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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

—————
Certiorari to York County

Honorable R. Lawton McIntosh, Circuit Court Judge

—————
JOHN EDWARD HUNSUCKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001979

—————
APPENDIX
—————

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
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ATTORNEYS FOR RESPONDENT

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State of South Carolina
County of York

Court of General Sessions

State)	
)	
)	Transcript of Record
v.)	2015-GS-46-3862
)	
John Edward Hunsucker, Jr.))	
)	
<u>Defendant.</u>)	

April 28, 2016
York, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge.

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

Christopher Epting, Assist. Solicitor
Attorney for the State

Michael Brown, Esquire
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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P R O C E E D I N G S

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* * *

3

JOHN EDWARD HUNSUCKER, JR.

4

being first duly sworn, testified as follows:

5

THE DEFENDANT: Yes, ma'am.

6

THE CLERK: Are those your signatures?

7

THE DEFENDANT: Yes, ma'am.

8

THE COURT: Solicitor?

9

MR. EPTING: Thank you, Your Honor. Before the

10

Court today is John Edward Hunsucker. I'm Chris

11

Epting on behalf of the State. He has retained Mike

12

Brown with the York County Bar to represent him on

13

this case.

14

It's my understanding that Mr. Hunsucker is

15

pleading guilty to two charges today; one count of

16

attempted armed robbery and also one count of

17

forgery over \$10,000. There's a negotiated sentence

18

in this case of a cap of a concurrent seven years,

19

Your Honor.

20

THE COURT: All right. Mr. Brown, you

21

represent John Edward Hunsucker on both of these

22

charges?

23

MR. BROWN: Yes, sir.

24

THE COURT: How does he indicate he wishes to

25

plead?

1 MR. BROWN: Guilty, Your Honor.

2 THE COURT: Mr. Hunsucker, I may be looking
3 down and writing or possibly reading throughout the
4 plea. I don't mean to show any disrespect to you or
5 to Mr. Brown, I'll be listening to you, but I'll try
6 to make as much eye contact as I can. But I don't
7 want you to feel like I'm being disrespectful when I
8 have my head down.

9 Mr. Hunsucker, how old are you?

10 THE DEFENDANT: Thirty-eight.

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

12 THE DEFENDANT: 10th grade. I got my GED, so
13 I graduated in '96.

14 THE COURT: Mr. Hunsucker, I have a plea waiver
15 form in front of me. It appears that you have
16 initialed most of the boxes on this plea waiver
17 form.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: In fact, on the acknowledgment
20 portion, you've signed your name with today's date
21 indicating that you understand the rights that are
22 in this form and that you're giving up those rights
23 to enter your guilty plea. Is that right?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: I also have two indictments in

1 front of me. They have not been to the grand jury.
2 We'll talk about that in just a moment. Indictment
3 2015-3862 is for armed robbery; however, the State
4 is allowing you to plead to attempted armed robbery.

5 That indictment alleges that on or about March
6 11th, 2015, you took goods with deadly force from a
7 CVS employee here in York County, you took currency.
8 You were initially charged with being armed with a
9 deadly weapon, however, the State is allowing you to
10 plead to attempted armed robbery which carries up to
11 20 years in prison.

12 That is a violent, most-serious offense. In
13 fact, I'm going to mark that on your sentencing.
14 It's marked non-violent. I'm going to scratch
15 through that and initial where I scratch and I'm
16 going to check violent and most serious. You
17 understand the potential penalty and the allegations
18 in the indictment?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: How do you plead to that charge?

21 THE DEFENDANT: Guilty.

22 THE COURT: Indictment 2015-GS-46-3863 alleges
23 that on or about April 5th, 2015, you presented or
24 made a false instrument of writing but -- involving
25 money, but the amount was for less than \$10,000.

1 And that carries -- that carries up to ten years.

2 How do you plead to that charge?

3 THE DEFENDANT: Guilty too, Your Honor.

4 THE COURT: You understand on the attempted
5 armed robbery, that because it's a violent,
6 most-serious offense, that if you got another
7 most-serious offense conviction in the future -- and
8 we hope that doesn't happen -- but if you did, the
9 State can seek a life-without-parole sentence
10 against you?

11 If you had three or more serious offenses,
12 that's the three strikes, you could also get life
13 without parole. Do you understand the consequences
14 on your current criminal record of your plea today?

15 THE DEFENDANT: Absolutely.

16 THE COURT: You still want to go forward with
17 your plea?

18 THE DEFENDANT: I do, sir.

19 THE COURT: Let me be sure that you understood
20 most of your rights that are included in this plea
21 waiver form. Do you understand that nobody can
22 force you to plead guilty, nobody can make you plead
23 guilty, your lawyer, law enforcement, your family,
24 the Court; it has to be of your own free will and
25 accord?

1 And, in fact, for me to accept your guilt, you
2 have to knowingly and intelligently and voluntarily
3 waive your rights. One of those rights is the right
4 to a jury trial, and that's included in that plea
5 waiver form. You and your lawyer talked about the
6 rights of a jury trial?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you know the burden is not on
9 you to prove anything; the State has to prove your
10 guilt beyond a reasonable doubt?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Before you can be found guilty, 12
13 jurors would have to unanimously agree that you were
14 guilty. Before you could be found guilty, you would
15 have the right to remain silent and you would
16 confront witnesses. That means that you and your
17 lawyer would be in a courtroom when witnesses come
18 in here and testify, and you'd get to see those
19 witnesses and hear those witnesses, and your lawyer
20 can cross-examine them on your behalf. All those
21 rights were explained to you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You still want to go forward with
24 your plea today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You're satisfied with Mr. Brown and
2 the way he's represented you?

3 THE DEFENDANT: I am.

4 THE COURT: Have you had plenty of time to go
5 over the evidence that's been provided to him, any
6 documents, statements, items that have been given to
7 him by the Solicitor's Office? Have y'all had
8 plenty of time to talk about that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Y'all discuss any possible
11 defenses? I don't know, maybe you don't have a
12 defense; on the other hand, you may have talked
13 about defenses and going to trial. Y'all had plenty
14 of time to do that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're satisfied with the way
17 Mr. Brown has negotiated this case? And the
18 solicitor is telling me that the negotiation in this
19 case is for a cap of seven years, that I give you no
20 more than seven years. You understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has there been anything else
23 promised to you or have you been threatened in any
24 way to get you to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you ever been treated for any
2 mental or emotional disability?

3 THE DEFENDANT: No, sir.

4 THE COURT: You understand what we're doing
5 here today?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: How many days have you been in
8 jail?

9 THE DEFENDANT: Three hundred, sir.

10 THE COURT: You understand this is also
11 included in your plea waiver form that you have ten
12 days from today's date to appeal? If I make an
13 error, you disagree with the sentence that I give
14 you, you'd have to file an appeal within ten days.
15 You normally start that process by notifying your
16 lawyer that you want to appeal. You understand
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You got any complaints about your
20 lawyer, about the Court, about law enforcement, the
21 jail? You got any complaints?

22 THE DEFENDANT: None whatsoever, sir.

23 THE COURT: Okay. Thank you.

24 Solicitor, give me the factual basis.

25 MR. EPTING: Thank you, Your Honor.

1 The robbery incident occurred in March of last
2 year. The defendant went into a CVS store wearing
3 what was later discovered to be likely a work
4 uniform. He presented himself as a customer, placed
5 some candy on the counter. While the clerk's
6 attention was diverted, Mr. Hunsucker pulled out a
7 pistol, like a semi-automatic pistol. At that
8 point, he demanded money. He received approximately
9 \$250 in one- and five-dollar bills and, at that
10 point, fled the store.

11 The clerk called 911. Officers retrieved the
12 surveillance tape at that point and received a great
13 deal of media exposure. Calls began to come in
14 identifying Mr. Hunsucker as the person who did the
15 robbery. Multiple identifiers said they knew him
16 for some time, he had a pill problem, and identified
17 him both by his face as well as his work uniform.

18 At that point, officers pinged the phone
19 belonging to Mr. Hunsucker and discovered he was
20 within approximately 3,000 feet of the robbery
21 location at the time that this happened.

22 As to the forgery charge, that occurred in
23 April. The defendant, along with Ms. Clamp, got a
24 stolen checkbook from the victim, Danny Earl, and
25 wrote a large number of checks totalling

1 approximately \$20,000 at various blanks out of his
2 checking account. Ms. Clamp did plead guilty and
3 gave a statement against Mr. Hunsucker as part of
4 her plea.

5 Mr. Hunsucker's prior convictions consist of a
6 2001 conviction for strong arm robbery and --

7 MR. BROWN: Objection.

8 MR. EPTING: In candor with the Court, that
9 was --

10 MR. BROWN: That was pardoned --

11 MR. EPTING: That was pardoned, Your Honor.

12 MR. BROWN: -- and should not be considered
13 whatsoever.

14 THE COURT: I won't consider that.

15 MR. EPTING: The State, in hearing that
16 Mr. Hunsucker does have a drug problem as well as
17 the fact that he was working and his record was de
18 minimis in light of that pardon, believes we've made
19 the appropriate reduction in this case bringing down
20 from the ten-year mandatory minimum, as well as the
21 five-year day-for-day additional charge, and have
22 entered an appropriate resolution here today with a
23 cap of seven years.

24 THE COURT: All right. Mr. Brown, I'll be glad
25 to hear from you and then your client.

1 MR. BROWN: Your Honor, if it pleases the
2 Court, I am retained counsel. In review of the
3 evidence, I do concur with his decision to enter
4 this plea.

5 Your Honor, Mr. Hunsucker is 38 years of age,
6 lived his whole life in Rock Hill, York County, went
7 to Northwestern High School through the 10th grade,
8 quit school, and went to work. To his credit, he
9 came back and got his GED, as he told you, in 1996.
10 He's been married and married for 16 years. His
11 wife is present in the courtroom today. He has a
12 15-year-old daughter and an 11-year-old son.

13 When he quit high school in '96, he went to
14 work for Ebara Industries where he did training in
15 building pumps. He was there for seven years. In
16 2008, he started his own company, still has it
17 except for the period up to the time he was
18 incarcerated, called Devoted Detail. He earns
19 approximately 3- to \$4,000 a month from that job
20 when he's working. He has two employees.

21 He's a lifelong member of Park Ridge Baptist
22 Church. He's very active in that church, Your
23 Honor. He's a member of the budget committee and
24 the men's ministry. I do have a letter that I want
25 to pass up from the senior pastor of Park Ridge

1 Baptist church. It spells out what kind of
2 individual that Mr. Hunsucker was prior to this.
3 He's very active in his kids' life. He helped coach
4 football for his son. He also has done such civic
5 work with his daughter around the school.

6 And, Your Honor, I'm sure this Court has heard
7 this several times before, but it's a sad story in
8 America: In 2006 he had surgery on his leg, had a
9 rod put in his leg, which led to pain. He got
10 prescribed opiates OxyContin and hydrocodone then.
11 He went down that dark road where he wound up
12 stealing to support this habit. Not only would he
13 buy the pills off the street, he would also buy
14 opiates such as heroin to subside his pain.

15 Your Honor, to his credit, since he's been
16 incarcerated for ten months, I would like to hand up
17 where he graduated Life Skills diploma. He's not
18 sat on his rear end in jail, but he's made some
19 progress toward his problem. Also, the teacher, the
20 head of that class, a letter, Dave Chappell, who
21 teaches that course, will tell you what kind of
22 individual he is. Your Honor, he's tried to rectify
23 his addiction problem while in prison.

24 I have some closing comments, Your Honor.
25 First, I brought some people to testify on

1 Mr. Hunsucker's behalf as to what kind of person he
2 is. These people have known him most of his natural
3 life. The first person I'd like to call would be
4 his mother, Debra Key.

5 THE COURT: Yes, ma'am. State your name,
6 please.

7 MS. KEY: My name is Debra Key.

8 THE COURT: Yes, Ms. Key, I'd be glad to hear
9 from you.

10 MS. KEY: Thank you. Your Honor, I kind of
11 just want to do a little backtrack here to show you
12 where my son -- what happened. Johnny had, like,
13 eight deaths that happened in his life. His
14 grandparents, all three of them, passed away within
15 three days; his step-grandmother, then his
16 step-grandfather the next day, and then his natural
17 grandmother that was his paternal grandmother, the
18 closest grandparent that he had, she passed away and
19 he watched her diminish and die.

20 Then his first cousin passed away very shortly
21 after that, and then his step-father. So he went --
22 within a year's time, he lost quite a bit and he
23 just kind of went into a dark spot.

24 And, Your Honor, my son is a very strong-minded
25 young man. I would have never dreamed -- I been in

1 this system as a bail bondswoman. You may remember
2 me from many years. But I been -- my son has been a
3 very quality young man. And this has been
4 horrifying for me as a mother to watch this happen
5 to him. But I have to say the ten months -- I
6 encouraged them to put him in jail, which was very
7 hard for me as a mother. But I did that because I
8 was afraid of what was going to happen to my son.

9 But I watched my son -- actually, God deliver
10 him from drugs while he's been in there. So I'm
11 grateful that's he's spent this ten months here.
12 And this program -- Ms. Darby actually told me that
13 I had a very unique young man and she was extremely
14 honored to watch him.

15 And Mr. -- the man that wrote the -- Dave that
16 sent the letter, I spoke with him and he shared the
17 same thing. Several COs, which I know they're not
18 allowed to testify, but they actually spoke highly
19 of him and they spoke highly to him today about how
20 they've watched him after the seven-week program,
21 that the last -- he's been 12 weeks now there, and
22 he's actually shared and became kind of like a
23 leader of the group there. And Ms. Darby has been
24 great.

25 And I'm so grateful for that because I know God

1 is in my son's heart and I know that my son will
2 never return to this court ever again. And my
3 heart's desire is for mercy today; that you will
4 allow him to come home, probation, whatever needs to
5 be done, whatever you say, Your Honor, and allow him
6 to be with his wife and his children and be able to
7 mentor his boys and his daughter. They need him, I
8 need him.

9 His last grandfather is my dad, and my dad is
10 months from passing away of cancer. And I really
11 need my son home. It's going to be very hard for me
12 to let go of my dad. My dad is 80 years old, been a
13 very dignified man. And Johnny has followed behind
14 his father -- his grandfather. But this was
15 horrifying. But I promise you, beyond a shadow of a
16 doubt, God as my witness, my son will never be in
17 this courtroom again and my son will be the man of
18 God that he's been called to be.

19 THE COURT: Thank you, Ms. Key.

20 MS. KEY: You're welcome.

21 MR. BROWN: His wife, Mrs. Hunsucker.

22 THE COURT: Yes, ma'am. Would you tell us your
23 name?

24 MRS. HUNSUCKER: Christy Hunsucker.

25 THE COURT: Yes, Mrs. Hunsucker?

1 MRS. HUNSUCKER: I have been married to Johnny
2 for 16 years. We are raising two children. I have
3 a 15-year-old daughter and an 11-year-old son. I
4 want nothing more in this world than for Johnny to
5 get better to be part of his kids' life. I need
6 him. I need him to help me raise them. I will be
7 very grateful for anything you can do as far as
8 mercy to allow him to come back to us.

9 THE COURT: Thank you, Mrs. Hunsucker.

10 MR. BROWN: Reverend Duncan. Reverend Duncan
11 is one of the ministers at Park Ridge Baptist
12 Church -- oh, I'm sorry, wrong church.

13 THE COURT: Okay. State your name, please.

14 MR. DUNCAN: Daggett Duncan. I'm the pastor of
15 New Vision Free Will Baptist Church of Rock Hill for
16 23 years. I've known Johnny most of his life, lived
17 right beside of him for 20-something years and
18 played in the field and rode horses with him and
19 all. And I can say that if you look at his past as
20 a young man growing up and all, you couldn't find a
21 finer young man; active in his church, youth leader.
22 In fact, the way he was, the way he is today, he
23 could be a youth leader in my church. That's how
24 influencing he was to others.

25 We all know what drugs will do. I deal with it

1 all the time as a pastor for over 45 years. And it
2 will just change who the person is, everything about
3 them. But I know that this young man here was given
4 another opportunity. I feel sure that you will
5 never see him back in another courtroom.

6 I believe he's rededicated his life sincerely.
7 I believe he's ready to move on with his life. And
8 his grandfather, a great man, man of great
9 integrity, is passing away, won't be too much
10 longer. That's his life. They walk with one
11 another. He walks in his footsteps. It would be
12 devastating to him not to be able to see him before
13 he passes away.

14 I'm just asking today that everything would be
15 considered and mercy might be shown and he be given
16 another opportunity to make good in his life.

17 THE COURT: All right. Thank you, sir.

18 MR. BROWN: Lastly, Your Honor, Reverend King.

19 MR. KING: Good afternoon, Your Honor. My name
20 is Reverend Doctor Ronald King. I'm a friend of the
21 Court and a friend of most of these officers as
22 well.

23 My job is to -- believe it or not, is director
24 and founder of a program called Feed the Hungry.
25 But with that comes also a liaison between highway

1 patrol, the sheriff's office, and all the other
2 municipal police agencies. I'm the guy who they
3 call when they can't find -- when they don't want to
4 put them in jail.

5 I've known this gentleman as a young man. I
6 understand his going down, but God had made a change
7 in his life. And sometimes we have to get down
8 before we can get up. And all I'm requesting and
9 suggesting is that no matter how strict the
10 probation could be, I think he's now learned a
11 lesson that could have only been taught in these ten
12 months of incarceration.

13 These deputies right here, they've known me for
14 over 30 years. I've been doing what I've been doing
15 for 40 years. And I'm really on-call, even as I
16 stand before you, for all of the police agencies in
17 York County as well as Chester, Lancaster,
18 Fayetteville, Kershaw, Gaston, Union, and North
19 Carolina.

20 So what we've started here is people like
21 Johnny who have been on the downside who have now --
22 God has moved in his life and has given him another
23 chance. And all I'm asking, in Jesus' name, is that
24 you give him another chance. I don't believe you'll
25 see him again at all. And if you do, then you can

1 throw this whole building on top of him and I'll
2 help you.

3 THE COURT: Thank you, Mr. King.

4 MR. BROWN: Your Honor, very briefly in
5 conclusion, he spent ten months in jail. As was
6 evidenced in the degrees, he's not wasted that time.
7 He has no prior record whatsoever. I know addiction
8 is a tricky slope, but I'm asking this Court to
9 fashion a sentence where he stays incarcerated at
10 Moss Justice Center until there's bed space
11 available in Florence. There's a 90-day-stay
12 program there for rehab.

13 I'm asking the Court, load him up with 20 years
14 hanging over his head. When he comes home, that he
15 have random drug and alcohol testing, that he have a
16 probationary sentence with 20 years hanging over his
17 head so the ball is in his court. If he ever comes
18 back in here again, he knows he's got 20 years
19 hanging over his head, and he'll be older than me
20 when he comes out, and I'm no spring chicken.

21 I would ask the Court to fashion a sentence
22 around that so he can get the help he needs. He's
23 done some time, Your Honor. I believe he realizes
24 the gravity and the seriousness of this. I would
25 ask the Court to fashion a sentence around that

1 where he stays incarcerated here until such time as
2 he can go to an inhouse 90-day treatment, complete
3 his recovery, because he's dried out, but he still
4 needs the knowledge to stay clean. I'd ask the
5 Court to fashion a sentence around that. Thank you
6 very much.

7 THE COURT: Thank you, Mr. Brown.

8 Mr. Hunsucker, anything you'd wish to say?

9 THE DEFENDANT: Yes, sir. First of all, I'd
10 like to say I'm sorry to the courts, sorry for
11 you -- to you for wasting your time, and sorry to my
12 family. This has been a rough time for me to be
13 away from my family like I have. I've never been
14 away from my two kids, 15 and ten. I've learned a
15 lot through this school of suffering, basically.

16 I stand here ashamed that the guy that you hear
17 from -- these different people are my family and
18 friends and that I could have committed any crime
19 like this, because in my right mind, I know I
20 wouldn't have done something like that.

21 But I stand here responsible today as the man
22 you've heard of from my family for actions that I
23 allowed drugs to come into my life and take away so
24 much that is important to me. So I don't take this
25 lightly. But I know that this is in God's hands and

1 in yours.

2 I wanted to plead guilty for that because I
3 didn't want to go into this trying to lie, cheat, or
4 steal or manipulate because I would not choose to do
5 something like that in my right mind without some
6 kind of drugs. But, yes, under the influence of
7 drugs, I've done many things wrong.

8 THE COURT: All right. Thank you,
9 Mr. Hunsucker. Well, the difficult thing,
10 Mr. Hunsucker, is, one, your lawyer has done a very
11 excellent job of getting the charge reduced from an
12 armed robbery that you were indicted for. It's very
13 clear and the Court is convinced from the facts that
14 were presented to the Court today that there was
15 certainly a sufficient factual basis for it to be an
16 armed robbery, which I'm sure you well know after
17 talking to your attorney that that carries a
18 mandatory minimum of ten years.

19 And so the solicitor and your lawyer have
20 negotiated a cap of seven years. You're to be
21 commended for how you availed yourself in the
22 programs in the detention center, and I hope you
23 stay on that path. However, you know, there's
24 certain offenses that even drug addicts commit that
25 are so egregious that -- and one that is very

1 egregious, and one of those is going into a
2 commercial business where there are other
3 individuals with a handgun and robbing the place,
4 and those are very serious.

5 So based upon that, the sentence on Indictment
6 2015-GS-46-3863 on the forgery, sentence is time
7 served. On Indictment 2015-GS-46-3862, John Edward
8 Hunsucker, Jr., having pled guilty to attempted
9 armed robbery, the sentence of the Court is that you
10 be committed to the state department of corrections
11 for a determinate term of six years, credit for 300
12 days. Thank you.

13 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for York County, South Carolina, on the 28th of April, 2016.

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

January 6, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

(c) _____

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

(a) April 28, 2015

(b) 6 yrs

(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. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

(c) the date of each such result:

i. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

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

(a) ineffective assistance of counsel

(b) _____

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

(a) see Supplement and exhibit A

(b) _____

(c) _____

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

(a) See Supplement and Exhibit A

(b) _____

(c) _____

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. NA

ii. _____

iii. _____

iv. _____

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

i. NA

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. NA
- 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. NA
- ii. _____
- iii. _____

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

- i. NA
- 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) NA
- (b) _____
- (c) _____

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

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

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 Brown 803-328-8822
223 East Main St Suite 550 RHSC 29730
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea Hearing
 - ii. _____
 - iii. _____

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

I, John Edward Hursucker Jr., 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.

John Edward Hursucker Jr.
Applicant

SWORN or affirmed to and subscribed before me this
12 day of October, 2014.

S J Oulau
Notary Public

My Commission Expires: 2/17/24

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

Re-sentencing

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

No

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION

I, John Edward Hunsucker Jr., 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.

J. E. Hunsucker Jr.

SWORN to and subscribed before me this 12th day of October, 2016.

S. J. Pittman (L.S.)
Notary Public

My Commission Expires: 2/17/24

Cover Letter

Clerk of Court
York County
P.O. Box 649
York, S.C. 29745

Honorable Clerk,

Please find enclosed Post Conviction Relief Application, Supplement and attached Exhibit 'A'.

Please file and return to me an 'in-clocked-stamped copy.

Also, I am requesting a court appointed attorney.

Thank you,

Sincerely,

368035
John E. Hunsucker Jr.
Evans Corr. Inst.
610 Hwy. 9, West
Bennettsville, S.C. 29512

Supplement

Procedural History

On April 28, 2016 John Edward Hunsucker Jr. herein offer (Applicant) entered into a negotiated plea deal with the State, arranged by plea counsel.

It was agreed on this day that Applicant would plead guilty to the lesser included offense of 'Armed Robbery' S.C. Code 16-11-0330 (A), to 'Attempted Armed Robbery' S.C. Code 16-11-0330 (B) under the non-violent sentence structure of 6 years.

This plea deal was negotiated through the coaxing of plea counsel as the prearranged sentence sheet was set before Applicant with the appropriate boxes checked, See Exhibit 'A' whereby, Applicant did in fact sign and approve in agreement with the negotiated plea having accepted and affirmed by his signature.

Applicant discovered after the fact, after sentencing, that Judge Daniel D. Hall, plea hearing judge, had in fact, altered the sentence structure, whereas, plea counsel failed to object to the altered negotiation during the plea hearing.

Applicant further asserts that he was not 'up-to-speed' on the court room colloquy pertaining to the alteration, however, afterwards, Applicant was apprised by counsel that some clerical error occurred in the document, but, Applicant ascertains that the record will show that counsel was aware that the court altered the plea agreement, changing the sentence structure from a non-violent offense to a violent offense, and thereby,

failed to object to the alteration on behalf of Applicant. Applicant asserts that he was assured by plea counsel that his plea negotiation was for the non-violent sentence structure which he understood would call for less actual time to be served, and was specifically the form which he signed.

Memorandum of Law and Citations on Authority Analogous to This Case

Applicant is claiming: Ineffective Assistance of Counsel as a Sixth Amendment Violation in accordance with 'Strickland v. Washington' 466 U.S. 668, 'Hill v. Lockart'; 474 U.S. 52 106 S.Ct. 366.

In failing to protect the validity of the sentence in accordance with the prearranged terms, "Counsel may be ineffective for failure to move for withdrawal of a guilty plea where government fails to fulfill its promises under the guilty plea." 'Thompson v. State', 340 S.C. 112, 531 S.E. 2d 294.

Plea of guilt to most violent offense was not made in full knowing of the plea's consequence. "Attorneys should advise defendants of the possibility that plea judge may deviate from the sentence recommendation in negotiated plea agreement." 'Roddy v. State' 399 S.C. 29 528 S.E. 2d 418 'Cruz v. McCall' 2015 WL 4464475.

"We held that "the conduct of Jordan's Counsel in not protecting Jordan's right to enforce the plea agreement with the solicitor's office fell below prevailing professional norms." 'Thompson v. State' 340 S.C. 112 531 S.E. 2d 294

"Defense counsel's failure to make a motion for clarification of sentence was deficient performance." 'Boan v. State' 388 S.C. 772 695 S.E. 2d 850.

"Guilty plea may not be accepted unless it is voluntarily

entered with understanding of nature and consequences of charge and plea." 'State v. Lambert,' 266 S.C. 574 225 S.E. 2d 340.

"This court has held that a defendant has the right to effective assistance of counsel during plea bargaining process." 'Judge v. State,' 321 S.C. 554, 471 S.E. 2d 146.

"Before accepting a guilty plea, the trial court must give the defendant an adequate warning of the consequences of his plea, which should include an explanation of the defendant's waiver of his constitutional rights and a realistic picture of all sentencing possibilities" 'State v. Lopez,' 352 S.C. 373 and knew specifically that he would be unable to withdraw his plea."

"Actual knowledge of consequences of his plea," insofar as the consequences concerned the inability to withdraw the plea," 'U.S. v. Smith,' 215 F.3d 1335 WL 374632

"The Court's failure to advise the defendant that he or she will be unable to withdraw a plea even if the court rejects the government's sentencing recommendation may constitute reversible error." See e.g. 'U.S. v. Livoris,' 180 F.3d 76, 79-80 (2d Cir. 1999). 'U.S. v. Debusk,' 976 F.2d 300. 'U.S. v. Zickest,' 995 F.2d 665

"However, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored." 'State v. Miller,' 375 S.C. 320 652 S.E. 2d 444. 'Reed v. Becka,' 333 S.C. 511 S.E. 2d 396.

"Thus only when it develops that the defendant was not fully apprised of its consequences was his plea challenged under Due Process Clause." 'Santobello v. New York,' 404 U.S. 257 92 S.Ct. 495

"Indeed the only way to neutralize the constitutional deprivation suffered by a defendant would seem to be

to provide the defendant with an opportunity to consider the Commonwealth's initial plea offer with the effective assistance of counsel, *Turner* 855 F.2d at 1208.

The United States Supreme Court has expressed that specific performance of a plea agreement is an allowable remedy where one has been denied constitutional-guaranteed effective assistance of counsel. On the other hand, specific performance is not warranted where it might necessarily infringe on the State's competing interests. In some circumstances, the State may withdraw its original plea proposal, yet, in order to effectively do so State must show the withdrawal is free of a reasonable apprehension of vindictiveness.

It has been clearly established that when a criminal defendant successfully achieves relief, either through a direct or collateral attack to the conviction, he must not be subject to greater punishment for exercising that right." *Blackledge v. Perry*, 417 U.S. 21, 94 S.Ct. 2098. "The rebuttable presumption of vindictiveness is valid where there is a "realistic likelihood" of prosecutorial retaliation," *Custodio v. State*, 373 S.C. 4, 13, 644 S.E. 2d 36, (finding counsel rendered ineffective assistance in failing to have plea agreement enforced and concluding the appropriate remedy was specific performance of the plea agreement because defendant determinately relied on the promised plea agreement." *Sprouse v. State*, 355 S.C. 335, 585 S.E. 2d 278 (holding counsel was ineffective in failing to ensure that the State adhered to the original plea agreement and remanding for specific performance of the plea agreement given it would grant the parties nothing more and nothing less than the benefit for which they originally bargained). Accordingly we hold that the appropriate remedy is a new sentence hearing." *Davie v. State*, 381 S.C. 601, 675

S.E. 2d 416.

"State is bound by bargain that it made to obtain guilty plea, and trial court, having accepted plea agreement must honor it also." *State v. Rhinehart*, 312 S.C. 36 430 S.C. 2d 536.

"Because there is no evidence in the record that Petitioner expressed a desire to proceed to trial rather than plea guilty, we find a remand for a new trial is not appropriate remedy." *See United States v. Blaylock*, 20 F.3d 1458, 1468 (9th Cir. 1994).

"The allegations of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute." *Sharper v. State*, 279 S.C. 264 305 S.E. 2d 247 (1983).

Applicant request a State appointed counsel for effective assistance remedy with his Post Conviction Relief Application.

Respectfully Submitted,

COUNTY OF YORK
STATE VS.

Jail

INDICTMENT/CASE#: 2015GS4603862
A/W: 2015A4620306273
Date of Offense: 03/11/2015
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

Exhibit ³⁹
A

JOHN EDWARD HUNSUCKER, JR.
AKA: John Edward Jr Hunsucker, John E Hunsucker
Race: White Sex: M Age: 37
DOB: 1978 SS#: [REDACTED]
Address: Ole Simpson Place
City, State, Zip: Rock Hill, SC 29730
DL# [REDACTED] SID# SC00998066

ORIGINAL

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Attempted Armed Robbery

In violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

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

ATTEST: *CWG* 76321 Christopher W. Epling, Assistant Solicitor SC Bar #
J. E. Hunsucker Defendant
[Signature] 943 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 6 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. *300 days*

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____	
*Fine: _____	\$ _____
\$14-1-206 (Assessments 107.5%)	\$ _____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100 \$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100 \$ _____
\$56-5-2995 (DUI Assessment)	\$12 \$ _____
\$56-1-286 (DUI Breath Test)	\$25 \$ _____
Proviso 47.9 (Public Def/Prob)	\$500 \$ _____
\$14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$150 \$ _____
\$50-21-114 (BUI Breath Test Fee)	\$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ _____
TOTAL	\$ <u>130.00</u>

May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Bethanne Creppon
SCCA/217 (03/2011)

Presiding Judge: *[Signature]*
Judge Bar ID: _____ Judge Code: 2753
Sentence Date: 4-20-16

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
JOHN E. HUNSUCKER, JR., #368035,)
 Plaintiff,)
 vs.)
)
STATE OF SOUTH CAROLINA.)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-46-3240

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Leah B. Moody, Esquire</u> Address: <u>Law Office of Leah B. Moody, LLC</u> <u>PO Box 1015</u> <u>Rock Hill, SC 29731-7015</u> Phone: _____ Fax: _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>Justin J. Hunter, AAG</u> Bar No. <u>101254</u> Address: <u>PO Box 11549</u> <u>Columbia, SC 29211</u> Phone: <u>(803) 734-3737</u> Fax: <u>(803) 734-4113</u> E-mail: _____ Other: _____
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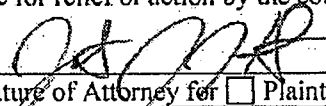
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

March 2, 2017
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRCP)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

John Edward Hunsucker, Jr.,
S.C.D.C. #368035,

2016-CP-46-3240

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on November 2, 2016, would respectfully show this Court:

I.

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted for Armed Robbery (2015-GS-46-3862). Michael Brown, Esquire, represented Applicant. On April 28, 2016, Applicant waived presentment and pled guilty to the lesser included offense of attempted armed robbery before the Honorable Daniel Hall. Pursuant to a negotiated sentence, Applicant was sentenced to imprisonment for six years. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein by reference are the application, the records of the York County Clerk of Court regarding the subject convictions, the transcript from Applicant's guilty plea, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel
 - a. See application's appendix for specific allegations

III.

Applicant alleges ineffective assistance of counsel. These allegations are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that 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 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's

unprofessional errors, he would not have pleaded guilty, but would have insisted on going to trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DON ZELENKA
Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

MARCH 2, 2017

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STATE OF SOUTH CAROLINA

-----x

JOHN E. HUNSUCKER, JR.,

Applicant,

Case No.

-against-

2016-CP-46-3240

STATE,

Respondent.

-----x

August 1, 2017

York, S.C.

B E F O R E:

HONORABLE R. LAWTON MCINTOSH, Judge.

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

LEAH MOODY, Esquire

Attorney for the Petitioner

JUSTIN HUNTER, Esquire

Attorney for the State

Aileen Butler

Official Court Reporter

	<u>I N D E X</u>				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2	<u>WITNESS</u>				
3	John Hunsucker				
4	Ms. Moody	4			
5	Mr. Hunter		15		
6	Michael Brown				
7	Mr. Hunter	18			
8	Ms. Moody		23		
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
Petitioner's 1	Sentencing sheet		18
Petitioner's 2	Plea waiver form		18

1 MR. HUNTER: The next case is John Hunsucker
2 versus State of South Carolina, 2016-CP-46-3240. He
3 was indicted December 2015 in York County for armed
4 robbery. He was represented by Mr. Michael Brown.

5 On April 28, 2016 he waived presentment and plead
6 guilty to lesser included offense of attempted armed
7 robbery before Judge Hall. He was sentenced to
8 pursuant to negotiation to six years. He has did not
9 file an direct appeal. He filed this current action
10 November 2nd, 2016.

11 He is present today represented by Miss Leah Moody.

12 MS. MOODY: Thank you, Your Honor. Your Honor,
13 if please the Court we are ready to proceed. At this
14 time I would like to call Mr. Hunsucker to the stand.

15 THE COURT: Come around please.

16 JOHN E. HUNSUCKER, called as a witness, having
17 been duly sworn by The Clerk, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MOODY:

21 Q Mr. Hunsucker, would you please state your full name
22 for the record?

23 A John Edward Hunsucker, Jr.

24 Q And Mr. Hunsucker, where are you currently
25 incarcerated?

1 A Tyger River.

2 Q And can you tell the Court what you are incarcerated
3 for?

4 A Attempted armed robbery.

5 Q And what was your sentence that you received on that
6 armed robbery?

7 A Six years.

8 Q Okay. And for that plea, correct, you did a plea?

9 A Yes, ma'am.

10 Q Who was your attorney?

11 A Michael Brown.

12 Q And was Michael Brown your first and only attorney on
13 this case?

14 A Yes, ma'am.

15 Q You have filed your post conviction relief hearing
16 alleging ineffective assistance of counsel?

17 A Yes, ma'am.

18 Q Can you tell the Court what the specific grounds of
19 your ineffective assistance of counsel is?

20 A Yes, ma'am. When I was -- when we went through with
21 the plea, when I'm in the room with Sean Cronin we're looking
22 over the plea agreement and it's showing non-violent and that
23 determines a lot of difference in time. So as I'm going through
24 the process that I'm under the impression that it's going to be
25 a non-violent charge and so -- instead of it being 85 percent

1 charge. That was basically what I was under the impression of
2 the whole time through the plea and --

3 Q Mr. Hunsucker.

4 A Yes, ma'am.

5 Q And so your grounds for ineffective assistance of
6 counsel is your advice on your plea?

7 A Basically, yes.

8 THE COURT: Say that again please.

9 MS. MOODY: His grounds for PCR is his advice on
10 his plea. The plea that he took.

11 Q So as far as advice, what specifically did you
12 understand about your plea and the amount of time you would
13 receive?

14 A That it would be six years non-violent, 51 percent. So
15 I would basically do 36 months off of the six-year deal.

16 Q Okay. So, when you discussed this you mention who is
17 Sean Cronin?

18 A That was I guess the under lawyer, or however you want
19 to pronounce it. He was the lawyer that was also on the case as
20 well. He worked for Michael Brown.

21 Q Okay. And again, the person you hired is who?

22 A Michael Brown.

23 Q Did you have an opportunity to go over your case with
24 Mr. Brown?

25 A Not really. Not at all.

1 Q What do you mean?

2 A Like I said, when we come into the room -- I only got
3 to see Mike like maybe two times throughout the whole process.
4 One being when we obtained him and the day that we went in to
5 court -- oh, no. One time right before we went into court and
6 then the day we went in to court. But as I'm sitting there
7 going over the plea agreement and the sentencing sheet which
8 was, you know, basically before me it was Sean Cronin. He
9 stepped in. Me and Michael we had spoke for a few minutes and
10 then he stepped out. So I dealt with Sean Cronin the day of the
11 sentencing.

12 Q So who stood before the judge with you?

13 A Mike Brown.

14 Q All right. And so, when did you learn that your
15 sentence would be a violent -- based a violent offense?

16 A As I heard the judge speaking. When he began to
17 explain some things, I mean, I heard it then. That you know
18 like I said under my impression it was being changed, but from
19 as I gathered later that, you know, it wasn't necessarily being
20 altered. But Mike Brown was sitting there with me when all this
21 was going on and never spoke up to, you know -- or in my
22 defense. I mean that's what I paid him for.

23 Q Who informed you that it was non-violent?

24 A Mike and Sean.

25 Q Okay.

1 A Both in that room. Briefly Mike. But as well when I'm
2 reading that sentencing sheet that's what I am looking at. And
3 I'm asking this is the non-violent plea that I'm signing, right,
4 and both of them had said yes. And that's what was on the
5 sheet. It showed negotiated non-violent plea. I wasn't aware
6 of the statutes and things like that as far as the names.

7 Q Let's talk about the sheet that you signed. How many
8 sheets did you sign before your plea, do you recall?

9 A I do recall the sentencing sheet itself was the first
10 one that I signed and I'm sitting there. I'm having a
11 discussion with Sean Cronin and I asked him specifically on the
12 next one that I would be initialing, I said, so this is
13 non-violent? What is this next thing, you know. What are these
14 things that I'm having to initial? And he was like all these
15 pertains to what your plea is and he said it's basically no
16 different then the sentencing sheet that you're looking at. So
17 I began to initial what I believe is another set of papers. I
18 don't remember if it was one or two, but the sentencing sheet
19 and maybe one or two other pieces of paper that had some
20 initials. But the initialed one as far as signature was the
21 sentencing sheet.

22 Q Okay. So earlier you said you had a discussion with
23 Sean Cronin and just be clear. Did you have a discussion when
24 you were signing those sheets with Michael Brown?

25 A No. Not as far -- I mean beforehand. That's when he

1 brought Sean Cronin in.

2 Q Okay. So you recall signing this sentencing sheet. Do
3 you recall signing a plea waiver form?

4 A No, ma'am. I mean, I've been told as far as the
5 record, but I don't recall it as of this moment. No, ma'am.

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

7 THE COURT: Yes.

8 (Defendant's Exhibit one and two, marked for
9 identification as of this date.)

10 Q I will show you has has been marked a Defendant's two.
11 Can you tell me what that document is?

12 A No, ma'am -- oh, the sentencing sheet.

13 Q So that's the sentencing sheet you signed. Do you
14 recognize that?

15 A Oh, yes, ma'am. I can see where they scratched out the
16 non-violent and he put violent, most serious after the fact.
17 But when I was signing it was non-violent.

18 Q Hold on one second. When you say "he", who are you
19 referring to?

20 A Cronin.

21 Q Sean Cronin?

22 A Yes, ma'am.

23 Q Marked that out?

24 A Oh, no, no, no. The judge marked that. Judge Hall
25 marked that out.

1 Q Okay.

2 A Yeah, I'm sorry.

3 Q So, the judge -- that's when you learned that it was
4 violent based on your testimony you learned?

5 A Yes, ma'am, in the hearing, yes, ma'am.

6 Q And is that your signature on that document?

7 A Yes, ma'am.

8 Q And can you recognize whose signature that is on the
9 document?

10 A I want to say that's Cronin, Sean Cronin.

11 Q Okay.

12 A And Chris Epting and Sean Cronin.

13 Q Okay. And then as far as Defendant's Exhibit One, do
14 you recognize that form?

15 A I never -- this was handed to me like this. That's why
16 I didn't understand what you were trying to explain to me.

17 Q Well, whose initials are those on the front sheet?

18 A These are my initials here. Right there. Okay yeah,
19 yeah, yeah.

20 Q But can you tell me what that document is?

21 A It's the plea waiver form. Right.

22 Q Okay. So you did go over the plea waiver form with Mr.
23 Cronin?

24 A Yes, ma'am.

25 Q Did he go through that form with you and explain to you

1 everything on that form?

2 A No, ma'am. When it was handed to me -- this is how it
3 was, both of these things. This is what I signed first.

4 Q When you say this?

5 A The sentencing sheet is what I signed first which shows
6 the non-violent. So I have never been through a court system.
7 I don't understand all the paperwork and stuff and so when I get
8 this I say what is all this right here. I didn't even look at
9 it, and this is my own fault. And he said this all pertains to
10 what you are signing here on this sentencing sheet. So I just
11 began to initial some of this stuff in my own ignorance. And I
12 started asking some questions right here and that's why I didn't
13 quite understand a few things. But there was never a complete
14 going over any of these things with me.

15 Never once had anybody explained to me what the crime was.
16 From that point I was under the impression it was non-violent
17 charge.

18 Q Okay. Did you read that document or are you saying Mr.
19 Cronin didn't read it to you and you didn't read it?

20 A I wasn't really -- I didn't go over this part. I
21 initialed the things. I never looked at this right here. Never
22 seen this violent most serious. Never once did I see that right
23 there.

24 Q Okay. Listen to what my question.

25 A Yes, ma'am.

1 Q I am asking you, did you read the document yourself;
2 yes or no?

3 A No, ma'am.

4 Q Did Mr. Cronin read the document to you?

5 A No, ma'am.

6 Q So you all talked about it generally?

7 A Right.

8 Q Okay. Okay. So then you went before the Court to do
9 the plea with Michael Brown?

10 A Yes, ma'am.

11 Q Was Sean Cronin in the courtroom with you standing at
12 the bar with you?

13 A No, I think he was sitting at the table -- sitting in
14 one of the chairs or something back there.

15 Q So when the judge corrected the sentencing sheet you
16 are saying that Michael Brown did not object to --

17 A Right.

18 Q -- the charge being non-violent --

19 A Right.

20 Q For the judge changing it?

21 A Right. He was standing right there. I'd seen him give
22 the solicitor a look like, you know, what's going on here, but
23 nothing was ever said.

24 Q Okay. And then what happened after you went through
25 the plea with the judge?

1 A He said that as far as once everything was done,
2 Michael said he would be back there to see me in just a minute
3 and I sat back there and still to this day haven't heard from
4 him.

5 Q Going to back to one quick thing, the negotiations.
6 You had a negotiated sentence?

7 A Yes, ma'am.

8 Q And your saying that your negotiation was for six
9 years; negotiated sentence ever six years?

10 A Yes, ma'am. It was a zero to seven plea. The judge
11 gave six, but it was non-violent. And you know, like I said it
12 was a negotiated plea from zero to seven. The only thing that
13 was open was the actually zero to seven.

14 Q So you're saying that as far as -- are you saying that
15 the negotiated plea was presented to you as zero to seven,
16 non-violent?

17 A Yes, ma'am.

18 Q So you understood it to be that meant it had to be
19 non-violent and it had to be under seven?

20 A Yes, ma'am.

21 Q But zero to seven?

22 A No more than seven. Right.

23 Q All right. So, in your application you state that the
24 judge altered your negotiations?

25 A Yes, ma'am.

1 Q And by altering it you're talking about marking on the
2 sentencing?

3 A That's what I meant, yes, ma'am.

4 Q Okay. Is there any other ground that you allege as to
5 your PCR?

6 A No, ma'am. I mean, that's pretty much what's in that
7 paper work there. I mean, that was the the only issue I had
8 with anything.

9 Q All right. So how did this change from non-violent to
10 violent prejudice you?

11 A Well, it doesn't allow me to go up for parole. It adds
12 31 more months to my sentence. I'm a father. I have a daughter
13 that's getting ready to graduate next year. Well, obviously
14 that was something I had in mind. I mean, I know I didn't have
15 much in mind when I was going through that process of being on
16 drugs but when I began to sign that plea, these are the things
17 that I began to look at that I would be home for my daughter's
18 graduation, and so that does kind of take away from that.
19 That's really something that meant something to me when I was
20 signing on that.

21 Q So the time factor --

22 A It's a big deal. A big deal.

23 Q And what relief are you asking the Court for today?

24 A To give back what I signed for. What I was under the
25 impression that I was signing for. That's all I'm asking.

1 Q And you understand that the judge can not change your
2 sentence?

3 A Right.

4 Q And you understand if you get relief here today that
5 means you start all the way over?

6 A Yes, ma'am.

7 Q It's a reset for everybody?

8 A Yes, ma'am. I do understand.

9 Q And you still wish to proceed with your PCR?

10 A I would.

11 MS. MOODY: No further questions for this witness.

12 Thank you.

13 MR. HUNTER: Just a few things.

14 CROSS EXAMINATION

15 BY MR. HUNTER:

16 Q So how many times did you say you met with Mr. Brown
17 prior to the plea?

18 A Three all together.

19 Q Okay. And when did you first hear about this plea
20 offer?

21 A A few days before going to court. I want to say it was
22 maybe the Thursday or Friday before going in on the Monday or
23 Tuesday. I can't remember exactly what date that we went in to
24 court but I know it was right before the weekend or something.

25 Q And you are saying that Mr. Brown told you that it

1 would be non-violent?

2 A Yes, sir.

3 Q And did he explain what that meant?

4 A I mean, he didn't really have to.

5 Q As far as the consequences go?

6 A Yeah, right.

7 Q Now, you say that you signed the plea affidavit but you
8 didn't read the part that says violent, is that correct?

9 A Right, yes, sir.

10 Q Okay. And I believe during the plea hearing do you
11 recall the judge saying that he is going to scratch through and
12 change it to violent, is that one of your allegations?

13 A Yeah.

14 Q Okay, and after he said that do you remember him asking
15 you do you understand the potential penalty and the allegation
16 of this indictment and you said yes, sir. How come you didn't
17 say anything about it being non-violent?

18 A Well, at that time I'm expecting my lawyer to do that.
19 I didn't know anything about it. I mean, that's what we were
20 paying him to do is to take care of a situation. I'm ignorant
21 to all this information. I was expecting well, okay, if he's
22 not doing anything right this minute then I understand he can
23 pull this out. We have whatever, five days or whatever how many
24 days there is to be able to pull the plea. And that's what I
25 was expecting. But like I said I'm ignorant to most of the

1 legal procedures anyway. So I didn't really know what to do. I
2 never walked through the court systems before. And so, I mean
3 yes, I understand that. That was ignorant on my part to not
4 stand up. It was my life on the line, not his, but I was
5 expecting, you know, him to fight for me.

6 Q And so after the plea did you ever ask him why it was
7 violent not non-violent?

8 A Never got a chance to. He said he would be back there
9 to see me and I still hadn't see him.

10 Q You didn't write him?

11 A Yeah, I wrote him. I never got a response.

12 MR. HUNTER: That's all I have. Thank you.

13 THE COURT: Redirect.

14 MS. MOODY: No, sir, Your Honor.

15 THE COURT: Thank you sir. You may step down.

16 Any additional witnesses?

17 MS. MOODY: No, sir Your Honor.

18 MR. HUNTER: The State would call Mr. Michael
19 Brown.

20 MICHAEL BROWN, called as a witness, having been
21 duly sworn by the clerk, was examined and testified as
22 follows:

23 MS. MOODY: Your Honor, I'm sorry, I forgot to move
24 those documents into evidence.

25 THE COURT: Any objection?

1 MR. HUNTER: No objection.

2 THE COURT: All right, they will be admitted. What
3 numbers would they be?

4 MS. MOODY: Then sentencing sheet would be two and
5 the plea waiver form would be one.

6 THE COURT: They will be admitted.

7 MS. MOODY: Thank you.

8 (Defendant's Exhibit 1 and 2, documents, received
9 in evidence as of this date.)

10 DIRECT EXAMINATION

11 BY MR. HUNTER:

12 Q Mr. Brown, please state your name for the record.

13 A Michael Lanford Brown junior.

14 Q Where are you currently employed?

15 A I'm self employed as attorney in Rock Hill, South
16 Carolina. Have been for 34 years.

17 Q And is that how you became retained in this case?

18 A Yes, I have been friends with his mother for a quarter
19 of century. Twenty-five years.

20 Q Okay. Can you just explain how you became involved in
21 this case?

22 A I am sorry.

23 Q Can you explain how you became involve in this case?

24 A Yes. I was retained to represent Mr. Hunsucker shortly
25 after this first happened which was March 11, 2015. There was a

1 video of the armed robbery posted on social media and I think
2 CN2 the local news station. We started going through the facts
3 of the case. Did our own investigation. I mean, the case was
4 so egregious against him. His own father-in-law is walking up
5 to people in church saying that my son-in-law who did this. So
6 we started looking toward trying to get a plea bargain going.
7 In the interim Johnny got arrested for eight to ten other counts
8 involving threat of some sort. He also plead guilty to either
9 fraud or something over \$10,000 on top of that. It's in the
10 transcript. But he also had eight or ten other counts that got
11 dismissed.

12 He had a bad -- he had gotten a bad habit from
13 pharmaceuticals, pain medication, and what we were trying to do
14 is get him some help. When he spent the three hundred some on
15 days awaiting trial over here he dried out for lack of a better
16 term and we wanted to get him to rehab.

17 Q And how often did you met with him before the plea
18 itself?

19 A I don't have exact records, but in my office before his
20 bond got revoked probably eight to ten times.

21 Q At your office you said?

22 A Say it again.

23 Q That was at your office?

24 A Yes, sir. And the only time I would not have had any
25 broken contact with Johnny was this plea was in April of 2016.

1 I had cancer surgery December 2015 and I was out for a couple of
2 months and I assume that is when he's talking about he talked to
3 Mr. Cronin.

4 Q And Mr. Cronin is your associate.

5 A He was my associate at the time. He is no longer with
6 me.

7 Q Okay. Now can you just explain the plea negotiations
8 with the State?

9 A It's kind of drawn out process. Chris Epting had the
10 case and he kept getting charge after charge. So finally when
11 all the dust settled and he was incarcerated he and I started
12 negotiating and I think what Mr. Hunsucker is getting confused
13 is, I was trying to get Mr. Epting to let him plead to strong
14 armed robbery which would follow in the criteria that he's
15 speaking about. I could not get that done. When he says he was
16 presented with a plea negotiation two days before that's not
17 entirely correct.

18 I always had the cap of seven. It wasn't negotiated. It was
19 cap of seven for attempted armed robbery. I wanted to get the
20 cap of seven for strong arm robbery. Obviously he wouldn't do
21 that based on the evidence he had. So therefore there's no
22 doubt in my mind at least when I talked to him this is no
23 parole, most serious offense. I don't know if exact words
24 violent were used or not but I know clearly that I told him it
25 was most serious, no parole. When we were sitting back the day

1 of the plea at least five to seven times I said, Johnny you
2 don't have to go through with this today. We can stand down and
3 do it some time else. He said, no, let's go forward.

4 My best guesstimate at that time based on my experience
5 doing this, I'm in front of Judge Hall. I'm not going to get a
6 better judge in my opinion for sentencing for the next two or
7 three terms. It's either that or Judge Hayes. With all due
8 respect to Judge Hayes, I would rather have this case in front
9 of Judge Hall. Judge Hall was a new judge at the time.
10 Relatively new. And he gave him six years.

11 Q And just going back to the -- did you go over the plea
12 waiver form with him?

13 A I looked through that. I thought I did but maybe I
14 didn't. Sean's signature is on that. I don't -- I remember
15 specifically going through the indictments with him and probably
16 maybe the sentencing sheets that day, but there's really no
17 doubt in my mind. I don't know if the exact words violent were
18 used, but there is no doubt in my mind we went through the
19 difference between attempted armed robbery and strong armed
20 robbery and it was most serious, a no parolable offense.

21 Q And did you see the plea. You signed the sentencing
22 sheet, is that correct?

23 A Yes, sir.

24 Q And could you just kind of explain how these were
25 initially marked as non-violent?

1 A I have no idea how that happened. I don't know if some
2 miss checked it.

3 Q So when the judge -- do you remember the judge during
4 the hearing going over that he was changing that? Did you
5 believe that to be error?

6 A Clerical error is the the best I can assume. I really
7 believe what Mr. Hunsucker is getting confused is I was trying
8 so hard to get him strong armed robbery. Chris Epting just
9 wouldn't do that.

10 Q And did you tell that to him?

11 A Oh yeah.

12 Q Okay.

13 A As a matter of fact, the time he is talking about two
14 days before the plea he has got his days mixed up. The pleas
15 was on Thursday. Thursday afternoon. I went over there early
16 after Chris Epting said no. No way. We either do it this term
17 or -- standard solicitor -- we'll take it to trial next term.
18 Be ready. All that nonsense. But, yeah, I had to get this done
19 and Judge Hall was here. He wasn't here next term.

20 Q Okay. So, I believe you already stated it but just
21 again, did you convey to him that it was violent, no parole
22 offense?

23 A I can't sit here and tell you I'm one hundred percent
24 sure I used the word violent. I feel sure I did, but I know for
25 a fact I told most serious strike, no parole.

1 Q Okay.

2 A I explained to him 85 percent and I think either him or
3 his mother I ran the calculations for SCDC guidelines. It may
4 not have him but definitely his mother. But after Chris just
5 said no, I'm not doing strong armed robbery. That's where we
6 were.

7 Q Okay. And after the plea hearing did you have any
8 issues with the sentence?

9 A Johnny wanted me to ask for time served, rehab and
10 probation. I wanted to ask for ATU but he would not let me do
11 that. As everybody knows, he's the boss. In my humble opinion
12 I should have over road him on that and asked for ATU. That's
13 the only thing I would take back in this case.

14 Q And after the hearing did you receive any
15 correspondence from him?

16 A I don't remember. I may have. I know I talked to his
17 mother several times afterwards. As late as yesterday.

18 Q Okay.

19 MR. HUNTER: That's all I have. I appreciate it.

20 CROSS EXAMINATION

21 BY MISS MOODY:

22 Q Thank you Mr. Brown -- Justin. Good morning Mr. Brown.
23 Question, you indicated that Chris Epting wouldn't let you
24 discuss -- or wouldn't let you plea before the court on strong a
25 armed robbery?

1 A He would not give me strong armed robbery.

2 Q And so you indicated you talked about that to Mr.
3 Hunsucker.

4 A Yes.

5 Q So when did you all discuss strong armed robbery versus
6 armed robbery?

7 A All the time leading up to the plea after I came back
8 from cancer surgery.

9 Q Okay. And was this the only charge that you handled
10 for him. You said he had eight or ten other charges?

11 A I can't remember off the top of my head. They got
12 dismissed but they all involved some sort of thievery to support
13 his habit at the time.

14 He was doing work at people's houses and I think -- I can't
15 remember what they were, but they were dismissed.

16 Q Was that part of the negotiations?

17 A To dismiss those charges, yeah.

18 Q Okay. So in terms of the ultimate negotiation you got
19 him the cap of six -- or the cap of seven on this one charge?

20 A Yes. He had two charges. Beg the Court's indulgence
21 one second. Forgery over \$10,000 and attempted armed robbery.

22 Q Okay.

23 A The rest of the charges were dismissed. Concurrent
24 sentence of seven years. Cap of seven years on both.

25 Q Okay.

1 A That was the plea bargain so to speak.

2 Q And during the time of the plea did Mr. Hunsucker
3 appear to understand what he was doing?

4 A I mean, I can't speak what was in his mind, but I
5 couldn't make it any clearer that we did not get the strong
6 armed robbery. That we got the attempted armed robbery with is
7 most serious offense and he's going to do 85 percent. I mean, I
8 couldn't make that any clearer. I can't sit here and tell you,
9 yeah, that's violent versus non-violent. I did explain to him
10 based on the codes that this is 85 percent, you know, non
11 parole.

12 Q Okay. And then as to the plea affidavit sheet Mr.
13 Cronin was the person who went over that?

14 A I can't speak to what Mr. Cronin said. Let me say
15 this. The reason he is no longer with me is what I would deem
16 is inefficiency.

17 Q Okay. All right. What exactly was the negotiation?
18 Was it -- and you heard Mr. Hunsucker say, is a cap of seven to
19 armed robbery non-violent or was it a cap of seven --

20 A There is no armed robbery non-violent. It don't exist.

21 Q I understand. I am just asking what was conveyed
22 because his testimony --

23 A There's no question in my mind. I made it very clear
24 the plea negotiation was we could not get the strong armed
25 robbery. We will do attempted armed robbery. It a most serious

1 or serious offense and there is no parole.

2 Q So off the negotiations I am --

3 A Yes, the --

4 THE COURT: Just one second. You all are talking
5 at once. Slow down.

6 MR. BROWN: I'm sorry.

7 A The negotiations were I was trying to get strong armed
8 robbery for the cap of seven. Mr. Epting would not do that. So
9 I made an strategic decision to take the plea in front of Judge
10 Hall at the time.

11 Q Right. And so, I guess you are missing what I'm
12 saying. What was said to Mr. Hunsucker was a cap of seven on
13 armed robbery.

14 A Attempted armed robbery. Armed robbery carries a
15 minimum of ten without parole. Mr. Epting did knock it down to
16 a cap of seven on attempted armed robbery, which I think is zero
17 to 20. But it's still a strike and it's still non-parole.

18 Q Right.

19 A This is why I'm so adamant that he understood that
20 because we met a couple of times in the jail to go over. Let me
21 see if I could get strong armed robbery for this plea. He
22 wasn't budging.

23 Q Okay. And I get all that and I understand your logic
24 in that. I am just trying to be clear on what was said is
25 attempted armed robbery, seven years?

1 A A cap of seven.

2 Q A cap of seven.

3 A It wasn't seven, it was a cap of seven. He wound up
4 with six.

5 Q Okay.

6 A Which I guess is some solace.

7 Q All right.

8 MS. MOODY: No further questions.

9 MR. HUNTER: Nothing else from the State?

10 THE COURT: Thank you sir.

11 THE COURT: Any other witnesses?

12 MR. HUNTER: That's all from the State.

13 THE COURT: Anything further from the applicant?

14 MS. MOODY: No, sir, Your Honor.

15 THE COURT: All right. Mr. Hunter, I will ask you
16 you to prepare me an Order.

17 I think it's clear from the record I notice in the
18 transcript on page six, lines 12 through 21; page
19 seven, lines four through 18, Judge Hall clearly
20 advised the applicant that this was a violent charge.
21 The change of the sentencing sheet is just an
22 administrative change and it's actually initialed by
23 the applicant as well as the fact that he signed the
24 plea waiver form that shows the charge as being
25 violent.

1 His trial attorney credibility testified that he
2 advised him as well. So I will deny the petition and
3 ask Mr. Hunter to draft me an Order.

4 MR. HUNTER: Thank you.

5 MS. MOODY: Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 1st day of August, 2017.

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

December 29, 2017

Aileen Butler

PLEA WAIVER FORM

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK

CERTIFIED TRUE COPY
2016 NOV -3 AM 10:31

vs.

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

[Handwritten initials]

= defendant's initials required

John Edward Hunsucker, Jr.
Defendant.

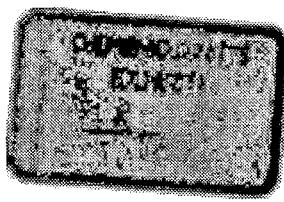
Total Time Served (days) [Click here to enter text.](#) 299?

I want to plead guilty, no contest, or enter a plea under N.C. v. Alford to the charges listed below. I understand that the minimum and maximum penalties as well as some of the collateral consequences for the charges to which I am pleading are listed below:

Truebilled Waiver
Indictment #: CDR: 0139 Statute #: 16-11-0330(A)

Original Charge: Armed Robbery

Pleading To: Attempted armed robbery



[Handwritten initials]

Misdemeanor Felony
Penalty: NMT 20 years

Non-Violent Violent Serious Most Serious No Parole Sex Offender
Registry
 Mandatory GPS Increased Punishment for Future Offenses Murder Day for Day

Truebilled Waiver
Indictment #: CDR: 3436 Statute #:

Original Charge: Forgery over \$10,000

Pleading To: Forgery over \$10,000

[Handwritten initials]

Misdemeanor Felony
Penalty: No more than 10 years

Non-Violent Violent Serious Most Serious No Parole Sex Offender
Registry
 Mandatory GPS Increased Punishment for Future Offenses Murder Day for Day

List **General Sessions** Charges Being Dismissed: 2015A4620306281, 6462, 6468

List Pending **General Sessions** Charges not being resolved: [Click here to enter text.](#)

List Prior Convictions: 00/ ~~Common law robbery~~ (Probation)

YOA: Eligible Ineligible due to: Age Offense Other: Click here to enter text.

Currently on Probation? Yes No Is this plea a violation of the probation? Yes No

I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea:

Type of Plea Guilty N.C. v. Alford Nolo
 Recommendation Negotiated Without Recommendation

State is recommending or the negotiation is: Negotiated 3 year floor, cap of 9 OR Negotiated 7 years

This plea is not the product of any other promises or any threats whatsoever, except as indicated below:

I understand that, upon entering a plea under N.C. vs. Alford, I will be treated as being guilty whether or not I admit that I am in fact guilty.

I understand that a no contest plea is treated by the Court the same as a plea of guilty.

The Solicitor is making a recommendation to the judge, as listed above. I understand the Judge is not required to accept the recommendation given by the Solicitor and the Judge may accept it, may go below the recommendation, or may go above the recommendation.

This plea is a negotiated plea and the negotiation is listed above. I understand the Judge may refuse to accept the negotiation and that if the Judge refuses, the plea will not go forward.

This plea is without negotiation and I understand I could receive from the minimum to the maximum sentence on each charge to which I am pleading guilty and that those sentences could also be run consecutive to other.

I am not currently under the influence of any intoxicants, drugs, or narcotics.

I currently DO take the following prescribed medications:

I am entering my plea today freely, voluntarily, knowingly, and intelligently.

I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer, or the court will appoint a lawyer for me if I cannot afford one. I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing

myself. Understanding this, I give up this right.

I understand that I have the right to plead not guilty and be tried by a jury, and that I am presumed innocent until such time as the jury is convinced of my guilty beyond a reasonable doubt. Understanding this, I give up that right.

I understand I have the right to have the Court issue subpoenas to bring my witnesses and evidence to a trial at no cost to me. Understanding this, I give up that right.

I understand I have the right to testify or remain silent at trial. Understanding this, I give up this right.

My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

I understand that I have the right to remain silent, that is, the right against self-incrimination. Understanding this, I give up this right.

I understand that in a jury trial I have the right to see and hear all witnesses called to testify against me and to confront, cross-examine, and question them.

I give up, for each of the charges listed above, my right to a jury trial, my right to a bench trial (trial by Judge with no jury), my right to confront and cross examine witnesses, my right to remain silent and not incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf.

I understand that by my pleading to each charge, I am waiving all defenses, including, but not limited to the right to challenge any evidence the State may have used in its case against me and the voluntariness of any statements made to law enforcement.

I understand that upon my conviction I may be ordered to pay restitution to any persons directly and proximately injured as a result of my commission of these crimes and that a civil judgement in favor of each person may be docketed against me and will be a lien against any real estate I own now or may own in the future.

I understand that if I am not a citizen of the United States, my plea of guilty, no contest, or my plea under N.C. v. Alford may result in my deportation, exclusion from re-entry to the United States, and denial of naturalization and amnesty.

I understand that I have 10 days within which to appeal this guilty plea.

I understand that I am pleading guilty, no contest, or under N.C. v. Alford to the charges shown above.

I now personally plead guilty; under N.C. v. Alford; no contest to the charges above.

Acknowledgement

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, the effects of any prior convictions and enhancements, have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Defendant's Signature: *J. J. Hunsucker* Date: 4.28.16

Defense Counsel's Statement

I, the attorney for the defendant in the above entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges, all discovery provided by the State, and possible defenses with the defendant and the consequences of the plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his or her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Print Name: SEAN F. CROWD *[Signature]* Bar # 28477
Attorney Signature

Date: 4/28/16 Circle One: PD Retained Appointed

Solicitor's Review

I have reviewed this form as completed by the Defendant or by the Defendant with his Defense Attorney for completeness and accuracy.

Solicitors Signature: _____ Bar # _____

Date: _____

Judge's Confirmation

Upon consideration of the record, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor and the contents of this plea and waiver form, the undersigned finds that:

- 1. There is a factual basis for the entry of the plea,
- 2. The defendant is satisfied with his/her lawyer's legal services,
- 3. The defendant is competent to stand trial, and
- 4. The plea is the informed choice of the defendant and is made freely, voluntarily, knowingly, and intelligently.

The defendant's plea is hereby accepted by the Court.

Judge's Signature

Judge's Code: _____ Date: _____

OF YORK

VS.

JOHN EDWARD HUNSUCKER, JR.

AKA: John Edward Jr Hunsucker, John E Hunsucker
Race: White Sex: M Age: 37
DOB: /1978 SS#:
Address: Ole Simpson Place
City, State, Zip: Rock Hill, SC 29730
DL# SID# SC00998066

INDICTMENT/CASE#: 2015GS4603862
A/W: 2015A4620306273
Date of Offense: 03/11/2015
S.C. Code #: 16-11-0330(A)
CDR Code #: 0139



ORIGINAL

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was [] CONVICTED OF or [X] PLEADS

TO: Attempted Armed Robbery

In violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

[X] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS [] §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: [] As indicted, [] Lesser Included Offense, [X] Defendant Waives Presentment to Grand Jury: (def.'s initials)
The plea is: [] Without Negotiations or Recommendation, [X] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Christopher W. Epting, Assistant Solicitor SC Bar # 76321
Defendant: John Edward Hunsucker, Jr.
Attorney for Defendant: [Signature] SC Bar # 943

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections [] County Detention Center, for a determinate term of 6 days/months/years or [] under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment
Payment Terms: Obtain GED: []

[] Set by SCDPPPS:

Table with 4 columns: Description, Amount, Total, and Payment Status. Includes items like §14-1-206 (Assessments 107.5%), §14-1-211 (A)(1)(Conv. Surcharge) \$100.00, §14-1-211 (A)(2)(DUI Surcharge) \$100.00, §56-5-2995 (DUI Assessment) \$12.00, §56-1-286 (DUI Breath Test) \$25.00, Proviso 47.9 (Public Def/Prob) \$500.00, §14-1-212 (Law Enforce. Funding) \$25.00, §14-1-213 (Drug Court Surcharge) \$150.00, §50-21-114 (BUI Breath Test Fee) \$50.00, §56-5-2942(I) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCA Surcharge) \$5.00, 3% to County (if paid in installments) \$, TOTAL \$130.00

Attend Voc. Rehab. Or Job Corp.
May serve W/E beginning
Substance Abuse Counseling []
Random Drug/Alcohol Testing []
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning
\$ Paid to Public Defender Fund

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

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Bethanie Creppon
SCCA/217 (03/2011)

Presiding Judge: Daniel D. Hill
Judge Bar ID:
Sentence Date: 4-20-16
Judge Code: 2753

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, S.C.
2016 NOV -3 AM 10:30
CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY
COUNTY OF YORK 2016 NOV -3 AM 10:30 INDICTMENT

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on December 10, 2015, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

The defendant, John Edward Hunsucker Jr, did on or about March 11, 2015 in York County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as US Currency from the person or presence of CVS - Kwan Fuller. All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

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


CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA RECEIVED IN THE COURT OF COMMON PLEAS
COUNTY OF YORK 2017 SEP 12 PM 12:32 FOR THE SIXTEENTH JUDICIAL CIRCUIT

John Edward Hunsucker, Jr. DAVID HAMILTON 2016-CP-46-3240
S.C.D.C. #368035, C.C.P. # 368035 YORK COUNTY, SC

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 2, 2016. Respondent made its Return on or about March 2, 2017. An evidentiary hearing into the matter was convened on August 1, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin J. Hunter, Esquire, of the South Carolina Attorney General's Office represented the Respondent. At the hearing, Applicant testified on his own behalf. Michael Brown, Esquire, also testified.

I. PROCEDURAL HISTORY

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted for Armed Robbery (2015-GS-46-3862). Michael Brown, Esquire, represented Applicant. On April 28, 2016, Applicant waived presentment and pled guilty to the lesser included offense of attempted armed robbery before the Honorable Daniel Hall. Pursuant to a negotiated sentence, Applicant was sentenced to imprisonment for six years. Applicant did not appeal his guilty plea or sentence.

In his PCR application, Applicant alleges he is being held in custody unlawfully for

ineffective assistance of counsel in that Counsel failed to object to the plea judge's alteration of Applicant's negotiated sentence from a non-violent offense to a violent offense.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds the testimony of Applicant's counsel to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Applicant alleged that his Counsel was ineffective for failing to object to the plea judge changing his negotiated plea from attempted armed robbery (non-violent) to attempted armed robbery (violent). He testified that he thought the plea was a six-year non-violent sentence and only learned that it would be violent at the plea hearing. He testified that he signed the sentencing sheet first and then the plea waiver form but did not discuss these sheets with Counsel. He testified that he did not look at the plea waiver form but only initialed the boxes. Applicant testified that he expected Counsel to speak up at the plea hearing and because he was ignorant on the law.

Counsel testified that the plea negotiations in this case were drawn out because of the amount of charges. He testified that he tried to negotiate a strong arm robbery plea but the

solicitor's office would not agree. He testified that the plea offer was always a plea to attempted armed robbery for a cap of seven years. Counsel testified that he explained what most serious and no parole meant. He testified that he discussed with Applicant the differences between armed robbery and attempted armed robbery and the differences between attempted armed robbery and strong arm robbery. He testified that he was not exactly sure if he used the words "violent" or "non-violent" when discussing the case with Applicant. Counsel testified that the negotiated sentence was attempted armed robbery and it would be most serious and a no-parole offense.

This Court finds that Applicant has failed to prove that Counsel's actions were ineffective. This Court finds it is clear from the record that Applicant was facing a non-violent offense and that he understood this fact. During the plea hearing the plea judge advised:

THE COURT: You understand on the attempted armed robbery, that because it's a violent, most-serious offense, that if you got another most-serious offense conviction in the future -- and we hope that doesn't happen -- but if you did, the State can seek a life-without-parole sentence against you?
If you had three or more serious offenses, that's the three strikes, you could also get life without parole. Do you understand the consequences on your current criminal record of your plea today?

THE DEFENDANT: Absolutely.

THE COURT: You still want to go forward with your plea?

THE DEFENDANT: I do, sir.

Trial Transcript p. 7, ll. 4-18.

This Court also finds that the plea waiver form, initialed and signed by Applicant, designates the plea as a violent offense. It is also clear from the record and the plea judge's indication to Applicant during the hearing that the sentencing sheet contained a clerical error that listed the offense as non-violent, however, the plea judge changed the sheet to indicate that it was a violent offense and initialed where he scratched through the error. This was stated on the

record and Applicant acknowledged that he understood the clerical error.

THE COURT: "...the State is allowing you to plead to attempted armed robbery which carries up to 20 years in prison.

That is a violent, most-serious offense. In fact, I'm going to mark that on your sentencing. It's marked non-violent. I'm going to scratch through that and initial where I scratch and I'm going to check violent and most serious. You understand the potential penalty and the allegations in the indictment?

THE DEFENDANT: Yes, sir.

Trial Transcript p. 6, ll. 9-21.

This Court finds that the plea judge did not erroneously change Applicant's negotiated plea or sentence. This Court finds that all parties understood the plea to be to a violent offense as evidenced by the plea waiver form and the plea colloquy during the hearing. The plea judge did not err in making an administrative change in open court to the clerical error on the sentencing sheet. As the plea judge did not err, Counsel was not deficient for failing to object. Furthermore, Applicant has failed to prove that he was prejudiced by Counsel's actions, as he has failed to show that the outcome would have been different and that he would have proceeded to trial but for Counsel's actions. Accordingly, this application must be dismissed.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

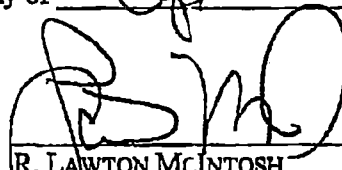
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate

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

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7th day of Sept, 2017.



 R. LAWTON MCINTOSH
 Presiding Judge
 Sixteenth Judicial Circuit

Anderson South Carolina

WITNESSES

RHPD

Witnessing Officer:

ARREST WARRANT NUMBER

2015A4620306273

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS46-03862

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 10, TERM 2015

THE STATE

VS.

JOHN EDWARD HUNSUCKER, JR

INDICTMENT FOR

ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

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

Defendant

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

Attempted Armed Robbery

J E Hunsucker Jr
Defendant

Witness:

Cindy Niek At Spce
C.C.C. PLS AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY

INDICTMENT

2016 NOV -3 AM 10:30


DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions convened on December 10, 2015, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

The defendant, John Edward Hunsucker Jr, did on or about March 11, 2015 in York County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as US Currency from the person or presence of CVS - Kwan Fuller. All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

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


CHRISTOPHER W. EPTING
ASSISTANT SOLICITOR

ARREST WARRANT

2015A4620306273

STATE OF SOUTH CAROLINA

County/ Municipality of
ROCK HILL

THE STATE ENTERED
against NCIC

HUNSUCKER, JOHN EDWARD JR

Address [Redacted] Lynwood Cir.
York, SC 29745

Phone: 000-000-0000 SSN: [Redacted]

Sex: M Race: W Height: 600 Weight: 195

DL State: SC DL#: [Redacted]

DOB: [Redacted] 1978 Agency ORI #: 460300

Prosecuting Agency: RHPD

Prosecuting Officer: J T WELCH

Offense: ARMED ROBBERY - 16-11-330

Offense Code:

Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

York The Accused
is to be arrested and brought before me to be
dealt with according to law.

D. Laszlo Surt (L.S.)
Signature of Judge

Date: 3/17/15

RETURN

A copy of this arrest warrant was delivered to
defendant John Edward Hunsucker Jr.

on 3/19/2015

J. Welch
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

HILL MUNICIPAL COURT
HILL SC 29730

STATE OF SOUTH CAROLINA)

County/ Municipality of)

ROCK HILL)

AFFIDAVIT

Personally appeared before me the affiant J T WELCH who
being duly sworn deposes and says that defendant HUNSUCKER, JOHN EDWARD JR
did within this county and state on 03/11/2015 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of ROCK HILL)
in the following particulars:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY - 16-11-330 ^{de}

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON MARCH 11, 2015 THE DEFENDANT DID WILLFULLY AND UNLAWFULLY VIOLATE SC CODE OF LAWS 16-11-330 BY
ENTERING CVS PHARMACY, LOCATED AT 609 CHERRY ROAD WITHIN THE CITY LIMITS OF ROCK HILL, SOUTH
CAROLINA, AND POINTING A HANDGUN AT THE CASHIER, KWAN FULLER. THE DEFENDANT DEMANDED MONEY AND
THE VICTIM GAVE THE DEFENDANT A TOTAL OF \$181.00 IN CASH AND ALSO A PACK OF SWEETTARTS AND MENTOS.

**1503110472

**SURVEILLANCE VIDEO

Signature of Affiant

J Welch

STATE OF SOUTH CAROLINA)

County/ Municipality of)

ROCK HILL)

Affiant's Address ROCK HILL MUNICIPAL COURT

ROCK HILL SC 29730

Affiant's Telephone 803-329-5695

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/11/2015 defendant HUNSUCKER, JOHN EDWARD JR

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY - 16-11-330

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me:

on March 17, 2015

[Signature] (L.S.)

Signature of Issuing Judge

Judge Code:

Judge's Address ROCK HILL MUNICIPAL COURT

ROCK HILL SC 29730

Judge's Telephone 803-329-5695

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ARMED ROBBERY

FELONY WARRANT

2016 NOV -3 AM 10:30
ROCK HILL MUNICIPAL COURT

CERTIFIED TRUE COPY

RHPD 15 MAR 17 2015

2016 MAR 17 5 24 AM
ROCK HILL MUNICIPAL COURT

FILED RECEIVED

OF YORK

Value

INDICTMENT/CASE#: 2015GS4603862
A/W: 2015A4620306273
Date of Offense: 03/11/2015
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

VS. JOHN EDWARD HUNSUCKER, JR.
AKA: John Edward Jr Hunsucker, John E Hunsucker
Race: White Sex: M Age: 37
DOB: 11978 SS#:
Address:
City, State: Rock Hill, SC 29730
DL# SID# SC00998066

ORIGINAL

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: **Attempted Armed Robbery**

In violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: *CUG* 76321 Christopher W. Epting, Assistant Solicitor SC Bar # Defendant *J.E. Hunsucker Jr* Attorney for Defendant *[Signature]* 943 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 6 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 300 days
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____ Obtain GED.

Set by SCDPPPS _____

Recipient: _____	
*Fine: _____	\$ _____
§14-1-206 (Assessments:107.5%)	\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100 \$ _____
§56-5-2995 (DUI Assessment)	\$12 \$ _____
§56-1-286 (DUI Breath Test)	\$25 \$ _____
Proviso 47.9 (Public Def/Prob)	\$500 \$ _____
§14-1-212 (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150 \$ _____
§50-21-114 (BUI Breath Test Fee)	\$50 \$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ <u>5.00</u>
3% to County (if paid in installments)	\$ _____
TOTAL	\$ <u>130.00</u>

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: _____
 Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

CERTIFIED TRUE COPY
NOV-3 AM 0:30
DAVID HAMILTON
CLERK OF COURT
SOUTH CAROLINA

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Bethanie Creppon
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Bar ID: _____ Judge Code: 2753
Sentence Date: 4-28-16