

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
Honorable Paul M. Burch, Circuit Court Judge

JAMES MURPHY, II

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002097

APPENDIX

VICTOR R SEEGER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg., Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2012-GS-21-788
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
James E. Murphy, II	)	)
<u>DEFENDANT</u>	)	February 15, 2013
		Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

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

JOHNNY ETHERIDE, DEPUTY SOLICITOR
Attorney for the State

MICHAEL MILLER, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

1 MR. JEPERTINGER: Call James Eric Murphy, II,
2 Your Honor. Your Honor, this is going to be a waiver of
3 venue from a case from Florence. The waiver of venue has
4 been signed by the defendant and his attorney. We bought
5 a copy of the Florence indictment with us. Mr. Murphy is
6 pleading to Counts one and two which are armed robbery and
7 kidnapping. The remaining two counts of the indictment
8 for conspiracy and possession of a weapon during the
9 commission of a violent crime are going to be dismissed.
10 He has a sentencing sheet, Your Honor.

11 The victim in the case Hakeem Lashawn Adams is
12 present in the court with his mother, Rachel Adams, also
13 Investigator Mike Robinson of the Florence Police
14 Department is here. This case is without negotiation or
15 recommendation. I will tell you a co-defendant in the
16 case -- one that I view as a principal in the case Marland
17 Tuft received a 20 year sentence last term of court,
18 another co-defendant who did not have a weapon and was
19 merely -- I wouldn't say merely present but that's a
20 defense, but less involvement was more of an aider-abettor
21 situation received five years. Your Honor, this young
22 man's involvement as we relate the facts to the Court was
23 a principal, a major principal in the kidnapping and armed
24 robbery, Your Honor. And we discuss what we consider an
25 appropriate sentencing later.

1 THE COURT: All right. And, Mr. Murphy, you are
2 pleading guilty to armed robbery, which has a minimum of
3 ten years and a maximum of 30 years; is that right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you are pleading guilty to
6 kidnapping, which has a maximum of 30 years in jail; is
7 that right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you also agree to waive venue in
10 Florence County and go ahead and plead guilty today over
11 here in Marion County?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Were you in the
14 courtroom when I went over your rights to a jury trial?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I want you to understand
17 Mr. Murphy that you do not have to plead guilty today. If
18 you would rather have a jury trial instead, all you have
19 to do is ask me and I'll make sure you get one because
20 that's your right. You understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I want you to understand also that
23 if you have a trial, you have nothing to prove. The
24 burden of proof is on the State of South Carolina to prove
25 you guilty beyond a reasonable doubt. Furthermore, if you

1 have a trial, you have a jury made up of 12 people. And
2 they would have to take all 12 members of that jury to
3 unanimously agree to convict you before the Court could
4 sentence you.

5 Furthermore, if you had a trial, your lawyer
6 could cross-examine and confront each and every one of the
7 State's witnesses. Furthermore, at your trial, you could
8 be sworn in and you could take the stand and you could
9 testify if you would like. You could tell your side of
10 the story any way that you and your lawyer see fit.
11 However, it's important to understand that you do not have
12 to testify because you have a Constitutional Right to
13 remain silent. And I want you to understand that if you
14 chose to exercise that right and not take the stand, I
15 would tell that jury they cannot use that against you in
16 any way whatsoever. I would tell the jury the fact that
17 you did not testify is to have absolutely no prejudice
18 against you. I would even tell the jury they cannot talk
19 about that fact in the jury room. You understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Furthermore, if you had a trial and
22 you didn't like something that took place, you could
23 appeal it, but you have to do so within ten days. That's
24 the same with this plea. You're not happy with the
25 outcome of this plea, you can appeal it, but you got to do

1 so within ten days. Do you understand these rights?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions for me or
4 your lawyer about your right to a jury trial?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you want to give up your right to
7 a jury trial and plead guilty today?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You satisfied with your lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you had enough time with your
12 lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he answered all of your
15 questions?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Has anybody promised you
18 any type of gift, reward to induce you into pleading
19 guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anybody been threatening you or
22 coercing you into making you plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you under the influence of any
25 drugs or alcohol at this time?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you have any mental or emotional
3 problems that would prevent you from understanding what's
4 going on today?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Are you guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you understood all of my
9 questions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you answered me truthfully?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right.

14 MR. JEPERTINGER: Your Honor, back on February
15 the 3rd, 2012, Hakeem Adams started the day over here in
16 Marion. He is a resident of Marion and he had taken his
17 vehicle to get rims placed on the vehicle. The vehicle
18 was specially painted. It had all these Cinnamon Toast
19 Crunch drawings on it and these large rims, very expensive
20 rims. He decided to go over to Florence that day. He has
21 one of his children's mother lives over there. He got to
22 Florence I would say late afternoon. Eventually, he made
23 it over to South Florence High School, saw a friend over
24 there. South Florence is on South Irby Street. They saw
25 a little bit of the basketball game there. He went up to

1 the Taco Bell there. Nothing unusual at that point.
2 There is a service station right down from the Taco Bell
3 on Irby Street, it's a Markette. He went to McDonald's,
4 it wasn't the Taco Bell. It was a McDonald's I misspoke.
5 They're right next door to each other. Then he went over
6 to the Markette service station, that's the first time he
7 noticed a gray vehicle there that seem to be following
8 him. He stopped there, went in the store and he tells me
9 that he saw Mr. Murphy kind of approach him. He noticed
10 Mr. Murphy come out of a vehicle and pass him as he was
11 leaving the store. He went west on Second Loop Road. The
12 Markette's on -- right at the intersection of Second Loop
13 and Irby street and went west. And then he noticed this
14 vehicle was following him.

15 In the vehicle, we find out that an Eddie Graham
16 was driving that vehicle. This case is still pending
17 against Eddie Graham and we plan to try Mr. Graham in the
18 month of March. Best we can tell, Mr. Murphy was a front
19 seat passenger. Keith Williams, who has pled guilty and
20 got five years, was the backseat passenger behind the
21 driver. And then Marland Tutt was the backseat passenger
22 behind Mr. Murphy, he received 20 years.

23 They followed him all the way to an apartment
24 complex quite a distance maybe two or three miles. The
25 apartment complex is behind Ham's Seafood off 76. When he

1 got there, he went into the residence. He saw his child's
2 mother and he said I think I'm being followed. And, you
3 know, her initial reaction is, you know, you're just
4 imagining it. And he didn't think much of it at that
5 point, but that was the thought that was in the back of
6 his mind. At that point, another friend came over and he
7 was there at the apartment complex with another girl both
8 his child's mother and the girl wound up leaving. He went
9 outside because there was an antitheft device that he was
10 going to set up on the car. He had to open up the hood of
11 the car and set that thing.

12 Well, apparently that crowd of men that I just
13 told you about in that gray car had followed him there.
14 And at that point, Murphy approaches him with a gun and he
15 knows something is terribly wrong at that point, and Tutt
16 comes up behind him. They come around the apartment
17 complex. One with a gun in one hand. Tutt with a gun in
18 the other hand. Tutt gets in the backseat and at this
19 point he says take whatever you want. They're not
20 interested in it. Tutt puts him in the backseat and sits
21 there with him with a gun to his head. Murphy gets his
22 keys from him. Murphy drives off. At this point, he's
23 lying in the backseat. Graham and William start following
24 him in the other vehicle. At best, that we could tell --
25 he knows he gets back on the interstate. Obviously,

1 Florence is sitting right there at I-20 and I-95.

2 Initially, he thought they went to a gas station
3 on I-95. We think there was a service station there on
4 I-20, that they may have gone to which is right near the
5 intersection of I-95 and I-20. At that point, they opened
6 the door. They get his credit card to get gas. He hears
7 from the gray vehicle someone say, Are you going to kill
8 him. And I keep saying it's a gray vehicle Mike Robinson
9 say's it's black, but it was a dark-colored vehicle. They
10 get back in the car. They don't stop there. They wind up
11 going up I-95 north towards North Carolina line. They
12 wind up getting off, I think on exit Highway 38. They're
13 in Dillon County at this time. Apparently, the car with
14 Graham and Williams somehow they get separated. And they
15 don't wind up in Dillon County as far as we could tell.

16 When they get to Dillon, Murphy's still driving.
17 Tutt's in the backseat with a gun on him. Of course,
18 Murphy's also armed. They stop at this abandoned building
19 that is right near Red Bethea's place. It's right across
20 the street from it. Murphy takes the victim out, walks
21 him up a little distance, grass is grown up all over the
22 place at this time, puts him against the building and
23 fires the gun at his head. He doesn't fire it once, but
24 we found three bullet holes at that location. All Hakeem
25 Adams could do at that time is play dead, that's what he

1 did until they got back into the car and left.

2 Now, when they left, Murphy -- we don't know if
3 Murphy's still driving or Tutt's driving or what the
4 situation is because he's playing dead at that point. He
5 gets up and run to houses up and down and that road saying
6 I need help. I need help. Finally, a woman allows him
7 in, allows him to the telephone. He calls the Dillon
8 Police Department. They come out there. And the Dillon
9 Sheriff's Department or one of the other. They show up
10 and start dealing with him.

11 As Tutt and Murphy are leaving Dillon County,
12 there's a Love Service Center right next to I-95. His
13 cousin is aware that he has just been kidnapped. And he
14 sees this unusual car, the Cinnamon Toast Crunch car with
15 the big rims. He knows it's his and he knows he just been
16 kidnapped. He gets on the horn with the police to let
17 them know, Listen, I'm following this car. Well, the car
18 goes south on I-95 gets off on Marlboro exit Highway 34.
19 And, of course, the police gets there. And as Murphy gets
20 out of the vehicle, once they finally stop, Murphy comes
21 out with a gun. And they -- the police there get involved
22 in a shooting incident start shooting at the car for their
23 officers safety. Tutt run out, gets away. Murphy gets
24 caught and in his presence, they find a gun near his
25 presence. And they find other items from the robbery as

1 well including his credit card. They found it in his
2 wallet, Your Honor. That's pretty much the gist of what
3 happened. They caught -- obviously, they caught Murphy.
4 Murphy did give about two or three statements I believe at
5 first mitigating and denying his involvement in it.
6 Eventually confessing to what he had done. And I probably
7 left out a lot of salient facts, but I will turn it over
8 to Investigator Robinson anything that I left out.

9 INVESTIGATOR MIKE ROBINSON: This was a
10 multi-jurisdictional incident, Your Honor, that involved
11 Marlboro County Sheriff's Office, Dillon County Sheriff's
12 Office and then the City of Florence. I went to all the
13 scenes that night, Your Honor. And when I located the
14 victim in Dillon County, he immediately put a BOLO out
15 that we had a legitimate kidnapping. This kidnapping was
16 witnessed by two very small children, who saw these two
17 men place a gun to the victim's head and force him into
18 the back of the car. They ran screaming to the other
19 adult in the home and that's how law enforcement knew.
20 But the condition of the victim and the circumstances in
21 my ten years of investigating violent crimes, this is one
22 of the most heinous, cruel acts that I have ever seen
23 anybody do.

24 When I reached Dillon County at Red Bethea's
25 farm out there, I had the investigators turn off all the

1 lights, so that he could -- we could see what the victim
2 was looking at and there was nothing anywhere around.
3 There was no light. He had no direction to know where to
4 run. There were three shots fired at this victim at very
5 close range in pitch black dark in the middle of no where.
6 There's no question that this victim is a lucky man to be
7 in this courtroom today.

8 MR. JEPERTINGER: One of the things I like to
9 point out to the Court even though his adult record is
10 minimal in terms of simple possession of marijuana and
11 looks like defrauding a boarding house or restaurant. If
12 the Court would like to look at the -- I think I'm
13 under -- I would like to present this and the defense has
14 the record, Your Honor. But he's been another in court,
15 Your Honor, with a similar type situation.

16 Your Honor, when he had that situation from the
17 other court, that's apparently where he met Marland Tutt,
18 the co-defendant in the case. And that's where they got
19 together -- he got to know this individual and get
20 together and... And Tutt was from Aiken originally, so he
21 was not local. This is the type deal that you come from
22 Aiken to do something like this and you hook up with a
23 buddy that you got to know. But that's it, Judge, this
24 has been traumatic I know. Ms. Adams would like to
25 address the Court.

1 Would you like to say something on your son's
2 behalf? State your name and keep your voice up.

3 MS. ADAMS: I just thank God that the Lord
4 spared my son life that night because it was really a
5 tragedy. I mean, you know, not knowing on that journey to
6 get him whether he was dead or alive, but he was alive and
7 I thank God for that. I want no parent to experience what
8 I went through that night. It was horrible, it was
9 terrible for a car. My son's life wasn't -- ain't worth
10 losing him for a car, but I just thank God that he's
11 alive.

12 THE COURT: All right. And would the victim
13 like to say anything?

14 MR. JEPERTINGER: No, sir.

15 THE COURT: Anything further?

16 MR. JEPERTINGER: I think that's it, Judge.

17 THE COURT: Just for the record, I can't
18 remember if I did this, but Mr. Murphy with armed robbery
19 you know you facing up to minimum of ten and a maximum
20 of 30?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And kidnapping a maximum of 30?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. I'll accept the plea. I
25 find that he's giving freely and he's making it

1 intelligently and he has a very competent lawyer. Be glad
2 to hear from you.

3 MR. MILLER: Thank you, Judge. Your Honor,
4 Michael Miller for the record. I was appointed to
5 represent Mr. Murphy back in May of last year. Mr. Murphy
6 has been in detention center approximately a year, since
7 last February since this incident occurred.

8 Obviously, we are here today because Mr. Murphy
9 is guilty of these crimes. He doesn't doubt or dispute
10 that he is guilty of armed robbery and kidnapping.
11 However, he also like to express to the Court that this
12 was the biggest mistake of his life, Your Honor. And a
13 mistake that he will assure you he will never make
14 again.to.

15 I've had the distinct pleasure of getting to
16 know Mr. Murphy the past however many months since -- nine
17 or ten months. And despite the events at issue in the
18 case, I sincerely believe that he is a fundamentally good
19 person. We got wrapped up in a terrible series of events
20 this evening.

21 A little background on Mr. Murphy. He's 20
22 years old. He's from Florence. He attended Wilson High
23 School, got his high school diploma in 2011. At the time
24 of this incident, he was carrying two jobs working at
25 Prime Federate (sic) and Coco-Cola bottling working over

1 40 hours a week. The same time taking online classes at
2 Florence Darlington Tech in computer engineering. He was
3 intending this past fall to transfer to South Carolina
4 State where he would have been a junior, continued at his
5 studies. He enjoys working on computers and fixing
6 computers and so forth and intended to pursue a career in
7 that field. He's a very spiritual person and he takes
8 faith very seriously.

9 Interestingly, he's also taken a critical
10 approach to his faith. In a little over a year ago prior
11 to this incident, he converted to Judaism and has
12 continued to study that religion while he's in jail and
13 intends to looking forward to the opportunity when he is
14 incarcerated to worship with a rabbi, which he hasn't had
15 the opportunity to do for the past 12 months. But he
16 takes that very seriously, that's a very important part of
17 his life.

18 He has a 15-month-old son in Bennettsville, that
19 he's seen very little of in the past year as a result of
20 his detention and intends when he gets out very much like
21 to be a father to this child. But he does understand and
22 accept the fact that he has to pay for what he has done,
23 that he does owe a debt to society. He does have an
24 obligation to accept the responsibility for these acts and
25 that he will go to prison and he accepts that.

1 It's our plea that the Court is lenient and
2 demonstrate mercy on Mr. Murphy. Because as I indicated
3 to you and I'm sure this is a message you've heard from a
4 lawyers in my situation before, that this gentleman has
5 committed a crime, but he's not a criminal. And I
6 sincerely believe that he is a good person that got
7 wrapped up in a series of events that obviously wasn't
8 worth it absolutely regrettable.

9 On his behalf as well are Veronica Murphy, who
10 is a loan officer came down from Charlotte in support of
11 her son as well his aunt and uncle, who are here as well,
12 Your Honor. He has a strong support system. He gets out
13 of prison he intends to move back in with his mother in
14 Charlotte. He wasn't raised to engage in these sorts of
15 acts and live this kind of life style. This was a mistake
16 that he made this evening. But he does have a strong
17 support system, that will ensure that after he's done his
18 time, that he'll never be in this situation before.

19 As to the facts of the evening, Your Honor, the
20 shooting occurred in Dillon County everything after that
21 occurred in Marlboro. What we are here for today, Your
22 Honor, is for the hijacking of the car and the carrying
23 away of Mr. Adams. He has not been prosecuted in Florence
24 County before the shooting, that's being handled by Dillon
25 County any other crimes are by other counties, so it's

1 important to remember that, Your Honor. But sense
2 Mr. Jepertinger has brought up the shooting, it's our
3 contention that Mr. Murphy was although a principal
4 portion -- a principal player in this crime in the series
5 of events that occurred, but that he was not the
6 mastermind behind this incident. And that essentially he
7 got swept up in a foolish and heinous idea, that was
8 cooped up by his -- set up by his co-defendants. He was
9 following his co-defendant's lead in doing what he was
10 told by his co-defendant in committing these crimes. And
11 in fact, when he -- when the shooting did occur in Marion
12 County, he was doing that in the instruction of his
13 co-defendant. And although, we recognize that Mr. Adams,
14 the victim, was not aware of his thought process during
15 this time and we fully understand that. And we understand
16 that the horrendous nature of this incident from his
17 perspective. Nevertheless, Mr. Murphy never had any
18 intentions of harming Mr. Adams. And in fact the
19 photographs show that the bullet holes -- the bullet
20 indentations on the concrete wall behind where the victim
21 lay are several feet off of the ground indicating to us in
22 our position that he intentionally miss the vehicle.

23 Now, again the victim is unaware of this while
24 this is occurring. He could have done significantly
25 better job of conveying that to the Court, but

1 nevertheless that shows that he did not have the intention
2 to harm the victim, that he was simply trying to protect
3 himself at the hand of his co-defendant.

4 I don't want to argue the facts at this time,
5 Your Honor. We certainly tend with the Solicitor's office
6 presentation of the facts, but it's our position that
7 Mr. Murphy did get swept up in a terrible criminal idea,
8 but that he was the follower not the leader. At the end
9 of the day, at the end of these series of events, it was
10 his co-defendant that got caught. Mr. Murphy gave him a
11 credit card. He never intended to take this vehicle. He
12 didn't want the vehicle. It was his co-defendant.

13 MR. JEPERTINGER: Your Honor, I don't mean to
14 interrupt, but when they left the car, no one got the car.
15 The police got the car because it was shot up and they
16 left the car.

17 INVESTIGATOR MIKE ROBINSON: The car was seized
18 as a result of what happened.

19 MR. MILLER: That was the plan at least, Your
20 Honor. And with regard to sentencing, his co-defendant
21 pled and received a 20 year sentence, Your Honor. We
22 would argue that under no circumstances should Mr. Murphy
23 get a sentence in excess of that and that justice and
24 reasonableness would dictate that he in fact is sentence
25 less than. And we would ask for the minimum of ten years.

1 I believe his mother would like to speak.

2 THE COURT: Sure. Your name please?

3 VERONICA MURPHY: Good morning. Thank you, Your
4 Honor. Veronica Murphy. I'm James' mother. He is my
5 only child. I've raised him better than this. And it's
6 been really a hard ordeal on me and my family. And I'm so
7 sorry for the victim and his family. I just thank God
8 that you're alive and I hope you can just live a life and
9 get past this. I'm sorry for my son's behavior. I'm
10 ashamed and I'm very hurt and very disappointed because he
11 was accepted to three colleges and, you know, he was on a
12 good track. So just wanted you to know that I support
13 him, I love him very much. And my family they're behind
14 me. And whenever he gets out, you know, I'll be there to
15 support him. And I pray for the victim's family. I pray
16 for my son and I pray for my family. And I ask that you
17 have mercy and be lenient. And thank you.

18 THE COURT: How much time has he served already?

19 MR. JEPERTINGER: He was arrested back on
20 February the 16th 2012.

21 THE COURT: Anything further?

22 MR. MILLER: No, Your Honor.

23 THE COURT: Sentence of the Court on each is 28
24 years. I'm going to run them concurrent and he will
25 receive credit from February 16th 2012 to today. Good

1 luck.

2 END OF REQUESTED TRANSCRIPT

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STATE OF SOUTH CAROLINA

COUNTY OF Florence

FILED

2013 JUL 19 PM 12:27

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SCCERTIFIED: A TRUE COPY
Clerk of Court
FLORENCE COUNTY, SC

2013 CP 21-1889

Full name and prison number (if any) of Applicant.

James E. Murphy II # 354373

v.

State of South Carolina

APPLICATION FOR

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 McCormick CORR. INST.
2. Name and location of Court which imposed sentence Florence County 12 Circuit
3. Name(s) of co-defendant(s) (if any) Marion Tutt, Eddie Graham, Keith Williams
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2012-GS-21-0788 - 28 years
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEB 15, 2013 - 28 years.
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
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) _____ Counsel informed me cannot Appeal Guilty plea.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Counsel informed me I would receive sentence of 15 years if I plead Guilty, and if I go to trial I would get 25 years. I Plead Guilty under the advise of Counsel.

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

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

- (a) _____ Counsel provided me with erroneous advise which
- (b) _____ caused me to give up my right to trial by jury
- (c) _____ Caused me to give up my rights. Counsel made no
objection to the sentence, knowing it was not the sentence he told me

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

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

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

(a) the specific nature thereof:

- i. _____
- ii. N/A
- iii. N/A
- iv. _____

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

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- 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 advised me appeal after guilty plea is not
 (b) _____ Worth the paper-work, Therefore I did not file
 (c) _____ Any other petitions with no other Court.

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? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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

(a) the name and address of each attorney who represented you:

- i. Michael T. Miller WUKELA LAW FIRM Florence SC
- ii. _____
- iii. _____

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

- i. Michael T. Miller: Plea Counsel and Re-consideration.
- ii. _____
- iii. _____

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

- I seek the Sentence Counsel informed me I would receive 15 years. That is the only reason I gave up my rights to trial by jury.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

County of McCormick

VERIFICATION

I, James E. Murphy II, 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.

James E. Murphy II

SWORN to and subscribed before me this 16
day of July, 2013

[Signature] (L.S.)
Notary Public

My Commission Expires:

12-16-2019

2013 JUL 19 PM 2:27
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY
Connie Rice-Shearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

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

I, James E. Murphy II, 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.

James E. Murphy II
 Applicant

SWORN or affirmed to and subscribed before me this

16 day of July, 2013

[Signature]
 Notary Public

My Commission Expires: 12-16-2019

FILED
 2013 JUL 19 PM 2:27
 CONNIE RICE-SHEARIN
 CLERK OF COURT
 FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

James E. Murphy, II, #354373,

) Case No. 2013-CP-21-1889
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

)

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed July 19, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2012, the Florence County Grand Jury indicted Applicant for armed robbery, kidnapping, conspiracy, and possession of a weapon during the commission of a violent crime (2012-GS-21-788). Michael T. Miller, Esquire, represented Applicant. On February 15, 2013, Applicant pled guilty to armed robbery and kidnapping. In exchange for his plea, the State dismissed the remaining charges. The Honorable William H. Seals, Jr., sentenced Applicant to concurrent terms of twenty-eight (28) years for armed robbery and kidnapping. On February 21, 2013, Applicant made a motion to reconsider his sentence. Judge Seals convened a hearing on the motion on May 22, 2013. Judge seals denied the motion by written order filed June 11, 2013. Applicant did not further appeal his guilty plea or sentence.

II.

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

1. "Counsel informed me I would receive sentence of 15 years if I plead Guilty, and if I go to trial I would get 25 years. I plead guilty under the advise of counsel."
 - a. "Counsel provided me with erroneous advise which caused me to give up my right to trial by jury caused me to give up my rights. Counsel made no objection to the sentence, knowing it was not the sentence he told me."

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this Return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent interprets Applicant's allegation as one of ineffective assistance of counsel. Such an allegation is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings

"cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact the

record does not conclusively refute. Accordingly, 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.

In the event Applicant is alleging his guilty plea was involuntary, such an allegation is likewise 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 v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (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) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. "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)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

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 questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

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

VI.

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

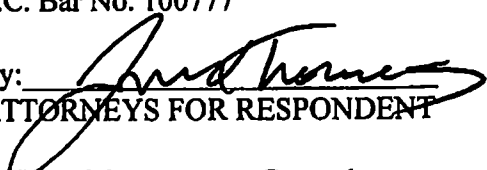
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

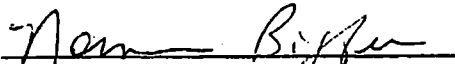
May 6, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2013-CP-21-1889
	)	
JAMES E. MURPHY, II, #354373	)	
	)	
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:

Jonathan D. Waller, Esquire
1720 Main St., Suite 104
Columbia, SC 29201

DATED this 6th day of May, 2014.


 Norma Bigbee, Legal Assistant

State of South Carolina)
)
 County of Florence)

In the Circuit Court
 Twelfth Judicial Circuit
 2013-CP-21-1889

JAMES E. MURPHY, II,)

 Plaintiff,)

 vs.)

THE STATE,)

 Defendant.)

Transcript of Record

Florence, South Carolina
 March 15, 2017

B E F O R E:

The Honorable Paul M. Burch

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

Mr. Johnathan D. Waller, Esquire
 Attorney for Plaintiff

Ms. Lindsey A. McCallister, Esquire
 Attorney for Defendant

LISA CARTER
 CIRCUIT COURT REPORTER

I N D E X

WITNESSESPAGE

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
P-1	Letter- February 18, 2013	53

1 MS. McCALLISTER: Your Honor, this is James E.
2 Murphy versus the State of South Carolina, 2013-CP-21-1889.
3 We're here today on application for post-conviction relief
4 that Mr. Murphy filed on July 19, 2013. He is presently
5 confined in the South Carolina Department of Corrections.
6 He was indicted at the June, 2012 term of the Florence
7 County Grand Jury for armed robbery, kidnapping, conspiracy
8 and possession of a weapon during the commission of a
9 violent crime. He was represented on those charges by
10 Michael Miller. On February 15, 2013, he pled guilty to
11 armed robbery and kidnapping and in exchange for the plea
12 the remaining charges were dismissed. Judge Seals sentence
13 applicant to a term of twenty-eight (28) years concurrent
14 for the armed robbery and kidnapping.

15 On February 21, 2013, applicant made a motion to
16 reconsider the sentence. Judge Seals convened a hearing on
17 that issue on May 22, 2013 and denied the motion.
18 Applicant did not further appeal the guilty plea or the
19 sentence. He is present in the courtroom today and he is
20 represented by Johnathan Waller.

21 THE COURT: Mr. Waller?

22 MR. WALLER: Thank you, Your Honor, I'd call Eric,
23 James Eric Murphy.

24 THE COURT: Mr. Murphy, if you will come around and
25 be sworn please.

1 THE CLERK: Raise your right hand as best as you
2 can. Do you swear to tell the truth, the whole truth and
3 nothing but the truth so help you God?

4 MR. MURPHY: I do.

5 THE CLERK: Thank you. Have a seat and state your
6 name for the record.

7 MR. MURPHY: James Eric Murphy.

8 JAMES MURPHY, first being
9 duly sworn, testified as follows:

10 Direct Examination by Mr. Waller:

11 Q. Good morning, Mr. Murphy, how are you today?

12 A. I'm good.

13 Q. Okay. Mr. Murphy, I want to take you back to when you
14 were arrested, okay?

15 A. Mmm, hmm.

16 Q. You were arrested with armed robbery?

17 A. Yes.

18 Q. Kidnapping?

19 A. Yes.

20 Q. Conspiracy?

21 A. Yes.

22 Q. And possession of a weapon during a violent crime?

23 A. Yes.

24 Q. Okay. Were you -- did you bond out or were you locked
25 up the whole time?

1 A. Locked up the whole time.

2 Q. Okay. How -- who was your attorney?

3 A. Mr. Miller. Michael T. Miller.

4 Q. Okay. Was he your only attorney?

5 A. Yes.

6 Q. Okay. How did he come to be your attorney?

7 A. The state appointed ---

8 MS. McCALLISTER: I'm sorry, Your Honor, he saying
9 he can't hear. Let me see if I can move this.

10 THE COURT: You're welcome to put it there.

11 MR. WALLER: And Mr. Murphy that's just so Mr.
12 Miller, whose by video, can hear your testimony.

13 A. Okay.

14 Q. He was appointed to represent you ---

15 A. Yes.

16 Q. --- is that right? Do you -- was he with the public
17 defender's office, do you know?

18 A. No, he was with the, um, he was with a law firm,
19 Wukela Law Firm.

20 Q. Wukela Law Firm?

21 A. Yes.

22 Q. Okay. So he was appointed to represent you. When --
23 about how long after you were arrested did you first meet
24 with Mr. Miller?

25 A. Probably -- I didn't meet with him until my, um, the

1 first appearance at the -- at the jail house.

2 Q. Okay.

3 A. I forgot what it's called but it's a hearing at the --
4 it's a hearing ---

5 Q. A preliminary hearing?

6 A. A preliminary hearing, that's what it was. That was
7 the first time I ever met with him.

8 Q. Okay. Did you meet with him after that?

9 A. No. I met with him twice after that.

10 Q. Okay. So at the preliminary hearing, did y'all just
11 meet in the courtroom or did you have time to talk?

12 A. No, he came to the back to speak with me, briefly.

13 Q. Okay. So y'all spoke about your case three times?

14 A. Correct.

15 Q. What did y'all talk about?

16 A. Well, really at first he was just explaining to me
17 what I was charged with and that he would be representing
18 me and that he -- first, he said he was going to try to get
19 me as less as amount of time as possible but that's really
20 it as far as what we spoke about.

21 Q. Okay. And just -- this incident, you had other
22 charges pending in other counties for the same day, is that
23 right?

24 A. Correct.

25 Q. Okay. So not everything was taken care of in Florence

1 County?

2 A. Nothing else was ever taking care of.

3 Q. Okay. Did Mr. Miller -- but you had pending charges
4 in other counties?

5 A. Yes.

6 Q. Was Mr. Miller appointed to represent you on those
7 charges as well or just in Florence?

8 A. No, he wasn't just in Florence.

9 Q. So we're just talking about Florence?

10 A. Correct.

11 Q. Did you and Mr. Miller talk about your constitutional
12 rights?

13 A. No.

14 Q. Did y'all talk about your rights to a jury trial?

15 A. No.

16 Q. Did you talk about your right to remain silent?

17 A. No, sir.

18 Q. Okay. You had some co-defendants in this case, is
19 that right, two co-defendants?

20 A. Three.

21 Q. Three co-defendants.

22 A. Correct.

23 Q. Okay. Some of the co-defendants gave statements, is
24 that right?

25 A. Correct.

1 Q. Okay. Did y'all talk about their statements?

2 A. No.

3 Q. Okay. Did you give a statement?

4 A. Yes.

5 Q. Okay. Did y'all talk about your statement?

6 A. No.

7 Q. Okay. Did you see a copy of your statement?

8 A. No.

9 Q. Do you have a copy of the Rule 5, Brady Discovery
10 motion information?

11 A. I got a copy of it, ah, I want to say -- I want to say
12 that I didn't get a copy of it until I was, already got my
13 time when I had to write him and ask about it but before I
14 did my PCR application.

15 Q. Okay. Did you ever see any parts of it while you were
16 locked up before?

17 A. No, I have it.

18 Q. Okay. Did you and I don't mean did you have a copy,
19 did you ever see any of it?

20 A. No, I have it.

21 Q. Did y'all discuss any of it?

22 A. The only thing that we discussed was something that
23 was in Dillon County about the gunshots where they went
24 into the dwelling, that's the only thing that we ever spoke
25 about. We never spoke about anything in Florence County.

1 Q. Okay. And that was part of this incident but it
2 wasn't something you were charged with, here?

3 A. Correct.

4 Q. Is that right?

5 A. Correct.

6 Q. Okay. Did y'all discuss any possible defenses that
7 you might have?

8 A. No.

9 Q. Okay. Did he ask you about any potential witnesses or
10 any information that you can provide him that might help
11 for defenses?

12 A. No, sir.

13 Q. Okay. Mr. Murphy, y'all met three times, what did you
14 talk about?

15 A. Basically, the first time as I said was about the
16 preliminary hearing. And the second time he came, he just
17 spoke to me about a plea which was twenty-five (25) years
18 that the state offered me. And the third time we met it
19 was about going to another county or something of that sort
20 to plead for a better deal.

21 Q. Okay. We're going to talk about that in just a
22 second. You mentioned the twenty-five (25) year offer?

23 A. Correct.

24 Q. Okay. What did you -- you rejected that?

25 A. Correct.

1 Q. Were there any other offers made to you?

2 A. No, not of my knowledge

3 Q. Okay. Did you and Mr. Miller ever have any other
4 conversations about plea offers?

5 A. Never.

6 Q. Okay. Did y'all ever have any conversations about
7 what you might get if you did pled guilty?

8 A. No, sir.

9 Q. Okay. Did y'all ever talk about a trial?

10 A. I told him that I wanted to go to trial.

11 Q. Okay. What was his response?

12 A. He didn't really give one. He just said, well, it's
13 up to you. Basically, that was the only response that I
14 received.

15 Q. Okay. Did y'all start preparing for trial?

16 A. No, we didn't.

17 Q. Okay. Did y'all discuss what would take place at a
18 trial ---

19 A. No, we ---

20 Q. --- the procedures of the trial?

21 A. No, we didn't.

22 Q. Okay. You -- when you pled guilty, you pled guilty in
23 Marion County ---

24 A. Correct.

25 Q. --- is that right?

1 A. Correct.

2 Q. You waived venue?

3 A. Correct.

4 Q. Okay. And you sign the piece of paper that you
5 understood that you had a right to have your case heard in
6 Florence County but you were waiving venue to go and plead
7 in front of Judge Seals in Marion County, is that right?

8 A. Correct.

9 Q. What did y'all discuss, what did you and Mr. Miller
10 discussed about that?

11 A. Okay, well, I guess in January he came, January of
12 2013, he came and told me that if I went to Marion County
13 that he could give me between ten (10) and fifteen (15)
14 years but if I didn't go to Marion County, if I didn't go
15 this time to Marion County, then we'll be going to trial
16 that following which was February, I was scheduled to go to
17 court, we'll be going to trial.

18 Q. Okay.

19 A. So, basically, it was either take this, we're going to
20 go get the ten (10) to fifteen (15) years or we're going to
21 trial.

22 Q. So were you under the understanding that there was a
23 time sensitive thing where you had to go to Marion County
24 to get any sort of a deal?

25 A. Correct.

1 Q. Okay. Otherwise, it was your understanding you were
2 going to trial the next month?

3 A. Correct.

4 Q. Okay.

5 A. That's when I -- I found that out if I didn't take
6 the deal, then I would be going to trial the next month.

7 Q. Okay. You said deal, what do you mean by deal?

8 A. He said that if I was to go to Marion County that I
9 would get between ten (10) to fifteen (15), he said that's
10 what I would be pleading to.

11 Q. Did you think that there was a deal in place?

12 A. I mean, the way he made it seem to me that it was a
13 deal in place.

14 Q. Okay. When you got to Marion County was that, did
15 your understanding change at all?

16 A. When I got to Marion County he told me that we would
17 be going in front of the judge on an open plea because the
18 state still had the twenty-five (25) year offer on the line
19 but going in front of the judge on an open plea, we could
20 get the ten (10) to fifteen (15).

21 Q. Okay. Did you ask him why the state still had the
22 twenty-five (25) year offer?

23 A. No, sir, I didn't.

24 Q. Okay. What did you understand -- you thought you were
25 going to get ten (10) to fifteen (15), the state was saying

1 your offer was twenty-five (25), did you ask Mr. Miller
2 about that?

3 A. No, I didn't.

4 Q. Okay. Did he tell you anything about that?

5 A. He didn't tell me anything about it.

6 Q. Okay. You pled guilty in front of Judge Seals and got
7 twenty-eight (28) years, is that right?

8 A. Correct.

9 Q. On the two charges, twenty-eight (28) years each on
10 the two charges, they were to run concurrent, is that
11 correct?

12 A. Correct.

13 Q. Did you and Mr. Murphy, excuse me, did you and Mr.
14 Miller discussed following any post-trial, post-sentencing
15 motions or an appeal from that sentence?

16 A. Yes, I ask him to.

17 Q. Okay. And you wrote him a letter, is that right?

18 A. Correct.

19 Q. Did he file any motions?

20 A. He filed a reconsideration motion.

21 Q. Did he ever file an appeal that you're aware of?

22 A. Not that I'm aware of.

23 Q. Okay. But you had -- did you ask him in person?

24 A. Yes, I did.

25 Q. Okay. Did you write him a letter also?

1 A. I did. I write him a letter also.

2 Q. Okay. To the best of your knowledge, he never filed
3 an appeal?

4 A. Right.

5 Q. Okay. Mr. Murphy, y'all, you testified that y'all did
6 not discuss any defenses or any co-defendants statements or
7 your statements, you testified that you were scheduled for
8 a trial the next month.

9 A. Correct.

10 Q. Had y'all done anything to get ready for trial?

11 A. Nothing at all.

12 Q. Okay. Did you want to go to trial?

13 A. Yes, I did.

14 Q. Okay. Did you feel that you had to plead guilty
15 because y'all weren't prepared for trial?

16 A. I did and I pled guilty because I felt like we weren't
17 prepared and the time frame that we had we couldn't have
18 gotten prepared in that time frame.

19 Q. Because it was the next month?

20 A. Correct. It was, basically, in a few weeks.

21 Q. Okay. Mr. Murphy I've asked you all the questions
22 that I have, is there anything that you think I've left out
23 or that the court needs to be aware of, of just Mr.
24 Miller's representation of you?

25 A. As far as him, no, sir.

1 Q. Okay.

2 MR. WALLER: Please answer any questions Ms.
3 McCallister has.

4 **Cross Examination by Ms. McCallister:**

5 Q. Okay. Mr. Murphy, you said you met with Mr. Miller
6 three times ---

7 A. Correct.

8 Q. --- total?

9 A. Correct.

10 Q. Okay. And the first time was at your preliminary
11 appearance?

12 A. Correct.

13 Q. Do you remember when the other two times were?

14 A. I know the second time was before I went to court.
15 The first time ever when they first offered me the twenty-
16 five (25) years that was the first time we met. And then
17 the second time was probably a couple of days before I went
18 to Marion County.

19 Q. And then when was the third time?

20 A. That was the third time. The first time was the
21 preliminary hearing.

22 Q. Okay.

23 A. The second time was right before, when they offered me
24 the twenty-five (25) years and I went to, I think it was in
25 January of 2013, at the beginning of January. And then the

1 second time was right before, I mean, the third time was
2 right before I went to Marion County.

3 Q. Okay. I'm sorry, then I'm not really following you.
4 The first time was the preliminary hearing ---

5 A. Preliminary hearing.

6 Q. Are you saying that's the ---

7 A. I came from Florence County the second time. I came
8 here the second time for the twenty-five (25) year
9 sentence, when they offered me twenty-five (25) years so I
10 met with him right before then.

11 Q. Okay. I'm sorry, let me stop you right there. Are
12 you saying the first time you were offered twenty-five (25)
13 years is at the preliminary hearing ---

14 A. No.

15 Q. At the second ---

16 A. That was --- yes, that was second time. Correct.

17 Q. Okay. And did you come to court that day, here?

18 A. I came for court, correct.

19 Q. Okay. And then you met with him again when a couple
20 of days before you went to Marion?

21 A. Correct.

22 Q. Okay. And then you actually saw him in Marion ---

23 A. Correct.

24 Q. --- on the day of your plea?

25 A. Correct.

1 Q. So in person you saw him really four times ---

2 A. Right.

3 Q. --- if you count the day of the plea?

4 A. Right.

5 Q. Okay. Did you talk to him on the day of the plea, did
6 y'all have some discussion about what was going to happen?

7 A. We talked right before the actual plea when he was
8 explaining about the ten (10) to fifteen (15) years and
9 taking an open plea instead of just straight pleading out.

10 Q. Okay. So he did tell you that it would just be an
11 open plea agreement?

12 A. Right.

13 Q. Okay. And the ten (10) to fifteen (15) years, he did
14 not tell you that, that was an offer from a solicitor to
15 plead you to ten (10) to fifteen (15) years?

16 A. Correct. He never told me about.

17 Q. Okay. Do you remember the plea itself and what
18 happened when you went in the courtroom?

19 A. Well, when I went in the courtroom it was, basically,
20 just an open plea.

21 Q. Okay.

22 A. When I found out that after I took -- after he told me
23 the ten (10) to fifteen (15) years I found out that it
24 could be between ten (10) and thirty (30).

25 Q. Okay. Do you remember -- do you remember the judge

1 kind of asking some questions of you during the plea
2 hearing?

3 A. Yes, ma'am.

4 Q. Do you remember the judge telling you what the maximum
5 sentences were for your charges?

6 A. Yes, ma'am.

7 Q. Do you remember telling the judge that you understood
8 what the maximum sentence were?

9 A. Yes, ma'am.

10 Q. Okay. Do you remember him going over some
11 constitutional rights with you?

12 A. Yes, ma'am.

13 Q. Do you remember him explaining your right that you
14 didn't have to plead and that you could take this to trial
15 ---

16 A. Right.

17 Q. --- if you wanted to?

18 A. Yes, ma'am.

19 Q. Do you remember that?

20 A. Yes, ma'am.

21 Q. And do you remember telling him that you understood
22 that?

23 A. Yes, ma'am.

24 Q. You remember telling him that you are pleading guilty
25 freely and voluntarily?

1 A. Yes, ma'am.

2 Q. Because you wanted to?

3 A. Right.

4 Q. Do you remember telling him that you were satisfied
5 with your attorney?

6 A. Yes, ma'am.

7 Q. Do you remember telling him that you had enough time
8 to talk to your attorney and you didn't have any more
9 questions?

10 A. Yes, ma'am.

11 Q. Okay. Do you remember -- do you remember the judge
12 telling you that this was a plea without any kind of
13 recommendations?

14 A. Right, recommendations from the state, yes. I
15 remember that.

16 Q. You remember that being said?

17 A. Right.

18 Q. And you understood that?

19 A. Yes, ma'am.

20 Q. Okay. And you told the judge that you understood?

21 A. Yes, ma'am.

22 Q. So you didn't going to the courtroom and say, hey,
23 judge wait a minute, I'm only supposed to be getting ten
24 (10) or fifteen (15) years?

25 A. No, I didn't go -- I didn't say that.

1 Q. Okay. And the judge did give you an opportunity when
2 he was asking questions if you had any misunderstandings,
3 correct?

4 A. Right.

5 Q. And in terms of this motion you ask, you said you ask
6 him to file a motion after the sentence, is that correct?

7 A. Correct.

8 Q. You asked Mr. Miller to file a motion of re-
9 sentencing?

10 A. Right.

11 Q. And he did file that motion for you?

12 A. He filed a reconsideration motion, yes.

13 Q. Okay. And you had a -- and you had a hearing on that
14 motion, correct?

15 A. Correct.

16 Q. Okay. What was your issue, what did you want?

17 A. Well, for one I never got a chance to speak as far as
18 saying anything to the court, I never got a chance to speak
19 at all during my sentencing.

20 Q. Okay.

21 A. So that was really the main thing about that.

22 Q. That was your main issue that you wanted to complain
23 about, essentially ---

24 A. Right.

25 Q. --- was that you didn't get a chance to speak?

1 A. Yeah, I didn't get a chance to say anything.

2 Q. Okay. And when he filed that motion what happened?

3 A. I went back, I spoke and Judge Seals denied it.

4 Q. Okay. So he didn't change your sentence but he did
5 bring you back and let you speak on your behalf?

6 A. Correct.

7 Q. So he did listen to you?

8 A. Correct.

9 Q. And your attorney did do what you ask him to do?

10 A. As far as the reconsideration, correct.

11 Q. Okay. When you were talking to him about these post-
12 trial motions, what did you say? What did you say to him,
13 specifically, do you recall?

14 A. I know I told him that I wanted to appeal the sentence
15 once, after - no, it was before the reconsideration I ask
16 him and then after the reconsideration I asked him again, I
17 wanted to appeal the sentence, the actual sentence.

18 Q. Okay. And did you have any conversation about that
19 with him? What did he tell you about that?

20 A. He didn't say anything about it.

21 Q. So you ask him a question and he just didn't answer
22 you?

23 A. Right. He didn't say -- he told me he would be in
24 contact with me and I never heard from him again.

25 Q. Did you try to contact him after that?

1 A. Yes, I did.

2 Q. What did you do?

3 A. I called and I wrote a letter.

4 Q. And you write a letter?

5 A. Correct.

6 Q. Okay. Do you have a copy of the letter that you
7 wrote?

8 A. No, I don't.

9 Q. You don't?

10 A. No.

11 Q. Okay.

12 MS. McCALLISTER: I think that's all I have, Your
13 Honor.

14 MR. WALLER: I just have one question, Your Honor.

15 THE COURT: Yes, sir.

16 **Redirect Examination by Mr. Waller:**

17 Q. Mr. Murphy, based on your conversations with Mr.
18 Miller, were you under the belief that you were looking at
19 ten (10) to fifteen (15) years?

20 A. Yes, I was.

21 Q. Okay.

22 MR. WALLER: Nothing further.

23 THE COURT: Thank you.

24 MS. McCALLISTER: Your Honor, May I just verify
25 that?

Re-cross Examination by Ms. McCallister:

Q. You believed that, but did Mr. Miller ever tell you that's for sure what was going to happen?

A. Yes, because I would have never pled if it wasn't because when the state offered me twenty-five (25) years I wouldn't take it so....

Q. Okay. But you told me a few minutes ago you understood that it was a plea without any recommendations?

A. Yes, I understood that the judge said that, but my attorney, Mr. Miller, told me that it would be between ten (10) to fifteen (15) years. That's the only reason why went to Marion County. I would've never went to Marion County if that wasn't the case.

Q. Okay. So your position is that he promised you ten (10) to fifteen (15) years?

A. Correct. He told me that I would get no more than fifteen (15), no less than ten (10).

Q. Okay.

MS. MCCALLISTER: Thank you.

MR. WALLER: Nothing further.

THE COURT: You can step down. All right. We have been going strong this morning, we need to recess at this time for lunch. Then we will be back here between 12:45 and 12:50 so will resume then.

MR. WALLER: Thank you, Your Honor.

1 (Whereupon, we took at short lunch)

2 MS. McCALLISTER: Your Honor, I believe it's still -

3 --

4 MR. WALLER: Your Honor, nothing further from the
5 applicant.

6 MS. McCALLISTER: Your Honor, at this time, then, we
7 would call Mr. Michael Miller who is available to us by
8 telephone and Skype. I'm not sure how you want to swear
9 him.

10 THE CLERK: Do I need to go over ---

11 THE COURT: Do you want me to do it?

12 THE CLERK: Yes, sir.

13 THE COURT: Mr. Miller?

14 MR. MILLER: Yes, Your Honor.

15 THE COURT: I don't know if you can see me but I
16 need to put you under oath, if you'll raise your right
17 hand. Do you solemnly swear the testimony you're about to
18 give the court is the truth, the whole truth, and nothing
19 but the truth so help you God?

20 MR. MILLER: I do.

21 MS. McCALLISTER: I'm going to come a little closer
22 here. Can you hear me, Michael?

23 MR. MILLER: Not very well.

24 MS. McCALLISTER: Okay. Is that better?

25 MR. MILLER: Yeah.

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1 MICHAEL MILLER, first being
2 duly sworn, testified as follows:

3 **Direct Examination by Ms. McCallister:**

4 Q. Just by way of background, at the time you took this
5 case or you were appointed on this case, is that correct?

6 A. Correct.

7 Q. At the time, how long had you been practicing law?

8 A. About five (5) years.

9 Q. Okay. And do you remember this representation of Mr.
10 Murphy?

11 A. I do.

12 Q. Okay. Can you give us a little bit of background
13 about the situation that he was facing and his charges,
14 what do you remember?

15 A. About the -- about the charges themselves?

16 Q. Yes.

17 A. So it was my understanding that Mr. Murphy and three
18 other co-defendants were involved in an allegedly
19 identifying a vehicle that they wanted to steal following
20 it into a point in which it stopped, got out of the
21 vehicle, and presented firearms to the owner of the
22 vehicle. I think he, the owner may have actually gone into
23 an apartment and when he came back out they confronted him.

24 COURT REPORTER: Hold on a minute.

25 A. In any event ---

1 COURT REPORTER: Tell him to hold on.

2 MS. McCALLISTER: I'm sorry, Michael, hold on one
3 second.

4 COURT REPORTER: Just take this and put it over
5 there where you are at.

6 MS. McCALLISTER: I'm sorry. We've got to get the
7 microphone situation figured out, one second.

8 COURT REPORTER: You're good. Just take this and
9 put it right there where you're at and we will be good.

10 MS. McCALLISTER: Take this next to the phone?

11 COURT REPORTER: Yes, ma'am. Thank you. Sorry.

12 MS. McCALLISTER: I'm sorry to interrupt you. Would
13 you please go ahead, continue.

14 A. So they allegedly put the owner of the vehicle in the
15 backseat of his own vehicle and then one of the
16 codefendants got in the backseat with the owner and held
17 him at gunpoint. I believe Mr. Murphy got in the front
18 seat of that vehicle, um, he got in the driver seat, and
19 then the two other co-defendants remained in the vehicle in
20 which they arrived. Then they got -- this occurred in
21 Florence. They got onto the highway and it is my
22 understanding that they were going to drop off the owner of
23 the vehicle. They ask him where he lived, he said he lived
24 in Dillon. So they got on 95 and drove up towards Dillon.
25 Somewhere -- this was February and so I think it was

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1 starting to get dark. Somewhere in Dillon County they pull
2 over and the co-defendant in the backseat, I believe his
3 name is Marlon Tutt. He, according to my understanding,
4 directed Mr. Murphy to take the owner, the victim, take him
5 out into an abandoned barn or something out in the field
6 and, kind of, take care of him. Mr. Murphy then takes the
7 victim out to the barn and discharges his firearm three
8 times.

9 Q. Okay.

10 A. Then he gets back in the vehicle leaving the victim in
11 the field and they drive to Marlboro County where they are
12 pulled over by police officers. They exit the vehicle. As
13 they are fleeing they are shooting back at the officers.
14 Ultimately, they were apprehended.

15 Q. Okay.

16 A. This resulted in charges in Florence County, Dillon
17 County and Marlboro County. Florence County they were
18 charges of conspiracy, armed robbery, kidnapping and
19 possession of a weapon during the commission of a violent
20 crime. There were Dillon County charges as well. Dillon
21 County was the attempted murder and then some charges
22 associated with fleeing, arrest, you know, presenting a
23 firearm to the officer in Marlboro County.

24 Q. Okay. And you were only representing him on the
25 Florence County charges, is that correct?

1 A. That's correct. I think at some point during the
2 representation we were made to understand that essentially
3 Dillon and Marlboro County were letting Florence County
4 handle prosecution of all of these defendants.

5 Q. Okay.

6 A. And that, essentially, that they were going to drop
7 their charges so long as the Florence County charges were
8 prosecuted.

9 Q. Okay. Um ---

10 A. No wait, I don't think he had an attorney for the
11 other charges, I guess, is what I'm saying.

12 Q. Okay. But were specifically appointed to represent
13 him on those charges or was your appointment solely for
14 Florence County?

15 A. No. My appointment was solely on the four charges
16 stemming from the kidnapping and the robbery of the vehicle
17 in Florence County.

18 Q. Did you meet with Mr. Murphy to talk about those
19 charges?

20 A. On many occasions.

21 Q. Okay. Could you give us a number, how many occasions
22 would you say?

23 A. Sure. So by my review of the file, I met with him
24 once at the preliminary hearing on May 10, 2012. I met
25 with him four times at the Florence County Detention Center

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1 subsequent to that pulmonary hearing. And then I met with
2 him twice more during the initial plea hearing and then the
3 motion for the reconsideration hearing. So four
4 independent visits and then three additional visits tied to
5 the hearings.

6 Q. Okay. Do you recall what you talked about with Mr.
7 Murphy during those meetings?

8 A. I do have a general sense of those discussions, yes.

9 Q. Okay. Did you talk to him -- do you remember, did you
10 talk to him about the charges, the possible sentences, any
11 defenses?

12 A. We did. So before I had been appointed Mr. Murphy had
13 offered a letter to the solicitor, John Jepetinger, where
14 he admitted his involvement in at least the Florence County
15 charges. In addition to that the co-defendants statements
16 to the officers pointed to Mr. Murphy as the leader of
17 these events. That was inconsistent with what Mr. Murphy
18 told me and our position was that Mr. Murphy was not the
19 ringleader that he was the reluctant participant in these
20 events and we were devising a defense to these charges
21 based upon what occurred in Dillon County. Mainly we felt
22 like we had some evidence that Mr. Murphy deliberately
23 missed the victim when he shot at him in Dillon County and
24 even those weren't the charges under which I was appointed,
25 we felt that that was evidence that Mr. Murphy did not

1 intend to go through with these crimes, did not have
2 detained criminal intent like this co-defendants did and
3 that was his way of avoiding any repercussions with his co-
4 defendants but also -- but also not harming the victim.
5 And so we met on multiple occasions particular early on. I
6 think we came pretty swiftly to the conclusion that we were
7 not going to be able to beat these charges and prevail at
8 trial with a not guilty verdict and that most of the
9 arguments that we were working to develop were to seek to
10 get Mr. Murphy as light of sentence as possible.

11 Q. Okay. Can you tell us a little bit about any plea
12 negotiations that you engaged in with the solicitor?

13 A. Sure. So I originally got, I think I got the Rule 5's
14 in May of 2012 which was a few weeks after my appointment
15 and there was, I believe, there was a plea offer included
16 in that original Rule 5 disclosure. And, essentially, what
17 Mr. Jepertinger was offering was that he would drop the
18 conspiracy and the possession of a weapon during a
19 commission of a violent crime charges if Mr. Murphy would
20 plea to kidnapping and armed robbery.

21 Q. Okay.

22 A. He was -- a component of the plea was a negotiated
23 sentence of twenty-five (25) years. From the outset, both
24 Mr. Murphy and myself did not like the negotiated sentence.
25 We both felt that that was excessive. And so really our

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1 discussion about the plea were that we got, we need to get
2 Mr. Jepertinger to not make that a negotiated sentence.
3 And that was a frustrating component for us was that he was
4 really stuck on keeping that as part of the deal. And upon
5 my review of the file in preparation for today, it's my
6 recollection that he had, I think, it's because Mr. Murphy
7 was the one who shot at the victim he felt like he needed
8 to get -- I think that's why he was being harsher and less
9 flexible with Mr. Murphy than he was the other co-
10 defendants because ultimately the other co-defendants pled
11 and got less severe sentences than Mr. Murphy. In one of
12 our argument at the plea hearing was that he wasn't the
13 ringleader and under no circumstances should he get more
14 time than the ringleader who I believe Mr. Tutt got twenty
15 (20) years. And clearly that was not successful,
16 unfortunately. But -- that was a major discussion, a major
17 point of discussion at all of our meetings was is twenty-
18 five (25) year negotiated sentence and how we could try to
19 work around that to do better, how we could beat that
20 twenty-five (25).

21 Q. Okay. And so you -- do you recall specifically
22 discussing what a negotiated sentence means with Mr.
23 Murphy?

24 A. Yeah, of course. Yeah.

25 Q. Okay.

1 A. And Mr. Murphy was -- he spent a lot of time,
2 unfortunately, in the Florence County Detention Center.
3 This was a complex set of charges with multiple counties,
4 multiple defendants and so it took longer than normal to
5 process and so I think he had a lot of time to think about
6 the charges, to speak with his peers about the charges and
7 so he was savvy about judges, he was savvy about the
8 process. But, yeah, questionably, we discussed what a
9 negotiated sentence meant because again we were frustrated
10 that the solicitor was hung up on that.

11 Q. Okay. And so in those discussions of what a
12 negotiated sentence meant, did you talk to him about what
13 it meant to plea without a recommendation?

14 A. Yes. In fact, essentially and I think it was around
15 December, one of our meetings at the end of 2012, we,
16 basically, there's basically four options available to Mr.
17 Murphy. One was to just accept the deal that was on the
18 table included the negotiated twenty-five (25) years. The
19 second option was to try to get Mr. Jepertinger to have the
20 twenty-five (25) years just be a recommendation and not
21 part of the deal. The third option was to just plead all
22 four crimes and argue for whatever sentence we wanted. And
23 the fourth option was to try the case.

24 Q. Okay.

25 A. Initially, Mr. Murphy's preference was to, was the

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1 second option, to let see if we can get Mr. Jepertinger to
2 just give us a break on the negotiated sentence. Let's
3 just make that a recommendation. You know, Mr. Murphy this
4 was his first crime as a major. He had a family. He was
5 working. He was going to school. We felt like we had a
6 good mitigating evidence and so we felt like if we could
7 just get in front of a judge even with the twenty-five (25)
8 year recommendation, we felt that we can do better than
9 that and so that was our first course of action. And again
10 Mr. Jepertinger was inflexible. He wouldn't ---

11 A. Okay.

12 Q. --- he wouldn't remove that as a contingency. And so
13 -- I'm sorry go ahead.

14 Q. I don't want to interrupt you I just want -- so how
15 did you come to the plea in Marion County? How did that
16 come about?

17 A. So-- yeah, so we, when we learned that he was going to
18 be inflexible, we were going to try the case. And, in
19 fact, in our meetings in December, we met in December,
20 January and February, twice in February, ---

21 Q. I'm sorry, is that January, December of 2012? January
22 and February of 2013, is that right?

23 A. That's correct. Yeah.

24 Q. Okay.

25 A. At the December meeting we were just kinda discussing

1 those four options. By the time of the January meeting it
2 was clear that Mr. Jepertinger was not going to budge off
3 of the negotiated sentence component. And so at that point
4 we adjusted our strategy to trial preparation. I think we
5 were looking at May trial date and so that's -- I think
6 that's right, I think it was either March or May. And so
7 we had enough time to get ready for trial especially since
8 we were, we didn't have a strong defense to the crimes
9 themselves. This is really going to be, the focus of our
10 defense was going to be he didn't, he wasn't the
11 ringleader, that he was a reluctant participant, the
12 evidence of intentionally missing the victim in Dillon
13 County was evidence that, you know, he did not have the
14 same criminal intent that his co-defendants did and really
15 just damage mitigation in effort to beat the twenty-five
16 (25) years.

17 A.. Okay.

18 Q. And then we learned in February, we met for an
19 extended period of time in January -- January -- we met
20 February 6, 2013 and by that time we have him placed on a
21 trial roster and had learned that Judge Brown was going to
22 try the case. Mr. Murphy, I met with him that day, and Mr.
23 Murphy on his own indicated that he did not want Judge
24 Brown to try the case. Judge Brown had a reputation for
25 being unpredictable and being sometimes harsh on criminal

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1 defendant's and Mr. Murphy unequivocal that he did not want
2 Judge Brown to try this case. And, in fact, he said that I
3 would rather plea to all four than try it in front of Judge
4 Brown.

5 Q. Okay.

6 A. And so at that point we had to essentially call it off
7 at the last minute and say, all right, well I don't see
8 grounds for us to getting it continued or trying to get
9 another judge to try the case, let me talk to the solicitor
10 and let's just see, let's if they can squeeze is in for a
11 plea. Again we don't want Judge Brown to hear the plea
12 hearing either, let's see if we can get somebody else to
13 hear the plea. And so we talked to Mr. Jepertering. He
14 was able to squeeze us in. Again, this was somewhat
15 unusual but he was able to squeeze us in front of Judge
16 Seals. We'll get another Twelfth Circuit judge and who was
17 holding court in Marion County. And so my recollection is,
18 the plan was what Mr. Murphy had outline, you know, I'd
19 rather -- I'll plea to all four as opposed to trying the
20 case. So that's how we ended up pleading in Marion.

21 Q. Okay. And was that plea was when you went in front of
22 Judge Seals, was that a plea with recommendation or
23 negotiation or what was it?

24 A. We did not have a negotiation, again we weren't
25 accepting the deal.

1 Q. Right.

2 A. My recollection is that we were pleading to all four
3 and I cannot recall if Mr. Jepetinger, despite that, still
4 made a recommendation or not. I seem to recall I know we
5 certainly ask him to just not make a recommendation and I
6 seem to recall that's what happened but I can maybe be
7 wrong about that.

8 Q. Okay. At any time before that plea in front of Judge
9 Seals, did you make a promise to Mr. Murphy as to how much
10 time he would receive?

11 A. No. The discussions that we had, of course, were
12 centered on our strategy and our approach was to try to get
13 him a sentence that was less than twenty-five (25) years
14 because that was our goal. I mean, that was what we were
15 trying to do. If we felt like either at trial or at a plea
16 hearing that we weren't going to beat twenty-five (25)
17 years, well then he was just going to take the negotiated
18 sentence. Our goal together was to see what we can do to
19 get less than twenty-five (25) and I think our -- and I
20 can't recall if at the plea hearing we specifically asked
21 for a sentence and there certainly -- they may have been
22 discussions that we had a goal or a target of maybe the
23 fifteen (15) year range but I was not in the position to
24 promise Mr. Murphy that he would only receive ten (10) or
25 fifteen (15) years because that was, I had no basis to make

1 that promise.

2 Q. Okay. So there was no offer from the solicitor with
3 that number or anything like that of ten (10) to fifteen
4 (15)?

5 A. No.

6 Q. Okay. When you -- when you went to the plea, do you
7 recall what arguments you made, was it essentially the same
8 as you outline for your trial strategy or how did you
9 handle that?

10 A. Yeah, I think so. I don't have a specific
11 recollection. I do know in my notes that the hearing was
12 over thirty minutes long. It was probably one of the
13 longer plea hearings I participated in and I remember the
14 victim was there and the victim gave a very impassioned
15 statement to the court. We were a little bit surprised by
16 that. I think -- yes, to answer your question, yes, I
17 think that the arguments we made were largely as I've
18 outlined but, yes ---

19 A. Okay.

20 Q. Actually, I do remember specifically talking about how
21 he deliberately missed the victim of the accounts of the
22 events. But Mr. Jepertinger's presentation and the
23 victim's presentation was that the victim was unaware of
24 that. So if Mr. Murphy deliberately missed that, that was
25 not communicated to the victim because the victim thought

1 that he was going to be shot.

2 Q. Okay. Do you feel like the presentation from the
3 solicitor, in terms of like -- did the investigator testify
4 as well?

5 A. I don't believe so, no.

6 Q. Okay. Well, the transcript will -- we'll let the
7 transcript speak for itself, but do you feel that the
8 presentation of witnesses from the state had any influence
9 on this sentence?

10 A. I do. I -- candidly, I think that the victim's
11 presentation influence the judge's decision pending that I
12 think that we had good arguments. Mr. Murphy had a
13 relatively good record. And I was candidly -- I was
14 surprised by the verdict, I mean, by the sentence. It was,
15 I thought it was harsh. I thought it was more than Mr.
16 Murphy should've gotten for these charges and I think that,
17 that was -- that's all I contribute it to was that he had a
18 victim in there saying he was thinking he was going to die
19 and so I think Judge Seals felt like his hands were tied
20 and was forced to give a harsh sentence.

21 Q. Okay. Did you at any time during that plea, did Mr.
22 Murphy signal to you, say anything to you about hey, what's
23 going on, I thought I had a deal for 'x' number of years?

24 A. No. I mean, by that point Mr. Murphy and I -- in
25 January or February, Mr. Murphy and I had talked, actually,

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1 a total of three or four hours. We spent, in my mind, a
2 considerable amount of time together talking about trial
3 but then once it got to the plea we had a specific meeting
4 three days before the plea hearing at the detention center
5 on February 12th. I went out there just so we could
6 prepare for the plea hearing. Just so we could get the
7 arguments in place. Just so we could make sure he could
8 express his contrition. And so by the time he actually got
9 in front of the judge, we had, had more than enough time to
10 discuss any matters that needed to be discussed.

11 Q. Okay. And did you feel like if for some reason the
12 plea had fallen through that you would've been prepared to
13 take this case to trial?

14 A. Yeah, I mean that's where we were -- until we got the
15 roster with Judge Brown and I had that meeting with Mr.
16 Murphy, we were trying the case.

17 Q. Okay. So ---

18 A. And, in fact, I think at the, you know, the December
19 or January meeting I had printed off a map of, kind of, the
20 street where the rural in Dillon County where the shooting
21 had occurred because we have photographs from the
22 solicitor's office of the barn where the shooting had
23 occurred, but I wanted to go out and take my own pictures
24 and I bought a map that I printed off Google maps and had
25 Mr. Murphy actually circle, kind of, where the location was

1 and my client was to go out there with the photographer and
2 have my own set of photographs taken, but we were gearing
3 up for trial.

4 Q. Okay.

5 A. And then when we got that -- when we got the roster
6 then everything changed.

7 Q. Okay. And then after the sentence -- after the plea
8 and the sentence, you filed a motion for reconsideration,
9 is that correct?

10 A. I did.

11 Q. Can you talk a little bit about that? How did that
12 come about?

13 A. So at the first plea hearing, we were, I think, both
14 of us were a little bit surprised because Mr. Murphy was
15 not given an opportunity to speak. The judge, I think to
16 my recollection as soon I finished my statement, the judge
17 issued his sentence.

18 Q. Okay.

19 A. And I think Mr. Murphy and I were both taken back by
20 my inability to make a statement on his behalf and I think
21 that frustrated both of us. And so it wasn't long after --
22 it wasn't long after the plea hearing, I mean, from my
23 records it was less than a week after the plea hearing, we
24 file that motion for reconsideration.

25 Q. Okay.

Michael Miller- Direct Examination by Ms. McCallister 42

1 A. Primarily on the basis that Mr. Murphy was not
2 provided an opportunity to speak and that if he had his
3 contrition, you know, his commitment to personal
4 betterment, to, you know, better good of society and so
5 forth, that if the judge had just heard what he had to say
6 that, that sentence would not have been imposed.

7 Q. Okay.

8 A. And that was filed -- go ahead. I'm sorry.

9 Q. And that was -- and that was -- eventually, that was
10 -- I'm sorry, eventually, that motion resulted in a
11 rehearing, correct?

12 A. Yes. And, candidly, I was surprised. I think we -- I
13 personally expected we would get a denial without, more
14 without an opportunity to get back in front of the judge.
15 But, no, we did get another hearing that was held on May
16 22, 2013.

17 Q. Okay.

18 A. Mr. Murphy was there. I believe his mother was there.
19 Of course, I was there again. Mr. Murphy was provided an
20 opportunity to speak. I believe the victim was there again
21 which I think frustrated us again that since the judge was
22 going to be in the same position he was the first time and,
23 of course, he obviously didn't disturb his sentence.

24 Q. Okay. After that -- after that reconsideration
25 hearing, did you have any further contact with Mr. Murphy

1 about his case?

2 A. Yes. So when I received the order I sent him a letter
3 including the order that was on June 14, 2013 and then in
4 January of 2014, Mr. Murphy sent me a letter requesting a
5 copy of his file and later that month I complied.

6 Q. Okay.

7 A. So from my file the last record I had of
8 communications with Mr. Murphy would've been in January of
9 2014.

10 Q. Did he -- did he talk to you at any point after the
11 re-sentencing about continuing to appeal his sentence?

12 A. He sent me a letter after the first plea hearing just
13 a few days after expressing a desire to appeal. I can't
14 recall. I only have an electronic copy in my file so I can
15 pull up that letter and see specifically when it's dated,
16 but if I recall there was some mention of not getting an
17 opportunity to speak and the desire to appeal and that, of
18 course, in part prompted me to file the motion for
19 reconsideration.

20 Q. Okay. And after in terms of your assessment of the
21 plea other than the issue of Mr. Murphy not being allowed
22 to a chance to speak, did you feel like there was any legal
23 error that was, that could have been appealed?

24 A. I didn't see any of that.

25 Q. Okay. Did you have, I know you said you were kind of

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1 were surprised at the sentence, but did you feel that the
2 sentence, there was anything legally incorrect about the
3 sentence?

4 A. I didn't feel that the sentence was a violation of the
5 law I just felt that it was harsher than it needed to be.

6 Q. Okay. Did you ever -- do you recall if you ever sent
7 Mr. Murphy his Rule 5 and discovery or gave him copies of
8 things that you talked about in these meetings, did he
9 access to his file?

10 A. Yes. So he requested a copy of his Rule 5's in
11 September of 2012 and from my records within three days of
12 receiving that letter we sent him a copy of his Rule 5's.

13 Q. I'm sorry you said that was September of 2012?

14 A. Correct.

15 Q. And so that was several months before the plea in
16 Marion, is that correct?

17 A. That's right. I think we initially -- I sent Mr.
18 Murphy a letter in late August and I think at that time we
19 had heard from Mr. Jepertinger that we were on a September
20 roster to plea and at that time, of course, the negotiated
21 sentence was still tied to the plea and so I think that's
22 what prompted his request for the Rule 5's. Of course,
23 when we rejected that plea offer and told them that we were
24 going to trial that's when the case kind of got on back
25 burner until we could get on trial roster.

1 Q. Okay. And just -- last question, did you ever have
2 any indication from Mr. Murphy on the day of the plea that
3 he did not understand what was going to happen in terms of
4 what it meant to take, to accept a plea and to, and what
5 sentence he was possibly facing?

6 A. No.

7 Q. Okay. And you didn't make him any promises to get him
8 to plea?

9 A. No. No promises.

10 Q. And you felt like -- was that his decision or your
11 decision to plead?

12 A. Well, it was his because he didn't want to try the
13 case in front of Judge Brown.

14 Q. Okay.

15 MS. MCCALLISTER: I think that's all I have.

16 **Cross Examination by Mr. Waller:**

17 Q. Good afternoon, Mr. Miller, can you hear me all right?

18 A. I can.

19 Q. Can you -- how well can you see?

20 A. It depends.

21 MR. WALLER: All right. I've got a couple of things
22 that were provided from you to the Attorney General's
23 office that I, you know, gonna and if you have copies of
24 and so were on the same page. That's why I was asking that
25 question. I'll get closer to the camera here in just a

1 second.

2 A. Sure.

3 Q. Mr. Miller, I apologize I think I called you Mr.
4 Murphy a second ago. Mr. Miller, you testified that you've
5 been practicing law, at this time, proximally five years or
6 at that time?

7 A. I was licensed in 2007 so, correct.

8 Q. Okay. How much of your practice was criminal law?

9 A. Not very much. I took -- I was on the criminal
10 appointment list and probably took just a handful of regain
11 criminal cases.

12 Q. Okay. You filed a request for an order protection in
13 May of 2013 in Florence County, do you recall asking for
14 that protection?

15 A. Not specifically, but I customarily did that every
16 year.

17 Q. Okay. You had one criminal case listed on there and
18 it was this case, would that have been the only criminal
19 case you had in Florence County at the time?

20 A. If that's what I put on the list, yeah, I think this
21 was my last -- what was the date of that order or that
22 request for protection?

23 Q. May 13, 2013. So ---

24 A. I moved -- I moved from South Carolina in March of
25 2014 and that the decision to move had already been made in

1 2013. So it's possible that I had made some communication
2 to whoever I needed to, to stop giving me appointments or
3 that if any appointments. My office knew that I was
4 leaving. If I had received any other appointments I made,
5 we had a lawyer in my office who did do criminal defense
6 work primarily. I may have given them those appointments.

7 Q. Okay. You testify ---

8 A. I -- go ahead.

9 Q. No, go ahead. I guess, I would say is I rarely had
10 more than a few criminal cases pending at a single time,
11 but I typically had more than one.

12 Q. Okay. You testified that Mr. Murphy was savvy about
13 judges that he was aware that Judge Brown had a reputation
14 as possibly a harsh sentencer, is that right?

15 A. That's correct.

16 Q. Did y'all discuss any potential reputation of Judge
17 Seals?

18 A. I do not recall. I think -- I think that since the
19 solicitor's office was making an exception for us and was
20 kind of squeezing us in, I felt like we probably had less
21 of a leeway to then ask for another exception or to
22 continue it or do something else and I don't recall how
23 much advance notice we had that Judge Seals would be the
24 one deciding it. So I guess the answer to the question is,
25 no. I don't recall that.

1 Q. Okay. You testified earlier that you thought it was a
2 May trial date, is that your recollection?

3 A. I -- it was my understanding that the trial date was
4 going to be in the spring of 2013.

5 Q. Okay. When you found out the judge, that it was on a
6 roster in front of Judge Brown, do you recall when it was
7 on that roster? How far away from February 15, 2013?

8 A. Give me just a second. Okay. So it looks like -- so
9 it looks like it was in March, it was scheduled for March
10 11, 2013. It looks like I learned that around mid-January.

11 Q. Okay. So approximately two months before he was
12 scheduled for trial ---

13 A. Right.

14 Q. --- is that accurate?

15 A. Yes.

16 Q. And there wasn't a -- there wasn't a term of court in
17 Florence between them?

18 A. I think -- I think that was going to be tried in
19 Florence. I don't know why it was put on that -- I don't
20 know what was put on that roster.

21 Q. Now, Mr. Miller, let me ask you that question again
22 because I didn't ask it very well. Was there not another
23 term of General Sessions court in Florence County between
24 mid-January when you found out it was on the roster and
25 that March 11th trial date?

1 A. I don't know.

2 Q. Okay. Well, Mr. Murphy, excuse me, Mr. Miller, sorry,
3 the reason I'm asking you that is y'all went to Marion
4 County and pled, did you check and see if there were other
5 terms of court in Florence County?

6 A. I think when the decision was made to plea I think we
7 were asking the solicitor's office to squeeze us in when
8 they could. I'm not even sure that, that was a regular term
9 for pleas. I think that, that they were, number one, you
10 have to understand our primary motivation was to get it out
11 of Judge Brown's courtroom. And so we didn't want to have
12 it occur that week and have judge do it and so I think when
13 he said we will plea but we'd like to do it sooner than
14 that, I think we were, to a certain extent, at the mercy of
15 the solicitor's office with the judge in the courtroom and
16 they had determined and it's my understanding that they
17 were, that they were squeezing us in when they could that,
18 that wasn't a tremendous availability.

19 Q. Okay. Do you -- do you have anything in your notes as
20 to any terms of court in Florence County between February
21 15th in March 11th?

22 A. No.

23 Q. Okay. You testified earlier that you met with Mr.
24 Murphy outside of court proceedings on four occasions at
25 the detention center, is that right?

1 A. Correct.

2 Q. How long did you represent him total?

3 A. I was appointed on April 30, 2012 and then the order
4 denying reconsideration was June 11, 2013. I sent him a
5 copy of my file January of 2014. So active representation
6 fourteen months, at least.

7 A. Okay. And he pled guilty February 15, 2013 so about
8 ten months after you were appointed?

9 A. Correct.

10 Q. You testified earlier that you believe that the
11 victim's presentation to the court influence Judge Seals
12 sentence?

13 A. Yes.

14 Q. Okay. Would it surprise you that the victim declined
15 to speak that day?

16 A. At the original plea hearing?

17 Q. Yes, sir.

18 A. I guess, yeah, I guess it would. I know for a fact
19 that the victim spoke so I may be mis-remembering, he may
20 have spoke at the motion for reconsideration hearing. I
21 feel like I recall he spoke at the plea hearing but you
22 have the transcript and I don't, so.

23 Q. Okay. Would it surprise you that his mother did speak
24 but spoke for a total of nine lines on a transcript page,
25 so not very long?

1 A. I -- I don't recall that aspect of it.

2 Q. Mr. Miller, I believe you just said that you don't
3 have a transcript?

4 A. I do not have the transcript over here, no.

5 Q. Okay. Well, if I, for everyone else here with us,
6 sorry, that does have a transcript, the very top of page 20
7 and the bottom of page 20, you tell the court that Mr.
8 Murphy's mother would like to speak and then the judge ask
9 you at the bottom of page 20 if there's anything further
10 and you tell the judge, no, Your Honor. At any of those
11 times, could you have informed the court that Mr. Murphy
12 would've liked to speak to the court?

13 A. My interpretation of him asking if there's anything
14 further was there anything further from me that was, my
15 understanding was at the conclusion of my arguments and
16 that I expected Judge Seals to then provide Mr. Murphy an
17 opportunity to speak. So to answer your question, could I
18 have asked that question, yes, I could have.

19 Q. Okay. What -- at the time -- at the time you learned
20 that the case was a trial roster in front of Judge Brown,
21 what had y'all done, at that point, to prepare for trial?

22 A. We had -- we had met in December and we met in
23 January. And my recollection is both of those were very
24 lengthy visits, longer than typical. And we, essentially,
25 discussed that we were concerned that a guilty verdict was

1 likely and that we were trying to get our arguments in
2 mitigation together upon as I referenced under direct
3 examination. I brought the map of the shooting location.
4 I think that we felt that, that was the strongest evidence
5 that Mr. Murphy was not in fact the ringleader that he was
6 coerced into these events. And so, brought the map, had
7 him circled it, I wanted to get some more specific
8 photographs of the shooting site with measurement and so
9 forth and so that was an effort that we took. I think
10 ultimately we did not end up taking those photographs
11 because we got the roster, you know, we changed our
12 strategy. But other than that, I can't recall any other
13 specific trial preparations other than just our meetings.

14 Q. Okay. Mr. Miller, I am holding what's marked as
15 plaintiff's exhibit or applicant exhibit number one. It's
16 a letter that you provided to the Attorney General's office
17 from Mr. Murphy dated February 18, 2013. I believe you
18 testified on direct that you received a letter shortly
19 after the original plea asking for you to file an appeal of
20 the, from the plea. Do you recall that?

21 A. I do.

22 Q. Can you, I'm going to do my best to hold this up, is
23 that a copy of the letter?

24 A. It looks to be, yes.

25 Q. Okay.

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1 MR. WALLER: I offer applicant's one.

2 MS. MCCALLISTER: No objection.

3 (Whereupon, the Letter- February 18, 2013 has been marked
4 and entered into evidence as Plaintiff's Exhibit No. 1)

5 Q. Mr. Miller, in that letter Mr. Murphy ask you to file
6 an appeal from his sentence, is that correct?

7 A. Do you mind if I pull up my electronic version of that
8 letter?

9 Q. Please do.

10 A. Okay. Give me just a second.

11 (Whereupon, Mr. Miller took a moment to location letter)

12 A. Give me just a second.

13 Q. Sure.

14 A. I'm having difficulty locating it. Yeah, I'm having
15 difficulty locating it so ---

16 Q. Okay. Well, is it your understanding that Mr. Murphy
17 ask you to file an appeal, is that your recollection?

18 A. I remember -- I remember him using language to that
19 effect, yes.

20 Q. To your -- from your records, did you ever file an
21 appeal?

22 A. With the South Carolina Court of Appeals?

23 Q. Yes, sir.

24 A. I did not.

25 MR. WALLER: I beg the Court's indulgence. Nothing

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1 further. Thank you, Mr. Miller.

2 MS. McCALLISTER: Your Honor, can I just briefly?

3 **Redirect Examination by Ms. McCallister:**

4 Q. Mr. Miller, do you recall why Mr. Murphy was asking
5 you to appeal?

6 A. I would really prefer to review the letter before I
7 answer that question but as I sit here today it would be
8 based on the fact that the sentence was harsher than it
9 was, I mean, harsher than we thought it should be and ---

10 Q. Do you ---

11 A. And I will also -- go ahead.

12 Q. No, go ahead finish your answer.

13 A. I'm not sure if Mr. Murphy understood exactly what he
14 meant by using the word, appeal.

15 Q. Okay. Did you feel like when you filed the motion for
16 reconsideration and had a hearing, you had got Mr. Murphy
17 the relief that he was asking for?

18 A. Yes.

19 Q. Okay.

20 A. I did not read that letter to be a request to file an
21 appeal with the South Carolina Court of Appeals.

22 Q. Okay.

23 A. I read that letter to be as a request to get an
24 opportunity to speak and have the judge reevaluate the
25 sentence after hearing his presentation.

1 Q. Okay.

2 MS. McCALLISTER: Thank you.

3 MR. WALLER: Nothing further.

4 MS. McCALLISTER: Okay.

5 THE COURT: Thank you, Mr. Miller.

6 MS. McCALLISTER: Thank you, Mr. Miller.

7 MR. MILLER: You're welcome.

8 MS. McCALLISTER: That's all from the state, Your
9 Honor.

10 THE COURT: Anything?

11 MR. WALLER: Yes, sir. Just very briefly, Your
12 Honor. Your Honor, Mr. Miller was very candid that they
13 were attempting to avoid certain judges as far as this
14 going to trial and yet they went to after having two months
15 of time, they went to -- they waived venue and went to a
16 different county. Your Honor, also the letter you have,
17 Applicant's Exhibit 1, Mr. Murphy clearly asked for an
18 appeal to be filed on his behalf which was never done. A
19 motion for reconsideration is certainly not an appeal. In
20 a guilty plea situation normally an attorney would not have
21 the duty to file an appeal unless it's ask of him or unless
22 he noticed something went wrong. In this case it was asked
23 of him.

24 THE COURT: Well, the problem you have there is he
25 did in the letter apparently asked for an appeal. The

1 attorney took the logical route of asking for the
2 reconsideration and then after that was heard. The
3 sentence was confirmed. There was no request after that
4 for the appeal. So, you know, the appeal withing ten days
5 with that motion for reconsider filed, then the ten days
6 would have run after the ruling at the reconsideration, so.

7 MR. WALLER: Yes, Your Honor.

8 THE COURT: But anyway I'll take a look at all of
9 this. Well, I didn't mean to cut you off. Madam, Attorney
10 General, is there anything you'd like to say?

11 MS. McCALLISTER: No, Your Honor. I think the
12 letter is pretty good evidence of what Mr. Murphy was
13 really asking for in his request and he testified and Mr.
14 Miller testified that he got the relief that he asked for,
15 at least, in terms of he was able to be heard, so, Thank
16 you.

17 THE COURT: That comment that I made is strictly on
18 appellate argument or the appeal's argument. Let me look
19 at the transcript and try to get a determination made as
20 soon as possible.

21 MR. WALLER: Thank you, Your Honor.

22 MS. McCALLISTER: Thank you, Your Honor.

23 (CONCLUSION OF THE HEARING ON MARCH 15, 2017)
24
25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Circuit Court of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Twelfth Circuit Court for Florence County, South Carolina, on the 14th day of March, 2017.

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

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

December 26, 2017

Dear Mr. Miller:

2-18-12

Hello Mr. Miller how is everything going? Well as far as me all is well im just preparing myself for what's ahead of me. The reason I am writing you is because I would like for you to file for an appeal as soon as possible on my behalf because I feel like I was given a wrong verdict. I also feel like it was wrong because the judge didn't even ask me to say anything on my behalf and every other person that went up before me was given the chance to say something for themselves. If possible I would also like for you to tell the solicitor that I am willing to testify against my co-defendant in March if he is willing to work with me. By the time you get this letter I will have been in the California so you don't have to write back to this address. I would really appreciate if you could get the things done for me as soon as possible so we can at least try to give some time back. Thank You In Advance.

Sincerely,

James E. Miller II

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

James E. Murphy, # 354373,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2013-CP-21-1889

ORDER OF DISMISSAL

2017 SEP 11 PM 3:20
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 19, 2013. Respondent made its Return on May 6, 2014. An evidentiary hearing into the matter was convened on March 15, 2017, at the Florence County Courthouse before the Honorable Paul M. Burch. Jonathan Waller, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Michael Miller, Esquire, also testified via Skype videoconference. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2012, the Florence County Grand Jury indicted Applicant for armed robbery, kidnapping, conspiracy, and possession of a weapon during the commission of a violent crime (2012-GS-21-788). Michael T. Miller, Esquire, represented Applicant. On February 15, 2013, Applicant pleaded guilty to armed robbery and kidnapping. In exchange for his plea, the State dismissed the remaining

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

charges. The Honorable William H. Seals, Jr., sentenced Applicant to concurrent terms of twenty-eight years for armed robbery and kidnapping. On February 21, 2013, Applicant made a motion to reconsider his sentence. Judge Seals convened a hearing on the motion on May 22, 2013 and denied the motion by written order filed June 11, 2013. Applicant did not further appeal his guilty plea or sentence.

ALLEGATIONS

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

- a. Involuntary guilty plea, in that Counsel gave erroneous advice as to the details and content of the plea agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Involuntary Guilty Plea

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 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, 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).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial

matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he spoke with Counsel three times before his guilty plea – once at his preliminary hearing and twice after that. Applicant testified Counsel did not discuss his right to

a jury trial, his right to remain silent, or his right to obtain his codefendants statements against him. Applicant further testified Counsel never discussed the contents of those statements with him. Applicant testified he received a copy of the discovery in his case after his plea, but he never had a chance to review it beforehand. Applicant testified Counsel did not discuss possible defenses with him, and Counsel did not ask him to provide any witnesses. Applicant acknowledged Counsel conveyed a plea offer of twenty-five years, and they discussed the possibility of taking the plea in Marion County. However, Applicant testified he told Counsel he wanted to go to trial rather than accept that offer, and Counsel told Applicant that was Applicant's decision to make. Applicant further testified he thought the agreement in Marion County was for ten to fifteen years, and Counsel only told him it was an open plea when they were already there to take the plea. Applicant testified he would have gone to trial if he had known he could still get twenty-five years. Applicant also testified he asked Counsel to file a motion after the plea, and Counsel did file a motion for reconsideration, but Counsel did not file a notice of appeal. Applicant testified he did not feel Counsel was prepared for trial, and Counsel wanted Applicant to plead guilty. Applicant testified he ultimately pleaded guilty because he did not feel Counsel could get prepared for trial in the timeframe of a few weeks.

Counsel testified Applicant had charges in Florence, Dillon, and Marlboro Counties all related to the same incident. Counsel only represented him on the Florence County charges. Counsel testified he had five years of experience and was on the criminal appointment list at the time. Counsel testified he rarely handled more than a few criminal cases at a time, but typically did have more than one. Counsel testified he first met with Applicant at the preliminary hearing on May 10, 2012, then they met four times at the Florence County Detention Center and twice more for court appearances at the initial plea and the hearing on Applicant's motion for

reconsideration. Counsel testified after he reviewed the State's evidence, his conclusion was Applicant was unlikely to be acquitted at trial, and his focus was on obtaining the lightest possible sentence. Counsel testified Applicant wrote the solicitor a letter detailing his involvement in the crime, and Applicant's codefendants gave statements naming Applicant as the ringleader. Counsel testified his defense theory was that Applicant had deliberately missed when firing the gun at the victim. Counsel further testified he received discovery pursuant to his Rule 5 request in May 2012, and it included a plea offer to drop the remaining charges if Applicant would plead guilty to the kidnapping and armed robbery. Counsel testified the offer was a negotiated twenty-five year sentence. Counsel further testified Applicant did not like that it was a negotiated plea and felt the sentence was excessive, so Counsel approached the solicitor about pleading with no negotiation. Counsel testified the solicitor indicated he would not be as flexible with Applicant as the other codefendants because Applicant was the shooter. Counsel testified his strategy at the plea was to argue Applicant should not receive more time than his codefendants and that Applicant deliberately missed shooting the victim based on the position of the bullets and bullet holes found at the scene.

Counsel testified he had a meeting with Applicant specifically to discuss pleading guilty without negotiation and told Applicant he had four options: accept the twenty-five year offer, try to get the solicitor to agree to twenty-five years as a recommendation rather than a negotiation, plead guilty to all four charges and make the best argument they could, or try the case. Counsel testified Applicant initially wanted him to pursue the option of a recommendation of twenty-five years rather than a negotiated sentence. Counsel further testified he began preparing the case for trial and met with Applicant in December 2012, January 2013, and February 2013, and he felt he had plenty of time to prepare the case. Counsel testified the visits in December 2012 and

January 2013 were lengthy because he was concerned a guilty verdict was likely, and he was trying to prepare mitigation arguments. Counsel testified the defense would be to argue Applicant was not the ringleader, he intentionally missed the victim, and the focus would be on mitigation.

Counsel also testified the case was placed on the trial roster in February or March 2013 before Judge Brown, and Applicant specifically requested not to appear in front of Judge Brown because he had a reputation in the jail for being extremely tough. Counsel testified Applicant told him he would rather plead guilty to all four charges in front of another judge than go to trial in front of Judge Brown, so the solicitor agreed to get Applicant's case on the plea docket in Marion County before Judge Seals. Counsel testified he and Applicant did not discuss Judge Seals' reputation among criminal defendants, and Counsel did not know if there were other judges available between the time they were notified of the trial date in mid-January and the time of the plea in March. Counsel testified he did not make Applicant any promises as to how much time he would get, and Applicant was aware he was pleading all four charges without negotiation. Counsel further testified his approach was to try to get Applicant a sentence less than the twenty-five years. Counsel testified he spent a considerable amount of time discussing Applicant's options with him before the plea, and Counsel was planning for and prepared for trial. Counsel testified it was Applicant's decision to plead guilty because Applicant did not want to go to trial. Counsel testified the plea lasted over thirty minutes, and the victim was present and gave an impassioned statement. Counsel testified he believed both the victim and the solicitor were unaware Applicant deliberately shot to miss the victim, and Counsel further stated he believed the victim's presentation influenced the sentence Applicant received.

Counsel testified he filed the motion for reconsideration because he was surprised the plea judge did not allow Applicant to speak at the plea. Counsel testified when the plea judge asked if there was anything further and Counsel answered "no," Counsel thought the judge was asking if Counsel had any further argument, and he did not understand the judge was asking if Applicant wished to speak. Counsel testified the rehearing occurred on May 22, 2013, and both Applicant and his mother were present and had a chance to speak to the judge. The victim was also present. Counsel further testified he received the order denying the motion and sent it to Applicant the same day, June 14, 2013. Counsel testified Applicant did send him a letter after the first plea hearing asking about an appeal because he did not get the opportunity to speak. Counsel further testified he did not see any legal errors or issues for appeal other than Applicant not being allowed to speak, and he felt the hearing on the motion for reconsideration remedied the issue.

Regarding Applicant's claim his guilty plea was induced by ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel is a trial practitioner who had experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, and answered all of Applicant's questions. Additionally, Counsel conveyed the State's negotiated plea offer to Applicant, who rejected it because he felt the sentence was too harsh. This Court finds credible Counsel's testimony as to why he felt he had no grounds to support an appeal when the only meritorious

pmb

issue Counsel identified was the plea judge's failure to allow Applicant to speak in his own defense, and that issue was completely and timely addressed by the hearing on Applicant's motion for reconsideration. This Court finds Applicant presented no evidence he asked for an appeal after the rehearing, and Counsel was not deficient for failing to file a notice of appeal because the issue raised by Applicant had been addressed.

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and did not challenge the facts presented by the State at the plea. Applicant told the plea judge that he was satisfied with his attorney, that Counsel had done everything Applicant had asked of him, and he did not need any more time to discuss this matter with Counsel. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceeding, and Applicant indicated he understood all of the plea judge's questions and had answered them honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove

the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant’s guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding 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.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

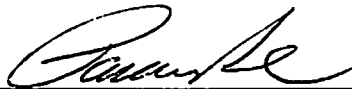
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Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1st day of September, 2017.



THE HONORABLE PAUL M. BURCH
Presiding Judge
Twelfth Judicial Circuit

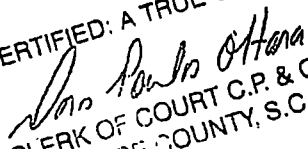


, South Carolina.

FILED

2017 SEP 11 PM 3:21

**DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC**

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FORM 4
FILEDSTATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER **2013CP2101889**

James E Murphy II

2017 SEP 13 PM 2:44

South Carolina State Of

DORIS POULOS O'HARA

CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

9/13/2017

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This judgment was entered on **September 11, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **September 14, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller 1116 Blanding Street Suite 2B
Columbia, SC 29201

Lindsey Ann McCallister PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Michael Robinson Florence Police Department

DOCKET NO. 2012-GS-21-00788

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2012

THE STATE

vs.

JAMES ERIC MURPHY II

John C Jupertinger

ARREST WARRANT NUMBER

M379444 M379443 M379456

M379457

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

5/31/2012

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

**ARMED ROBBERY, KIDNAPPING,
CONSPIRACY**

AND

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

2012 MAY 31 PM 12:58
CONNIE REEL-SHEARIN
CLERK OF COURT
CP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
ARMED ROBBERY, KIDNAPPING,
CONSPIRACY
AND
POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on MAY 31, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

That JAMES ERIC MURPHY, II did in Florence County on or about February 3, 2012, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Hikeem Rashawn Adams from or in the immediate presence of Hikeem Rashawn Adams with intent to deprive Hikeem Rashawn Adams of possession of a 1994 Chevrolet Caprice automobile, a wallet, cell phone and cash, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT TWO- KIDNAPPING

That JAMES ERIC MURPHY, II did in Florence County on or about February 3, 2012, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Hikeem Rashawn Adams by forcing him into his car at gunpoint and driving off with him, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT THREE - CONSPIRACY

That JAMES ERIC MURPHY, II did in Florence County on or about February 3, 2012 combine with EDDIE MONTREL GRAHAM, KEITH ANTONIO WILLIAMS and MARLON ABDUL TUTT, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Armed Robbery and Kidnapping, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ARMED ROBBERY (FOUR COUNTS), KIDNAPPING (FOUR COUNTS), CONSPIRACY (FOUR COUNTS) AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME (TWO COUNTS), WITH THE AFORESAID NAMES(S) OF EDDIE MONTREL GRAHAM, KEITH ANTONIO WILLIAMS, JAMES ERIC MURPHY, II AND MARLON ABDUL TUTT SHOWN THEREON:

**COUNT FOUR- POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

That JAMES ERIC MURPHY, II did in Florence County, on or about February 3, 2012, possess a firearm, or visibly display what appeared to be a firearm to wit: a handgun, during the commission or attempted commission of a violent crime, an Armed Robbery and Kidnapping, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

CERTIFIED: A TRUE COPY
Minnie F. J. Spain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR