the Boykin standard"

Attached to and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Applicant can satisfy neither 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, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's allegation that his guilty plea was involuntary is equally without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz, 338 S.C. at 363-64, 527 S.E.2d at 747 (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant 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); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006). "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000). When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

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

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VI.

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

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

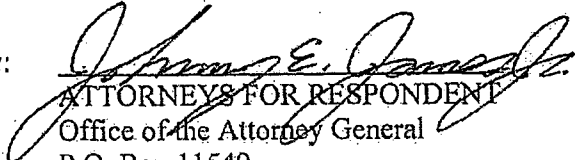
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

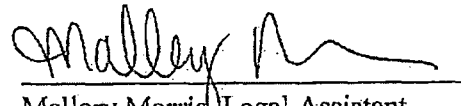
1 June, 2017

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)	
)	
	)	2015-CP-16-0863
CLEVELAND MCNEAL, #322191,)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

Lance S. Boozer, Esquire
Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201

DATED this 1st day of June, 2017.



Mallory Morris, Legal Assistant
For Respondent

ulu

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Cleveland McNeal, #322191,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 C/A NO: 2015-CP-16-863


**FIRST AMENDMENT TO PRIOR
 APPLICATION FOR PCR**

The Applicant, at his request and through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief:

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

- (i) Applicant believes the gun charge was supposed to have been dismissed upon accepting the plea.
- (ii) Applicant believes counsel failed to secure in writing a plea deal Applicant claims was offered by the State.
- (iii) Applicant believes his rights were violated by the State and the Solicitor abused his authority by forcing Applicant to plead to a violent offense.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
 Attorney for Applicant
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

2017 JUL 10 PM 1:28
 11 1 11


Columbia, South Carolina
 July 7, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO: 2015-CP-16-863
)	
Cleveland McNeal, #322191,)	
)	
Applicant,	)	PROOF OF SERVICE
)	
v.)	
)	
State of South Carolina,)	
)	
<u>Respondent.</u>)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Johnny E. James, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


Lance S. Boozer
Attorney for Applicant
1400 Laurel Street, Suite 4A
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2017 JUL 10 PM 1:28
CLERK OF COURT
COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
DARLINGTON, SC

Columbia, South Carolina
July 7, 2017

State of South Carolina)
County of Darlington)

In the Circuit Court
Fourth Judicial Circuit
2015-CP-16-0863

CLEVELAND McNEAL,
Plaintiff,
vs.
THE STATE,
Defendant.

Transcript of Record

Dillon, South Carolina
July 17, 2017

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Lance S. Boozer, Esquire
Attorney for Plaintiff

Mr. Johnny E. James, Jr., Esquire
Attorney for Defendant

LISA CARTER
CIRCUIT COURT REPORTER

I N D E X

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WITNESSES

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Mr. Paul Neely:

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
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(NO EXHIBITS WERE INTRODUCED DURING THIS HEARING)

1 THE COURT: I'm ready.

2 MR. JAMES: Your Honor, the State calls Cleveland
3 McNeal versus the State of South Carolina. This is docket
4 number 2015-CP-16-00863. Would, Your Honor, like a
5 complete procedural history of this matter?

6 THE COURT: Yes, sir.

7 MR. JAMES: All right. Your Honor, Mr. McNeal was
8 indicted in 2014 for attempted murder, possession of a
9 weapon during a violent crime, and discharging a firearm
10 into a vehicle. He proceeded to plead guilty to the lesser
11 included offense of attempted murder, I'm sorry, lesser
12 included offense of ABHAN on July 20, 2015 for which you
13 received a negotiated sentence of ten (10) years. As part
14 of that plea agreement the charges for possession of a
15 weapon and discharging a firearm into a vehicle were nol
16 pros. In that guilty plea Mr. McNeal was represented by
17 Paul Neely and the plea was prosecuted by Mr. Adam Foard.
18 Mr. McNeal did not appeal that guilty plea or that
19 sentence.

20 His application for post-conviction relief was filed
21 November 17, 2015. The State made its return on or about
22 June 1, 2017, is what I have written down here. The
23 opposing counsel filed an amendment on July 10, 2017. Your
24 Honor, the State's understanding of the allegations are as
25 follows: that plea counsel was ineffective because,

1 "counsel misadvised me on the nature of the offense and the
2 possible defenses" because the plea did not meet the Boykin
3 standard, because the applicant believes the gun charge was
4 supposed to have been dismissed upon accepting a plea,
5 because applicant believes counsel failed to secure in
6 writing a plea deal that applicant claims was offered by
7 State, because applicant believes his rights were violated
8 by the State and the solicitor abused his authority by
9 forcing applicant to plead to a violent offense. That is
10 stated, we seek the floor to Mr. Boozer.

11 MR. BOOZER: Your Honor, May and I approached the
12 bench for a preliminary matter?

13 THE COURT: Yes, sir.

14 (Whereupon, a bench conference was held)

15 MR. BOOZER: Thank you, Your Honor. Judge, if it
16 pleases the Court? Just a couple of preliminary matters.
17 The first, Your Honor, is Mr. McNeal does have an amended
18 application and really part of that amendment, does, Your
19 Honor, have a copy of that?

20 THE COURT: Yes, sir, I do.

21 MR. BOOZER: Okay. Part of that amendment is that
22 he believed counsel was failed to secure in writing a plea
23 deal that he was offered by the State and believes his
24 rights were violated by the State for abusing it's
25 authority and forcing him to plea to a violent offense.

1 Your Honor, my client's position in this is that I think
2 July 17th, two years to the day, he has indicated to me
3 that at the Darlington County Detention Center he was
4 offered a plea to ten (10) years non-violent on a reduced
5 charge and that he accepted that plea. He indicates that
6 fast forwarding he ends up actually talking to his lawyer
7 sometime later, to Mr. Neely, and what my client has
8 indicated to me is that at that time Mr. Neely, per my
9 client, told him that Mr. Holt with the solicitor's office
10 said that, that deal was no longer on the table and is no
11 longer good. The offer is ten (10) years violent or you go
12 to trial. And at that point under the duress of having to
13 go to trial and take that offer right then and there and
14 thinking that he was going to have this other deal the ten
15 (10) years non-violent that he went ahead and took the ten
16 (10) year violent. What he's asking the Court is that,
17 Your Honor, basically find that this offer, basically, on a
18 contractual principle that this offer was made, the offer
19 was accepted, and then grant the PCR. Send the case back
20 to general sessions and allow him to accept and enter the
21 plea under the terms of the offer that he says he accepted.
22 His position is not to request a new trial but to make that
23 request. So that's sort of the first thing.

24 The second thing that goes along with that, Your
25 Honor, is that my client has indicated to me that he thinks

1 that in Darlington County there would either be a tape that
2 would exist evidencing him meeting with a member of the
3 solicitor's office and maybe Mr. Neely that they were going
4 into bond court, I guess, to accept this offer and that's
5 when everything, I guess, then came unraveled later on. He
6 said he would like to get a copy of the tape if he needs it
7 depending on what Mr. Neely says today or be allowed to
8 have who he says was then the director, I guess, is
9 Lieutenant at Darlington County Detention Center, make some
10 sort of written statement or correspondence to the Court
11 the fact that the meeting did occur. That would be the
12 request, Your Honor.

13 THE COURT: What kind of tape? And who made the
14 tape?

15 MR. BOOZER: Well, I guess, judge, it would be like
16 a surveillance footage at Darlington County that tells me
17 that they would have maintained, I guess, this area that he
18 would've been in. I would guess there's no audio on the
19 tape. I presume it would just be visual.

20 THE COURT: Mr. James?

21 MR. JAMES: Your Honor, the prospect of a trial
22 does not amount to duress under South Carolina law. A
23 trial can be very scary. Even a PCR can be very scary but
24 it does not amount to duress. Your Honor, under Reed vs.
25 Becka there has to be some sort of detrimental reliance on

1 the agreement for it to be brought back in a PCR setting
2 and there's no indication of detrimental reliance either by
3 the presentation that I assume opposing counsel has made so
4 far, nor do I anticipate that any evidence of such
5 detrimental reliance would be introduced in the testimony
6 that we presently plan to have today. Your Honor, under -
7 - the relief that is available to applicant under South
8 Carolina law is to get a new trial out of a PCR and that's
9 if you grant him relief. It is not upon the Court to
10 concoct other forms of relief or it's not upon the Court to
11 force that relief upon that he doesn't want it. So if Mr.
12 McNeal does not want a new trial, if he affirmatively
13 avers that opportunity I respectfully request that this
14 opportunity, that this Court dismiss this action. As for
15 the request to subpoena this person and that person seeking
16 testimony and records, Your Honor, the State was not aware
17 of any of these desires until this very moment. We are all
18 present here today. Attorneys have been waiting in this
19 courtroom patiently all day to conduct this hearing. I, to
20 the extent that Mr. McNeal does want an opportunity for new
21 trial, the State is ready to proceed on that. But we will
22 oppose any continuance for any further development in this
23 case.

24 THE COURT: Mr. Boozer, do you want to address the
25 alternative relief that you're seeking other than a new

1 trial?

2 MR. BOOZER: Yes, Your Honor, absolutely. Judge, I
3 do believe that it's in this Court's province to and now, I
4 don't believe this Court can grant, respectively, and I
5 don't believe that this Court can modify sentence or reduce
6 his time or make him parole eligible or anything like that,
7 but I think per the statute it can vacate, remand, or any
8 other relief per the PCR statute. I think that this Court
9 can grant the application and send, remanded back to the
10 PCR, to the, excuse me, to general sessions if this Court
11 finds that a plea offer was offered and accepted and that
12 he was relying on that offer that, that's what he was going
13 to plea guilty and then when it was revoked he took the ten
14 (10) violent that is, basically, a breach of contract. I
15 think the Court can find that, that did occur and,
16 basically, send it back to enforce the original plea. I
17 think in terms of ineffective assistance of counsel as he
18 claims he felt that counsel should've secured the writing,
19 the plea deal in writing or inform the Court at the plea,
20 judge, there was a plea offer, my client accepted it,
21 apparently it's now been revoked after he accepted it that,
22 that could be ineffective assistance of counsel. But the
23 remedy wouldn't be a new trial, it would be to go back and
24 accept that offer.

25 MR. JAMES: Your Honor, there is no contract until

1 there's actually some formal process accepting this plea,
2 until we have something in writing, until we've stood up in
3 front of the judge, and until the judge has accepted that
4 plea. Until that time, the State can pull back that plea
5 almost any time it wants and cannot be obligated to enter
6 into whatever advantageous terms that a defendant or at
7 this point, applicant might desire.

8 THE COURT: Well, I can definitely rule on the
9 request to secure the tape or have some individual
10 subpoenaed, I'm going to deny that request. That should've
11 been done before today. It has not been done. Before I
12 can rule on your first motion concerning somewhat
13 alternative relief, I'm going to have to have the
14 testimony. I mean, it may even be that there is testimony
15 that there wasn't no agreement, you know, and it depends on
16 who I want to believe at that point in time. So let's go
17 forward with the hearing. Realizing he doesn't want new
18 trial but....

19 MR. BOOZER: Court's indulgence, Your Honor?

20 THE COURT: Yes, sir.

21 MR. BOOZER: Thank you, Your Honor. I understand
22 the Court's ruling in the posture that were in and with
23 that being said, we'll go ahead and call Mr. McNeal to the
24 stand.

25 THE COURT: All right. Come forward, sir.

1 THE CLERK: Place you left hand on the Bible and
2 raise your right hand. Do you solemnly swear or affirm the
3 testimony you're about to give the Court is the truth, the
4 whole truth, and nothing but the truth so help you God?

5 MR. McNEAL: Yes, ma'am.

6 THE COURT: Please be seated in the witness box and
7 state your full name for the Court.

8 MR. McNEAL: Cleveland McNeal.

9 CLEVELAND McNEAL, first being
10 duly sworn, testified as follows:

11 **Direct Examination by Mr. Boozer:**

12 Q. Mr. McNeal, how are you doing today?

13 A. I'm doing fine. How are you?

14 Q. I'm doing fine. Thank you for asking. If you would
15 just keep your voice up and speak clearly so Madam, Court
16 Reporter can take down everything we're saying, okay?

17 A. Yes, sir.

18 Q. All right. Now, do you know why we're here today?

19 A. Yes, sir.

20 Q. Why is that?

21 A. Post conviction relief.

22 Q. And you filed, initially, you filed an application for
23 post-conviction relief on your own?

24 A. Yes, sir.

25 Q. All right. Now, you're currently serving -- what are

1 you currently serving a sentence for?

2 A. Assault and battery of a high and aggravated nature.

3 Q. And what sentence did you receive?

4 A. I received ten (10) years non-violent but I took a
5 plea bargain for ten (10) years non-violent.

6 Q. And we'll get to that in a moment. But what is it
7 you're asking the Court -- you've, obviously, heard what
8 the discussions that's been had so far in court today.

9 What is it you're asking the Court to do for you?

10 A. Grant me the first plea bargain that I first went for.

11 Q. All right. You don't want a new trial?

12 A. No, sir.

13 Q. Okay. And so if this Court, if this Court were
14 inclined to grant a new trial would you not want that?

15 A. No, sir.

16 Q. All right. But you do want this Court to grant you an
17 opportunity to go back and accept a plea offer that you
18 feel you accepted initially?

19 A. Yes, sir.

20 Q. All right. When is your max out date?

21 A. 2022, March 5th.

22 Q. Okay. Let's talk a little bit by way of background,
23 you pled guilty, was it on July 20, 2015?

24 A. Actually, on the 17th but, yes, sir.

25 Q. Okay. And what do you mean by actually on the 17th?

1 A. They came to the county jail and gave me, they offer
2 me a zero (0) to ten (10) nonviolent?

3 Q. Who?

4 A. Mr. Paul Neely and Ms. Pattie.

5 Q. Ms. Pattie, where was she from?

6 A. The solicitor's office.

7 Q. The solicitor's office?

8 A. (Shaking of head, yes)

9 Q. Mr. Neely was with her?

10 A. (Shaking of the head, yes)

11 Q. Okay. And you've got to say yeah or no so she can
12 take it down.

13 A. Yes, sir.

14 Q. Okay. So tell me a little bit more about this, you
15 were saying on July 17th and keep going?

16 A. On July 17th they pulled me in the office, I mean, in
17 the courtroom, the bond hearing courtroom, they offer me
18 zero (0) to ten (10) non-violent for assault and battery
19 with a high and aggravated nature and I took the plea.

20 Q. All right. Where did that happen?

21 A. At the county jail at the bond hearing courtroom.

22 Q. It was in a courtroom?

23 A. The bond hearing courtroom at the county jail.

24 Q. And who was with you?

25 A. At the time, he was the director at the time, Mr.

1 Waddell Coe and he escorted me in and they ask me the
2 questions and they ask me to plea bargain and I accepted
3 it.

4 Q. All right. Do you know specifically it was to ten
5 (10) years non-violent?

6 A. Yes, sir.

7 Q. Do you know the charge was?

8 A. Assault and battery with a high and aggravated nature.

9 Q. Okay. Are you -- do you know if they were reducing it
10 down to something else or....

11 A. They were -- no, the original charge was attempted
12 murder.

13 Q. Okay.

14 A. And then reduced it from assault -- they reduced it to
15 assault and battery of a high and activating nature.

16 Q. All right. Now, when you say you accepted that offer,
17 tell me how you accepted it, what happened?

18 A. They asked me did I like to take the zero (0) to
19 ten (10) non-violent and I said, yes and I signed the
20 paper. But I never did get a copy.

21 Q. What kind of paper do you recall signing?

22 A. I can't recall.

23 Q. Okay. But it was to, you said, zero (0) to ten (10),
24 was it to ten (10) years non-violent or zero (0) to ten
25 (10)?

1 A. Zero (0) to ten (10) non-violent.

2 Q. Okay. So it would be somewhere in that range but it
3 would be a non-violent sentence?

4 A. Yes, sir.

5 Q. All right. After that did you have any discussions
6 with Mr. Neely?

7 A. Yes, sir.

8 Q. When was that?

9 A. Monday morning when we went to court he pulled me from
10 out of the holding cell and we talked into another office,
11 the office. He pulled me and told me, he said, Mr. John
12 Holt said that the plea bargain that the zero (0) to ten
13 (10) was taken off the table and take the ten (10) violent
14 or go to trial.

15 Q. All right. Do you know why it was taken off the
16 table?

17 A. Yes, they said the victim, the family members and the
18 victim wasn't, they didn't want me to have that plea
19 bargain, the zero (0) to ten (10).

20 Q. Okay. And so at that point what were you faced with
21 either going to trial or plea guilty?

22 A. Yes, sir.

23 Q. Why did you then accept that plea?

24 A. Because I was, at the time, all my evidence, they have
25 all the evidence and I cannot beat trial. So from one plea

Cleveland McNeal- Direct Examination by Mr. Boozer 16

1 bargain to another I accepted it just because I know I
2 couldn't go to trial.

3 Q. Okay. And you thought that you were going to be
4 allowed to enter the plea to the non-violent?

5 A. Yes, sir.

6 Q. And that's why you accepted it?

7 A. Yes, sir.

8 Q. All right. Did you have any further discussions after
9 your plea with Mr. Neely about, hey, what happened to that
10 ten (10) year non-violent offer?

11 A. No, sir.

12 Q. Okay. Is there anything else you want to tell the
13 Court about that offer or why you're here today?

14 A. Okay. Yes. About that offer when I took the offer
15 and went to prison I was already on medication, mental
16 medication. I was on Depakote 1500 mg, Buspar 20 mg,
17 Remeron 30 mg and Amitriptyline 25 mg. And as of me going
18 to prison with that time it enhance a 1000 mg of the
19 Depakote and now I'm going through side effects from the
20 medication. I got off the medication. And I'm having a
21 little problems of coping and understanding certain things.

22 Q. How are you doing today?

23 A. I'm doing. I'm trying.

24 Q. Do you understand everything that's going on here
25 today?

1 A. Yes, sir.

2 Q. Okay. Are you under the influence of anything that
3 would affect your understanding of today's proceedings?

4 A. No, sir.

5 Q. Okay. Other than that, is there anything that you
6 wish you tell the Court about this offer or why you ended
7 up pleading guilty?

8 A. I was pressured, basically.

9 MR. BOOZER: Your Honor, that's all the questions I
10 have at this time.

11 THE COURT: All right, sir. Mr. James?

12 **Cross Examination by Mr. James:**

13 Q. Good afternoon, Mr. McNeal?

14 A. How are you doing today, sir?

15 Q. I'm doing all right. About how many times did you
16 meet with your plea counsel?

17 A. Several times.

18 Q. Several. Did he go over the discovery in your case
19 with you?

20 A. Yes.

21 Q. Did he go over the elements of the offenses that were
22 charged against you?

23 A. Yes.

24 Q. Did he go over the elements of assault and battery of
25 a high and activating nature?

1 A. Yes.

2 Q. Did he explain to you that ABHAN, for short, is a
3 violent offense?

4 A. When I accepted the plea at the courthouse. The day
5 that I got sentenced.

6 Q. And just for my own clarification, Mr. McNeal, you
7 claim that Mr. Neely was in your presence at the time that
8 this purported non-violent plea was offered, correct?

9 A. Yes, sir.

10 Q. And Mr. Neely communicated to you when you pled guilty
11 that, that offer was gone, correct?

12 A. Yes, sir.

13 Q. And that you are pleading to violent?

14 A. Yes, sir.

15 Q. And that there was no question that your pleading to
16 violent?

17 A. I mean, no, sir.

18 MR. JAMES: If I may beg your indulgence for just
19 one moment, Your Honor.

20 THE COURT: Yes, sir.

21 Q. You didn't want to go to trial, correct?

22 A. No, sir.

23 Q. You still don't want to go to trial?

24 A. No, sir.

25 MR. JAMES: I have no further questions, Your

1 Honor.

2 THE COURT: Mr. Boozer?

3 MR. BOOZER: No redirect, Your Honor.

4 THE COURT: You can step down, sir. Thank you.

5 MR. McNEAL: Thank you, sir.

6 THE COURT: Any other witnesses, Mr. Boozer?

7 MR. BOOZER: No, Your Honor.

8 THE COURT: Mr. James?

9 MR. JAMES: Your Honor, the State would
10 respectfully motion for directed verdict. Mr. McNeal has
11 stated in no uncertain terms on the record that he knew he
12 was pleading to violent, that he was pleading to ABHAN,
13 that whatever he was pleading to before or after was going
14 to be ABHAN and, Your Honor, ABHAN is a violent offense.
15 And so with that stated there aren't any other allegations
16 here to continue taking evidence on today.

17 THE COURT: Any response?

18 MR. BOOZER: Your Honor, in considering the evidence
19 in the like most favorable to the applicant, the standard
20 for a directed verdict motion, judge, we would argue that
21 he had -- he's certainly not a lawyer so I don't know that
22 he knows nuances of ABHAN and how ABHAN is classified.
23 Maybe there was something else that was offered that was
24 not ABHAN that was non-violent. He may not understand all
25 that. I think that we need to get into that with his

Paul Neely- Direct Examination by Mr. James

20

1 attorney who I presume they're going to call to testify to
2 his involvement with this case. I certainly think we
3 presented enough evidence to at least get to the part where
4 Mr. Neely testified that there was an offer made or not
5 made.

6 THE COURT: Okay. All right. I respectfully deny
7 the motion for directed verdict. We'll here for Mr. Neely.

8 MR. BOOZER: Thank you, Your Honor.

9 MR. JAMES: Thank you, Your Honor. The State calls
10 Paul Neely.

11 THE CLERK: Do you solemnly swear or affirm the
12 testimony you're about to give the Court will be the truth,
13 the whole truth, and nothing but the truth so help you God?

14 MR. NEELY: I do.

15 THE CLERK: Be seated. Please give your full name
16 for the Court.

17 MR. NEELY: Paul Neely.

18 PAUL NEELY, first being
19 duly sworn, testified as follows:

20 **Direct Examination by Mr. James:**

21 Q. Good afternoon Mr. Neely. How are you doing today?

22 A. I'm doing well. How are you?

23 Q. I'm doing very well. Thank you very much for being
24 patient all day today. About how long have you been
25 practicing law, Mr. Neely?

1 A. I was sworn in February of 2014.

2 Q. And how much of that experience is criminal?

3 A. The entire time. I began in the public defender's
4 office in May of 2014.

5 Q. About how many times did you meet with your client?

6 A. Several. I don't have an exact number. Office policy
7 at that time was to meet with every client in the detention
8 center about every thirty days.

9 Q. And I apologize if you could speak up just a little
10 bit between the rain and too much hard rock music I'm
11 having a little hard time hearing you. Did you file a
12 motion pursuant to Rule 5, Brady?

13 A. We did.

14 Q. And did you get everything back in response to those
15 motions?

16 A. We did.

17 Q. All right. Did you review everything with your
18 client?

19 A. I did.

20 Q. All right. I'm going to skip ahead to plea
21 negotiations, he alleges that there was an unreported,
22 well, not reported on paper meeting between himself,
23 yourself and a representative for the State where he was
24 offered the opportunity to plea to ABHAN for ten (10) years
25 non-violent, is there any truth to that?

1 A. I have no recollection of that. In reviewing my notes
2 for this hearing the last notes in my folder indicate that
3 I met with Cleveland on July 16, 2015. At that point, I
4 reviewed the plea offer with Cleveland which was ten (10)
5 years to assault and battery of a high and aggravated
6 nature. My standard procedure is to review everything that
7 the judge will go over in the plea colloquy, all of his
8 constitutional rights, what the charge is and what it
9 carries, what the collateral consequences of that charge
10 was and that's what my notes indicate and they indicate in
11 that note, that, that meeting was on July 16, 2015.

12 Q. All right. Just to be clear you reviewed his
13 constitutional rights, right to remain silent ---

14 A. (Shaking of the head, yes)

15 Q. You reviewed whether or not this was a violent or non-
16 violent offense?

17 A. Correct.

18 Q. And did you explain to him that distinction between
19 violent and non-violent offense?

20 A. I did.

21 Q. Okay. Did you coerce him into taking a guilty plea?

22 A. No. And actually my notes indicate that at that
23 meeting on July 16, 2015, we actually discussed possible
24 defenses at trial. The victim in that case was a known
25 drug dealer in the area and we discussed whether it was a

1 drug deal gone bad and whether self-defense would have been
2 an option.

3 Q. So you weren't just ready to plea, you were preparing
4 to take this to trial, if necessary?

5 A. If Cleveland had indicated that he wanted to go to
6 trial I would've been ready or I would've gotten ready but
7 all along as Cleveland said he didn't want to try. He
8 didn't want a trial.

9 Q. He never wanted a trial?

10 A. No, sir.

11 Q. All right. Aside from his allegation that you were
12 present at a meeting for ten (10) years non-violent, did he
13 ever communicate to you that any other plea offers were
14 made to him outside of your presence?

15 A. No. No. And again his entire time that he was
16 incarcerated on this charge he indicated what offer he did
17 want but the only offer that was ever received was ten (10)
18 years to assault and battery, high and aggravated.

19 Q. Since were there let's go ahead and ask that question,
20 what offer did he want?

21 A. If I can look at my notes.

22 Q. Take your time.

23 A. We met on July 16, 2015 Cleveland told me he wanted
24 five (5) years non-violent as far back as, looks like, as
25 far back as January of 2014 he told his previous defense

Paul Neely- Cross Examination by Mr. Boozer

24

1 counsel, Mrs. Julie Swilley, that he wanted five (5) years
2 nonviolent.

3 Q. But no one ever offered five (5) years non-violent?

4 A. While I was his defense counsel that was never
5 offered.

6 MR. JAMES: I have no further questions. Please
7 answer any questions that Mr. Boozer may have for you.

8 **Cross Examination by Mr. Boozer:**

9 Q. Mr. Neely, how are you?

10 A. Doing well.

11 Q. Did you ever have any conversation with Mr. McNeal
12 about Mr. Holt with the solicitor's office revoking any
13 prior offers?

14 A. No, and actually to the best of my recollection by the
15 time that this plea was done in July of 2015, John Holt was
16 actually working for the Florence County Solicitor's
17 Office.

18 Q. Okay. So it's your understanding -- you don't believe
19 there was any -- to your knowledge -- strike that.

20 MR. BOOZER: I beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 MR. BOOZER: No further questions, Your Honor.

23 THE COURT: Anything else, Mr. James?

24 MR. JAMES: No redirect.

25 THE COURT: All right. You can step down, Mr.

1 Neely. Thank you, sir.

2 MR. NEELY: Thank you, judge.

3 MR. JAMES: I respectfully request that this
4 witness be excused.

5 THE COURT: Any objection?

6 MR. BOOZER: No objection.

7 THE COURT: You may be excused, Mr. Neely.

8 MR. NEELY: Thank you, judge.

9 MR. JAMES: The State has no further witnesses,
10 Your Honor.

11 THE COURT: Do counsel wish to make any type of
12 oral argument with this one.

13 MR. BOOZER: No, Your Honor.

14 MR. JAMES: I really don't think it's necessary,
15 Your Honor.

16 THE COURT: Okay. All right. I'm going to go
17 ahead and rule on this matter. I am going to find that Mr.
18 McNeal is not entitled to any type of relief in the form of
19 a new trial or any alternative type of relief. This matter
20 is dismissed. I find no ineffective assistance of counsel
21 at all.

22 MR. JAMES: Thank you, Your Honor.

23 (CONCLUSION OF THE HEARING ON JULY 17, 2017)

24

25

CERTIFICATE

1
2
3 I, the undersigned Lisa S. Carter, Official Court
4 Reporter for the Circuit Court of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete excerpt of transcript of
7 record of all the proceedings had and evidence
8 introduced in the hearing of the captioned cause,
9 relative to appeal, in the Fourth Circuit Court for
10 Darlington County, South Carolina, on the 17th day of
11 July, 2017.

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

14
15
16 *Lisa S. Carter*

17 Lisa S. Carter

18 Circuit Court Reporter

19 December 20, 2017
20
21
22

JEL
5/8/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON)	
Cleveland McNeal,	)	Case No.: 2015-CP-16-00863
S.C.D.C. No. 322191,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

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 FILED
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Cleveland McNeal ("Applicant") on November 17, 2015, and amended July 10, 2017. Respondent made its return on or about June 1, 2017. The Court convened an evidentiary hearing into the matter on July 17, 2017, at the Dillon County Judicial Center in Dillon, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Paul Neely, Esquire ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Dillon County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the April

2014 term of the Darlington County Grand Jury for possession of a weapon during the commission of a violent crime (2014-GS-16-00510), discharging a firearm into a vehicle (2014-GS-16-00511), and attempted murder (2014-GS-16-00512). Paul Neely, Esquire represented Applicant, and Adam M. Foard, of the Fourth Circuit Solicitor's Office, prosecuted the case. On July 20, 2015, Applicant pled guilty to the lesser-included charge of assault and battery of a high an aggravated nature; the charges for weapon possession and discharging were dismissed *nolle prosequi*. The Honorable Paul M. Burch accepted terms negotiated between Applicant and the State and sentenced Applicant to imprisonment for a term of 10 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. Ineffective Assistance of Counsel and Involuntary Guilty Plea, in that:
 - a. "Counsel misadvised me on the nature of offense & possible defenses."
 - b. "Applicant believes the gun charge was supposed to have been dismissed upon accepting the plea."
 - c. "Applicant believes counsel failed to secure in writing a plea deal Applicant claims was offered by the State."
 - d. "Applicant believes his rights were violated by the State and the Solicitor abused his authority by forcing Applicant to plead to a violent offense."

At the evidentiary hearing, Applicant indicated that he did not want a new trial, but requested the modification of his sentence from that of a violent offense to a non-violent offense.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel and Involuntary Guilty Plea

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; 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.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).



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 at 117, 386 S.E.2d at 625 (citing Strickland at 688). 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 at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). 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. Strickland at 696. 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. at 696-97.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made



during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

IAC Allegation #1 – Failure to Explain Offense and Defenses

Applicant alleges that Counsel failed to adequately explain the terms of his plea offer to him. Assault and battery of a high and aggravated nature ("ABHAN") is statutorily defined as a violent crime. S.C. Code Ann. § 16-1-60. At the evidentiary hearing, Applicant testified that he believed he had accepted an offer to plead to assault and battery of a high and aggravated nature, non-violent, to serve a 10 year sentence. On cross-examination, Applicant testified that he met with Counsel several times, went over the elements of the crimes charged against him, and that Counsel explained that ABHAN was classified as a violent crime. Counsel testified that there was no discussion of a "non-violent" ABHAN and that he explained the violent classification of the offense with Applicant. Counsel affirmed that he discussed possible defenses with

Applicant, namely that the victim was a drug dealer and that self-defense could be an appropriate trial strategy.

ABHAN is indisputably a violent offense and Applicant's own testimony confirms he understood as much at the time he pled guilty. Based upon the clarity of Counsel's recollection of the facts and defenses available in Applicant's case, and based upon Counsel's courtroom demeanor, the Court finds credible Counsel's testimony that he explained the classification and potential defenses. Applicant has failed to show any deficiency or prejudice from Counsel's conduct, and thus has failed to carry his burden as to either prong of Strickland. Accordingly, Applicant's request for relief as to this allegation is **DENIED**.

LAC Allegation #2 – Failure to Secure Dismissal of Gun Charges

Applicant, in his amended application, alleges that "the gun charge was supposed to have been dismissed upon accepting the plea." Upon review of the records it appears that the indictments for possession of a weapon during the commission of a violent crime and discharging a firearm into a vehicle were dismissed as part of the plea arrangement. Therefore, Applicant is correct, the gun charges were supposed to have been dismissed—and they were. Accordingly, Applicant's request for relief as to this allegation is **DENIED**.

LAC Allegation #3 – Failure to Secure Plea Offer to Non-Violent Offense

Applicant, in his amended application, alleges that Counsel failed to secure in writing a plea deal in which Applicant would serve 10 years on a non-violent ABHAN offense. "A plea agreement is only an 'offer' until the defendant enters a court-approved guilty plea. A defendant accepts the 'offer' by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court." Reed v. Becka, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (1999). "Absent a plea of guilt, a defendant may only

enforce an oral plea agreement upon a showing of detrimental reliance." Id. "A defendant relies upon a solicitor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer." Id., 333 S.C. at 689, 511 S.E.2d at 403. As previously noted in Section II.A.1. above, ABHAN is statutorily defined as a violent crime. S.C. Code Ann. § 16-1-60.

At the evidentiary hearing, Applicant testified that Counsel and the State negotiated a 10-year, non-violent ABHAN deal at the Darlington County Detention Center. Applicant claims to have accepted that offer at that time, but that the State later informed him the deal was no longer on the table and would only permit a plea to 10 years for ABHAN, violent. Applicant testified he knew he was pleading to a violent offense at the time of the plea but that he did so under the duress of an impending trial. Counsel testified Applicant wanted a deal for five years, non-violent, but that such a deal was never offered. Counsel denied that there was ever any offer for 10 years, non-violent, and that no such meeting as described by Applicant ever occurred.

For the same reasons as set forth Section II.A.1. above, the Court finds Counsel's testimony credible. Additionally, the Court finds Applicant's testimony not credible as to the supposed meeting and offer of 10 years for ABHAN, non-violent. There is no non-violent form of ABHAN, so such an offer could not exist or even be accepted by a South Carolina court. In any event, Applicant testified the State withdrew the mythical offer, which was its right to do. Applicant has proven no deficiency on the part of plea counsel, nor prejudice therefrom, and thus has failed to meet his burden as to either prong of Strickland. Accordingly, Applicant's request for relief based upon this allegation is **DENIED**.



IAC Allegation #4 – Plea was Involuntary due to Duress

Applicant alleges his plea was involuntary entered under duress from the State and the looming specter of an impending trial. Applicant testified that he never wanted a trial—he pled to avoid trial and even on post-conviction relief, rejects the possible relief of granting a new trial. Applicant contends that he was forced to plead guilty by the approaching trial date, and that the solicitor abused his authority thereby. The Court finds this ground is patently meritless—the clockwork approach of judicial process does not amount to duress absent some other clear deficiency on the part of counsel, however anxious a defendant may be. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief based upon this allegation is **DENIED**.

III. CONCLUSION

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

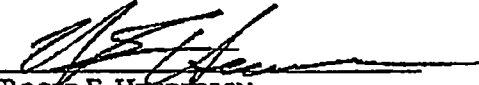
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCF provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 23rd day of August, 2017.



ROGER E. HENDERSON
Presiding Judge
Fourth Judicial Circuit

Charleston, South Carolina

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #: 201311-0615

[Signature]

495

WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER
2013A1610400756

ARRESTED ON: 2013-12-04

ACTION OF GRAND JURY

True Bill

[Signature]
Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2014-GS-16-0512

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
April 2014

THE STATE

vs.

Cleveland Shenard Mcneal

INDICTMENT FOR

Murder/Attempted murder

§16-03-0029

CDR Code: 3410

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

INDICTMENT FOR
Murder/Attempted murder

§16-03-0029

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

ATTEMPTED MURDER

CDR: 3410, 16-3-29

That Cleveland Shenard Moneal did in Darlington County, on or about November 25, 2013, with specific intent to kill, attempt to kill Nebuyius Holloway with malice aforethought, either expressed or implied, to wit: did shoot the victim numerous times with a handgun as was hospitalized for life threatening injuries, in violation of Section 16-3-29 of S.C. 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.


WILLIAM B. ROGERS, JR.
SOLICITOR