

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

R. Scott Sprouse, Circuit Court Judge

RECEIVED

JUL 12 2018

S.C. SUPREME COURT

KIRK WILLIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002508

APPENDIX

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ATTORNEYS FOR RESPONDENT

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2015-GS-30-1735

State of South Carolina)
 vs.) Transcript of Record
)
Kirk Willis)
)
)
)

November 3, 2015
Laurens, South Carolina

B E F O R E:

Honorable Frank R. Addy, Jr., Judge

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

Warren Mowry, Assistant Solicitor
Attorney for the State

Aaron Taylor, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

EXHIBITS

(There were no exhibits introduced.)

1 THE COURT: Mr. Mowry, is this Mr. Willis?

2 MR. MOWRY: Yes sir, Your Honor. This is actually
3 Mr. Sheek's case, he is under the weather today so I am
4 doing this for him. This is Kirk Willis. He is before
5 Your Honor on indictment 15-1735, he is indicted for
6 attempted murder. He is before Your Honor to enter a
7 guilty plea to the reduced charge of assault and battery
8 in the first degree. He is represented by his attorney,
9 Mr. Taylor. There is a recommendation of five years in
10 prison.

11 THE COURT: A straight five year sentence?

12 MR. MOWRY: A straight five years, yes sir.

13 THE COURT: Mr. Taylor, you are representing Mr.
14 Willis, is that correct?

15 MR. TAYLOR: Yes sir, I am.

16 THE COURT: Assault and battery first degree would
17 carry up to, of course, ten years. In this case the
18 recommendation is a five year sentence, is that correct?

19 MR. TAYLOR: That's correct.

20 THE COURT: You have explained to him the
21 ramifications of this plea to Mr. Willis and also reviewed
22 with him his constitutional rights and all of the
23 evidence?

24 MR. TAYLOR: I have, Your Honor.

25 THE COURT: And do you agree with his decision?

1 MR. TAYLOR: I do.

2 THE COURT: All right. Sir, if you would, raise your
3 right hand, please.

4 KIRK WILLIS, being
5 first duly sworn, testified as follows:

6 THE COURT: Are you Kirk Willis?

7 MR. WILLIS: Yes, sir.

8 THE COURT: Mr. Willis, they are telling me that you
9 want to plead guilty to assault and battery first degree.
10 Is that correct?

11 MR. WILLIS: Yes, sir.

12 THE COURT: Do you understand normally that would
13 carry up to ten years. In this case the State is making a
14 recommendation of five years. Do you understand that?

15 MR. WILLIS: Yes, sir.

16 THE COURT: Mr. Willis, in the last twenty-four hours
17 have you taken any medication or any substance that would
18 affect your thinking right now?

19 MR. WILLIS: No, sir.

20 THE COURT: Have you ever been treated for any mental
21 illness issues or problems understanding what is going on?

22 MR. WILLIS: No, sir.

23 THE COURT: Are you in fact guilty of assault and
24 battery first degree?

25 MR. WILLIS: Yes, sir.

1 THE COURT: All right. Mr. Mowry is going to give me
2 the facts on this particular case. When he is done
3 speaking I will then ask if that is what you did. So
4 please pay attention to what he says happened, okay?

5 MR. WILLIS: Yes, sir.

6 MR. MOWRY: Your Honor, Mr. Bentley is here with me
7 to correct me if I go wrong. He investigated the case for
8 our office and is well familiar with the facts.
9 Essentially on August the 7th of last year, about 10:00
10 o'clock that evening the defendant's wife arrived at a
11 location in Clinton with two other men in the car. They
12 got out, Mr. Willis confronted them, there was a fracas, I
13 guess, and in the process Mr. Willis stabbed Larry Larnell
14 Worthy several times causing some injury, sufficient to
15 the point that the victim ended up being airlifted to
16 Greenville Memorial Hospital. Mr. Willis left the scene,
17 later turned himself in the next morning at Clinton Police
18 Department and has been in custody ever since. I have
19 included the defendant's prior record. That certainly is
20 entered into the mix, into the amount of time. But at any
21 rate, Your Honor, those are the facts of the case.

22 THE COURT: And I assume he is on probation and
23 apparently for something.

24 PROBATION OFFICER: Criminal domestic violence second
25 degree.

1 THE COURT: Mr. Willis, you heard what the State
2 alleges happened on August the 7th of last year. Is what
3 they say true, did you stab Mr. Worthy?

4 MR. WILLIS: Yes, sir.

5 THE COURT: So you are, in fact, guilty of this
6 charge?

7 MR. WILLIS: Yes, sir.

8 THE COURT: Mr. Willis, I need to review with you a
9 few of your constitutional rights. If you don't
10 understand something I am telling you stop and I will
11 allow you to talk to Mr. Taylor.

12 MR. WILLIS: Yes, sir.

13 THE COURT: First, you do understand that this is a
14 violation of your probation. This plea would be a
15 violation.

16 MR. WILLIS: Yes, sir.

17 THE COURT: And, of course, you don't have to plead
18 guilty, you can have a jury trial in this case. Do you
19 understand that?

20 MR. WILLIS: Yes, sir.

21 THE COURT: In a jury trial the State would have the
22 burden of proving your guilt beyond a reasonable doubt to
23 the satisfaction of all twelve jurors. In an attempt to
24 meet that burden by calling witnesses to testify, one by
25 one they would come forward, they would be sworn and you

1 and Mr. Taylor would be able to question them about any
2 relevant matters. Do you understand that, sir?

3 MR. WILLIS: Yes, sir.

4 THE COURT: You have no burden of proof in a criminal
5 trial but if you wanted to you could call your own
6 witnesses; you can subpoena any reluctant witnesses, force
7 them to come to court, you can also take the stand in your
8 own defense. Do you understand that, sir?

9 MR. WILLIS: Yes, sir.

10 THE COURT: You would be treated pretty much the same
11 way as any other witnesses, so if you decided not to take
12 the stand I would instruct the jury that they could not
13 hold that against you and use that for a sentence of
14 guilt. Do you understand, sir?

15 MR. WILLIS: Yes, sir.

16 THE COURT: In a trial you would also be presumed
17 innocent, you would have the right to challenge any of the
18 State's evidence, I really don't know what evidence they
19 have against you. It sounds like maybe you turned
20 yourself in, but I am sure you viewed the evidence with
21 Mr. Taylor, is that right?

22 MR. WILLIS: Yes, sir.

23 THE COURT: Understand by pleading guilty you are
24 waiving your right to challenge any of the evidence that
25 the State has collected. Do you understand that?

1 MR. WILLIS: Yes, sir.

2 THE COURT: Finally, Mr. Willis, by pleading guilty
3 you are waiving your right to present any defense you
4 might have. A defense to this charge could be something
5 as simple as I was acting in self-defense, Mr. Worthy came
6 at you first and I had no choice but to defend myself by
7 stabbing him. Do you understand?

8 MR. WILLIS: Yes, sir.

9 THE COURT: Obviously by pleading guilty you are
10 waiving your right to present that or any other defense.
11 Do you understand?

12 MR. WILLIS: Yes, sir.

13 THE COURT: All of these very important rights, are
14 you sure you want to give them up and plead guilty?

15 MR. WILLIS: Yes, sir.

16 THE COURT: And, Mr. Taylor, you have reviewed the
17 discovery with Mr. Willis?

18 MR. TAYLOR: Yes sir, I have.

19 THE COURT: Mr. Willis, are you satisfied with the
20 way that Mr. Taylor has represented you on this charge?

21 MR. WILLIS: Oh yes, yes sir.

22 THE COURT: Do you have any complaints to make
23 against him?

24 MR. WILLIS: No, sir.

25 THE COURT: He has done everything that you have

1 wanted him to do?

2 MR. WILLIS: Yes, sir.

3 THE COURT: Any complaints to make against the
4 Solicitor's office, law enforcement, work personnel or
5 anyone involved?

6 MR. WILLIS: No, sir.

7 THE COURT: And aside from the recommended five year
8 sentence has anyone promised you anything else?

9 MR. WILLIS: No, sir.

10 THE COURT: Tried to threaten you, coerce you, force
11 you in any way?

12 MR. WILLIS: No, sir.

13 THE COURT: There will be some charges dismissed?

14 MR. TAYLOR: That is correct.

15 MR. MOWRY: Yes, sir. The whole idea is to clear the
16 decks.

17 MR. TAYLOR: And to run this concurrent with his
18 probation revocation.

19 THE COURT: In that caveat, have there been any other
20 problems?

21 MR. WILLIS: No, sir.

22 THE COURT: Very good. Mr. Willis, are you pleading
23 guilty then of your own free will because you did commit
24 this offense?

25 MR. WILLIS: Yes, sir.

1 THE COURT: Very good. I do find there is a
2 substantial factual basis for this plea, it is freely,
3 voluntarily, knowingly and intelligently made. Mr. Willis
4 is satisfied with Mr. Taylor's assistance and I will
5 accept this plea.

6 MR. WILLIS: Thank you, sir.

7 THE COURT: The victim is understanding in this
8 regard?

9 MR. MOWRY: Yes, sir.

10 THE COURT: Mr. Taylor.

11 MR. TAYLOR: Thank you, may it please the Court. I
12 was appointed to represent Mr. Willis two weeks ago and
13 we, I have met with him quite a few times, talked with
14 him. He has an extremely good understanding of what the
15 facts are. He even pointed out some potential defenses
16 and a few of those would be, self-defense would be a good
17 one, potentially defense of others but I don't think that
18 really applies. Also there is some kind of, maybe he was
19 the victim as opposed to actually doing anything wrong.
20 So, we talked about all of that and he was looking at 0 to
21 30, eighty-five percent. So obviously a strike and the
22 State made a very generous offer which we appreciate,
23 after speaking to the victim who could not be here today.
24 At one point we were ready to go to trial but Mr. Willis
25 and I together as a team decided to do this, it was in his

1 best interest. This is Ms. Willis standing next to him,
2 this is his wife, she was actually there that night and
3 supports him obviously, because she is here on his behalf
4 which I am glad, they made up a little bit after this
5 incident. And Mr. Willis told me today, he said, you will
6 never see me again. So I hope that he holds to it. He
7 does have a prior record which is what, why the offer is
8 five years instead just some kind of time served sentence.
9 I spoke to the Solicitor before we got in here, Judge. I
10 had it calculated as 588 days, he had a different
11 calculation.

12 MR. MOWRY: Yes, sir. I used a computer app to run
13 it from August the 8th of last year, it is 452.

14 MR. TAYLOR: Plus there were 104 probation days, of
15 my understanding that is going to be added into that.

16 MR. MOWRY: And I don't know how that would, I will
17 leave that up to your discretion.

18 MR. TAYLOR: I am not really sure how all of that
19 worked either other than that was my understanding in
20 terms of making this deal go through.

21 THE COURT: All right. Does the State have any
22 objection to the--

23 MR. MOWRY: I will leave that to your discretion,
24 Your Honor. No sir, I don't.

25 PROBATION OFFICER: Your Honor, he was sentenced, he

1 had one year suspended on 104 days and one year of
2 probation.

3 THE COURT: Okay. So he has already done the 104 on
4 that probation.

5 PROBATION OFFICER: Yes.

6 MR. TAYLOR: And that is where we came up with that
7 number, Judge, and that was sort of part of the deal. And
8 just respectfully, I know this is probably, not sure, but
9 it is in the Judge's discretion potentially. So, we would
10 respectfully ask you to do that, that was kind of part of
11 the way we got this over the finish line. And obviously
12 this is on the trial docket.

13 MR. MOWRY: We are not squawking one way or the
14 other, Your Honor.

15 THE COURT: How many days?

16 MR. MOWRY: 452, I believe.

17 MR. TAYLOR: Plus 104 so that is close to what I
18 have.

19 THE COURT: Mr. Willis, anything that you want to
20 say, sir?

21 MR. WILLIS: Thank you if you will give me my days,
22 sir.

23 THE COURT: Ms. Willis, anything you want to say?

24 MS. WILLIS: Just want him to go ahead and get it
25 over with.

1 MR. TAYLOR: Thank you to the State again for the
2 offer.

3 THE COURT: Mr. Willis, I am going to go along with
4 what y'all have worked out. I will tell you, sir, you
5 have got a criminal history. So when you say you are not
6 coming here again I hope you are being straight with
7 everybody because you do have a bit of a record and you
8 are catching a pretty good break.

9 MR. WILLIS: Yes, sir.

10 THE COURT: The sentence is five years, you will get
11 credit for the 556 days that y'all pretty much have worked
12 out. I have noted this will be concurrent with the
13 violation of probation. And that case, Agent, simply
14 revoke the remaining months that he has got, run it
15 concurrent with this. I have noted here that I am
16 recommending anger management for you while you are in the
17 Department of Corrections.

18 MR. WILLIS: Yes, sir.

19 THE COURT: Wish you luck, Mr. Willis.

20 MR. TAYLOR: Just, he wanted to make sure it was
21 non-violent.

22 THE COURT: It is non-violent. This is non-violent.

23 MR. WILLIS: Thank you, sir.

24 MR. TAYLOR: Thank you, Your Honor.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1
2
3
4 CERTIFICATE OF REPORTER5
6
7
8 State of South Carolina)
9)
10 County of Newberry)
11
12
13
1415
16 I, Joy E. Holston, Official Court Reporter for the
17 Eighth Judicial Circuit of the State of South Carolina, do
18 hereby certify that the foregoing is a true, accurate and
19 complete transcript of record of the proceedings had and
20 evidence introduced in the trial of the captioned case,
21 relative to appeal, in the County of Laurens, South
22 Carolina on the 3rd day of November, 2015.
2324
25 I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

November 8, 2016

20
21
22 *Joy E. Holston*
2324
25 Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

STATE OF SOUTH CAROLINA

County of Laurens

IN THE COURT OF COMMON PLEAS

LYNN WILANCASTER

15

Kirk Willis - 182845

Full name and prison number (if any) of Applicant

2016 CP30 - 757

VS.

2016 SEP -9 P 4: 48/

APPLICATION FOR

State of South Carolina

Name of Respondent

LAURENS COUNTY POST-CONVICTION RELIEF
CLERK OF COURT

Laurens County Detention Center

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Laurens County Detention Center, South Carolina
Department of Corrections.
2. Name and location of Court which imposed sentence Court of General Sessions,
Laurens County Judicial Complex Center, 100 Hill Crest Sq. Laurens S.C.
3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Attempted Murder / 15GS30-1735, 15GS30-1738
 - (b) Weapons / Poss. Weapon during Vio. Crime / 2015GS3001736,
2015GS3001739
 - (c) Criminal Domestic Vio. 3rd offense / 2015GS3001734,
2015GS3001737

the date upon which sentence was imposed and the terms of the sentence:

- (a) Lesser Included Offense - Nov. 3, 2015, Assault + Battery 1st
 (b) Other charges dropped, 5yrs Jail credited 556 days
 (c) Warrant number, 2014A3020100420

5. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓ Assault + Battery 1st degree
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgement of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list:

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

i. Case # 8:15-cv-03427-SMC U.S. District Court of South Carolina

ii. ~~_____~~

iii. ~~_____~~

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

i. ECF No. 10 at 4 quoting Kugler v Helfant, 421 U.S. 117, 124 (1975)

ii. ~~_____~~

iii. ~~_____~~

(c) the date of each such result:

i. 6-6-2016 at 2:36 pm and Filed on 6-6-2016

ii. _____

iii. _____

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

i. ~~_____~~ An Attempt to dismiss an indictment or otherwise

ii. prevent a prosecution... is normally not attainable

iii. through Federal habeas Corpus... Brown v. Estelle, 530 F.2d 1280, 1283 (5th Cir. 1976)

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

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

- (a) State v. Wheeler, 193 S.E. 2d 515, 518 (S.C. 1972)
- (b) South Carolina Rule of Criminal Procedure, Rule of Civil Procedure Rule 36
- (c) In Effective assistance of Counsel

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) S.C. Code 1962 section 43-232; Const. Article I section 11
- (b) State v. Edwards, 374 S.C. 543 (2007) 649 S.E. 2d 112
- (c) Powell v. Alabama, 287 U.S. 45 (1932)

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

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? Yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Violation of 5th, 6, 14th Amendment
 - ii. in state court Motion to Dismiss for Failure to indict (July 9, 2015)
 - iii. June 6, 2015 Filed for habeas Corpus in U.S. District Court.
 - iv. refuse to give preliminary hearing, Fail to indict
- (b) the name and location of the Court in which each was filed:
 - i. U.S. District Court 300 E. Washington St. Greenville S.C. 29601
 - ii. General Sessions Court of Laurens County 100 Hillcrest Sq. Laurens S.C. 29360
 - iii. _____
 - iv. _____

- i. Could not get relief through habeas Corpus
- ii. Attorney would not take me before the court
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 6-6-2016 at 2:36
- ii. 7-9-2015 Motion to Dismiss in General Sessions
- iii. _____
- iv. _____

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

- i. None
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes

Motion to Dismiss pursuant to Rule 3(c) S.C. Crim Procedure

14. If you answered "yes" to (13) identify:

(a) which grounds have been presented:

- i. Violated of my Constitutional Right. 5th, 6, 14th Amendment
- ii. Failure to indict
- iii. _____

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

- i. I was in Jail from 8-8-14 to 10-30-15 before being indicted
- ii. I demanded a preliminary hearing on 8-8-14 and was denied it.
- iii. _____

... ground set forth in (7) 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) My Attorney Bryan C. Able and Aaron V. Taylor would
 not bring it before the court.
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgement of conviction or the imposition of sentence? none
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? to Dismiss all Charges

17. If you answered "yes" to one or more parts of (16), list:

- (a) the name and address of each attorney who represented you:
- i. Bryan C. Able; 916 W. Main St. Laurens, S.C. 29360
Phone # 864-984-6100
- ii. Aaron V. Taylor; P.O. Box 1705 Greenwood S.C. 29648
Phone # 864-229-2229
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Mr. Bryan C. Able Filed Motion For Bond, Bond Reduction,
and Motion to Dismiss For Failure to indict pursuant to Rule 3(c)
- ii. But would not take me before the court, because He knew
I was not in the Jurisdiction of the court of General Sessions.
- iii. Aaron V. Taylor took me for sentencing knowing I was not
in the Jurisdiction of the court of General Sessions.

All charges dropped and Expunged off my Record
for them Violating my Constitutional Rights according
to the laws of this State of S.C.

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

No, I am out on Furlow until 1-26-17

STATE OF SOUTH CAROLINA)

County of Laurens)

VERIFICATION

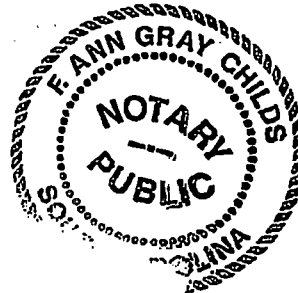
I, Kirk Willis, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the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

Kirk Willis

SWORN to and subscribed before me this 7
 day of September, 2016.

J. Anna G. Philke (L.S.)
 Notary Public

My Commission Expires: June 4, 2019



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

I, Kirk Willis, 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:

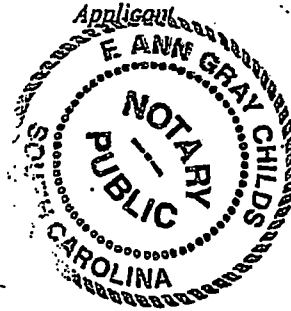
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kirk Willis

SWORN or affirmed to and subscribed before me this
7 day of September, 2016.

J. Ann G. Childs
Notary Public

My Commission Expires: June 4, 2019



Post-Conviction Relief

Kirk Willis-182845

question number 3- Violation of Court Order of protection

indictment number- 0000GS30

Probation Violation- 14-GS-30-0636

question number 4 (A) degree; indictment number- 15GS30-1735,

question number 10-A

Return Address

Kirk Willis

120 E. Bluford St.

Clinton, S.C. 29325

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	2016-CP-30-0757
Kirk Willis,	)	
	)	
Applicant,	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed September 9, 2016, would respectfully show this Court:

I.

Applicant was previously confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court.

Applicant was indicted at the October 2015 term of the Laurens County Grand Jury for attempted murder (2015-GS-30-1735), possession of a weapon during the commission of a violent crime (2015-CP-30-1739), attempted murder (2015-CP-30-1738), criminal domestic violence (2015-CP-30-1737), and criminal domestic violence (2015-CP-30-1734). Applicant was represented by Aaron Taylor, Esquire. On November 3, 2015, Applicant appeared before the Honorable Frank R. Addy, Jr., and pled guilty to first degree assault and battery as a lesser included offense of attempted murder. Indictments 2015-CP-30-1734, -1737, -1738, -1739 were dismissed as part of Applicant's plea. Applicant was sentenced pursuant to a recommendation to imprisonment for five years. Applicant did not file a direct appeal.

II.

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

1. State v. Wheeler, 193 S.E.2d 515, 518 (S.C. 1972).
2. South Carolina Rule of Criminal Procedure, Rule of Civil Procedure Rule 3(c)
3. Ineffective Assistance of Counsel
4. S.C. Code 1962 section 43-232; Const. Article: 1 Section: 11
5. State v. Edwards, 374 S.C. 543 (2007) 649 S.E.2d 112
6. Powell v. Alabama, 287 U.S. (1932)

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

Attached herewith and incorporated herein are the Laurens County Clerk of Court records regarding the subject convictions and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

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

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

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

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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 hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

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

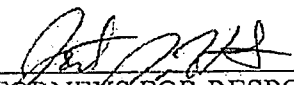
Respectfully submitted,

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Attorney General

ROBERT BOLCHOZ
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JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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February 17, 2017

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

2016-CP-30-0757

KIRK WILLIS,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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

Ashley A. McMahan, Esquire
Mac | Vance Attorneys, LLC
PO Box 5501
West Columbia, SC 29171-5501

DATED this 17th day of February, 2017.



Jocelyn Baker, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	Case No.: 2016-CP-30-00757
Kirk Willis,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on September 9, 2016, to add the following allegations:

1. Ineffective Assistance of Counsel as to Bryan C. Able, Esquire:
 - a. Failed to file a motion for a speedy trial, and if he did he also failed to have that motion addressed by the Court.
 - b. Failed to secure preliminary hearing. When Mr. Able was asked when the preliminary hearing would be held he indicated the Applicant was already indicted, when in fact, the Applicant was not. Applicant was not indicted until over a year later.
 - c. Failed to have bond reduction motion brought before the Court.
 - d. Failed to discuss possible defense and challenges to the evidence with the Applicant.
 - e. Failed to challenge the Solicitor's incorrect statements made at the bond hearing regarding the fact. Had he done so the Applicant would most likely have gotten a lower bond, PR bond, or ultimately the charges would have been dismissed
2. Ineffective Assistance of Counsel as to Aaron V. Taylor, Esquire:
 - a. Failed to address that Applicant's probation was revoked before he pled guilty.
 - b. Failed to address possible double jeopardy issues. There were multiple indictments for the same charges. Failed to also secure an arraignment on the charges that were directly indicted.
 - c. Failed to have Mr. Able's motions brought before the Court.
 - d. Failed to discuss challenges to the evidence with the Applicant. Counsel only went over the paperwork with the Applicant and never discussed a trial strategy.
 - e. Failed to discuss with Applicant that he could challenge the inconsistent statements made by the witnesses and didn't make a motion *in limine* to have those statements addressed by the Court prior to a guilty plea.

- f. Applicant was represented by Counsel for only two weeks prior to the guilty plea. Because counsel failed to offer any substantive representation regarding defenses to the charges, Applicant felt he had no choice but to accept the State's plea offer because he did not trust counsel to handle his trial in an effective manner.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application and this Amended Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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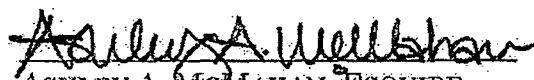
March 13, 2013

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Justin J. Hunter
 Assistant Attorney General
 jhunter2@scag.gov

This 13th Day of March, 2017.



ASHLEY A. MCMAHAN, ESQUIRE
 Attorney for Applicant

State of South Carolina)
) Court of Common Pleas
 County of Laurens)

2016-CP-30-00757

Kirk Willis)
 vs.) Transcript of Record
)
)
 State of South Carolina) Post Conviction Relief
 Defendant)

October 11, 2017
 Laurens, South Carolina

B E F O R E:

Honorable R. Scott Sprouse, Judge

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

Justin Hunter, Assistant Attorney General
 Attorney for the State

Ashley A. McMahan, Esq.
 Attorney for the Defendant

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(AW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(AW) Kirk Willis

Direct examination by Ms. McMahan: 4

(SW) Bryan Able

Direct examination by Mr. Hunter: 44

Cross-examination by Ms. McMahan: 54

(SW) Aaron Taylor

Direct examination by Mr. Hunter: 59

Certificate of Reporter 70

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E X H I B I T S

Applicant

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Arrest Warrant		X	37

1 THE COURT: Yes, sir.

2 MR. HUNTER: Your Honor, the next case is Kirk Willis
3 versus the State of South Carolina, 2016-CP-30-757. Your
4 Honor, he was indicted in Laurens County for two counts of
5 CDV, two counts of attempted murder and one count of a
6 possession of a weapon during the commission of a violent
7 crime. Your Honor, he was initially represented by Mr.
8 Bryan Able and then ultimately represented by Mr. Aaron
9 Taylor. On November 3rd, 2015 he plead guilty before
10 Judge Addy to a lesser included offense of assault and
11 battery first degree, as a lesser included of attempted
12 murder. The four remaining charges were dismissed. He
13 was sentenced pursuant to a recommendation to imprisonment
14 for five years. Your Honor, he did not file a direct
15 appeal. He filed this current action on September 9th,
16 2016. He is present today represented by Ms. Ashley
17 McMahan.

18 THE COURT: Ms. McMahan.

19 MS. MCMAHAN: Yes, Your Honor, the State calls Kirk
20 Willis to the stand.

21 KIRK WILLIS, being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Ms. McMahan:

25 Q Mr. Willis, did you file this PCR application?

1 A Yes, ma'am.

2 Q And we have got an amended application and we have
3 got the regular, your initial application?

4 A Right.

5 Q So we are going to go through, step-by-step,
6 everything that we have talked about.

7 A Yes, ma'am. I understand.

8 Q So on your initial application, okay, well, let's
9 just start with, who was your very first attorney that
10 represented you?

11 A My first attorney was Mr. Bryan C. Able.

12 Q Did you have anybody before Mr. Able?

13 A Yes, I had Ms. Chelsea McNeil.

14 Q And tell us, just give us a brief overview of what
15 happened with you and Ms. McNeil.

16 A I wasn't satisfied with Ms. Chelsea's behavior or
17 whatever and I came to the Court to tell them that I
18 didn't trust her. And I think it was the 6th of October
19 of 2014 they gave me a new attorney which was Mr. Able.

20 Q So when did you get arrested?

21 A I got arrested August the 8th of 2014.

22 Q And so when you were coming to court and you relieved
23 Ms. McNeil, what were you suppose to be coming to court
24 for that day?

25 A For bond.

1 Q But you didn't have a bond hearing?

2 A No, ma'am.

3 Q So then after that you were appointed Mr. Able, is
4 that correct?

5 A Yes, ma'am.

6 Q All right. So, let's start with your issues that you
7 had with Mr. Able.

8 A Yes, ma'am.

9 Q So what, you said on your application that he was
10 ineffective because he didn't, well, it kind of ties into
11 part of your amended application too, that he filed some
12 motions for you that were never heard?

13 A Yes, ma'am.

14 Q So tell us about those motions and what happened with
15 them.

16 A Okay. Me and Mr. Able, can I start from the
17 beginning when we first met?

18 Q Yes.

19 A This is before I ever met Mr. Able, didn't know him,
20 he didn't know me. He wrote me a letter, he wrote me a
21 letter telling me on November, on November the 24th of
22 2014 Mr. Able wrote me a letter. And the letter said, I
23 am in recipient of your most recent letter dated November
24 the 14th. I have filed a motion for bond on your behalf.
25 I will ask the Solicitor to schedule the hearing as soon

1 as possible. And it says, while I understand your
2 confidence in the belief you were being granted a personal
3 recognizance bond I must tell you, I do not share your
4 position. First of all, you admitted to the police that
5 you stabbed the victim and I have in my possession a
6 letter you wrote to your wife, Barbara Willis, admitting
7 that you stabbed the victim. I understand it is your
8 position that you were attacked first and you were only
9 defending yourself. This is the catcher right here, this
10 is the catcher. This is information that I will bring out
11 at the bond hearing. However, I have reviewed the
12 statement of Alexander Simmons who is reportedly a witness
13 to altercation stating that you were the aggressor. Now,
14 I have, I have here Mr. Alexander's statement but I also,
15 Mr. Alexander made two different totally statements and
16 put me in two totally different places. But he used the
17 witnesses, he used the witnesses statements instead of the
18 victim to say that he feel as though I am guilty already.
19 Now, he never met me, never knew my side of the story.

20 Q Okay, let's pause just for a minute there. So, it
21 says you asked for a bond hearing for you?

22 A Yes.

23 Q What was the date of the letter?

24 A The 24th of November.

25 Q When did you have your bond hearing?

1 A December the 6th, 5th, December the 5th.

2 Q Okay. So almost a month later?

3 A Yes.

4 Q Okay. So I am sorry to interrupt you, I just wanted
5 to clarify that. Feel free to continue.

6 A Okay. This is when I first met him. When I got this
7 letter, he didn't know I had a copy of my motion. Oh,
8 where did you get this from. So I showed him, I showed
9 him, I have the statements right here, right here in my
10 possession. I have the statements, where are my booking
11 paper in my case. I have the statements that coincide to
12 showing, before I went to the bond hearing me and Mr. Able
13 went over it, when we went over it he changed, oh, I am so
14 sorry, I didn't mean that because I didn't mean, I didn't
15 mean for you to take it that way. We will discuss all of
16 this when we get at the bond hearing. I let him know,
17 that's at the end of the letter, that is at the end of the
18 letter where he told me, he said, it is my professional
19 opinion that all of this together with your lengthy
20 criminal record will cause a Judge to set a high bond. I
21 understand your position that the alleged victims and
22 witnesses are lying. But those are issues that are
23 addressed at a trial. Remember that word, trial, it was
24 some things later on that I had asked Mr. Able to do for
25 me.

1 Q So what happened at the bond hearing?

2 A Oh, okay. At the bond hearing. At the bond hearing
3 me and Mr. Able was standing right here, we were standing
4 right here. The Solicitor was standing over there. The
5 Solicitor came out to the courtroom and the Solicitor
6 stated this, he said, Mr. Willis, he said Mr. Willis, he
7 said about my criminal record this and that and another.
8 And then he said, Mr. Willis admitted to stabbing the
9 victim. Your Honor, Mr. Worthy stated, Mr. Worthy stated,
10 I am going to read what the Solicitor said, the first
11 statement that the victim gave. He said, Mr. Worthy says
12 right here, it says, reporting officer asked Mr. Worthy
13 where this occurred. And he stated that Calhoun Town
14 House, down the street in the curve. Mr. Worthy continued
15 and stated that the subject stabbed me in the head from
16 behind. This incident occurred because Mr. Worthy think
17 he is messing with his estranged wife. But I have been
18 trying to tell him I am not messing with her, stated Mr.
19 Worthy.

20 Q Okay, let's pause for a second. Did Mr. Worthy make
21 any other statements?

22 A Yes ma'am, he did.

23 Q Was that consistent with the other statements that he
24 had made?

25 A No, ma'am. No ma'am, in no fashion.

1 Q And at the bond hearing you already had all of this
2 information including the different statements. Is that
3 correct?

4 A Yes ma'am and the statement, and the statement, this
5 statement, there are statements that I have right here
6 showing that me and Mr. Able, when I was standing here, I
7 was getting ready to say, hold it, Your Honor. He put my
8 arm back down. This right here for trial, don't do that,
9 just be quiet, this is for trial. And then when I sit
10 down in that chair over there it dawned on me. He kept
11 saying all about the witnesses because it is in my bond
12 paper.

13 Q Do you feel like if Mr. Able had brought that to the
14 attention to the Court that you would have had a different
15 bond?

16 A I think I would have been acquitted right then
17 because it would have showed the fact that everybody was
18 lying. It would have showed it. And from my
19 understanding, when the Solicitor said what he said, Mr.
20 Able could have crossed him because he said something that
21 was contrary. If Mr. Able would have crossed him and
22 showed the two statements that Mr. Worthy gave that was
23 inconsistent, inconsistent with the statements that he had
24 gave the first time it would have been over with right
25 there, it would have been over with.

1 Q Well, even if it wasn't over with, do you feel like
2 you would have at least gotten a bond?

3 A I would have gotten a personal recognizance bond.

4 Q Okay.

5 A Because I wasn't even indicted at the time.

6 Q Okay.

7 A Yes, ma'am. I wasn't even indicted.

8 Q So the next issue that we had, so we have talked
9 about the hearing with Mr. Able. So you had Mr. Able
10 until when?

11 A I had Mr. Able for about thirteen and a half months.

12 Q So let's talk about all of that.

13 A Yeah. Yes, ma'am.

14 Q So what are the issues in your main application but
15 also, remember we did an amended application, where you
16 talk about the motion for, he made a motion but it was
17 never heard.

18 A The first one was my bond hearing.

19 Q Okay.

20 A My bond reduction. The reason, when he filed my bond
21 reduction on February the 6th, the reason he didn't take
22 me to it is because when he requested, I have got a letter
23 right here, let me read the letter to you, I've got the
24 letter. I have got every letter he ever wrote me. Here
25 you go right here. I am reading this letter. This is

1 from Mr. Able, on February the 15th, 2015. It says, I am
2 in recipient of your letter. The first mistakenly dated
3 January the 2nd, 2014. And the second dated January the
4 8th, 2015. Yeah, on it is '14 but it is '15. It says,
5 you have asked that I write and file and request for a
6 bond reduction and personal recognizance bond. I remind
7 you that we were just before the Court on December the 5th
8 of 2014 to have a bond setting. Judge Hocker set your
9 bond at \$35,000.00 dollars. I do not believe that with
10 the charges you have pending that you will be, you will
11 get a bond reduction. I have also maintained with you
12 that you will not get a personal recognizance bond. Now,
13 I want to remind you now, this is me being in jail six
14 months and I am still not indicted. Okay. And you have
15 got to look at the fact that the law does not state, South
16 Carolina rule, criminal rule of evidence, Rule 613 does
17 not accept any statements in the court, never did. But
18 yet I asked him to bring all of this up at my bond
19 reduction. He never took me to it, never, even when I
20 asked him about the indictment. He never brought me, he
21 never would bring me because of that.

22 Q Let's pause just a little bit. So he did file a bond
23 reduction motion?

24 A Yes ma'am, he filed it.

25 Q And you were never brought to court for that?

1 A Never brought to court for it.

2 Q And let's back up even a little bit further. So when
3 you were first arrested you asked for a preliminary
4 hearing, didn't you?

5 A Yes, ma'am. When I was first arrested, when I was
6 first arrested, when I came out in front of the Judge and
7 handcuffed and stood in front of her, she said I cannot
8 grant you bond. She said but you got some rights. She
9 said you have the right to a preliminary hearing, would
10 you like one. I said, yes ma'am. She handed me a card, a
11 little piece of paper. I filled it out, had the police
12 officer in the courtroom, handed it back to the
13 Magistrate. I sit down, when Mr. Able became my lawyer he
14 sent me three letters in the mail. One was to a Robert
15 Morrison, saying not to mess with me or whatever because
16 he have to go through the lawyer.

17 Q That was the officer, right. So you were telling the
18 officer not to talk to you directly but he needed to talk
19 to Mr. Able?

20 A Yes, with my lawyer. Yeah. That was one letter.
21 One letter was saying that he requesting a preliminary
22 hearing for me with Joe Whitsel. And the next one him
23 writing Lance Sheek saying he needed to meet with him
24 immediately about my case, concerning my case.

25 Q So Mr. Whitsel is the Magistrate Judge, right?

1 A Yes, ma'am.

2 Q So it was a letter to the Magistrate saying, I would
3 like a preliminary hearing?

4 A That's what he said. But when he came to see me for
5 the first time on December, I went to bond on December the
6 5th which was that following, I think it was on a Tuesday
7 or something. The, it was like two days before he came to
8 see me that is when he took me for my bond hearing. Okay.
9 But when we were talking about everything and when I was
10 telling him, he told me, when he first come up, I said,
11 oh, glad you filed. I told him, I am glad you asked them,
12 you requested to get my preliminary hearing because all of
13 this can come out at my preliminary hearing about these
14 statements and this will be over with. He said I sent
15 these letters to everybody. So I don't even know if he
16 ever did what he said he done.

17 Q So you don't know if he actually sent the letter?

18 A No, --

19 COURT REPORTER: Wait, wait.

20 THE COURT: Slow down, don't talk over each other.

21 MR. WILLIS: I am sorry.

22 Q So you are asserting that you are not sure that he
23 actually sent the letter to Judge Whitsel asking for the
24 preliminary, is that correct?

25 A No, ma'am. He told me he done it three times but I

1 don't think he done it. Because from my understanding, if
2 I request a preliminary hearing, by the law I suppose to
3 be granted that preliminary hearing. And if my attorney
4 took the time and did what he said he done by law he was
5 suppose to be got that Judge, that Magistrate to give me
6 my preliminary hearing. That is in my head of what's
7 right.

8 Q Let me interrupt just for a second. So when were you
9 indicted?

10 A I was, whoa man, I was indicted fifteen and a half
11 months later after I was locked up.

12 Q And when was that first letter from Mr. Able saying
13 that he asked for the preliminary hearing?

14 A October the 1st of 2014.

15 Q At any point did you ever have a conversation with
16 Mr. Able asking him why you didn't have a preliminary
17 hearing?

18 A I wrote him letters, numerous letters asking him. As
19 you can see, I wrote numerous letters asking him.

20 Q And what did he say in the last conversation as to
21 why you didn't have it?

22 A Oh, I got that letter too, let me read it. Here it
23 goes right here. Let me read what he said. Let me put my
24 glasses on. Right here, it says, as to your preliminary
25 hearing, I requested by preliminary, I requested a

1 preliminary hearing for you by my letter dated October the
2 1st, 2014 to Joe Whitsel. When this hearing is scheduled
3 I will let you know, as I told you when we spoke, most
4 Judges take the position if you have been indicted you are
5 no longer entitled to a preliminary hearing. And I was
6 never indicted then. I didn't get indicted until eleven
7 months after this letter.

8 Q All right, so, we have talked about that. Then we
9 were talking about the bond reduction. But he did file a
10 bond reduction motion for you, it wasn't heard. What were
11 the other motions that he filed?

12 A Right here. I have a motion for a speedy trial and a
13 motion to dismiss all charges for, under Rule 3(c) because
14 I wasn't indicted. He did file it July the 6th, July the
15 9th of 2015. I was in jail eleven and a half months.

16 Q So he filed the motions but they were never heard?

17 A Never heard. He never took me to them, never did.

18 Q And when did you plead guilty?

19 A I plead guilty November the 3rd, 2015.

20 Q And at what point after he filed those motions for
21 you did Mr. Taylor become your attorney?

22 A Mr. Taylor, August, July, August, September, October,
23 October, four months, four and a half months.

24 Q Okay. Did you ever talk to Mr. Able about filing
25 motions in limine to try to get some of the statements

1 cleared up?

2 A Yes, ma'am. I asked him, but I didn't know that
3 word, in limine. I told him, could you get me evidentiary
4 hearing on the statements and why you keep putting me off
5 because I can't get, about the dismissal of the charges.
6 When the first time, he said the reason was, this is like
7 in September, no, August. He said because his mama
8 passed. Then September came up, he said he had a jury
9 trial which he didn't have.

10 Q So are we talking about Mr. Able now or are we
11 talking about Mr. Taylor?

12 A Mr. Able.

13 Q Okay.

14 A Mr. Able.

15 Q I am sorry.

16 A This is about the motion for the speedy trial and
17 dismissal of the charges. He filed it in July, July,
18 court term came in July, from my understanding they say
19 within ten days or something, answer, whatever he said.
20 But when it came down to something that is a speedy trial,
21 I have been in jail already over a year, you know, to me
22 if he was representing me, see we are skipping things.
23 This is a whole lot more in between.

24 Q Okay. Let's talk about what is in between.

25 A Okay. What is in between, okay. When I talked to

1 Mr. Able, the times, other than the letters, the few
2 times, well he came what, two times, three times. How
3 many times, three or four times you came to see me. But
4 anyway, the time that he came to see me, when I was trying
5 to go over this with him and asked him, I didn't know
6 about, I asked for a evidentiary hearing. When I asked
7 about a evidentiary hearing I got letters. He telling me
8 we got to wait to trial. Let me read one of the letters
9 that he said. I can read the first one. Everything that
10 me and Mr. Able were talking about, when it came down to
11 filing a motion for me on my behalf or doing something, he
12 always said, his magic word was, we have to wait for
13 trial.

14 Q So did you ever talk about when that trial was going
15 to come up?

16 A He said, yeah, yeah. He never could, he said he
17 would never give me a trial because it is up to the
18 Solicitor to bring a person, you know, to bring a person
19 out here in the court. It is up to the, but it didn't
20 take but a week when I wanted to fire him, it didn't take
21 but one week. I filed a motion, they didn't hear my
22 motion. The motion that I filed to dismiss him, the Court
23 didn't hear it. So he filed a motion to relieve himself
24 and then he got with the Solicitor, here, I got the motion
25 right there. Let me find that thing. I have got every

1 single copy of what Mr. Able gave to me, every single
2 copy. I got it, I got it.

3 MS. MCMAHAN: The Court's indulgence, - Your Honor.

4 MR. WILLIS: Excuse me, sir.

5 A I got it in my paperwork. But, yes, when I filed the
6 motion for Mr. Able, right, the Clerk of Court stamped it,
7 sent it back to me. It wasn't heard, they wouldn't bring
8 me in the courtroom. So, then I get a letter from Mr.
9 Able telling me that, I see that you are wanting to fire
10 me but I don't go along--

11 Q When did you file your motion to have him relieved,
12 do you remember?

13 A That is what I am getting at, it was in August the
14 26th.

15 Q Shortly after his other motions were filed you moved
16 to have him relieved?

17 A A month later when he kept putting me off and not
18 taking me into the courtroom, I am like, man, so I let him
19 know the other lawyer would take me, present the motion.

20 Q Okay.

21 A And I tried to do it but it didn't happen. But
22 anyway.

23 Q So you filed it and it never got anywhere. And then
24 he filed a motion to have himself relieved and it got
25 heard?

1 A Just like that but I couldn't get in the courtroom
2 for filing of the motion to dismiss--

3 Q So the other three motions that were still pending--

4 A --even after my sentencing.

5 Q So is there anything else that you wanted to bring up
6 about Mr. Able, were there issues with your charges, maybe
7 having more than one?

8 A Yeah, more than one charge. I had abuse of a weapon
9 of a violent crime. I had a violation of a order of
10 protection, attempted murder. Well, I got two warrants
11 for attempted murder for the same charge. I don't know
12 how that even came about. But then I got, then I got a
13 abuse of a weapon of a violent crime, attempted murder,
14 violation of order of protection, criminal domestic
15 violence third. Yes, I got those warrants and all Mr.
16 Able was representing me on. And he just, everything he
17 said he lied, he lied to me from the day, he lied to me
18 from the time, he didn't even meet me to know that I was
19 pleading self-defense. He lied from straight on, all the
20 way out. His whole legal representation for me was to the
21 Solicitor. He was doing everything to help the Solicitor.
22 He was talking to the Solicitor on my behalf, hell, I was,
23 excuse me. I was in jail a year when he decided, saying
24 he was going to talk to the Solicitor on my behalf but
25 never brought up the idea when the Solicitor said he had

1 enough information or enough to prosecute me, he ain't
2 represent me or nothing. Said, why didn't you file an
3 indictment. He never did, that was the simplest thing he
4 could of did, talking in my behalf. Why haven't you, you
5 said you got all of this information against my client.
6 Why want you file an indictment or present an indictment.
7 But yet he wrote me a letter saying, when I asked him
8 could me and him talk to the Solicitor, he told me I
9 couldn't do that.

10 Q Did he explain to you that the Solicitor is the one
11 that files the indictment, not him?

12 A Ma'am?

13 Q Did Mr. Able say that the Solicitor is the one that
14 does the indictments, not him?

15 A No, we never had a conversation like that.

16 Q Okay.

17 A Where is that, here you go. Yes, yes. And here is
18 another great fantastic story that he, that he
19 deliberately kept from the Solicitor and the Court. I am
20 going to read this letter dated September the 10th. This
21 is after I have been in jail over a year. This is before,
22 this is right after, here you go, this is how I found it
23 out. See, here are the motions right here, here you go,
24 right here. I filed this motion right here because a
25 witness on my behalf, the police at the time that she gave

1 the statement, the police didn't want to hear what she
2 have to say so they tore her statement up. So after me
3 and her got to talking again I sent her up to Mr. Able.
4 So when I sent her to Mr. Able she give Mr. Able a formal
5 statement that answered that every last statement that was
6 against me, how it was a lie. So this is how I found out
7 that he ever got the statement. I wrote the Clerk of
8 Court. This is to Ms. Lancaster. It says, Ms. Lancaster,
9 I am writing, writing, requesting a copy of a affidavit
10 from Barbara Willis about, 201408122, an affidavit in CDV
11 third offense in violation of the court order. My lawyer,
12 Bryan C. Able, took her statement, I am asking, I am also
13 writing Mr. Able letting him know that I am requesting
14 this affidavit from the Clerk of Court, Ms. Lancaster.
15 Kirk Willis.

16 Q You are talking about your wife's statement?

17 A Yes, ma'am.

18 Q What's her name?

19 A Barbara Willis.

20 Q And so in your letter, basically you are saying that
21 Ms. Willis wrote a letter saying, I don't want these
22 charges pursued and then mailed it to Mr. Able?

23 A No, no, no. That, that is this statement right here.
24 I am not talking about this statement.

25 Q Okay. We are talking about a different one?

1 A Right, yeah. I am talking about this statement.

2 Q Okay.

3 A And this is the proof that she gave him the
4 statement. This is a letter from Mr. Bryan C. Able. He
5 said he sent me a copy of it. I never got that copy.
6 This was a lie, straight out lie. I would like to see the
7 statement that he took from her. It says, as requested, I
8 am enclosed, herein a copy of the affidavit signed by Ms.
9 Barbara Willis. Please note that I have not yet filed
10 this affidavit with the Court, retained the original in my
11 file. I am also enclosing a copy of affidavit of your
12 wife dated April the 8th, 2015 and filed May the 5th of
13 2015 which I did not prepare but do have a copy of. I am
14 also in recipient of your motion to have me relieved as
15 your attorney filed on August 26th, 2015. Please be
16 advised that I will not object to be relieved as your
17 attorney. I do not, however, agree with any of the
18 reasons stated in your motion as to why I should be
19 relieved as your attorney. By separate letter I am
20 writing, here you go, Assistant Solicitor Lance Sheek
21 asking that your motion be placed on the docket for the
22 next term of court.

23 Q Let's pause for one second. So you are talking about
24 two different statements, right, from Barbara?

25 A Yes.

1 Q So one of them he sent you a copy of?

2 A Right.

3 Q And the other one--

4 A --he didn't, he just put it on paper saying--

5 Q --but the letter says he filed it with the Clerk?

6 A The letter is saying he didn't file it with the
7 Clerk.

8 Q That is the one that you never got?

9 A Never got it. The Court never seen it. I had to
10 wait for a hearing to have them dismissed, the Judge
11 ordered him to give me the statement. He gave me a copy
12 of this saying it was a copy that my wife was suppose to
13 got that he took from her on June 20th but it wasn't. He
14 looked at me, lied, sent me on back, got mad or whatever,
15 yeah. But like I said, he been doing deceitful things and
16 the man never met me. And every time he was sending over
17 to see me, the few times he came to see me, you know what
18 he said, oh, they really want you bad. That is what, that
19 is the topic of his conversation. They want you bad. And
20 we would go over this right here, I would ask him, file a
21 motion about the statements to be dismissed. I called it
22 a hearing. But he just did me dirty, I mean, he straight
23 up did me dirty. And I kept every letter he got to prove
24 it.

25 Q One of the issues that you brought up is that he

1 didn't discuss possible defenses and challenges?

2 A We never go that far, ma'am. Never even got that
3 far.

4 Q So you never even got a chance to even talk about
5 defenses?

6 A No, no, never. He ain't come to see me but three or
7 four times the whole time he was my lawyer.

8 Q Okay. And then you are talking about having two
9 charges for attempted murder?

10 A Yes, ma'am.

11 Q I am going to show you--

12 A One is 35 and one is 38. On these indictments, from
13 my understanding, on South Carolina Code of Laws, 1976,
14 17-19-20, it says, it says indictments and information.
15 Certainty and particularity. Indictments is sufficient,
16 offense is stated with sufficient certainty and
17 particularities to enable for Court to know what judgment
18 to pronounce and Defendant to know what he or she is
19 called upon to answer and whether he or she may plead,
20 acquittal or conviction, therefore--

21 Q Okay, let's pause--

22 A --I am indicted for the same crime twice and it ain't
23 no information on it say nothing about a lessor offense
24 like the law is saying.

25 Q Okay. So you have two different indictments for

1 attempted murder, these were filed with the Clerk, were
2 they not?

3 A Yes, ma'am. Two different warrants.

4 Q Okay. One, 1735 that relates to a warrant number,
5 and 1738 for a direct presentment number for the same
6 charge. Is that correct?

7 A Yes, ma'am.

8 Q And it is the same victim in both of them?

9 A Yes, ma'am.

10 Q Okay. So that would have been when you were indicted
11 when you were represented by Mr. Taylor. Did Mr. Taylor
12 bring up the fact that you--

13 A No, we never talked about it. He just came to me on
14 a Friday, told they indicted me on, at 3:30 that Friday.

15 Q Okay. Let's move on to Mr. Taylor now. We discussed
16 everything with Mr. Able?

17 A Yes, we might go back a--

18 Q If something comes up you remember.

19 A Yeah. He did a lot.

20 Q So Mr. Taylor becomes your attorney in August of
21 2015?

22 A No, no, October.

23 Q October.

24 A Of 2015.

25 Q And you plead guilty that same in November?

1 A Yes, yes. He was my lawyer for what, two weeks.

2 Q So let's talk about what you and Mr. Taylor talked
3 about.

4 A Me and Mr. Taylor, we talked about everything that I
5 have got here, we talked most about State versus Edwards.
6 About the Rule 3(c) that Mr. Able filed, the motion for me
7 to have my charges dismissed and the speedy trial. We
8 talked about that, when me and him was talking about it he
9 was looking at the files, going over them and everything.
10 And my only thing that I have about Mr. Able is the fact
11 that I had two warrants against, I mean two indictments
12 with all the charges against me and he didn't take the
13 initiative at all to bring that to my attention.

14 Q You mean Mr. Taylor, not Mr. Able?

15 A Mr. Taylor, to bring that to my attention. Because,
16 Mr. Taylor, I am going to tell you, I really respect you
17 and I like you. But it was certain things that I didn't
18 know, you know, that should have came out. You know I
19 don't have no harsh feelings for you, I swear I don't.
20 But I thank you for what you have done because I would
21 have rotted in that jail if it wasn't for you. They would
22 have kept me there without anything. That was the goal,
23 that was their goal to keep me there. The only reason I
24 plead guilty because I was scared. Because when I asked
25 you about State versus Edwards you never came back at me

1 with any type of case. I was scared. That is the bottom
2 line, I cried in front of you. I tried my best to let you
3 know how Mr. Able did me and I did all of that. Remember
4 I was telling you about how Mr. Able was suppose to be
5 getting pictures and all of this and he was telling me he
6 was going to do this and do that. And he never did even
7 question the Solicitor about anything like that, never
8 questioned them.

9 Q Let's pause right there and sort of address some of
10 the issues in your application. So did, one of the issues
11 was challenging inconsistent statement and issues that you
12 had where they were talking about different things in the
13 police report but also comparing to your injuries that you
14 had in your booking photo to what actually happened. So
15 let's talk about that.

16 A Yes, right here. I showed Mr. Able this too. That
17 is when he, oh, I didn't know. That is self-defense and
18 then he would get in the courtroom at my bond hearing. He
19 spilled out a good case now, I mean he spilled it out, I
20 mean letting them know everything. Then the Judge, he
21 ruled on my bond paper, with my bond paper there. He
22 ruled on my bond paper right here.

23 Q That was with Mr.--

24 A Able. See it is going to come to me, he did a lot.

25 Q Let's put your bond paperwork--

1 COURT REPORTER: Wait, wait, Judge.

2 THE COURT: Make sure she finished her question.

3 MR. WILLIS: I am sorry, Ma'am, I am sorry.

4 Q So we are going to put this bond paperwork up here so
5 we can address this later. Let's finish what we were
6 talking about with Mr. Able, I mean with Mr. Taylor, when
7 you got him you sat down, did you talk with him about the
8 different statements that everybody had made in the police
9 report and compared them with your booking photo?

10 A Yes, yes. He told me he believed me. He told me
11 this.

12 Q Did you talk to him about the statements, I mean not
13 the statements, the motions that Mr. Able had filed?

14 A Yes, I asked him would we address them. He told me,
15 he said, the Solicitor was going to take me to court on
16 the 11th. He said something about we would address those
17 issues. The Judge and I have to, that would be something
18 that would have to be took up on an appeal. Something
19 like that he was saying.

20 Q So he was saying that the motions could only be
21 addressed on an appeal?

22 A Yes, because they are bringing me to trial. They are
23 bringing me to trial, everything has to be addressed at
24 appeal, yes.

25 Q So you address it through the trial and then you

1 appeal?

2 A I guess that is what he was saying, I guess. I don't
3 know how it goes but I know it was, had to address the
4 issues on appeal.

5 Q So what did he say about the indictments for the two
6 different charges?

7 A He just told me I was indicted. They indicted me.

8 Q Did he tell you that there were two attempted murder
9 charges?

10 A No, no. He just told me I was indicted that Friday
11 when he came and talked to me.

12 Q Okay. When did you find out you had the two
13 different murder charges?

14 A When I took, was getting ready to go to the
15 penitentiary, I said, I told he jailer, I said, ma'am, my
16 lawyer, I can get copies of everything up here. So I get
17 copies of my tracking sheet, tracking sheet, I have got
18 them with me. It comes to find out that I got two
19 indictments but only, upon the two indictments, one
20 indictment said that I was arrested on August the 8th of
21 2014 which is true. Now on the other indictment, on the
22 tracking, attached to that tracking sheet it is saying
23 that I was arrested on October the 30th, 2015. That is a
24 whole year and a half saying that I was free. But I was
25 in the county jail and I was indicted for it. How did

1 that be. I don't understand.

2 Q But ultimately one of these was dismissed, right?

3 A But see, we go back to the law.

4 Q Well, let's answer my question first. One of these
5 dismissed?

6 A Yes, one of them was dismissed I guess, I guess it
7 was.

8 MS. MCMAHAN: Your Honor, obviously these are Clerk's
9 records if you would like to see them, I can show.

10 THE COURT: Are you going to make them exhibits?

11 MS. MCMAHAN: Sure, do you mind--

12 A I got some more now, I have got some more on other
13 charges.

14 Q Wait a minute.

15 THE COURT: I have the sentencing sheet and the
16 indictments.

17 MS. MCMAHAN: Do you have the nolle pros indictment.

18 THE COURT: I have got number 1735 and then I have,
19 let's see, 1739, nolle pros. I have got 1738.

20 MS. MCMAHAN: I just wanted to make sure, thank you.

21 THE COURT: Also 1737.

22 MS. MCMAHAN: Yes, sir.

23 THE COURT: And 1734 and it looks like all of those
24 are nolle prosed.

25 Q So the Judge has all of those records, okay. All

1 right. So, I am sorry. I had to stop you so we could
2 finish. What were we just talking about?

3 A You were talking about the statements.

4 Q Yes. So you are talking to Mr. Taylor about the
5 different statements that everybody has made in the police
6 report. So what was he saying, how to challenge that?

7 A Well, he said that when we come out here, that yes,
8 we can challenge, when they get on the stand, remember how
9 you did me when you asked the question. A direct question
10 or indirect because how would you, the statement, you have
11 to find grounds for it. How would you get the grounds for
12 it and he said, and the guys said--

13 Q So he did it through an example?

14 A Right.

15 Q Explained it through a question and answer example?

16 A Yes. And I was asking, but to save the county money,
17 it is something that we could do to answer this
18 beforehand. You know, go to a hearing or something to
19 answer and dispute the statement before we ever get in
20 front of a jury or anything like that. He said, yeah. He
21 said, yeah. There is a way to do it but the Solicitor
22 taking me to trial on November the 11th.

23 Q Okay. And so it was going to have to be--

24 A I didn't see him any more after that until that, that
25 Monday he came and told me about what the Solicitor wanted

1 to do. And he telling me that five years sound pretty
2 good, a good offer and everything. So I told him I would
3 think about it.

4 Q Okay.

5 A Okay.

6 Q Tell me how you decided to go from being in a trial
7 that November to pleading guilty just beforehand?

8 A When I sit down and talk to Mr. Able, when we were
9 talking I asked him about State versus Edwards. It is a
10 case that was overturned, three brothers and one of the
11 brother's sentence was overturned because of, not the
12 speedy trial but the lack of jurisdiction because it
13 wasn't granted a preliminary hearing. The sentence was
14 overturned, one of the brother's. So I was explaining it
15 to him and he was telling me, you know, he didn't really
16 understood, know about the case. So he was going to look
17 at the case but then he said, I will be back and we will
18 go over it again and I will see you in two weeks. I can't
19 see you this Friday but I will see you that following
20 Friday. So that following Friday came and I asked him, I
21 said, are you looking over the case. And he said, like,
22 he didn't know what I was talking about. Right then in my
23 mind, well, no, I can't take him to trial.

24 Q So you felt like and I am not trying to put words in
25 your mouth but tell me if this is a good explanation of

1 how you felt. Did you feel like, because he wasn't doing
2 this work preliminarily for you that you did not feel like
3 he would go through with a trial very well?

4 A Listen, he knew I was scared. He knew it and he knew
5 because he watched me cry, boohoo, he watched it now.
6 When we were sitting down talking but I was ready to go to
7 trial, but when he came, the second time we talked it was
8 a different thing. No, I am not going to do it. I even
9 wrote him a letter I was so scared and I would take the
10 plea, man. I wrote a letter but it went to the
11 Solicitor's office and not his office.

12 Q So you would have gone to trial had you felt more
13 comfortable?

14 A And a time to get, because, this is what he told me.
15 He couldn't get the pictures because Mr. Able never even
16 asked for them, what he told me. And it was the pictures,
17 the going over the, it was the pictures, the blood, the
18 blood toxicology report and the statements. It was stuff
19 that he was not or couldn't get for me before trial. And,
20 no, we can't do that. And he was asking me why, he asked
21 me why did the blood matter. Because, man, if you look at
22 the evidence, I showed him. I said, sir, if you look at
23 the booking report it is telling you that all the blood is
24 over here. But yet, the victim, the witnesses, we fought
25 over here. And you read the statement, you could read the

1 report where it says, there are no scuff marks on the
2 ground. So I am just me talking to Mr. Taylor. If they
3 are saying, if the victims, the witnesses and everybody
4 saying that we are fighting over here some twenty feet
5 away how is all the blood and everything over here. That
6 means he had to come from over there to come over here.
7 You see what I am saying. When I went over that with him
8 and everything, about the toxicology, now you are making a
9 good point. But in my mind we can't ever get the pictures
10 to show what we are talking about. I would be a fool to
11 come out here.

12 Q So you just did not feel comfortable at that point,
13 he would have the ability to represent you in a trial in a
14 couple of weeks?

15 A No, it was days, it wasn't weeks, it was days. No,
16 he was not able, there was no way.

17 Q So that is why you made the decision to plead guilty?

18 A Yes, ma'am.

19 Q Okay.

20 A The Solicitor's offers denied me a lot and my lawyer
21 was telling me he was talking for me but he wasn't.

22 Q I am sort of working concurrently here. What was the
23 issue with your, you were on probation when all of this
24 happened, right?

25 A Yes.

1 Q What was the issue with your probation being revoked?

2 A As soon as the, oh boy. Mr. Able came to see me on
3 June the 9th telling me, when I leave here I am going to
4 file a motion to have your charge dismissed because you
5 are not indicted. This is June the 9th. I am like, okay,
6 make sure you send me a copy now because I didn't trust
7 him. Okay. June 9th comes, it is going by. So July
8 rolls around, a dude lets me get a call, calls him on the
9 phone. But I couldn't talk to him, I talked to his
10 secretary. She couldn't tell me nothing so I, can't get a
11 copy of the motion. Come to find out he didn't never file
12 the motion. He waited until July. So when he left the
13 jail he went to the probation people, told them what he
14 was going to do. The reason I know this for sure is I am
15 going to get to that. He told the probation people to
16 violate my probation. He told them because I, all right,
17 when the probation people violated my probation. Mr.
18 Bryan Able walked in the door, Mr. Bryan Able walked in
19 the door of the jail. He didn't know that I was back over
20 at the phone. So as my probation officer passed Mr. Bryan
21 Able said, did you see him, did you serve him. How would
22 he know that this man is serving me a warrant.

23 Q Okay. So, is this that warrant?

24 A Yes, that is the warrant.

25 Q Was this warrant served on June 10th?

1 A Yes, ma'am. And I wasn't even found guilty, wasn't
2 even indicted.

3 Q Okay. Is this a copy of that warrant you were
4 served. This is your copy of that warrant you were
5 served, isn't it?

6 A Yes, ma'am.

7 Q Okay.

8 MS. MCMAHAN: Your Honor, at this time I would like
9 to move this into evidence.

10 THE COURT: Any objection?

11 MR. HUNTER: No objection.

12 THE COURT: That would be Applicant's number 1
13 admitted without objection.

14 (Whereupon, Applicant's Exhibit 1 was admitted into
15 evidence.)

16 Q I will get you a copy of that, okay.

17 A Yes, ma'am.

18 Q So you were talking about, you are still back in the
19 holding area and you hear him?

20 A I witnessed, hear Mr. Able do this.

21 Q Okay.

22 A I hear, I looked at him and was like, what the heck.

23 Q So you were upset because you felt like you were
24 betrayed by him for him telling them to do that?

25 A From the first letter he wrote me I felt betrayed,

1 from the first letter.

2 Q Did you discuss that warrant with Mr. Taylor?

3 A Yes. Me and Mr. Taylor, we went over this.

4 Q Okay.

5 A We went over everything right here, we went over.

6 Q So did you tell him you felt like your probation had
7 already been revoked?

8 A No, I told him, how could they revoke my probation.
9 I had been trying to give me a \$50,000.00 dollar bond and
10 I am in jail, they revoked my bond. I am not even
11 indicted and they violated my probation. I come to court,
12 come to find out, I come to court and the Judge is going
13 to tell me, because I wrote the Judge asking him how could
14 they violate my probation and I am not found guilty. This
15 is why he made the statement in open court.

16 Q Who is he?

17 A Judge--

18 Q Addy?

19 A Yeah, Addy. The statement he made, this is who he
20 made the statement. He said on page 6.

21 Q You can just say page 6, everybody has a copy of the
22 transcript.

23 A Okay. On page 6 where he said, I need to review with
24 you a few of your constitutional rights. If you don't
25 understand something I am telling you, stop and I will

1 allow you to talk with Mr. Taylor. This is me, yes sir, I
2 understand. This is the Court, do you understand that
3 this is a violation of your probation. This plea would be
4 a violation. See, I wouldn't never even guilty, never
5 even indicted.

6 Q But you had a prior conviction that you were on
7 probation for, right?

8 A Yes.

9 Q And that is what that arrest warrant was for?

10 A Yes.

11 Q Okay.

12 MS. MCMAHAN: So, Your Honor, he was pointing at page
13 6, line 8 through 15.

14 Q So you got the arrest warrant for it. Did Mr. Taylor
15 sit down and say, hey, by the way, because you are on
16 probation on this other charge and you are pleading guilty
17 to this one it violates your probation?

18 A Yes, we made a deal with, I have time served, I have
19 time for, that I had been in jail, to add on to that.

20 Q So Mr. Taylor got you a deal on--

21 A Probation. He gave me, 104 days to add to the 442
22 days that was already in jail.

23 Q And then they backdated it for you, right?

24 A No, that's what was the thing, see. Mr. Taylor told
25 me, I stayed in jail for 556 days. Mr. Taylor gave me the

1 impression that I was going down the road and do 6 months,
2 because on a non-violent sentence you do 30 months. Out
3 of the 30 months you are, will get a furlough on your last
4 6 months, which I got, but I did 11 more months and not 6.
5 But that is a done deal.

6 Q So Mr. Taylor, how did he give you the impression
7 that you would only have to do 6 months?

8 A I am telling you, because, non-violent. I had
9 already did 500, if I did 556 days that is 18 months and
10 something. And if you only do 2 you have got to do 30
11 months on a non-violent crime. So if I got 18 months
12 built in he told to go down and do 6 more months, that
13 made it 2 years.

14 Q Did he say exactly 6 months?

15 A Yeah, isn't that what was said, Mr. Taylor, it was 6
16 months.

17 Q He told you exactly that you would have to do exactly
18 6 months?

19 A Yeah, 6 months.

20 Q Okay. And anything else, let's go back to this bond
21 form. What did you want to tell about the bond form?

22 A Mr. Taylor now, I mean Mr. Able, he mentioned in the
23 bond hearing right here, he said, see, he write, the Judge
24 put it on the paper. It says, wanted personal
25 recognizance bond, dispute voracity of witnesses

1 statements. If he would have never stopped me when the
2 Solicitor took, said what he said, it would have been
3 victim too. So my bond wouldn't have been just \$35,000.00
4 dollars. My bond would have been a personal recognizance
5 bond because at the time, the law, the law, 17-23-90, it
6 says that a person, if you stay in jail, where I have been
7 indicted in the first term of the court and if the Judge
8 can get in touch with the victim and all of that you can
9 be granted bond. But see, I was never indicted when I
10 went to the bond hearing. And it was a lot of issues with
11 the statements and everything. And right here, when I
12 went to the, my bond, if he would have just said that.
13 There you go right there.

14 Q We are talking about Mr. Able now?

15 A Yes, we are talking about Mr. Able.

16 Q Because we were talking about Mr. Taylor, I just
17 wanted to clarify.

18 A He would never say about the victim, he kept saying--

19 Q During your bond hearing Mr. Able never clarified the
20 multiple statements that everybody--

21 A --no, no, he never did.

22 Q Is there anything else--

23 A --no, I pretty much covered it. If it come to you
24 but it might be too late but everything--

25 Q -- so we have covered everything that you needed to

1 tell the Judge.

2 A Yes, ma'am.

3 Q Okay. Nothing further?

4 A What about the speedy trial, yes.

5 Q I believe we talked about Mr. Able filed a speedy
6 trial?

7 A From my understanding, on that speedy trial thing,
8 right, my speedy trial. When he filed that speedy trial,
9 if he would have brought me into the courtroom, if he had
10 of brought me in this courtroom I would have showed this
11 Court all by, at the time he brought me here I wasn't even
12 indicted. If he would have brought me in the courtroom my
13 charges would have been dismissed because my understanding
14 of the law, if I can prove that the State show any
15 prejudices whatsoever and the time that I was in the jail,
16 they have prejudices against me I would have been free.
17 That is the reason why I think he bring me in there to the
18 courtroom.

19 Q So we are talking about--

20 A Mr. Able, my speedy trial, yes.

21 Q We are talking about the speedy trial motion that Mr.
22 Able filed?

23 A Right.

24 Q So you feel like if you had been brought in and that
25 had been heard that your case would have been dismissed?

1 A Dismissed, right, by law, by law because it says it.
2 I wasn't even indicted so how could they have took me to
3 trial.

4 Q Okay.

5 A That shows prejudice right there.

6 Q Okay. We got it. So anything else you want to bring
7 up.

8 A I would like to know how can I, if like, Your Honor,
9 if I win and if I win my case how when my constitutional
10 right, my Fifth Amendment and my Sixth Amendment, the
11 Fourteenth Amendment right was violated. The Fourteenth
12 Amendment said that I have got equal protection of the
13 law. I mean, equal. This county was suppose to protect
14 me equally and it was not done because I stayed in jail
15 almost two years before I was indicted, almost two years.
16 And there was no lack of me trying to get out of doing
17 anything, just because my lawyer did what he did I
18 shouldn't be held like that. Because from my
19 understanding, from what he tells, the Solicitor could
20 have brought me in this courtroom at any time. But here I
21 am at a PC hearing facing, fighting for my life and get
22 this off of my record because of something I didn't do and
23 I am here, I mean, all I am looking for is my due process
24 of my rights, my rights to be upheld, constitutional
25 rights to be upheld. Because of the simple fact if Mr.

1 Able would have done his job I would have been a free man,
2 I would have never had to dealt with Mr. Taylor, never
3 would have seen him, never would have met him. And if the
4 law is upheld and it answered my right to a speedy trial
5 like I was suppose to have gotten because we filed it,
6 this is suppose to be over with. I get a new trial, the
7 motion he filed, they are gone. That is a violation of my
8 right, by itself, just because they weren't answered. But
9 it would be his fault, yes, but I am to suffer. So I
10 guess I need to get that out because I was innocent and
11 they knew it.

12 Q Anything else you want to tell the Judge?

13 A No, ma'am.

14 Q Don't forget that Mr. Hunter can ask you some
15 questions.

16 THE COURT: Does the State have any questions?

17 MR. HUNTER: No sir, Your Honor.

18 THE COURT: Thank you, Mr. Willis.

19 MS. MCMAHAN: Your Honor, the Applicant rests.

20 MR. HUNTER: Your Honor, the State would call Mr.
21 Bryan Able.

22 BRYAN ABLE, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Hunter:

1 Q Would you please state your name for the record?

2 A My name is Bryan C. Able.

3 Q And how long have you been practicing law?

4 A November 24th of this year will be 30 years.

5 Q And can you just explain how you became involved in
6 this case?

7 A I got a letter from Ms. Janna Nelson who is the
8 Circuit Public Defender appointing me to the case, that
9 was on October 1, 2014. I understood at that time that
10 Mr. Willis had a previous attorney, Ms. Chelsea McNeil.
11 Sha had been relieved and I was appointed.

12 Q Were you appointed on the list or as part of the
13 Public Defender's office?

14 A I had a contract at the time.

15 Q Okay. Okay. Please explain, when you first met Mr.
16 Willis and where that took place?

17 A The first time that I would have met him would have
18 been shortly after I had been appointed. I have some
19 notes here but they are undated. I tried to go back and
20 put everything in order last night when I was looking over
21 the file. I do have my initial notes but they are
22 undated. It would have been, after I got appointment I
23 wrote the regular letters that I usually write when I get
24 these cases. And I would have met him sometime late
25 October, early November.

1 Q Do you remember what y'all discussed during these
2 initial meetings?

3 A Well, the first meeting I had was basically, you
4 know, going over the, his history, you know, address and
5 things like that, children, marital status, history of
6 mental illness, education, military service, arrest
7 record, prior history. And then, you know, go over his
8 version of the facts of the case.

9 Q Had you received discovery from the State?

10 A Yes, I did. One of the first things I do, when I got
11 the appointment on October 1st I do the letters, Mr.
12 Willis had mentioned the letters. I had sent him copies
13 of everything. I did those on October 1st. A letter to
14 Robin Morse who is the Director of Public Safety in
15 Clinton. I do a letter to the Solicitor forwarding to him
16 the Defendant's discovery request. I do a formal motion
17 pursuant to Rule 5 and Brady. And then I also do a letter
18 to the Solicitor asking, well, I had already looked and
19 found that Lance Sheek was the Assistant Solicitor and
20 that I would need to talk to him about the case. And then
21 I did a letter to Joel Whitsel that same day, October 1st.
22 Joel, it is Judge Whitsel, he was the Judge in Clinton. I
23 asked him to, you know, informed him that I had been
24 appointed to the case and that we would need a preliminary
25 hearing scheduled.

1 Q So can you repeat that again. You sent a letter to
2 the Magistrate Judge asking for a preliminary hearing?

3 A Well, he was the City Judge.

4 Q City Judge, okay.

5 A Yes, he was the City Judge. But to answer your
6 question, yes, based upon the Rule 5 Brady motion I filed,
7 I had gotten the discovery from the Solicitor's office
8 which I have in my file.

9 Q Okay. Did you go over that discovery with Mr.
10 Willis?

11 A Yes, I did.

12 Q And did you go over that with him, I guess, while he
13 was still in jail?

14 A Yes, I did.

15 Q Did you go over with him these indictments and what
16 specific charges were that the State would have to prove?

17 A Well, when I first met him I went over his specific
18 charges. At the time I was informed that there were four
19 warrants. One for CDV third offense, violation of a Court
20 order of protection, attempted murder and possession of a
21 weapon during a violent crime. We discussed those at
22 length and the facts surrounding the incident.

23 Q Can you explain, I guess, he alleges that you should
24 have challenged the fact that there were multiple
25 indictments for the same action. Can you go over that,

1 the fact that there were two attempted murder charges and
2 two CDV charges?

3 A All I have is, showing the, the warrants that I had
4 were the four. CDV third offense, violation of a order of
5 protection, attempted murder and possession of a weapon.

6 Q So you didn't have, I guess two indictments for
7 attempted murder?

8 A No, I didn't.

9 Q And I guess at that point, what point during your
10 representation was he actually indicted?

11 A You know, that was, when I first got involved in it I
12 didn't anticipate there were to be indictments. It was
13 kind of still an early case. I did mention to him at one
14 time that, you know, depending upon whether he was
15 indicted or not I didn't have the indictments, that may
16 play a role in whether the Court granted him a preliminary
17 hearing or not. I think that that was in a letter that he
18 had mentioned, one of the first letters that I had written
19 to him about his eligibility for a preliminary hearing.

20 Like I said, on October 1st I wrote Judge Whitsel asking
21 for that hearing. And subsequently spoke to him about
22 that. But it was when, I think sometime early in 2015
23 that I, there were no indictments at that time. And that
24 is when I wrote Judge Whitsel a second time telling him I
25 had written him on October 1st and we needed to have that

1 preliminary hearing set up.

2 Q And so, you wrote him a second time on what day?

3 A Let's see, I wrote him first, I wrote Judge Whitsel
4 first on October 1st. Like I said, I subsequently wrote
5 him again, I have a letter of February 6th, 2015 addressed
6 to Judge Whitsel informing that I had written him March, I
7 am sorry, October 1st requesting that he grant a
8 preliminary hearing. I had no response as of the date and
9 time of the hearing, please schedule a preliminary hearing
10 in the matter and kindly advise me of the date and time of
11 such hearing. That was February 6th, 2015 and I sent a
12 copy of that to Mr. Willis.

13 Q And what was the result of that letter?

14 A I never got a response. So what I eventually did and
15 I don't have a note in my file but I called Judge Whitsel.
16 I had known Judge Whitsel for a long time, he used to be
17 on the police force there. And I contacted, just called
18 him and I said, you know, Judge, we haven't had this
19 preliminary hearing yet. And that was the last I heard of
20 it, I told him I still needed a preliminary hearing and
21 that it needed to be granted and held. That was the last
22 I ever heard of it.

23 Q Okay. So, was that, was the preliminary hearing ever
24 held?

25 A No. I made three attempts to try to get one granted.

1 Q Okay. Now, let's talk about the, I guess, bond
2 hearing. Can you explain, was he initially given a bond,
3 do you remember the amount?

4 A I have got it here. I filed for a bond, let's see,
5 after I had a chance to talk to Mr. Willis, the bond was
6 filed on December 1, a motion for bond and that was held
7 before Judge Hocker on December 5, 2014. And that was the
8 initial setting of bond.

9 Q Okay. So after that did he talk to you about moving
10 to reduce that bond?

11 A Well, yes, he did. The bond was set at \$35,000.00
12 dollars based upon the charges, based upon Mr. Willis'
13 extensive record and seriousness of the charges. I
14 thought that was pretty, I thought it was a very
15 reasonable bond. And there was subsequent discussion
16 almost immediately after Judge Hocker had signed that
17 bond, that he wanted a bond reduction.

18 Q Did you know anything about that?

19 A I am sorry?

20 Q Did you know anything about that?

21 A Yes, I did. Let's see, a letter I wrote to Mr.
22 Willis on January 15, 2015. I stated, you have asked that
23 I write and file a request, file your request for bond
24 reduction or a PR bond. I remind you we were just before
25 the Court on December 5, this was January 15th. Judge

1 Hocker set your bond at \$35,000.00 dollars. And I
2 explained to him, I do not believe with the charges that
3 you have pending that you will get a bond reduction. I
4 have always maintained with you that you will not get a
5 personal recognizance bond. But as he requested I went
6 ahead and filed the bond, motion for bond reduction was
7 filed on February 10, 2015. And it was sometime after
8 that I got a letter from him saying that, you know, he had
9 to have a PR bond, he couldn't make any bond anyway. So
10 there was a request for a PR bond. I just don't believe
11 he was going to get a PR bond.

12 Q So was that, was your motion ever addressed before
13 the Court?

14 A No, it was not.

15 Q Now, you discussed his version of events, so you guys
16 discussed how you could challenge certain pieces of
17 evidence in this case?

18 A Yes, we did. Mr. Willis was always of the opinion
19 that, as he said a moment ago when he was testifying about
20 the bond hearing, if I had made, which I did make in the
21 order, State's references as to the voracity and
22 challenging the truthfulness of the statements of the
23 alleged victims which is in the order, that he would have,
24 it would have been over then. It would have magically
25 gone away. Well I did inform the Court at that time that

1 that was one of the issues that we would be before the
2 Court, that we would be challenging the truthfulness of
3 the alleged victims. Mr. Willis was always under the
4 impression that he was entitled to some kind of miny
5 evidentiary trial and that simply by challenging those
6 statements or inconsistent statements with the Court prior
7 to trial that he would be found not guilty by the Court
8 and be allowed to leave. That was always something that
9 we struggled between the two of us.

10 Q And what did you tell him about having a miny
11 evidentiary hearing?

12 A I told him that was not procedurally correct,
13 basically I would tell him that, my statement was
14 basically, that is what trials are made of. The evidence
15 the State intends to put forward, we can challenge it, we
16 can address some issues pretrial but, you know, I told him
17 basically you are not entitled to a miny trial before the
18 Court.

19 Q Okay. Your attorney representation, did you guys
20 ever discuss pleading guilty or was it always on a trial
21 posture?

22 A No, we did discuss that a couple of times or maybe
23 more Mr. Willis had written me and we would discuss it
24 when I would go out to see him and I would have to look
25 back at his letters. He was wanting to fashion some kind

1 of plea deal to where he would plead to a lessor included
2 and yet a time served sentence with no probation. And
3 that is all he ever told me. When I first started meeting
4 with him and talking to him about the case, you know, he
5 let me know in no uncertain terms that he was not going to
6 enter a plea of guilt. Then I got some letters saying
7 that he would and I approached the Solicitor, Lance Sheek,
8 and Lance's response to me was basically he wasn't
9 interested in that at the time, he was not going to allow
10 him to plead to anything and be a time served sentence.

11 Q Okay. And just to be, you discussed with him what he
12 would be able to challenge at that trial, did you discuss
13 with him what he would be able to do procedurally prior to
14 trial?

15 A As far as like pretrial motions?

16 Q Yes.

17 A Yes, I did. You know, we weren't in that posture yet
18 as far as trial preparation or motion preparation as far
19 as pretrial. So there wasn't an extensive conversation
20 about that. I just told him that, you know, as far as
21 some type of motion hearing where we come in here to
22 challenge the statements, basically it was Mr. Willis'
23 position for me to inform the Court that these people were
24 liars and that he would be set free. I told him that was
25 not an appropriate motion.

1 Q Okay. Can you go over, I believe he said you didn't
2 file a motion for a speedy trial. Did y'all ever discuss
3 that?

4 A I am sorry?

5 Q Speedy trial motion?

6 A I filed one, yes sir.

7 Q You did file one, okay. And was that ever resolved?

8 A No, that was late in my representation. That was
9 filed on July 9 of 2015, it was a motion for a speedy
10 trial. And at the same time I did file a notice of motion
11 and motion to dismiss. And during, like I said, that was
12 late in my representation of Mr. Willis. It was during
13 that time, July, August, September that I was in a trial
14 on a homicide case that took two weeks to try. And so
15 those were never heard.

16 Q And when exactly were you relieved?

17 A Hold on. Judge Hocker's order was dated October 13th
18 of 2015.

19 Q That is all I have, thank you sir.

20 THE COURT: All right, Ms. McMahan.

21 CROSS-EXAMINATION

22 By Ms. McMahan:

23 Q Just a few questions. So when was the first time you
24 met with him, was that like in November, October?

25 A My notes, like I said, I reviewed the file, putting

1 the file together last night. I don't have a date. I
2 have got my notes and the way I know that the first
3 meeting is because I am going through the biographical
4 information with him writing it down. But I don't have
5 it, it would have been, prior to the bond hearing and that
6 was December 5th. It would have been sometime in
7 November.

8 Q Okay.

9 A Late October, early November.

10 Q And when did you file the Rule 5?

11 A It was filed October 9th.

12 Q And did you know that the Defendant already had the
13 discovery or when you first met with him. Did you send
14 him another copy of it?

15 A I was thinking about that last night. I don't know
16 if I mailed it to him, I don't have a letter where I
17 mailed it to him so I probably just took him a copy of it.
18 If I am going out there I will take a copy of it to them.

19 Q Did he ever tell you that Ms. McNeil had given him a
20 copy of it?

21 A I think he may have at the time, yes. I don't recall
22 specifically but he may have.

23 Q And all of those letters and everything you were
24 reading out earlier that came from you, would you dispute
25 their contents since they came to you?

1 A The letters say what they, the letters say what they
2 say on their face. But they are not, they don't say what
3 Mr. Willis intended for them to say. As far as the letter
4 of 11/24, I just made a note about that while he was
5 testifying. November 24, to read the letter basically
6 saying that I believe him to be guilty. That is not the
7 case. As his lawyer, I think it is important for me to
8 point out to him the realities of the situation he is
9 involved in. You know, it was always Mr. Willis' position
10 that he was entitled to a personal recognizance bond and I
11 kept telling him that was not going to happen, it was not
12 going to happen given the charges he had pending, given
13 the extensive record he had. And just basically knowing
14 that a Judge is not going to give a personal recognizance
15 bond on that. I thought it was important for me in that
16 letter to point out, it wasn't, I wasn't trying, as I
17 said, the letter says what it says. But I am not trying
18 to tell him that I believe he is guilty. What I was
19 saying was, how I believe the Judge would approach a bond
20 hearing. And I think it is important to let a client know
21 that. And I say in the letters, my professional opinion
22 that all of this together, with your lengthy prior
23 criminal record will cause the Judge to set a high bond.
24 And I thought it would have been higher than what Judge
25 Hocker set. I thought it was a very, very reasonable bond

1 given the things that I just enumerated.

2 Q And he couldn't make any type of monetary bond, is
3 that correct?

4 A Right. When I filed the motion for bond reduction he
5 wrote me a couple of times, I have to have a PR bond, I
6 can't make this bond, I can't make any bond.

7 Q And did you ever talk to him about the jury making a
8 finding of who is the credible witness and who is
9 believable?

10 A As I said, I think the phrase I kept using was, is
11 that is what trials are made of, you know, jury's have to
12 weigh the credibility of the witnesses and come to a
13 conclusion. I told him there were things that we could
14 address at trial or prior to trial. But as I said, we
15 were not in trial mode yet, we weren't actively preparing
16 for trial as to preparation of any pretrial motions or
17 anything like that. But, yes, we discussed the trial
18 process.

19 Q So while you were representing him the Solicitor
20 never said, hey, I am going to put it on this docket on
21 this day or anything like that?

22 A No, ma'am.

23 Q And the trial, after you filed the speedy trial
24 motion and that other motion, I think it was like a 3(c)
25 motion or something?

1 A Yes.

2 Q And you said that it didn't get heard because you
3 were having a homicide trial?

4 A I was up for a homicide trial that took two weeks to
5 try. I was up for that during August, I think I said
6 those motions were filed in July but I was up for that
7 trial, I was preparing for that trial in either August or
8 September. It was then scheduled for September, early
9 September and it was during that term of court that my
10 mother passed. And or, the week before she was put in
11 intensive care and she passed during that week of trial
12 and of course I didn't start the trial. And then we
13 subsequently tried it in November.

14 Q So you were put on notice that you possibly have this
15 homicide in August--

16 A --August or September.

17 Q Okay.

18 A Late August, early September and then my mother
19 passed and it was put off to November.

20 Q So when you filed those motions in July was the court
21 term already over?

22 A I don't know that I filed them during the court term,
23 I don't recall.

24 Q Okay. But even if you had filed them in July, what
25 would have been the possibility of being able to get them

1 heard?

2 A Well, Solicitor Sheek who has handling this case, his
3 time was split between here and Greenwood. And in
4 coordinating our schedule sometimes was difficult in
5 having us both here for something like that.

6 Q And that is because he was also trying cases in
7 Greenwood?

8 A Yes, his time was split between here and Greenwood.

9 Q Okay.

10 MS. MCMAHAN: Nothing further, Your Honor.

11 MR. HUNTER: Nothing else for this witness, Your
12 Honor.

13 THE COURT: Any objection to this witness being
14 excused?

15 MR. HUNTER: No, sir.

16 MS. MCMAHAN: No, sir.

17 THE COURT: You are excused.

18 MR. HUNTER: The State would call Mr. Aaron Taylor.

19 AARON TAYLOR, being

20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Hunter:

23 Q Please state your name for the record.

24 A Aaron Taylor.

25 Q And where are you currently employed?

1 A I am a solo, practice law in Greenwood, South
2 Carolina.

3 Q Can you explain just what the majority of your law
4 practice entails?

5 A Sure, it is mostly criminal defense or family court
6 related stuff.

7 Q Can you explain how you became involved in Mr.
8 Willis' case?

9 A Sure. I got a letter from Janna Nelson, the Chief
10 Public Defender of this circuit saying that Mr. Able had
11 been relieved. And I have a contract to the State so I
12 was the next person on the list to handle the case.

13 Q Okay. And do you remember what day you were
14 appointed?

15 A It was middle, part of October, I think, 2015.

16 Q Now, can you explain to me first when you met Mr.
17 Willis?

18 A Sure, I had already filed a Rule 5, discovery motion
19 and letter of representation and met him, I am pretty sure
20 shortly thereafter, sometime middle, late of October. I
21 don't remember the exact date but met him at the county
22 detention center and went through the case. And we kind
23 of met and went through a lot of the stuff. He actually
24 had already, had really all of the discovery minus a
25 couple of things he testified about that he was missing.

1 He had the full packet, had more than I did at that point.
2 And obviously at that point knew way more than I did. And
3 once we met I told him I would follow-up with the
4 Solicitor and kind of went from there, it went very
5 quickly after that point.

6 Q What did you also explain, or what did you all
7 discuss about any sort of motions being filed?

8 A Yes, he had a lot of motions that I know Mr. Able
9 filed on his behalf and he actually mentioned some other
10 ones, you know, relating to all the different statements
11 given by certain witnesses. And at that point, you know,
12 I am getting involved on the back end. I told him we
13 would do that before the jury was sworn. But the jury
14 trial is coming up soon, you are already on the trial
15 docket. And that any of those motions we would do then
16 and then depending on how the trial went, you know, we
17 would have to appeal after that point, you know, if it
18 didn't go well.

19 Q Okay. Did you see or I guess you had a copy of all
20 of his indictments, correct?

21 A Yes.

22 Q Did you guys ever discuss the fact that there were
23 two CDV indictments and two attempted murder indictments?

24 A You know, I trust, Mr. Willis and I had a very good
25 relationship, he is saying we really didn't talk about it

1 much. I do remember very well that there were, I thought,
2 duplicates of several of those and that they would have
3 never been presented. Like in other words, at trial they
4 would just not gone forward on them because they were the
5 exact same facts, victims, et cetera, of elements. So we
6 didn't really talk about it a lot but I don't think that
7 would, I don't think the State could have gone forward on
8 two indictments for the same, in other words, same exact
9 thing. That wouldn't have made a lot of sense, and I am
10 not really sure how that happened because that doesn't
11 happen very often. That was sort of odd.

12 Q Do you know if you discussed that with the Solicitor?

13 A I did which, you know, I know they were dismissed as
14 part of a plea. That has been a while ago, I don't
15 remember exactly what they said other than it was sort of,
16 you know, not a big deal to him. Like in other words,
17 yes, we know there is, we are not to go forward on those
18 because they are duplicates kind of thing. But I don't
19 remember the exact wording of how that conversation went.

20 Q Can you go through your plea negotiations with the
21 Solicitor?

22 A Sure. I never dealt with Lance Sheek. He was the
23 Solicitor the whole time and he left the office around
24 that time. And so I dealt with Warren Mowry who is the
25 Deputy Solicitor. And, like I said, it happened very

1 fast. They actually had Mr. Willis over here in court and
2 they got his wife up here who was listed as a victim and
3 then this gentleman, that Mr. Worthy, who was another
4 victim. He did not show up but they got him on the phone
5 and it was sort of a back and forth. I think it kept
6 coming back to him and I am pointing to Mr. Willis, in the
7 holding cell back there. And it happened very fast. But
8 he was looking at eighty-five percent strikes on some of
9 these charges. And looking at a lot of time and they came
10 to us with a non-violent offer and again, when this
11 happened so fast I am not writing down, okay, at 10:00 a.m
12 the offer is 10 years and then come back and forth. I
13 just remember it was not at non-violent originally. I had
14 to kind of work them down. They wanted him to plead to
15 the CDV HAN which I think at that time was under the old
16 law so it doesn't carry what it carries now, it was much
17 less, it was a 1 to 10 range as opposed to now it carries
18 up to 20. And so we got that dismissed. His wife,
19 Barbara, showed up and was very helpful and actually stood
20 with him at the plea on his behalf. And I think the
21 biggest thing driving all of this, because I kept pushing
22 for a time served sentence, was his prior record. And I
23 know it was discussed that Mr. Willis has done his time,
24 why are they picking on him kind of thing in the past.
25 But unfortunately that is how it works, they look at your

1 record. So he ended up getting that 5 year non-violent
2 sentence which, you know, when you have a jury of 12
3 people that we don't know and are strangers and the facts
4 where I did believe Mr. Willis, I still believe him. When
5 you kind of roll the dice on something like that and what
6 is at stake, and I said it on the record, Mr. Willis, as
7 you can see, is very headstrong and I respect him for
8 that, I am too. There is no way I could have made him do
9 something because he is a man and I told him that. And so
10 when we reviewed everything, even though it wasn't a
11 perfect situation he may have felt under the gun. That is
12 something we decided to do and he plead guilty which I
13 told him when I got here, I am glad he is out and I am
14 glad he looks good and I still think it was the right
15 decision even though you did give up a lot of defenses and
16 there was a lot of stuff there. He had been in jail so
17 long and we got that extra 104 days with the probation. I
18 thought it was a very good decision even though, that is
19 easy for me to say because I am not the one doing the
20 time, he is. I still stand by that decision and I am glad
21 he did it and he is out and moving on with his life.

22 Q Okay. You explained probation, I believe he alleged
23 that you got a warrant for his probation violation
24 released, allegations that he violated his probation. Can
25 you explain how that came to be?

1 A I think that was Mr. Able actually.

2 Q Okay.

3 A Because I wasn't involved with that stuff. But to
4 answer your question or to discuss the probation thing. I
5 just knew it was an issue, that they had violated him even
6 though, you know, probably wasn't the most legit warrant,
7 that is just one of those they dumped on him because he
8 had been arrested. I went and talked to him and they
9 agreed to run it concurrent and I told Mr. Willis and it
10 worked out. I was pretty confident just dealing with
11 Judge Addy enough that they would give him credit for
12 those days. And the Solicitor had told me from the start
13 that he wasn't going to object to it, he wasn't going to
14 agree to it but that was something we had asked for. So
15 that worked out as well. And that was really my only
16 involvement that I talked to the probation agent and they
17 terminated the case and ran it concurrent and they closed
18 his case out.

19 Q So even though, even though it all kind of originated
20 before you--

21 A -- I think he conceded the violation because it was
22 part of that plea. So all of the other stuff I am not
23 going, I just don't know, I don't think, if he did discuss
24 that issue it ended up becoming very minor because we were
25 pleading guilty and it all kind of worked out at the same

1 time.

2 Q Now did you ever tell him exactly how much he would
3 have to do?

4 A Again, I had a good relationship with Mr. Willis, I
5 do not want to say that I did or didn't, I am not trying
6 to dodge it, I don't remember, I don't, I really don't. I
7 can't, I don't want to say yeah and not tell the truth or
8 no. I just don't recall that. I know he says I did, I
9 don't have anything to confirm or deny that. That has
10 been a while ago.

11 Q Do you think that the length of your representation
12 affected your ability to represent him?

13 A I think that we hadn't have gotten such a good deal
14 and they tried to push us to trial, it definitely would
15 have affected it. I think how it worked out and I
16 understand Mr. Willis says he had fell under the gun and I
17 wasn't prepared. That is something, if we are missing
18 pictures and testing of the blood and all of these
19 different things and he had not plead guilty and we went
20 to trial, I mean I would have definitely either, I mean I
21 would have made a motion, a couple of motions. One, for a
22 continuance but that to me wasn't great because he is just
23 sitting in there in jail, or a motion to allow me to
24 discuss that with the jury, that there is a bunch of
25 evidence floating around out there and that the State

1 either didn't have it or didn't turn it over. And I could
2 hammer them on that and probably to his advantage at trial
3 would be able to do that. But how it all worked out I
4 don't think it negatively affected him. It comes down to
5 this. And they told me and it was the bottom line when we
6 get to the 5 and eventually agreed to it. If you don't
7 take this offer, even if you get the trial continued the
8 next Monday your offer is gone, it is nothing, if is over,
9 we are not putting up with it. And even though I had only
10 been on the case for however many weeks, a month or so at
11 the most, that was sort of where they stood. They are
12 like the victim is tired of it who I never met, they
13 talked to him, one of the victims. And that was it. So,
14 no, I don't think it negatively affected it, it could have
15 if the case continued on though.

16 Q So did you ever get to the point where you were
17 discussing trial strategy and what he would challenge?

18 A Sure, we talked about that because on the day, when
19 we first, the day he was brought over to the courtroom,
20 the Court House, I mean we weren't in a plea situation at
21 all at that point. We had talked about it, he was
22 confident and I agreed with him he had a lot of potential
23 defenses. I mean, a lot of that stuff still, I wasn't
24 there, it was dark. There is all of these different
25 statements, it was a convoluted set of facts. I mean on

1 its face, it is simple, it was a fight and he stabbed the
2 guy but there was a lot more to it than that. So, we did
3 talk about trial stuff, yes, and about kind of
4 procedurally how that would go. And if he hadn't plead
5 that day, when I left here I was going to have to get down
6 to business. So, again, pushing for some of that stuff,
7 getting an investigator to get in, you know, even I had to
8 go to these people's house to talk to them, the witnesses
9 and whatnot then I would have done all of that.

10 Q Okay. That is all I have.

11 THE COURT: Ms. McMahan.

12 MS. MCMAHAN: No questions, Your Honor.

13 MR. HUNTER: Nothing else for this witness or from
14 the State, Your Honor.

15 THE COURT: Any objection to this witness being
16 excused?

17 MS. MCMAHAN: No, Your Honor.

18 THE COURT: You are excused.

19 MR. HUNTER: That is all from the State on this case.

20 THE COURT: Anything further for the record?

21 MS. MCMAHAN: Nothing further, Your Honor.

22 THE COURT: All right, I will deem the matter being,
23 having been submitted, I want to read the materials that
24 has been submitted. So I am going to take this under
25 advisement.

1 MS. MCMAHAN: Thank you.

2 MR. HUNTER: Thank you, Your Honor.

3 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Laurens, South
14 Carolina on the 11th day of October, 2017.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 March 6, 2018
1920 *Joy Holston*
21 _____

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

Form 16-1-Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

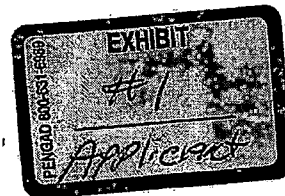
Probation

ARREST WARRANT

Indictment Number 14-GS-30-00636

Warrant Number W-30-15-0054

State Identification No. (SID) 00358320



TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF LAURENS, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that KIRK WILLIS, did on the 10 day of June, 2015 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Subject violated conditions 7, 9, 10, and Special Conditions of Probation pursuant to Sections 24-21-430 and 24-21-450 by:

Now, therefore, you are empowered and directed to arrest the said defendant and bring KIRK WILLIS 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. Done at LAURENS, S. C. this 10 day of June, 2015.

Signature of Probation and Parole Agent

(L.S.)

County of LAURENS

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Michael Richards, who, first being duly sworn, deposes and says that KIRK WILLIS did within this County and State on the 10 day of June, 2015, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

Subject violated conditions 7, 9, 10, and Special Conditions of Probation pursuant to Sections 24-21-430 and 24-21-450 by:

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

By failing to pay on his accounts as agreed to, being in arrears \$100.00 on supervision fee, \$20.00 on his drug test fee, and \$605.00 on his court ordered surcharge with a balance owed of \$648.90; subject failed to complete Batterer's Treatment Counseling as ordered by the court; subject failed to refrain from contacting Barbara Willis as ordered by the court on 6/13/14, evidenced by an incident report and arrest by Clinton City PD on 8/7/14 (case# 201408122); subject failed to follow the advice and instructions of agent, evidenced by the above violations.

Sworn to and Subscribed before me
this 10 day of June, 2015.

Signature of Notary Public

(L.S.)

My Commission Expires

Affiant

Address: P.O. BOX 305
LAURENS, SC 29360
LAURENS
USA

(864) 984-4564

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

Kirk Willis,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

2016-CP-30-757

ORDER OF DISMISSAL

LYNN W. LANCASTER
7017 NOV 27 AM 10:11
LAURENS COUNTY
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 9, 2016. An evidentiary hearing into the matter was convened on Wednesday, October 11, 2017, at the Laurens County Courthouse in Laurens, South Carolina before the Honorable R. Scott Sprouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Bryan Able and Aaron Taylor, Esquires, also testified. This Court also had before it a copy of Applicant's PCR application and amendment, the records of the Laurens County Clerk of Court regarding the subject convictions, Respondent's Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant was previously confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. Applicant was indicted at the October 2015 term of the Laurens County Grand Jury for two counts of attempted murder (2015-GS-30-1735, -1738), possession of a weapon during the commission of a violent crime (2015-CP-30-1739), and two counts of criminal domestic violence (2015-CP-30-1737, -1738). Applicant was initially represented by Bryan Able, Esquire, but ultimately represented by

A TRUE COPY OF ORIGINAL

RSS

Taylor, Esquire. On November 3, 2015, Applicant appeared before the Honorable Frank R. Addy, Jr., and pled guilty to first degree assault and battery (non-violent) as a lesser included offense of attempted murder. Indictments 2015-CP-30-1734, -1737, -1738, -1739 were dismissed as part of Applicant's plea. Applicant was sentenced pursuant to a recommendation to imprisonment for five years. Applicant did not file a direct appeal.

Allegations

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

1. Ineffective Assistance of Counsel as to Bryan C. Able, Esquire:

- a. "Failed to file a motion for a speedy trial, and if he did he also failed to have that motion addressed by the Court."
- b. "Failed to secure preliminary hearing. When Mr. Able was asked when the preliminary hearing would be held he indicated the Applicant was already indicted, when in fact, the Applicant was not. Applicant was not indicted until over a year later."
- c. "Failed to have bond reduction motion brought before the Court."
- d. "Failed to discuss possible defense and challenges to the evidence with the Applicant."
- e. "Failed to challenge the Solicitor's incorrect statements made at the bond hearing regarding the fact. Had he done so the Applicant would most likely have gotten a lower bond, PR bond, or ultimately the charges would have been dismissed."

2. Ineffective Assistance of Counsel as to Aaron Taylor, Esquire:

- a. "Failed to address that Applicant's probation was revoked before he pled guilty."
- b. "Failed to address possible double jeopardy issues. There were multiple indictments for the same charges. Failed to also secure an arraignment on the charges that were directly indicted."
- c. "Failed to have Mr. Able's motions brought before the Court."
- d. "Failed to discuss challenges to the evidence with the Applicant. Counsel only went over the paperwork with the Applicant and never discussed a trial strategy."

PSS

- e. "Failed to discuss with Applicant that he could challenge the inconsistent statements made by the witnesses and didn't make a motion in limine to have those statements addressed by the Court prior to a guilty plea."
- f. "Applicant was represented by Counsel for only two weeks prior to the guilty plea. Because counsel failed to offer any substantive representation regarding defenses to the charges, Applicant felt he had no choice but to accept the State's plea offer because he did not trust counsel to handle his trial in an effective manner."
- g. Mr. Taylor promised Applicant that if he pled guilty, he would only have to serve six months in prison before being paroled.

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 amendment, 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.

Ineffective Assistance of Counsel as to Bryan Able, Esquire

Failed to file a motion for a speedy trial, and if he did he also failed to have that motion addressed by the Court.

Applicant alleged that Mr. Able was ineffective for failing to file a speedy trial motion and failing to have that motion addressed by the court if it was filed. Applicant testified that he was arrested August 8, 2014 and was initially represented by Assistant Public Defender Chelsea McNeil. He testified that he relieved Ms. McNeil and hired Mr. Able after a few months. Applicant testified that he relieved Mr. Able in August 2015. Applicant testified that he had not been indicted on the charges, so Mr. Able should have filed a motion for a speedy trial to get the charges dismissed by law.

Mr. Able testified that he was appointed to represent Applicant on October 1, 2014. He testified that he met with Applicant and went over his version of the facts, the discovery, and the charges. He testified that he did not anticipate indictments early in the process. Mr. Able testified that he filed a Motion for a Speedy Trial and Motion to Dismiss on July 9, 2015. He testified that these motions were never heard by the court because he was preparing for a two-week long trial in late August and early September, his mother passed away, Applicant filed a motion to relieve him as counsel shortly thereafter, and the plea was ultimately heard in early November.

This Court finds that Mr. Able was not ineffective for failing to have his speedy trial motion brought before the court. This Court finds that Mr. Able acted reasonably by filing a speedy trial motion, and finds Mr. Able was not at fault for the motion's failure to be heard before the court where Mr. Able was preparing for a two week trial, had a death in the family, and was relieved as counsel by Applicant.

This Court further finds that Applicant has failed to show that he was prejudiced by Mr. Able's failure to have his speedy trial motion heard in court. He has failed to show resulting prejudice to his case and has failed to show that a speedy trial motion would have been successful had it been heard before the court. Accordingly, this allegation must be dismissed.

Failed to secure preliminary hearing. When Mr. Able was asked when the preliminary hearing would be held he indicated the Applicant was already indicted, when in fact, the Applicant was not. Applicant was not indicted until over a year later.

Applicant testified that Mr. Able was ineffective for failing to secure a preliminary hearing on Applicant's charges. Applicant testified that he requested a preliminary hearing and wanted to meet with the solicitor. He testified that he wrote letters to Mr. Able asking why he had not had a preliminary hearing, and Mr. Able told him that he asked for a hearing. Applicant further testified that he was indicted on October 30, 2014.

Mr. Able testified that he wrote the magistrate judge on October 1, 2014 asking for a preliminary hearing. He testified that he wrote the judge a second time asking for a preliminary hearing on February 6, 2015. He testified that he never heard a response and personally called magistrate Judge Whitsell. Mr. Able testified that he filed a Rule 5/Brady motion and received the State's discovery.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Able was deficient for failing to secure a preliminary hearing. This Court finds that Mr. Able was very active in trying to secure a preliminary hearing, writing two letters to the magistrate and personally calling the magistrate on the phone to arrange a hearing. This Court finds that Mr. Able's actions constituted due diligence and he was not at fault for the lack of a preliminary hearing. This Court further finds that Applicant has failed to show that he was prejudiced by Mr. Able's failure to secure a preliminary hearing. This Court finds that Applicant has failed to provide evidence that a preliminary hearing would have affected the outcome of his case. Accordingly, this allegation must be dismissed.

Failed to have bond reduction motion brought before the Court.

Applicant testified that Mr. Able was ineffective for failing to have a bond reduction motion brought before the court. He testified that Mr. Able sent him a letter on November 24, 2014 saying he filed a motion for bond and adding that Applicant would probably not get a personal recognizance bond. Applicant testified that he had a bond hearing on December 5, 2014. Applicant testified that Mr. Able filed a Motion for a Bond Reduction on February 10, 2015, and Mr. Able sent him a letter on February 15, 2015 indicating that he did not think Applicant would get a bond reduction or a personal recognizance bond. He testified that Mr. Able never took him to a bond reduction hearing.

Mr. Able testified that he filed for an initial bond on December 1, 2014, and the hearing took place December 5, 2014. He testified that the bond was set at \$35,000, which he thought was reasonable, but Applicant immediately asked for a reduction. Mr. Able testified that he filed a Motion for a Bond Reduction on February 10, 2015. He testified that Applicant told him that he could not make any monetary bond so it would have to be reduced to personal recognizance. Mr. Able testified that a personal recognizance bond was not going to be an option in Applicant's case given his criminal history and the fact that he was charged with attempted murder and criminal domestic violence.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Able was deficient for failing to have his bond reduction motion brought before the court. This Court finds that Mr. Able was able to get Applicant a bond at the hearing on December 5, 2014. Based on the testimony, it is apparent that Applicant moved for a bond reduction to attempt to obtain a personal recognizance bond, as he told Mr. Able that he was unable to make any monetary bond. This Court finds that Mr. Able filed the Motion for a Bond Reduction. This Court finds that Mr. Able was not deficient for failing to get the motion brought before a judge as he made the motion and is not responsible for court scheduling.

Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Mr. Able's actions. This Court finds that Applicant has failed to show that such a motion would have been successful and agrees with Mr. Able that a personal recognizance bond would not be a likely result for someone charged with attempted murder and criminal domestic violence while also on probation for criminal domestic violence. As Applicant has failed to show that the outcome of his case would have been different had a bond reduction motion been brought before the court, he has failed to prove prejudice. Accordingly, this allegation must be dismissed.

Failed to discuss possible defenses and challenges to the evidence with the Applicant.

Applicant testified that Mr. Able was ineffective for failing to discuss possible defenses and evidentiary challenges. He testified that Mr. Able got a statement from Applicant's wife, Barbara Willis, and got an affidavit from her. He testified that Mr. Able said he did not file the affidavit because he did not prepare it. Applicant testified Mr. Able discussed Applicant's theory of self-defense and told him that the witness would say otherwise. He also testified that the victim made inconsistent statements. Applicant testified that he wanted an evidentiary hearing on the inconsistent statements but Mr. Able told him that they would have to wait until trial. Applicant further testified that Mr. Able did not discuss defenses with him because they never got that far.

Mr. Able testified that he met with Applicant for the first time in late October or early November and went over Applicant's version of the facts, the discovery, and the charges. Mr. Able testified that he discussed potential trial issues with Applicant but they were not at a trial preparation mode at that point during his representation. Mr. Able testified that Applicant assumed he would have his charges dismissed based on the victims' inconsistent statements. Mr. Able testified that he did challenge these inconsistencies at the bond hearing. He testified that Applicant wanted a mini-evidentiary trial to address the evidence but Mr. Able told him that it would have to be addressed at trial.

This Court finds that Applicant has failed to prove that Mr. Able was deficient for failing to discuss possible defenses and challenges to the State's evidence. This Court finds Mr. Able provided credible testimony that he and Applicant discussed Applicant's version of the facts, the discovery materials, the charges, and potential trial issues. Applicant also provided testimony that Mr. Able discussed the self-defense theory. This Court also finds that Mr. Able was not

deficient for failing to completely discuss possible defenses because, as Applicant and Mr. Able testified, Applicant moved to relieve Mr. Able as counsel before they were in a trial preparation posture.

Applicant has failed to prove that he was prejudiced by Mr. Able's actions as he moved to relieve Mr. Able over two months before he pled guilty and as he has failed to show that he would not have pled guilty but would have proceeded to trial but for Mr. Able's failure to discuss defenses and challenges to the evidence. Accordingly, Applicant has failed to meet his burden of proving Mr. Able was ineffective in this regard, and this allegation must be dismissed.

Failed to challenge the Solicitor's incorrect statements made at the bond hearing regarding the fact. Had he done so the Applicant would most likely have gotten a lower bond, PR bond, or ultimately the charges would have been dismissed.

Applicant alleged that Mr. Able was ineffective for failing to challenge the solicitor's incorrect statements made at the bond hearing. Applicant alleged that he would have received a lower bond, personal recognizance bond, or dismissal of his charges if Mr. Able disputed the inconsistent statements. Mr. Able testified that he did challenge the witnesses' inconsistencies at the bond hearing.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Able was deficient for failing to challenge the solicitor's incorrect statements. Applicant has failed to show what these incorrect statements were and how they affected the outcome of his case. To the extent that Applicant alleges the incorrect statements made were inconsistencies in the witnesses' version of events, this Court finds that Mr. Able provided credible testimony that he challenged the witnesses' inconsistent statements at the bond hearing. As Mr. Able did challenge these statements, he was not deficient. Furthermore, Applicant has failed to meet his burden of proving that he was prejudiced by Mr. Able's actions as he has failed to show that the outcome of his

bond hearing would have been different had Mr. Able acted differently. Accordingly, this allegation must be dismissed.

Ineffective Assistance of Counsel as to Aaron Taylor, Esquire

Failed to address that Applicant's probation was revoked before he pled guilty.

Applicant alleged that Mr. Taylor was ineffective for failing to address that his probation was revoked prior to him pleading guilty. He testified that Mr. Taylor told the probation officer to violate his probation. He testified that he was served with a probation violation warrant on June 10, 2015 for case 2014-GS-30-636. Applicant testified that he discussed the warrant with Mr. Taylor and asked how his probation could be revoked if he was found not guilty on the current charges.

The guilty plea transcript reflects that the plea judge informed Applicant that the plea would constitute a violation of his probation, and Applicant acknowledged that he understood. See Guilty Plea Transcript, p. 6, ll. 13-16.

Mr. Taylor testified that he was appointed to represent Applicant on October 14, 2015, and the probation violation warrant was served months before he undertook representation.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Taylor was deficient for failing to address that Applicant's probation was revoked before he pled guilty. This Court finds that Applicant was served with a probation violation warrant several months prior to the guilty plea, but the actual revocation did not occur until he pled guilty. This Court finds that he was fully informed by the plea judge that a guilty plea would constitute a violation of his probation, and Mr. Taylor was not deficient for failing to address this issue.

This Court further finds that Applicant has failed to prove that he was prejudiced by Mr. Taylor's actions, as he has failed to show that he would not have pled guilty but would have gone to trial but for Mr. Taylor's failure to address the probation issue. This Court finds that

Applicant's probation revocation on a prior criminal domestic violence charge did not affect the knowing and voluntary nature of his guilty plea to assault and battery. As Applicant has failed to prove deficiency or resulting prejudice, this allegation must be dismissed.

Failed to address possible double jeopardy issues. There were multiple indictments for the same charges. Failed to also secure an arraignment on the charges that were directly indicted.

Applicant alleged that Mr. Taylor was ineffective for failing to address double jeopardy issues. He testified that Mr. Taylor should have challenged the fact that Applicant had two indictments the same crime – two indictments for attempted murder and two indictments for criminal domestic violence. He testified that the indictments had different arrest dates and one was ultimately dismissed. Applicant testified that one indictment was directly indicted.

Mr. Taylor testified that he thought there were duplicate indictments, and thought that Applicant would not go to trial on all. He testified that he discussed this with the assistant solicitor and the charges were ultimately dismissed when Applicant pled guilty to a lesser included offense on one attempted murder charge.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Taylor was deficient for failing to address double jeopardy issues. This Court finds that Mr. Taylor provided credible testimony that he discussed the duplicate indictments to the solicitor prior to the plea. This Court finds that although Applicant was charged with two counts of attempted murder and two counts of criminal domestic violence, one attempted murder charge was nolle prossed and both counts of criminal domestic violence were nolle prossed. As Applicant only pled guilty to one charge, no double jeopardy issues exist. Furthermore, none of Applicant's indictments were directly indicted, all were true-billed and dated October 31, 2015. This Court finds Mr. Taylor was not deficient in this regard and Applicant suffered no prejudice as a result. Accordingly, this allegation must be dismissed.

Failed to have Mr. Able's motions brought before the Court.

Applicant alleged that Mr. Taylor was ineffective for failing to bring Mr. Able's motions before the court. Mr. Able filed a speedy trial motion, motion to reduce bond, and motion to dismiss the charges. He testified that he wanted Mr. Taylor to move to challenge the victims' inconsistent statements pre-trial but Mr. Taylor told him that the solicitor would take the case to trial.

Mr. Taylor testified that he did not bring Mr. Able's motions before the court because the case was already on the trial docket. Mr. Taylor testified that he was appointed to represent Applicant on October 14, 2015 and Applicant pled guilty on November 3, 2015.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Taylor was deficient for failing to have Mr. Able's motions brought before the court. This Court finds that Mr. Taylor provided credible testimony that he did not bring Mr. Able's motions before the court because Applicant's case was already on the trial docket. Applicant's plea took place less than one month after Mr. Taylor was appointed to represent him, and this Court finds he was not deficient for failing to bring the speedy trial motion, motion to reduce bond, and motion to dismiss the charges to the court. Furthermore, Applicant has failed to show that he was prejudiced by Mr. Taylor's actions in this regard as he has failed to show that any of the three motions would have been successful or that he would have rather proceeded to trial but for Mr. Taylor's conduct. Accordingly, this allegation must be dismissed.

Failed to discuss challenges to the evidence with the Applicant. Counsel only went over the paperwork with the Applicant and never discussed a trial strategy.

Applicant alleged that Mr. Taylor was ineffective for failing to discuss challenges to the evidence with Applicant, such as the inconsistent statements. He testified that Mr. Taylor never discussed a trial strategy. Mr. Taylor testified that he discussed trial strategy with Applicant and

what evidence he would be able to challenge at trial. He testified that he discussed with Applicant his potential defenses, including challenging the convoluted facts and the statements from witnesses.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Taylor was deficient for failing to discuss challenges to the evidence or a trial strategy. This Court finds that Mr. Taylor provided credible testimony that he and Applicant did discuss trial strategy and the evidence that they would be able to challenge at trial. This Court also finds that Mr. Taylor provided credible testimony that he discussed the potential defenses and challenges to inconsistent statements. Given Mr. Taylor's testimony concerning his discussions with Applicant, this Court finds that he was not deficient. Furthermore, this Court finds that Applicant has failed to show that he was prejudiced by Mr. Taylor's actions as he has failed to show that he would not have pled guilty but would have gone to trial but for Mr. Taylor's actions. Accordingly, this allegation must be dismissed.

Failed to discuss with Applicant that he could challenge the inconsistent statements made by the witnesses and didn't make a motion in limine to have those statements addressed by the Court prior to a guilty plea.

Applicant alleged that Mr. Taylor was ineffective for failing to discuss with Applicant that he could challenge the witnesses' inconsistent statements and made a motion in limine to challenge the statements prior to a guilty plea. Applicant testified that he wanted to address the witnesses' statements pre-trial. Mr. Taylor testified that he did not bring any pre-trial motions before the court because the case was already on the trial docket.

This Court finds that Applicant has failed to meet his burden of proving that Mr. Taylor was deficient for failing to inform Applicant that he could challenge the inconsistent statements and for failing to make a motion *in limine* to have those statements addressed by the court before the guilty plea. This Court finds that it was not unreasonable for Mr. Taylor to not bring a motion

to have the witnesses' statements examined before the court when the case was already on the trial docket and Mr. Taylor worked out a plea deal for Applicant to plead guilty to a five-year sentence for a non-violent lesser-included offense while also having four other charges dismissed. This Court finds that Applicant has failed to show that he was prejudiced by Mr. Taylor's actions as he has failed to show that he would not have pled guilty but would have proceeded to trial had Mr. Taylor made the motions *in limine*. Applicant has failed to show that the motions *in limine* would have been successful and by pleading guilty, he waived his right to challenge the evidence. Applicant has failed to show that Mr. Taylor was ineffective in this regard and this allegation must be dismissed.

Applicant was represented by Counsel for only two weeks prior to the guilty plea. Because counsel failed to offer any substantive representation regarding defenses to the charges, Applicant felt he had no choice but to accept the State's plea offer because he did not trust counsel to handle his trial in an effective manner.

Applicant alleged that Mr. Taylor was ineffective for failing to sufficiently represent him because he only represented Applicant for two weeks prior to the plea. He alleged that Mr. Taylor did not offer substantive representation regarding the defenses and Applicant did not trust Mr. Taylor to handle his trial. Applicant testified that he pled guilty because he did not think Mr. Taylor would do well at trial because Mr. Taylor had not done the proper legal research for his case. He testified that he would have proceeded to trial if he had more time and if his attorneys had done their jobs properly.

Mr. Taylor testified that after he was appointed to represent Applicant, he filed a discovery motion and received full discovery from the State. He testified that he discussed with Applicant his potential defenses, including challenging the convoluted facts and the statements from witnesses. He testified that he negotiated plea offers with the State and engaged in discussions with Applicant, the victims, and the assistant solicitor. He testified that he ultimately

negotiated a plea to a non-violent, lesser-included offense for a five year sentence. Mr. Taylor testified that he pushed for a time-served sentence but Applicant's prior criminal record prevented the State from offering time-served. He testified that he did not force Applicant to plead guilty, and he believed that it was in Applicant's best interest to plead guilty. Mr. Taylor testified that he did not think Applicant's case was negatively affected by the short amount of time of his representation because he had the all of the discovery and helped Applicant get a good plea deal from the State.

This Court finds that Applicant has failed to show that Mr. Taylor was deficient in his representation. Applicant testified that Mr. Taylor had not done the proper legal research and that he only pled guilty because he did not think Mr. Taylor would do well at trial. The guilty plea record reflects that Applicant raised none of these concerns to the plea court, and reflects that Applicant reviewed discovery, was satisfied with Mr. Taylor's services, and acknowledged that Mr. Taylor did everything that Applicant wanted him to do. See Guilty Plea Transcript, p. 8, l. 16 – p. 9, l. 2. This Court finds Mr. Taylor provided credible testimony that he went over the facts, statements, and defenses with Applicant and also negotiated a plea offer that was greatly beneficial to Applicant. Applicant has failed to show what how Mr. Taylor was deficient and how his representation suffered due to representing Applicant for a short period of time.

Applicant has failed to show that he was prejudiced as he has failed to provide evidence that he would have gone to trial but for Mr. Taylor's representation and has failed to point out specific deficiencies in Mr. Taylor's performance. This Court finds that Applicant has failed to meet his burden of proving that Mr. Taylor was ineffective, and this allegation is dismissed.

Mr. Taylor promised Applicant that if he pled guilty, he would only have to serve six months in prison before being paroled.

Applicant testified that Mr. Taylor promised Applicant that if he pled guilty, he would only have to serve six months in prison before being paroled. Applicant testified that he actually served over a year in prison. Mr. Taylor testified that he could not recall if he told Applicant how much prison time he would have to serve.

This Court finds Applicant has failed to prove that Counsel was deficient. This Court finds Applicant acknowledged during the plea hearing that he understood the charge carried up to ten years and the State was making a recommendation of five years. See Guilty Plea Transcript, p. 4, ll. 8-15. Applicant also acknowledged that no one had promised him anything in order to plead guilty other than the State's five year recommendation. See Guilty Plea Transcript, p. 9, ll. 7-9. The record reflects that the plea was made freely, voluntarily, knowingly, and intelligently. See Guilty Plea Transcript, p. 10, ll. 1-5. This Court finds that Counsel was not deficient. Applicant told the plea judge that no promises had been made to him to get him to plead guilty and raised no concerns to the plea judge. This Court finds that Applicant was well informed of the amount of time he was facing and the recommendation made from the State. See Wolfe v. State, 485 S.E.2d 367, 371, 326 S.C. 158, 165 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made).

This Court further finds that Applicant has failed to show that he suffered prejudice. Even if Mr. Taylor did give Applicant a prediction of when Applicant would be eligible for parole, the plea judge conducted a proper colloquy concerning the amount of time Applicant was facing and

Applicant has failed to show that he would have rather gone to trial. Accordingly, Applicant has failed to show that Counsel was ineffective in this regard and this allegation 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 that Mr. Able's and Mr. Taylor's performances were 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), SCRCR, 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.~~ *ress*

AND IT IS SO ORDERED this 21 day of November, 2017.



R. SCOTT SPROUSE
Presiding Judge
Eighth Judicial Circuit

Waltham, South Carolina.

A TRUE COPY OF ORIGINAL
Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCR & GS

WITNESSES

Shane Prather
Clinton Police Department

WARRANT NUMBER

2014A3020100418

True Bill

Marjetta Thompson

Foreman of the Grand Jury

Date: 10-30-15

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2015

Indictment # 15GS30-1734

THE STATE

vs.

Kirk Willis

No U Pros

11/3/15

Warren Long

INDICTMENT FOR

Domestic / Criminal Domestic Violence; 3rd offense

within 10 yrs.; or 2 prior co

§16-25-0020

CDR: 3055

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCRP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR**Domestic / Criminal Domestic Violence; 3rd offense
within 10 yrs.; or 2 prior co
§16-25-0020**

At a Court of General Sessions, convened on the 30th day of October, 2015, the Grand Jurors of Laurens County present upon their oath:

That Kirk Willis did, on or about August 7, 2014, in Laurens County, willfully and unlawfully cause or offer or attempt to cause physical harm or injury to his family or household member, to wit: Barbara Willis, with apparent present ability under circumstances reasonably creating fear of imminent peril, in violation of the provisions of Section 16-25-20 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 cases made and provided.


Assistant Solicitor

WITNESSES

Shane Prather
Clinton Police Department

WARRANT NUMBER

2015D3000100144

True Bill

Marlette Thompson
Foreman of the Grand Jury

Date: 10-30-15

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2015

Indictment # 15GS30-1737

THE STATE

vs.

Kirk Willis

Nolle Pross

11/3/15

Warrant No 7

INDICTMENT FOR

Domestic / Criminal Domestic Violence; 3rd offense

within 10 yrs.; or 2 prior co

§16-25-0020

CDR: 3055

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

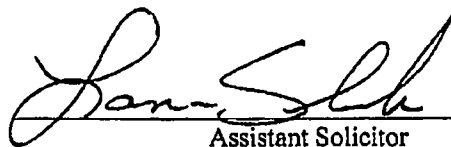
COUNTY OF LAURENS

Domestic / Criminal Domestic Violence; 3rd offense
within 10 yrs.; or 2 prior co
§16-25-0020

At a Court of General Sessions, convened on the 30th day of October, 2015, the Grand Jurors of Laurens County present upon their oath:

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


Assistant Solicitor

WITNESSES

Shane Prather
Clinton Police Department

WARRANT NUMBER

2015D3000100145

True Bill

Marietta Thompson

Foreman of the Grand Jury

Date: 10-30-15

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2015

Indictment # 15GS30- 1738

THE STATE

vs.

Kirk Willis

No He Pros
11/3/15

Warden Long

INDICTMENT FOR

Attempted Murder

§16-03-0029

CDR: 3410

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

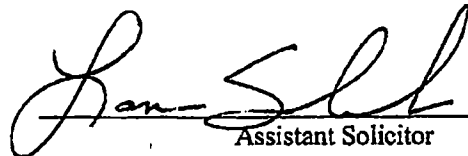
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****INDICTMENT FOR****Attempted Murder
§16-03-0029**

At a Court of General Sessions, convened on the 30th day of October, 2015, the Grand Jurors of Laurens County present upon their oath:

That Kirk Willis did, on or about August 7, 2014, in Laurens County, willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill Larry Worthy, in violation of Section 16-3-29 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 cases made and provided.


Assistant Solicitor

WITNESSES

Shane Prather
Clinton Police Department

WARRANT NUMBER

2015D3000100146

Travis Bell

Marietta Thompson
Foreman of the Grand Jury

Date: 10-30-15

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2015

Indictment # 15GS30-1739

THE STATE

vs.

Kirk Willis

Nolle Pross
11/3/15
Wanna Long

INDICTMENT FOR

Possession of Weapon During Violent Crime
§16-23-0490

CDR: 0549

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF LAURENS****Possession of Weapon During Violent Crime
§16-23-490**

At a Court of General Sessions, convened on the 30 day of October, 2015, the Grand Jurors of Laurens County present upon their oath:

That Kirk Willis did, on or about August 7, 2014, in Laurens County, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Attempted murder, or any lesser included violent offense, in violation of Section 16-23-490 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 cases made and provided.


Assistant Solicitor

WITNESSES

Shane Prather
Clinton Police Department

WARRANT NUMBER

2014A3020100420

True Bill

Maritta Thompson

Foreman of the Grand Jury

Date: 10-30-15

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2015

Indictment # 15GS30- 1735

THE STATE

vs.

Kirk Willis

INDICTMENT FOR

Attempted Murder

\$16-03-0029

CDR: 3410

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

**Attempted Murder
§16-03-0029**

At a Court of General Sessions, convened on the 30th day of October, 2015, the Grand Jurors of Laurens County present upon their oath:

That Kirk Willis did, on or about August 7, 2014, in Laurens County, willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill Larry Worthy, in violation of Section 16-3-29 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 cases made and provided.


Assistant Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Laurens
 STATE VS.
Kirk Willis
 AKA: _____
 Race: _____ Sex: M Age: 51
 DOB: 1964 SS#: [REDACTED]
 Address: East Bluford Street
 City, State, Zip: Clinton, SC 29325
 DL#: [REDACTED] SID#: _____
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault / Assault & Battery, 1st degree

INDICTMENT/CASE#: 15GS30-1735A/W#: 2014A3020T00420Date of Offense: 8/7/2014S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0600 of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act).

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

ATTEST: by O. Warden 4124 Kirk Willis Lynn W. Lancaster
 Sheek, C. Lance SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 (Five) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Probation violation
☒ 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. audit 556 days = jail.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Lynn W. Lancaster

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

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

Clerk of Court/ Deputy Clerk Lynn W. LancasterCourt Reporter: Gary Holston

SCCA/217 (03/2011)

Presiding Judge: F. J. [Signature]Judge Code: 2159Sentence Date: 11-3-15