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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to York County

Honorable J. Cordell Maddox, Circuit Court Judge  
\_\_\_\_\_

JOHN BROOKS HALL DUNCAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000712

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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STATE OF SOUTH CAROLINA

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STATE,

Plaintiff,

Case No.

-against-

2007-DR-46-3270; 3272;

JOHN BROOKS HALL DUNCAN,

3275;3276

Defendant.

-----x

October 30, 2015

York, SC

B E F O R E:

HONORABLE DANIEL D. HALL

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

CHRISTOPHER EPTING, Esquire

Assistant Solicitor

MELISSIA INZERILLO, Esquire

Attorney for the Defendant

Aileen Butler

Official Court Reporter

E X H I B I T S

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Court's 1	Attorney fee affidavit		13

1 THE COURT: All right, solicitor.

2 MR. EPTING: That you, Your Honor. May it please  
3 the Court. Before the Court today is John Brooks Hall  
4 Duncan represented by Melissa Inzerillo of the Public  
5 Defender's Office. It is my understanding that Mr.  
6 Duncan wishes to enter a plea of guilt under North  
7 Carolina versus Alford to seven charges; solicitation  
8 to commit a felony, Indictments 2015-GS-46-03270  
9 through 03276.

10 There is a negotiated sentence in this case, Your  
11 Honor, of a cap of 18 years.

12 THE COURT: Thank you Mr. Epting.

13 Miss Inzerillo, do you represent John Brooks Hall  
14 Duncan on these seven charges of solicitation to  
15 commit a felony?

16 MS. INZERILLO: Yes, Your Honor.

17 THE COURT: Have you had plenty of time to talk to  
18 him about the offenses and any potential penalty, any  
19 possible defenses he might have and the elements of  
20 each of these offenses?

21 MS. INZERILLO: Yes, Your Honor.

22 THE COURT: And how does he indicate he wishes to  
23 plead?

24 MS. INZERILLO: Guilty under North Carolina versus  
25 Alford, Your Honor.

1 THE COURT: And do you concur with his decision to  
2 plead guilty under North Carolina versus Alford?

3 MS. INZERILLO: I do, Your Honor.

4 THE COURT: All right. Is it John Brooks Hall  
5 Duncan, is that your name?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right, Mr. Duncan, let me ask you  
8 some basic questions. How old are you?

9 THE DEFENDANT: Twenty-four years old, Your Honor.

10 THE COURT: All right. How far did you go in  
11 school?

12 THE DEFENDANT: Ninth grade.

13 THE COURT: And I don't mean to demean you or  
14 anything. Are you able to read and write?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. We are going to talk about  
17 this plea waiver form in a moment.

18 Are you married?

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you have any children?

21 THE DEFENDANT: One.

22 THE COURT: How old is that child?

23 THE DEFENDANT: Almost two years old.

24 THE COURT: Mr. Duncan, there may be times while I  
25 may be looking down and reading or writing during this

1 procedure. I don't mean any disrespect to you. I'm  
2 able to listen to you while I am taking care of some  
3 other matters pertaining to your case. I don't want  
4 you to believe I am disrespecting you by not looking  
5 up.

6 Mr. Duncan, I have seven Indictments in front of  
7 me. They are all for the same offense.

8 I assume these are seven separate and distinct  
9 incidents; is that right Mr. Epting?

10 MR. EPTING: They are seven different victim's  
11 names.

12 THE COURT: Seven different victims. So let me  
13 start first by noting that none of these Indictments  
14 have been to the Grand Jury. The importance of that  
15 is the solicitor can not call your case for trial  
16 unless a Grand Jury listens to some of the evidence.  
17 Usually law enforcement comes in and gives some of the  
18 evidence in the case and if the grand jury is  
19 satisfied that probable cause has been shown to them  
20 then they return what is called a True Bill  
21 Indictment. They stamped it. Mark it True Bill. And  
22 the solicitor can not call your case for trial unless  
23 that case has been to the Grand Jury. That's your  
24 right. You have a right to the Grand Jury to hear  
25 your case. But you can give up and waive that right.

1 It appears by your signature on each of these seven  
2 Indictments and your initials on each of the seven  
3 sentencing sheets that you are giving up or waiving  
4 your right to the Grand Jury; is that correct?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: And you want to go forward with your  
7 plea today?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: All right. Your lawyer has told me  
10 that you have indicated to her that what your desire  
11 is to enter a guilty under North Carolina Alford.  
12 That's where when I ask you how do you plead on these  
13 cases the response if you want to plead that way is  
14 guilty under Alford.

15 Now there are two things you have to know to be  
16 able to intelligently plead guilty under Alford. One,  
17 is you have to believe that the State has offered you  
18 a negotiation or recommendation that is to your  
19 advantage to enter a plea. That means that you think  
20 it's to your advantage to take their offer and to  
21 enter a Alford plea. Secondly, you have to believe  
22 there are sufficient facts that the State would  
23 present that would likely result in you being found  
24 guilty if you went to trial. On both of those you  
25 don't have to acknowledge that you are guilty of the

1 facts but you have you to acknowledge that under the  
2 facts of the case that is presented by the State it is  
3 very likely that a jury would find you guilty and that  
4 you want to take advantage of the negotiations or the  
5 offer that the State has made.

6 Do you understand that is what an Alford plea is?

7 THE DEFENDANT: Well, that I get to maintain my  
8 innocence. What I understand I will get the deal out  
9 of it at the end and other charged might be dropped.

10 THE COURT: That's correct, and I don't know what  
11 those -- those haven't been told to me yet. I don't  
12 know what those are but you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you also understand that for  
15 purposes of a criminal record and for what we are  
16 doing here today in the future you will have a  
17 conviction? Your record is going to show that you  
18 have been convicted of these offenses.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And a they will be counted in the  
21 future against you as convictions even though you  
22 entered an Alford plea. Do you understand that sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right, let me go through these  
25 Indictments and let's talk about each one of them.

1 Indictment 2015-GS-46-3276 alleges here in York County  
2 on or about June the 20th of 2015 you sent a message  
3 or attempted to send a note to another inmate or to --  
4 to intimidate, harm or kill a witness against you -- a  
5 witness in a case against you. That carries up to ten  
6 years in prison.

7 How do you plead to that charge?

8 THE DEFENDANT: Under Alford sir.

9 THE COURT: Guilty under Alford?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Indictment 2015-3275 alleges that here  
12 in York County on or about June 20th those same  
13 circumstances that the defendant did send or attempt  
14 to send a note instructing another to intimidate, harm  
15 or kill a witness against him in the name of a -- yet  
16 another witness. So that's a second witness.

17 How do you plead to that charge?

18 THE DEFENDANT: Guilty under Alford, Your Honor.

19 THE COURT: Indictment 2015-3274 alleges that here  
20 in York County on or about June the 20, 2015 under  
21 those same circumstances, same allegations as the  
22 other Indictment, however, a third named individual  
23 who was a potential witness against you. How do you  
24 plead to that charge?

25 THE DEFENDANT: Guilty under Alford, Your Honor.

1           Indictment 2015-3273 alleges that on or about June  
2           the 20th, 2015 here in York County under the same  
3           circumstances, same allegations of the other  
4           Indictments, that there was a fourth -- I'm sorry, a  
5           fourth witness in this particular case, a detective  
6           from the York County -- I assume that's from York  
7           County Sheriff's Department.

8           MR. EPTING: That'S correct, Your Honor.

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

10           Don't look to your lawyer. I'm asking you. She  
11           can't answer for you.

12           THE DEFENDANT: Guilty under Alford, Your Honor.

13           THE COURT: Indictment 2015-3272, that Indictment  
14           alleges that here in York County on or about June the  
15           20th under the same circumstances, same allegations,  
16           that you did send a note or attempt to send a note  
17           instructing another person to intimidate, harm or kill  
18           a witness against a second York County Sheriff's  
19           Deputy. How do you plead to that charge?

20           THE DEFENDANT: Guilty under Alford, Your Honor.

21           THE COURT: Indictment 2015-3271 that Indictment  
22           alleges that here in York County on or about June the  
23           20th, 2015, under the same circumstances as stated  
24           earlier, same elements, the offense that you did send  
25           or attempt to send a note instructing another to

1 intimidate harm or kill a witness, a potential witness  
2 against you and there again that would have been a  
3 third deputy from the York County Sheriff's  
4 Department.

5 How do you plead to that charge?

6 THE DEFENDANT: Guilty under Alford Your Honor.

7 THE COURT: And then Indictment 2015-GS-46-3270,  
8 that Indictment alleges that here in York County on or  
9 about June the 20th that under the same circumstances  
10 as the prior Indictments and the same elements you  
11 intended to kill or attempted to have one, intimidate,  
12 harm or kill another witness. I believe that would be  
13 a fourth witness in your case.

14 How do you plead to that charge?

15 THE DEFENDANT: Guilty under Alford Your Honor.

16 THE COURT: Do you understand that all seven of  
17 those charges carry up to ten years in prison, which  
18 would mean 70 years. The negotiation in this case is  
19 for a negotiated sentence of a cap of 18 years. If I  
20 follow the negotiation it means that that I will not  
21 give you more than 18 years. Do you understand that?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: And if I went to the 18 years that  
24 would mean a ten year sentence on any of these  
25 Indictments, but then also one of the Indictments have

1 an eight-year sentence that would run consecutive. Is  
2 that your understanding?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 All right. I have what's in front of me what is  
5 marked a plea waiver form. It is entitled plea waiver  
6 form marked Courts Exhibit One, and on the appropriate  
7 page on this plea waiver form there appears to be a  
8 signature by the defendant's name, dated today's date  
9 and then Melissa Inzerillo's, your attorney's name and  
10 signature. Is that your signature on this plea waiver  
11 form?

12 Do you need to look at it?

13 THE DEFENDANT: Yes, sir, that's mine.

14 THE COURT: That's your signature, and I'm marking  
15 this Court's Exhibit One.

16 Did you understand all of your rights when Miss  
17 Inzerillo went over this form with you?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: She went over the form. You have a  
20 right to a jury trial, the right to appeal, your right  
21 to remain silent, right to confront witnesses. She  
22 went over all those rights with you?

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: Do you have any questions or concerns  
25 about anything on this form. Do you have any

1 questions about it?

2 THE DEFENDANT: No, sir Your Honor.

3 THE COURT: It appears that your initials are in  
4 most of the boxes that are included in this form. Do  
5 you remember initialing all those boxes?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: And so you understood those when you  
8 initialed those boxes?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Well, let me talk to you a little bit  
11 about just to be sure we have a clear record that you  
12 understand what you are doing and you are doing this  
13 freely and voluntarily.

14 You understand by pleading under North Carolina V  
15 Alford when you enter that plea you are giving up your  
16 right to a jury trial. At a jury trial you have a  
17 right to maintain your innocence and the State would  
18 be required to bring witnesses here in the courtroom  
19 and the State would have to prove every element of the  
20 charges against you beyond a reasonable doubt to the  
21 jury. You would have a right to remain silent. You  
22 wouldn't have to say anything. You wouldn't even have  
23 to put up a case. You could if you wished but if you  
24 didn't put up a case the Court would instruct the jury  
25 not to consider that in determining whether you are

1 guilty or not guilty. The burden is on the State to  
2 prove your guilt beyond a reasonable doubt on every  
3 element of any offense that they bring against you.  
4 In fact 12 jurors would have to all unanimously agree  
5 that you were guilty before you can be found guilty.

6 At trial you have an important right called the  
7 right to confrontation. The right to confrontation  
8 means you get to be here in the courtroom when the  
9 witnesses come in the courtroom. You get to see them.  
10 You get to hear them and your lawyer can cross examine  
11 them on your behalf. That's called the right to  
12 confrontation. Do you understand those rights?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: Understanding those rights do you still  
15 want to go forward with your plea today or do you want  
16 me to set your case for trial?

17 THE DEFENDANT: I would like to go forward Your  
18 Honor.

19 THE COURT: You are represented by Miss Inzerillo  
20 here. Do you have -- has she done everything you  
21 asked her to do in this case?

22 THE COURT: Yes, sir, Your Honor.

23 THE DEFENDANT: Are you satisfied with her  
24 representation?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Have you had plenty of time to talk to  
2 her about the case and to go over the documents and  
3 information that's been provided to her by the  
4 solicitor's office.

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Have you all had plenty of time to do  
7 that?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: You all been able to talk about any  
10 possible defenses you might have.

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: Do you need any more time to talk to  
13 her?

14 THE DEFENDANT: No, sir Your Honor.

15 THE COURT: Let me talk to you a little bit about  
16 medication. I notice in this plea waiver form that  
17 you are taking or -- are you taking any medication?

18 THE DEFENDANT: No sir, Your Honor.

19 THE COURT: But you in the past had a prescription  
20 for Adderall, Risperdal, Depakote, Wellbutrin and I  
21 can't read the other. You have been on those. You've  
22 had prescriptions for those in the past?

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: The fact that you had those  
25 prescriptions in the past does that affect your

1 ability to understand what we are doing here today?

2 THE DEFENDANT: No, sir, Your Honor.

3 THE COURT: You know what we are doing here?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: Have you got at this point do you have  
6 any complaints against your lawyer, against law  
7 enforcement, against the Court, against the jail?  
8 Have you got any complaints?

9 Other than -- well, let's talk about that.  
10 You're smiling. You may have some complaints. Do you  
11 have any complaints by which you think would alter the  
12 outcome of what we are doing here today?

13 THE DEFENDANT: No, sir Your Honor.

14 THE COURT: Are you in fact guilty of these -- are  
15 you in fact pleading guilty under North Carolina  
16 versus Alford to these seven charges?

17 THE DEFENDANT: If that makes me where I can  
18 maintain my innocence then yes, sir, Your Honor.

19 THE COURT: And we talked about that. You  
20 understand what a North Carolina v Alford plea is, is  
21 that correct?

22 THE DEFENDANT: My lawyer explained to me where I  
23 would plead guilty but I get to maintain my innocence.

24 THE COURT: All right, and that's right. You are  
25 exactly right. And you're taking advantage of the

1 offer that the State is making you to today. Is that  
2 your understanding of where we are?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: I find the decision of this defendant  
5 to plead guilty under North Carolina v Alford to these  
6 seven charges to be freely, voluntarily and  
7 intelligently made with the advice and consent of a  
8 competent attorney with whom he says he is satisfied.  
9 I will accept your plea.

10 Mr. Duncan, in the plea waiver form and I am  
11 telling you here now you have been made aware that you  
12 have ten days from today's date to appeal any error.  
13 If I make an error, if you disagree with the sentence  
14 you can appeal, but that you would have to do that by  
15 notifying your lawyer.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That's the appeal's process. You have  
18 to do that within ten days. Do you understand that?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: All right. Solicitor tell me about  
21 it.

22 MR. EPTING: Thank you, Your Honor.

23 The facts that constitute the factual basis for  
24 this should this case come to trial the State would  
25 intend to introduce evidence that in June of this year

1 a message was given from another inmate. That inmate  
2 reported that message was given to him by the  
3 defendant J.B. Duncan. The content of that message  
4 says "These are the names of who needs exterminated."  
5 He names the seven victims at that point. Turns that  
6 over to officers and at that point these charges are  
7 made.

8 THE COURT: All right. Let me be sure that I am  
9 clear, so he passed a note or something in writing  
10 with that wording on to another inmate?

11 MR. EPTING: That is, correct, Your Honor, and  
12 instructed that inmate to deliver -- we would present  
13 evidence that he instructed that inmate to deliver  
14 that note to parties on the outside who are known to  
15 have gang affiliation.

16 THE COURT: All right, and then how did law  
17 enforcement come in possession of that note?

18 MR. EPTING: That inmate turned it over to law  
19 enforcement at that time.

20 THE COURT: All right, thank you.

21 Mr. Duncan, are those the facts that you believe  
22 that the State would present at trial? I'm not asking  
23 you to put on the record are you guilty of those  
24 facts. Do you understand that those are the facts  
25 that the State would introduce in front of a jury at

1 trial?

2 THE DEFENDANT: That's their case they are going to  
3 present?

4 THE COURT: That's correct. That's what I am  
5 asking?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And is it your belief that if they  
8 present those facts it's likely a jury would find you  
9 guilty.

10 THE DEFENDANT: I'm not sure Your Honor.

11 THE COURT: Well, let me ask you this. In an  
12 Alford plea there is two things. We talked about two  
13 things you have to knowingly and intelligently do.  
14 One is you have to believe that there is a sufficient  
15 factual basis by which a jury would find -- could find  
16 you guilty. You don't have to know that they are  
17 going to absolutely find you guilty. We don't know  
18 what a jury will do in any case but as an individual  
19 entering his plea under Alford you have to believe  
20 that there is a sufficient factual basis by which a  
21 jury could find you guilty.

22 THE DEENDANT: Yes, sir, Your Honor.

23 THE COURT: Is that -- is that -- do you understand  
24 that?

25 THE DEFENDANT: If I went to jury trial there's a

1 fifty/fifty chance I could be found guilty or not  
2 guilty.

3 THE COURT: I didn't say fifty/fifty. The law  
4 doesn't require fifty/fifty. The law says that a jury  
5 could find you guilty.

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: All right. Anything -- do you have --  
8 what else do you need to present?

9 MR. EPTING: Your Honor, I would like to present  
10 his record. I think it's important for the Court to  
11 hear the lead-up of these charges. The victims that  
12 are present in Court today I believe would also like  
13 to address the Court.

14 THE COURT: All right, hold on just a second. I  
15 need -- my clerk is not here and I need to get one  
16 piece of paper off my desk. I will be right back.  
17 Thank you.

18 (WHEREUPON, there was a brief recess.)

19 Let me ask Mr. Duncan another question to just be  
20 sure we have everything. This is for your protection  
21 too Mr. Duncan.

22 In an Alford plea, to enter your plea you have to  
23 believe that the evidence strongly supports your  
24 guilt. In other words, there is enough evidence that  
25 strongly supports a jury returning a verdict of guilt

1 in your case. Is that clear to you?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: All right. Understanding that does  
4 that change your view of whether to go forward with  
5 this plea or not?

6 THE DEFENDANT: No, sir, Your Honor.

7 THE COURT: You still want to go forward with the  
8 plea?

9 THE DEFENDANT: With the not guilty under Alford?

10 THE COURT: Guilty under Alford.

11 THE DEFENDANT: Guilty under Alford, I apologize  
12 Your Honor.

13 THE COURT: Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Epting, I will be glad to hear  
16 from you anything else.

17 MR. EPTING: Thank you, Your Honor. I'll begin by  
18 reading out his prior criminal convictions.

19 Mr. Duncan has a history dating back as an adult  
20 2009, petit larceny conviction, 2010 a malicious  
21 injury to personnel property. The penalty on that was  
22 unclear. In 2011 he received convictions for burglary  
23 2nd degree, property enhancement and financial  
24 transaction card fraud. He received a sentence of six  
25 years suspended on active three years followed by

1 three years probation. In 2013 he received a sentence  
2 of grand larceny over ten K, burglary 2nd, controlled  
3 substance and he received a thirty month sentence on  
4 that charge.

5 Your Honor, on the cases that led up to this the  
6 first one occurred in March. A machine gun and other  
7 police gear including a pistol were stolen out of a  
8 police officer's vehicle over a range of time. When  
9 the officer found out that that was missing he  
10 reported that to officers. They began to investigate.  
11 They began to receive numerous tips that Mr. Duncan  
12 had in fact -- was in fact showing some items similar  
13 to the ones that had been stolen around; showing a  
14 bullet proof vest, showing numerous things.

15 MS. INZZERILLO: Your Honor, I am sorry to  
16 interrupt. May we approach briefly?

17 THE COURT: Yes.

18 (WHEREUPON, there was an off the record  
19 discussion.)

20 MR. EPTING: And Your Honor, just to clarify the  
21 charges that I am reading to the Court are being  
22 dismissed as part of this plea as a benefit to the  
23 defendant for accepting the offer here today.

24 Eventually they did serve a search warrant on a  
25 place where the defendant stays where they did

1 discover some items they believe were related to that.  
2 They got a search warrant for his phone. They saw the  
3 bullet proof vest and through other witnesses some of  
4 those named in the note which is how it's relevant to  
5 the case in hand were the ones giving that information  
6 to the police.

7 THE COURT: Let's do this Mr. Epting. Let's put  
8 on the record so the record is clear about the benefit  
9 he is receiving in exchange for his Alford plea.

10 Would you list the charges that are being dismissed  
11 in the case.

12 MR. EPTING: Your Honor, I do not have the  
13 warrants in front of me. They are listed in full on  
14 the plea waiver form. I can go case by case.

15 THE COURT: I don't need the warrant number. Do  
16 you have the list of the --

17 MR. EPTING: I believe so Your Honor, of the case  
18 I just referred to you there was breaking and entering  
19 into an automobile charge. There was a possession of  
20 machine gun charge and a transportation of a machine  
21 gun charge.

22 THE COURT: Okay. And I will list what -- and  
23 this is part of the plea waiver form that Mr. Duncan  
24 executed and in that plea waiver form it lists the  
25 General Sessions charges being dismissed; that would

1 be --and these are Indictment numbers --  
2 2015-GS-46-2255, 2256, 2172, 2172-A, 2169, 2170, 2171,  
3 2173 through 2177. So numerous charges including the  
4 offenses that you just related to the Court.

5 MR. EPTING: That is correct Your Honor.

6 THE COURT: Thank you.

7 MR. EPTING: In a separate robbery case also  
8 involving a named victim on that note Mr. Duncan was  
9 charged assaulting in a group. A victim on that case  
10 alleges on that were that he beat up the victim on  
11 that case. It's a gang related fight. He believed  
12 that the person was representing to be a member of his  
13 gang when in fact he was not. A fight ensued wherein  
14 a wallet and some other items were taken and  
15 eventually shortly after that returned. Shortly after  
16 that incident, Your Honor, the uncle of that victim,  
17 another named person in the note, began to communicate  
18 with Mr. Duncan. They set up a meeting. Frankly Your  
19 Honor in all candor to the Court set up a meeting for  
20 them to fight, mutual combat. The victim on that case  
21 reported the Mr. Duncan showed up at that fight with a  
22 knife. At that point he fled. Mr. Duncan pursued  
23 him. Various parties became armed at various points.  
24 The fight ended with Mr. Duncan stabbing that victim  
25 in the chest. He had to be airlifted to North

1 Carolina. Very serious injuries. Mr. Duncan was also  
2 injured in that fight with a broken shoulder. And  
3 that's -- those are all related to those Indictment  
4 numbers that Your Honor read.

5 THE COURT: As far as the charges that are before  
6 us that he's pleading guilty under Alford, to nthe  
7 solicitation to the comit a felony has the State  
8 complied with the victim's right act on each of those  
9 Indictments?

10 MR. EPTING: We have and several of those victims  
11 are present in Court and wish to address the Court at  
12 the appropriate time.

13 THE COURT: I think this is the time, the Court  
14 like to hear from them.

15 MR. EPTING: Your Honor, this is Detective Nick  
16 Shiftly of the York County Sheriff's Office.

17 THE COURT: Yes, Detective Shiftly.

18 DETECTIVE SHIFTLY: Your Honor, I have been a  
19 police officer for over ten years. Currently I am  
20 detective assigned to criminal investigation division  
21 with the sheriff's office. Since being a sheriff's  
22 deputy I've been punched. I've been kicked. I have  
23 been spit on. I've been cussed out. I've almost  
24 drowned. Been bit in the face by a meth coke's dog. I  
25 have been threatened verbally. Somebody even threw a

1 rock through my window with a death threat on it  
2 before. But none of that bothers me as much as this  
3 incident, and the reason why that is is this an  
4 individual who choose not to have a fair trial. This  
5 is an individual who tried to tip the scales of  
6 justice by threatening witnesses including myself in  
7 this case. I'm sure some people will suggest this was  
8 a joke or this wasn't a serious message but we don't  
9 even know how many messages were sent. People act  
10 like this message was stopped. This was prevented but  
11 we had to have a separate hearing just to find out  
12 just so the defense can learn the name of the  
13 individual that turned over the note. So how many  
14 more messages are out there. We don't know. We don't  
15 even know how many more conspirators there are. I  
16 know that some people will think that this is an  
17 incredible threat, but this is coming from a gang  
18 member who stabbed someone, who robbed somebody, who  
19 broke into a car and stole a fully automatic machine  
20 gun, bullet proof vest, a gas mask,, ammunition. How  
21 can anyone not feel that this is a credible threat.

22 Being a police officer is difficult enough. Why  
23 should I have to die so he can seek revenge or go  
24 free. Why should I have to carry a gun when I'm out  
25 in my yard. Why should I have to carry a gun when I

1 go to the store. Why should my safety be threatened.  
2 There's a thousand and one reasons why it's extremely  
3 dangerous to be a police officer these days.

4 Your Honor all I can ask for is justice. That's  
5 all.

6 THE COURT: Thank you sir.

7 MR. EPTING: Your Honor, this is Detective Gonzalez  
8 from the York County Sheriff's Office.

9 THE COURT: Thank you, Detective Gonzalez.

10 DETECTIVE GONZALEZ: Your Honor, thank you for  
11 allowing me be before the Court.

12 Currently I am assigned to Criminal Investigations  
13 Division of the York County Sheriff's Department as a  
14 detective. My partner and colleague has spoken very  
15 eloquently. I am trying to phrase my statements while  
16 staying on point as to the material facts at hand  
17 while sparing this Court any of my natural emotions I  
18 may feel and possibly feel towards the defendant.

19 I've proudly served as a police officer for over a  
20 decade. In that time during the course of my duties I  
21 have been assaulted, shot at, cut, spit on, stabbed,  
22 hit by a truck.

23 THE COURT: Let me ask, Mr. Duncan if you can  
24 focus on the Court. You don't need to focus on any  
25 victims in this case.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Thank you. Go ahead.

3 DETECTIVE GONZALEZ: Yes, sir, Your Honor. I have  
4 seen some of most ghastly and disgusting acts people  
5 have done to others in my career, yet I have continued  
6 to faithfully serve our justice system because I  
7 believe in it. I have made both professional as well  
8 as personnel investment in our system in missing  
9 holidays, birthdays, special events along with many  
10 other police officers because we believe in the legal  
11 justice system. We hope that the community continues  
12 to believe in us as we protect and uphold the laws  
13 that we have sworn to uphold. We live every day  
14 knowing this might be our last on earth yet we  
15 continue to live by our code and live as contributing  
16 members of society.

17 The defendant had multiple chances to be a  
18 contributing member of society and yet he has  
19 repeatedly violated our laws and committed crimes  
20 against our community including threatening the lives  
21 of police officers and other witnesses who faithfully  
22 serve this community. Case in point, one of the York  
23 County Sheriff's Deputies he was threatened. He's  
24 only named in the list because that their name was on  
25 the affidavit. That demonstrates his willingness to

1 target a person without any real justification or  
2 forethought which makes him even a greater danger to  
3 this community. With this in mind our investment --  
4 with this in mind our investment of the justice system  
5 is only founded when justice is served. The evil and  
6 guilty are punished in our courts are courts of the  
7 laws.

8 The defendant is not a good person. He is not a  
9 contributing member of society. He is a well-known  
10 and documented gang member who means to do harm to  
11 those who oppose his criminal activities. I can only  
12 hope that today in this Court he will be punished  
13 accordingly and receive the maximum sentence for his  
14 crime.

15 Thank you for your time sir.

16 THE COURT: Thank you Detective Gonzalez.

17 MR. EPTING: Your Honor, I believe we have one  
18 more witness that wishes to address the Court.

19 Two more witnesses Your Honor. I apologize.

20 THE COURT: Mr. Hudgins.

21 MR. HUDGINS: I am representing Sheriff Bruce  
22 Bryant in this proceeding this afternoon. We at the  
23 sheriff's office take this quite seriously when  
24 someone threatens our deputies. As you know in the  
25 culture today that's quite a serious thing that has

1           been going on around this country, and we would just  
2           ask that you take the seriousness of what's taken  
3           place here in mind in your sentencing. As you well  
4           know the defendant has been stated that he is part of  
5           a gang and those kind of incidents. And the thing is  
6           just recently we had those kind of incidents occur in  
7           our county where two people lost there lives. Our  
8           officers who are out here risking their lives every  
9           day, day in and day out, 24 hours a day, seven days a  
10          week, have enough problems on the job and then have to  
11          worry about themselves and there families when they  
12          are away from their job.

13                 We just ask that justice would be served and that  
14                 you would take that into consideration as you make  
15                 your decision today.

16                 THE COURT: Thank you Mr. Hudgins.

17                 Solicitor Brackett.

18                 SOLICITOR BRACKETT: I just want to add my voice to  
19                 their's because this type of crime doesn't just  
20                 involve an attack or a threat on officers in the  
21                 course of doing their jobs, and I know exactly what  
22                 Major Hudgins was referring to when we had a situation  
23                 earlier in this county about this time last year. Two  
24                 individuals were killed over in Lake Wylie and I was  
25                 involved in that case from the day it happened, from

1 the crime scene all the way working with the United  
2 States Attorney's Office in Charlotte. Ultimately  
3 they took over the case but at the time that they  
4 adopted the case with prosecution in Federal Court I  
5 went up there and joined them in a press conference  
6 and I told them what I will tell you now.

7 This sort of thing isn't just an attack or a threat  
8 to these individuals. It's an attack on our system of  
9 justice. You and I and everyone in this courtroom  
10 work really hard to make sure that this is a venue, a  
11 forum for the fair and just resolution of cases.  
12 People who come here have a right to expect that, both  
13 defendants and victims and we all work hard to make  
14 sure that they have a right to that and that those  
15 rights are observed and honored. When you do this  
16 sort of thing, when you threaten witnesses, when you  
17 try to intimidate, when you attack them when you try  
18 to change the balances as Detective Shiftly said and  
19 put your thumb on the scale it's not just an attack on  
20 them. It's an attack on the system that we all work  
21 so hard to maintain and when that happens, as I said  
22 that day in Charlotte and I will say it again now, the  
23 response of a civilized and orderly justice system  
24 needs to be dramatic. We need to make sure that  
25 people understand when you do this sort of thing, when

1 you engage in these kinds of underhanded tactics to  
2 try and absolve yourself of what you did by  
3 threatening and scaring other people and preventing  
4 them from going to Court or killing them to prevent  
5 them from coming to Court to testify the results need  
6 to be dramatic and a statement needs to be made to  
7 disincant (phonetics), demotivate and make sure that  
8 everyone knows when you do that we are going to  
9 respond and it's going to be dramatic.

10 So I would join in them in asking for every single  
11 day of the 18 years that he is exposed to and  
12 hopefully that will be a lesson as well for Mr. Duncan  
13 and to anyone else that might engage in these kinds of  
14 tactics that we will take these cases seriously and  
15 the system will take these cases seriously.

16 THE COURT: Thank you Solicitor Brackett.

17 MR. EPTING: That is the State's case Your Honor.

18 THE COURT: Miss Inzerillo, I will be glad to hear  
19 from you and Mr. Duncan I'll be glad to hear from you.

20 MS. INZERILLO: Thank you, Your Honor. May it  
21 please the Court.

22 Your Honor, I can tell you all the meeting that I  
23 have and all the discussions I have had with Mr.  
24 Duncan during the duration of this case two aspects of  
25 his personality stand out the most. The first is he

1 is an extremely loyal. In fact his loyalty he gives  
2 it to others and he expects it from others. The  
3 second thing is that he is impetuous. That he is  
4 impulsive. I have had conversations with Mr. Duncan  
5 and in the course of one conversation he's said one  
6 thing and then by the end of it he's kind of thought  
7 through it and reconsidered and moved on to a  
8 different position.

9 I start here Your Honor because in this case I  
10 think the crux of it really comes from the betrayal  
11 that Mr. Duncan felt by some of these victims.  
12 Witnesses really as they started out that he  
13 considered his friends and I think there was a fatal  
14 moment when those two aspects of his personality  
15 crossed. His intense loyalty and his expectation of  
16 that from others and then the impulsivity that drives  
17 a lot of his decisions. I don't say this to minimize  
18 anything and certainly this type of action is a  
19 serious action. But I will tell the Court now that  
20 the Court has heard his record, there is nothing on  
21 his record where he has threatened officers, where he  
22 has assaulted officers. You have heard he has a quite  
23 a -- he's been in the system for a while. Essentially  
24 since he has been about 17. So, he has been arrested  
25 numerous times. Interacted with the officers. And

1 when in direct interaction with the officers he takes  
2 it very seriously to comply with their demand. So I  
3 did wish the Court to note that.

4 In the impulsivity, Your Honor, I think that traces  
5 back to his bi-polar diagnosis and it would appear  
6 that he's had that diagnosis for a while, and as I  
7 indicated in my conversations with him when you see  
8 him kind of go back and forth from one end of scale to  
9 the other that does seem to be in line with the  
10 bi-polar diagnosis. Unfortunately because as you  
11 heard from the State that he's been in and out of the  
12 system for a while he has not gotten consistent  
13 treatment. The medicine that I reviewed with him that  
14 the Court has read out a lot of that has come through  
15 the prison system and not out in the community when  
16 perhaps some of these impulsive actions could be  
17 controlled.

18 Mr. Duncan does live in Fort Mill. He has a very  
19 strong family unit. His mother is here and does wish  
20 to address the Court. He also has a sister. He -- I  
21 can tell his mother is very strict with him. Does not  
22 at all approve of the lifestyle he has chosen to lead  
23 in terms of the criminal record that he has amassed  
24 and she is very stern on him. So he does have that  
25 type of stern hand and guiding light in his life. His

1 sister as he described to me is only three years older  
2 but one really one that kind of raised him and showed  
3 him a lot of things. Also kind of tries to keep him  
4 straight and narrow as she can.

5 Your Honor, our wish would be for the Court to  
6 consider concurrent time in this case. Certainly the  
7 Court is aware that consecutive time does effect  
8 parole eligibility and max-out dates and that kind of  
9 thing. We would ask the Court to consider concurrent  
10 time. He did come before the Court, Your Honor. We  
11 discussed all the other cases that Solicitor Epting  
12 described to the Court and certainly I would point out  
13 that in the B and E case there is no forensic evidence  
14 linking him to that. In the fight case we felt like  
15 we had a strong argument for self-defense. So there  
16 were certain aspects of those cases that he is also  
17 waiving and not challenging those. Making these  
18 witnesses come before a Court and jury to testify. So  
19 after much deliberation in this case, extension  
20 discussion, he has decided to come before Your Honor.  
21 He recognizes he is getting a benefit. This decision  
22 of all his decisions I think has been the most well  
23 reasoned that he's done. He has really considered the  
24 case.

25 I will tell you that he knows the in and outs of

1 this case. He's a prolific writer. The majority of  
2 my file there's a lot of letters pointing out details  
3 in his case. Asking very poignant questions about his  
4 case. But I think we are here today because of, sort  
5 of an almost fatal crossover of those two aspects of  
6 his personality.

7 Your Honor, as I indicated his mother Heather  
8 Duncan does wish to address the Court.

9 THE COURT: All right, Miss Duncan, I will be glad  
10 to hear from you.

11 MS. DUNCAN: Thank you, Your Honor.

12 I known him better than anybody.

13 THE COURT: Lets do this. Miss Duncan if you stand  
14 up here and tell us your full name.

15 MS. DUNCAN: My name is Heather Hall Duncan. I too  
16 appreciate the justice system, Your Honor, and I read  
17 an article recently where there was going to be a  
18 mental health court here in the county soon. That  
19 there was a law passed for that and I am very grateful  
20 for that. I am grateful for these officers and what  
21 they do for our county and for our safety but I do  
22 stand before you with a plight for my child. John has  
23 been diagnosed with a mood disorder and bipolar since  
24 the age of 11 and he has been in and out of hospitals.  
25 He's been in and out of incarceration and while

1           incarcerated he did not receive the kind of medication  
2           that he should have and when he did get it he was  
3           never sent home with a prescription or a doctor's  
4           treatment plan. I'm not defending him, Your Honor. I  
5           am not defending his behavior. I'm not defending his  
6           choices. I'm here as a plight for my child and for  
7           the rest of mental health community that they be able  
8           to get the kind of health that they need. Prison is  
9           not a help for him. Prison is not a solution. It's  
10          not going to fix the problem. What he needs is a good  
11          solid mental health plan. As many people would  
12          benefit from these kind of laws being in our court.

13                 I love no one other on the face of this planet more  
14                 than you and your sister and I will stand behind you  
15                 till heaven opens up, and I love you.

16                 I am not excusing him, Your Honor. I don't want  
17                 anybody in this courtroom to think that I am excusing  
18                 this. I am grateful to be here and I am grateful for  
19                 an opportunity to stand before you and share. If you  
20                 need any more information about John Brooks and any  
21                 more of the struggle that we've experienced with this  
22                 I will be glad to share with you.

23                         THE COURT: Thank you Miss Duncan.

24                         Miss Inzerillo.

25                         MS. INZERILLO: Your Honor, Mr. Duncan does wish

1 the Court to be aware of the fact he has never been  
2 arrested for anything gang related. I believe that  
3 was mentioned by several people who spoke here today  
4 but as the court does have his record he did wish to  
5 the Court to pay special attention to that.

6 THE COURT: Anything else Miss Inzerillo?

7 MS. INZERILLO: No, Your Honor.

8 THE COURT: Anything else from the State?

9 MR. EPTING: No, Your Honor.

10 THE COURT: How long has he been in jail?

11 MS. INZERILLO: 265 days Your Honor.

12 THE COURT: Mrs. Duncan, I am sorry that you had  
13 to be caught in the mist of all this. Sadly the  
14 criminal system, the State through the criminal system  
15 is not in the position to really be able to offer any  
16 beneficial help for people with emotional mental  
17 issues. The sad thing is and whether your son has  
18 something to that extent I don't know, but when, you  
19 know, folks with with mental issues commit criminal  
20 acts the only thing the State can do is deal with them  
21 through the criminal justice system and what we hope  
22 for you Mr. Duncan is that you will change for the  
23 good.

24 Indictment --

25 THE DEFENDANT: Your Honor.

1 THE COURT: Yes, sir.

2 THE DEFENDANT: I would like to say one thing, Your  
3 Honor.

4 THE COURT: Yes, sir.

5 THE DEFENDANT: I'm not trying to put my actions  
6 off on my mental health disability.

7 THE COURT: No one has done that. And it's clear  
8 -- and I appreciate that. I mean, it's clear that it  
9 doesn't seem to be a basis where whatever your mom has  
10 dealt with or whatever you dealt with in the past  
11 affects your ability of whether you know what you are  
12 doing is right or wrong and be able to assist your  
13 lawyer here today. But obviously, and certainly your  
14 admitting that means that you have the ability to  
15 change. We hope that you will change for good.

16 Be that as it may, on Indictments 2015-GS-46-3276,  
17 State versus John Brooks Hall Duncan, having plead  
18 guilty to solicitation to commit a felony, sentence of  
19 the Court that he be committed to the State Department  
20 of Corrections for a determinate term of ten years,  
21 concurrent, credit for 265 days. Indictment  
22 2015-GS-46-3275, State versus John Brooks Hall Duncan,  
23 having plead -- and these are all guilty under North  
24 Carolina versus Alford -- having plead guilty under  
25 North Carolina versus Alford to solicitation to commit

1 a felony, sentence of the Court he be committed to the  
2 State Department of Corrections for a determinate term  
3 of eight years, consecutive to Indictment  
4 2015-GS-46-3276. Credit for 265 days. Sentence on  
5 the remaining five Indictments is all for ten years  
6 concurrent.

7 Thank you.

8 MR. EPTING: Thank you, Your Honor.

9 (END OF TRANSCRIPT)

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## C E R T I F I C A T E

1  
2  
3 I, the undersigned Aileen Butler, Official Court Reporter  
4 for the 16TH Judicial Circuit of the State of South Carolina, do  
5 hereby certify that the foregoing is a true, accurate, and  
6 complete transcript of record of all the proceedings in the  
7 captioned case, in the Circuit Court for York County, South  
8 Carolina, on the 29 day of October, 2015.

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

11 November 30, 2016

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14 S/ Aileen Butler  
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FORM 5

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY

County of York SC. 2016 OCT-26 PM 1:38 IN THE COURT OF COMMON PLEAS

John-Brooks Hall Duncan # DAVID HAMILTON CLERK OF COURT YORK COUNTY, SC

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

v. )

State of South Carolina )

2016 CP46-3163

2016 OCT 26 AM 11:50 DAVID HAMILTON C.C.P. & GS YORK COUNTY, SC

CO-RECEIVED

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS READ CAREFULLY

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

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

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

1. Place of detention Lec County Correctional Institution

2. Name and location of Court which imposed sentence York County South Carolina 29745

3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015GS4603270, 2015GS4603271, 2015GS4603272

(b) 2015GS4603273, 2015GS4603274, 2015GS4603275  
(c) 2015GS4603276,

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

(a) 10-29-15  
(b) 10 yrs - Non-Volent  
(c) 8 yrs - NonVolent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_  
(b) after a plea of not guilty \_\_\_\_\_  
(c) after a plea of nolo contendere ~~\_\_\_\_\_~~

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

yes

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:  
i. South Carolina Direct appeals  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:  
i. Denied to lack of probable cause  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(c) the date of each such result:  
i. unknown, because I am currently in lock-up  
ii. and cant get into my property bag for legal  
iii. material

(d) if known, citations of any written opinion or orders entered pursuant to such results:  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) \_\_\_\_\_

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) unaffordable counsel
- (b) lack of proper evidence.
- (c) Unfair ~~on~~ over sentencing

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

- (a) Co-defendant + Counsel both from same office +
- (b) Co-defendant was witness against me for the state
- (c) over sentencing on A misdemeanor crime

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

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

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

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

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Melissa Inzerillo York County South Carolina Public Defenders office
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. All preliminary Hearing, Sentencing, filing Direct appeal
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

A sentencing overturned, retrial or plea deal, lesser  
Harsh sentencing OR Acquitte on all charges

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


NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of York SC )

VERIFICATION

I, John-Brooks Hall Duncain I, 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.



SWORN to and subscribed before me this 20  
day of Oct, 2014.

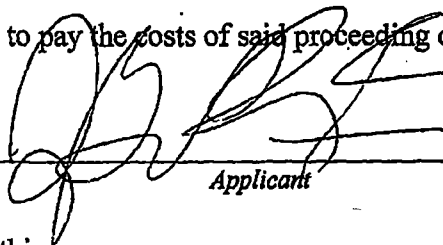
Debra E. Eustace (L.S.)  
Notary Public

My Commission Expires: 3/3/2026

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

I, John-Brooks Hill Duncan I, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

  
 \_\_\_\_\_  
 Applicant

SWORN or affirmed to and subscribed before me this  
20 day of Oct, 2014.

  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 John Brooks Hall Duncan, )  
 S.C.D.C. #344423, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-3163

**RETURN**

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on October 26, 2016, would respectfully show this Court:

I.

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the November 2015 term of the York County Grand Jury for seven counts of solicitation to commit a felony (2015-GS-46-3270 through 3276). Mellissa Inzerillo, Esquire, represented Applicant. On October 29, 2015, Applicant pled under North Carolina v. Alford as indicted before the Honorable Daniel Hall. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years on indictments 2015-GS-46-3270, 3271, 3272, 3273, 3274, and 3276 and a consecutive term of eight years on indictment 2015-GS-46-3275. Applicant did not appeal his guilty plea or sentence.

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

## II.

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

1. Ineffective Assistance of Counsel
  - a. "Lack of proper evidence"
  - b. "Unfair over sentencing"
  - c. "Codefendant and counsel both from same office and codefendant was witness against me for the state over sentencing on a misdemeanor crime"

## III.

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

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

(citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on going to trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

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

*[Signature block on following page]*

## IV.

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

## V.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

DON ZELENKA  
Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

February 23, 2017





I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
John Duncan				
By Mr. Sheldon	5			
By Mr. Hunter		9		
Melissa Inzerillo				
By Mr. Hunter	12			
By Mr. Sheldon		18		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(NO EXHIBITS)

1 THE COURT - All right, yes, sir.

2 MR. HUNTER - May it please the Court, Your Honor.

3 The next case is John Brooks Hall Duncan vs. State of South  
4 Carolina, 2016-CP-46-3163. Your Honor, he was indicted for  
5 seven counts of solicitation to commit a felony. I believe  
6 he waived presentment on those charges. He was represented  
7 by Ms. Melissa Inzerillo. On February 29th, 2015 he pled  
8 under Alford to all the charges before Judge Hall. He was  
9 sentenced to ten years concurrent on six of the charges and  
10 eight years consecutive on one of the charges, did not file  
11 a direct appeal. Filed this current action October 26th,  
12 2016. He's present today represented by Mr. Nathan  
13 Sheldon.

14 THE COURT - All right, yes, sir.

15 MR. SHELDON - We're ready to proceed, Your Honor.  
16 We'd call Mr. Duncan to the stand.

17 THE COURT - Okay. Come on up.

18 JOHN BROOKS HALL DUNCAN, AFTER BEING FIRST DULY  
19 SWORN, TESTIFIES AS FOLLOWS -

20 DEPUTY CLERK - Have a seat there and just watch  
21 your step up.

22 MR. SHELDON - Thank you, Your Honor.

23 THE COURT - Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. SHELDON -

JOHN DUNCAN - DIRECT BY MR. SHELDON

5

1 Q Mr. Duncan, please state your name for the record.

2 A John Duncan.

3 Q And you're currently incarcerated I think at Kirkland.

4 Is that right?

5 A Yes, sir.

6 Q And you received what amounts to an 18-year sentence

7 on these charges. Is that right?

8 A Yes, sir.

9 Q Stemming from a plea under North Carolina vs. Alford?

10 A Yes, sir.

11 Q Okay. You were represented by Ms. Inzerillo?

12 A Yes, sir.

13 Q Tell me what -- what concerns -- you've raised an  
14 ineffective assistance claim. First of all, before we get  
15 started, you understand that if the Court vacates these  
16 convictions, that you will be, essentially, in the position  
17 you were before any of this ever happened?

18 A Yes, sir.

19 Q You'll be charged with everything you were charged  
20 with including any charges that were not proessed as part of  
21 the plea deal.

22 A Yes, sir.

23 Q Knowing all that, you still want to go forward.

24 A Absolutely.

1 Q Okay. What -- what concerns did you have with Ms.  
2 Inzerillo? When did she first start representing you?

3 A I believe she was the first public defender I had when  
4 I caught all my charges.

5 Q Okay, so originally you were incarcerated on unrelated  
6 charges to which you end up pleading guilty to. Is that  
7 right?

8 A Yes, sir. Yes, sir.

9 Q And she represented you on those, as well as the ones  
10 that you end up pleading guilty to.

11 A Yes, sir.

12 Q Which was some sort of accessory charges. Is that  
13 right?

14 A Yes, sir.

15 Q What -- what did -- how often did you and Ms.  
16 Inzerillo meet regarding your charges?

17 A Several times. Several times.

18 Q And what -- what concerns do you have with her  
19 representation?

20 A Well, the first concern I had was when I found out  
21 that she and another -- my co-defendant was, actually, a  
22 witness against the State against me on few of the charges  
23 were coincided in the same office, they were represented by  
24 the same office and I brought that up, and she informed me  
25 that they were allowed to do that, which I thought, you

JOHN DUNCAN - DIRECT BY MR. SHELDON

7

1 know, was very unorthodox, because I felt like because of  
2 that could be contaminated.

3 Q Okay, but she -- she acknowledged that she was allowed  
4 to do that. Correct?

5 A I mean she -- she said that she was allowed to do  
6 that. From my understanding, I didn't know if that was  
7 correct or not.

8 Q What other concerns do you have?

9 A Well, she -- when I took the North Carolina vs. Alford  
10 deal, she informed me that, you know, I would be guaranteed  
11 ten years, not 18. She said when you go in there, they're  
12 going to give you ten years, I've already talked to the  
13 solicitor and the judge, I come in the courtroom, I plead  
14 guilty, I do everything she says to do, and I get 18.

15 Q Okay. What about -- so you were under the standing  
16 (sic) you were getting ten years. Is that right?

17 A Yes, sir.

18 Q What -- what else did she fail to go over with you?

19 A Well, I've asked her -- I asked her to take pictures  
20 of the scene that was involved with the attempted murder  
21 due to the fact that some of the witnesses' statements were  
22 incoherent and, actually, non-truthful. I asked her to,  
23 you know, provide me with certain documents and things of  
24 that nature but they were still not forthcoming before my  
25 plea.

1 Q Did you end up getting convicted of the attempted  
2 murder?

3 A No, sir. I was, actually, in the courtroom when the  
4 judge said that he found no probable cause at my  
5 preliminary hearing for the attempted murder, and then Ms.  
6 Inzerillo stood up and said, well, Your Honor, we'll, Your  
7 Honor, we'll take any lesser charges which is my  
8 understanding would be -- you know, I don't understand why  
9 she would want lesser charges when the judge just threw my  
10 attempted murder out due to self-defense.

11 Q What was your understanding of your right to -- with --  
12 - did you have any concerns with the Alford plea or  
13 anything like that?

14 A Well, yeah, I'd had a couple of concerns because I  
15 didn't fully understand what the Alford plea was. I didn't  
16 understand I was waiving my presentment to a grand jury,  
17 which, you know, I hadn't even indicted on the charges yet,  
18 so that -- you know, I wasn't fully aware of everything  
19 that was being, you know, represented to me. Also, due to  
20 the fact that, you know, she was kind of -- she was talking  
21 to my mother and my mother was a big influence on whether I  
22 was going to take the time or not.

23 Q Okay. So, ultimately, you end up pleading guilty  
24 though. Is that right?

25 A Yes, sir.

JOHN DUNCAN - CROSS BY MR. HUNTER

9

1 Q What other concerns did you have with Ms. Inzerillo?

2 A What other concerns?

3 Q Yeah.

4 A I just feel like I was being poorly represented, you  
5 know what I'm saying? Like you did not inform me of all  
6 the things that I was giving up or all the things that I  
7 could lose. If I would've known that, I would've never  
8 took the North Carolina vs. Alford plea, because several  
9 times during the proceedings I was -- you know, they  
10 telling me to plead guilty. I'm -- in my mind, I'm  
11 pleading no contest not guilty, not guilty.

12 MR. SHELDON - Okay. Thank you, Your Honor. No  
13 more questions.

14 THE COURT - Okay. Yes, sir?

15 MR. HUNTER - Judge a couple of things.

16 CROSS EXAMINATION

17 BY MR. HUNTER -

18 Q Do you remember the plea judge going over with you the  
19 waiver of presentment?

20 A Not very clearly, sir.

21 Q What's that?

22 A Not very clearly, sir.

23 Q Okay. And ---

24 MR. HUNTER - Your Honor, I'm looking at -- just  
25 for the record, I'm looking at page 5 of the transcript.

1 THE COURT - Okay.

2 Q Do you remember them saying none of these indictments  
3 have been to the grand jury and he explains what all that  
4 means and said it appears by your signature on each of  
5 these seven indictments and your initials on each of the  
6 seven sentencing sheets that you're giving up or waiving  
7 your right to the grand jury -- is that correct? -- and you  
8 said, yes sir, Your Honor? Do you recall that?

9 A Yes, sir.

10 Q Okay. And I believe he also explained to you what the  
11 Alford plea was ---

12 MR. HUNTER - And, Your Honor, for the record  
13 that's on page 6 of the plea transcript.

14 THE COURT - Okay.

15 Q --- and he explains that -- I guess that you were even  
16 offered an Alford plea and that means you're maintaining  
17 your innocence. You remember that?

18 A Yes, sir, that's the only reason I was accepting the  
19 plea, ---

20 Q Okay.

21 A --- because I was thinking I was maintaining the non-  
22 guilty (sic), my innocence, not guilty.

23 Q Okay, so you -- you're saying you thought it meant ---

24 A That I was going to be pleading ---

25 Q --- that you're pleading not guilty to every charge?

1 A --- guilty. (sic) Yeah, that I'm innocence. When the  
2 man says you're -- you understand that you're getting to  
3 maintain your innocence, to me, my understanding, because  
4 I'm not a lawyer, would mean that I'm still innocent, not  
5 getting found guilty of the charges.

6 Q So when you were sentenced to the 18 years, did you  
7 ever say anything to the judge? Did you ever say, I  
8 thought I was not guilty?

9 A Well, I did use profanity when I walked out of the  
10 courtroom.

11 Q Did you ever say, hold up, this is not what I agreed  
12 to do?

13 A No, sir, because they escorted me out extremely fast.

14 Q Okay. I understand. Do you remember signing a plea  
15 waiver form or initialing all those boxes that went over  
16 all the charges against you?

17 A I vaguely remember signing some paperwork.

18 Q Do you remember where it says, the State is  
19 recommending or the negotiation is a cap of 18 years?

20 A I can't recall, but I remember that being part of the  
21 plea agreement.

22 Q Okay. So do you remember, I guess, cap of 18, but  
23 you're saying that Ms. Inzerillo said you're guaranteed  
24 ten?

25 A Yeah, that -- that I was supposed to get ten years.

MELISSA INZERILLO - DIRECT BY MR. HUNTER

12

1 MR. HUNTER - Okay. That's all I have. Thank  
2 you.

3 MR. SHELDON - No re-direct, Your Honor. Thanks.

4 THE COURT - Okay. Thank you. You can step down.

5 MR. SHELDON - Your Honor, that's petitioner's  
6 case.

7 THE COURT - Okay. Yes, sir?

8 MS. HUNTER - Your Honor, the State would call Ms.  
9 Melissa Inzerillo.

10 MELISSA INZERILLO, AFTER BEING FIRST DULY SWORN,

11 TESTIFIES AS FOLLOWS -

12 DIRECT EXAMINATION

13 BY MR. HUNTER -

14 Q Good morning. Please state your name for the record.

15 A Melissa Inzerillo.

16 Q Where are you currently employed?

17 A York County Public Defender's office.

18 Q Is that where you were employed in 2015?

19 A Yes, sir.

20 Q Can you describe how you became involved in this case?

21 A I was appointed Mr. Duncan's case -- I believe at the  
22 time he requested a public defender, but he had an initial  
23 appearance some time after that and that's when I first met  
24 with him.

1 Q Okay. So I believe he's testified to a little bit --  
2 that you were representing him before these seven charges.  
3 Is that correct?

4 A That's correct. He, actually, had two sets of  
5 unrelated charges. He had an assault charge that was a  
6 result of a fight that he was involved in, as well as some  
7 charges related to a break-in of a police officer's car.

8 Q And about how long did you represent him before the  
9 plea on these seven charges?

10 A Well, he picked up these seven charges mid-way through  
11 my representation, so from the time of the warrants to the  
12 plea.

13 Q Okay. And did you receive discovery in this case?

14 A I did. We had to have an additional hearing to get  
15 the name of the confidential informant and so we did that  
16 by a hearing but everything else discovery-wise was  
17 provided by the State.

18 Q And just briefly can you explain the nature of the  
19 charges against him?

20 A Of the solicitation charges?

21 Q Of these seven, yeah.

22 A Okay. Essentially, he -- the allegation was that he  
23 had written up, essentially, a request or an order to be  
24 sent outside the jail to assault or kill the officer --  
25 some officers that were involved in this case -- in the two

1 unrelated cases. That note was given to an inmate with the  
2 idea that it would passed outside the jail and the  
3 situation, I guess, would be handled, but that inmate  
4 decided to give it to law enforcement, so it was  
5 intercepted before it left the jail.

6 Q Okay. And did you explain, I guess, what the State's  
7 allegations against him -- did you explain that to Mr.  
8 Duncan?

9 A Yes. We had discussions pretty early on because they  
10 -- once they intercepted it, they had, actually, raided the  
11 cell and taken all of his paperwork out, and he and I  
12 discussed his concerns that he had written some legal notes  
13 and things of that nature that he did not wish for the  
14 State to see, so we brought that to law enforcement,  
15 detention, so that that stuff could be separated, so pretty  
16 early on from when this event happened I was kind of roped  
17 into it and made aware of it.

18 Q And what was your strategy, defense strategy, as far  
19 as these charges were concerned?

20 A Um, well, we had talked about, I mean, obviously,  
21 taking it to trial. The original plea offer that I got was  
22 a cap of 30 or a 30-year offer, which I thought was too  
23 high for what he was charged with. I understand the  
24 sensitivity of the situation and the seriousness of the  
25 allegations, but I thought that was way too high for him.

MELISSA INZERILLO - DIRECT BY MR. HUNTER

15

1 The situation in his case -- I mean he had -- if he had  
2 written it down, it didn't get out of the jail, and I  
3 understand law enforcement's concern about that, but, you  
4 know, -- in that situation he didn't have the means at his  
5 disposal, because he had been locked up for so long, and so  
6 we'd talked about possibly going to trial or resolving the  
7 case by a plea. The last offer I got was a cap of 18  
8 years, which I explained to him would, if the judge gave 18  
9 or anything under 10 it would mandate that he get some  
10 consecutive time but that all of the other charges would be  
11 dismissed. I discussed with him on the ABHAN charges -- I  
12 think he and I agreed we probably had a self-defense claim  
13 that we would put in front of the jury on that one, and on  
14 the breaking and entering, he and I agreed there wasn't any  
15 forensics really linking him to the breaking into the car,  
16 but there might be an issue in terms of testimony by co-  
17 defendants as to his possession of the goods, and so really  
18 a lot of my discussions, especially, towards the tail-end  
19 of resolving the case was he was getting a tremendous  
20 benefit by not having to go to trial on those sets of  
21 charges and getting the cap as it was, and so we discussed  
22 him entering an Alford plea, which would acknowledge that  
23 he was getting a benefit but that he still maintained his  
24 innocence and for what the solicitation charges alleged.

1 Q Okay, so let's go over the Alford plea. Did you  
2 discuss with him exactly what that meant?

3 A I did.

4 Q And so I assume that -- did you discuss with him how  
5 he's maintaining his innocence but still pleading guilty?

6 A I did. Essentially, I explained to him that the  
7 Alford plea requires two acknowledgments, and it's similar  
8 to the way Judge Hall did it in the plea, that he is not  
9 pleading guilty, he's maintaining his innocence, but that  
10 the conviction could be used against him and would be on  
11 his record as if he pled guilty. Realistically speaking  
12 for him, he would not have to come into Court tell the  
13 judge, I wrote the letters, I sent it out, I intended to  
14 have this done. He could maintain his innocence. And the  
15 second prong is that he has to acknowledge that if we went  
16 to trial, he could lose, and there would be evidence that  
17 could be put forth where the jury could find his guilt, and  
18 he did acknowledge that. We discussed that that's what an  
19 Alford plea meant. And I think he and I were sort of on  
20 the same page that that was a good acknowledgement and  
21 resolution to the case, because he didn't have to come in  
22 and acknowledge any wrong-doing.

23 Q Okay, so -- so did he ever express any concern at the  
24 plea hearing to you that he didn't understand what's going  
25 on?

1 A No. In fact, I found Mr. Duncan to be pretty active  
2 in his case and very smart.

3 Q Okay. And did you explain to him about waiving  
4 presentment to the grand jury?

5 A I did. I think there's a point on the plea sheets  
6 where he may have had to initial, and usually at that point  
7 I go over that situation with him to make sure he  
8 understands it's a waiver if he does wish to plead that  
9 day.

10 Q And I believe you testified that there was a hearing  
11 where a charge was dismissed and you said that we'll have  
12 lesser charges. Do you recall that that was held?

13 A I don't recall, specifically, doing (sic) the  
14 preliminary hearing. I know -- I believe the victim in the  
15 assault case was stabbed in the chest, and it could've been  
16 an acknowledgement by either side that it may not have been  
17 an attempted murder, but statutorily could've been ABHAN.  
18 I know sometimes our preliminary hearing judges will say I  
19 will not find probable cause on this charge but will do so  
20 on the lesser charge that would also fit the facts.

21 Q So that didn't involve his seven solicitation charges.  
22 Is that correct?

23 A It did not. Those charges were dismissed as part of  
24 the plea.

1 Q And, again, you went over the plea waiver form with  
2 him?

3 A I did.

4 MR. HUNTER - That's all I have. Thank you.

5 MR. SHELDON - May it please the Court.

6 THE COURT - Sure.

7 CROSS EXAMINATION

8 BY MR. SHELDON -

9 Q Ms. Inzerillo, you -- did Mr. Duncan originally  
10 contest writing the note that got -- well, I guess it got  
11 passed off to an inmate but not sent out?

12 A Originally, what I recall is that he -- the police  
13 kept saying that he used the word exterminate, and he kept  
14 telling me I would've never said the word exterminate.  
15 That was the biggest thing he contested.

16 Q Okay. And so was this case in a trial posture or a  
17 plea posture or ---

18 A It was kind of nebulous at that point. It could've  
19 gone either way and in discussions with the solicitor with  
20 this offer, Mr. Duncan indicated he would just rather  
21 resolve it this way.

22 Q And did you -- when relaying the offer to him, did you  
23 maybe not necessarily promise him ten years -- did you guys  
24 have a discussion about what the likely outcome was?

1 A I explained to Mr. Duncan that I wished to ask for  
2 concurrent time, that because of the cap situation, he --  
3 if the judge were to give anything over ten, include  
4 anything up to 18 on the cap, then it would mandate  
5 consecutive time, because each charge only carried ten  
6 years and that I -- my intent was to ask for concurrent  
7 time, which would keep him at ten years or less. I did not  
8 promise him ten years and I didn't -- I mean I don't know  
9 what the judge was going to do. We may have had a  
10 discussion with the judge, but I don't recall the judge  
11 ever promising ten years, and I certainly wouldn't have  
12 promised him that, not ---

13 Q And did you -- did you feel the need at any point to  
14 hire -- you said it was kind of nebulous or it could've  
15 gone both ways on the letter.

16 A (Indicating yes)

17 Q Did you hire any expert to analyze the hand-writing or  
18 anything like that in the note?

19 A Um, I -- give me one second; let me check. I can't  
20 remember if I did or not.

21 Q Yeah.

22 A I remember discussing that or considering that option,  
23 but to be honest with you, Mr. Sheldon, I don't know that I  
24 went so far as to retain someone. The note was written --  
25 it was this sort of code, um, and so it wasn't truly

1 handwriting, but I remember that being discussed at some  
2 point, so my recollection on that is not clear.

3 Q Were there -- what about the -- so he's incarcerated  
4 on the underlying attempted murder and what, breaking and  
5 entering into a police vehicle or something along those  
6 lines. Is that right?

7 A That's correct.

8 Q Did you inter -- were you able to interview all the  
9 witnesses for those cases and this case, as well?

10 A I think we were -- and my recollection to this is a  
11 little bit soft, as well -- we were sort of in the process  
12 of that, because I -- I know we felt -- about the forensics  
13 and about the self-defense on those two cases and I had  
14 discussed that with Mr. Duncan. I think his sister also  
15 had provided some Facebook messages or something along  
16 those lines and we had discussed those, as well.

17 Q And he mentioned something about, essentially, I think  
18 that y'all have some sort of implementation in your office  
19 where you can set up, I guess, a Chinese wall and still be  
20 able to represent co-defendants. Is that right?

21 A That's right.

22 Q Which -- was the co-defendant -- did you represent --  
23 did your office represent the co-defendant that turned the  
24 note over to law enforcement?

25 A We did not.

1 Q Okay. So when you're representing co-defendants, it's  
2 in the underlying set of charges.

3 A That's correct. Now, my recollection is that we did  
4 not. I think his main concern was regarding a co-defendant  
5 that was originally co-defendant but then turned as State's  
6 witness and was going to testify against him, and that --  
7 that was the one I knew about.

8 Q And on which set of charges would that have been?

9 A That would've been on the B&Es and I think at one  
10 point there was an altercation between Mr. Duncan and this  
11 person and -- so he could've possibly been a victim as  
12 well, and -- he possibly was a victim in one of the  
13 solicitations. I'm not sure.

14 Q What is the office policy regarding that? Did you  
15 have -- do you have conversations about the cases with ---

16 A Well, no, with the Chinese wall we -- I mean we're  
17 aware that someone in our office -- but we're mainly aware  
18 of that because we don't want to have a conversation with  
19 someone or be out of bounds and myself and people in our  
20 office are very good about stopping -- if an attorney  
21 starts a conversation and another attorney realizes it's --  
22 it's getting -- you know, that that first attorney may not  
23 know that there's a co-defendant implication about stopping  
24 and saying, we can't talk about this right now.

25 Q Thank you.

1 MR. SHELDON - Beg the Court's indulgence.

2 (Pause) Judge, I don't have any more questions.

3 THE COURT - Okay. Anything on follow-up?

4 MR. HUNTER - No, sir.

5 THE COURT - Okay. All right, I've got that  
6 transcript too. I'll take it with me and take it under  
7 advisement.

8 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL  
9 AND OUT OF HEARING OF EVERYONE WHICH WAS NOT REPORTED.)

10 THE COURT - Yeah, I've got to read through  
11 everything, and I'll let y'all know.

12 MR. HUNTER - Okay, thank you.

13 THE COURT - All right.

14 (END OF TRANSCRIPT)

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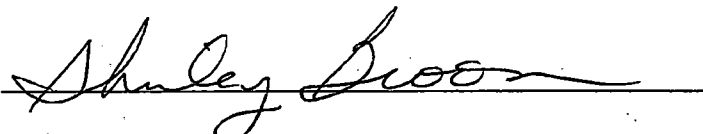
24

25

## C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 22 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of John Brooks Hall Duncan vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on November 8th, 2017, and provided by me this the 7<sup>th</sup> day of May, 2017.

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



Shirley Broom, CVR-M  
Official Court Reporter,  
Certified Verbatim Reporter, In and  
for the State of South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )  
 )  
 John Brooks Hall Duncan, )  
 S.C.D.C. #344423, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS,  
 FOR THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-3163

ORDER OF DISMISSAL

FILED-RECEIVED  
 2018 APR -6 AM 10:00  
 D.M. J. HAMILTON  
 C.C.P. & GS  
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 26, 2016. An evidentiary hearing into the matter was convened on November 6, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Melissa Inzerillo, Esquire, also testified. This Court also had before it a copy of Applicant's PCR application, the records of the York County Clerk of Court regarding the subject convictions, Respondent's Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined to South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant waived presentment to the York County Grand Jury for seven counts of solicitation to commit a felony (2015-GS-46-3270 through 3276). Mellissa Inzerillo, Esquire, represented Applicant. On October 29, 2015, Applicant pled under North Carolina v. Alford as indicted before the Honorable Daniel Hall. Pursuant to a negotiated sentence, Judge Hayes sentenced Applicant to imprisonment for

concurrent terms of ten years on indictments 2015-GS-46-3270, 3271, 3272, 3273, 3274, and 3276 and a consecutive term of eight years on indictment 2015-GS-46-3275. Applicant did not appeal his guilty plea or sentence.

### Allegations

In his 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
  - a. "Lack of proper evidence"
  - b. "Unfair over sentencing"
  - c. "Codefendant and counsel both from same office and codefendant was witness against me for the State over sentencing on a misdemeanor crime"

### 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. Lookhart, 474 U.S. 52, 59 (1985).

### III. SUMMARY OF THE TESTIMONY AT PCR HEARING

#### Applicant's Testimony

Applicant testified he met with Counsel several times. He testified Counsel and his codefendant's attorney were both part of the York County Public Defender's Office. He testified Counsel discussed this fact with him and told him that she is allowed to represent him under these circumstances. Applicant testified he did not know what an Alford plea was and thought he was guaranteed a ten year sentence. Applicant testified he wanted pictures of the attempted murder scene. Applicant testified Counsel told him they would have lesser charges. He further testified he did not understand what waiving presentment meant.

#### Counsel Melissa Inzerillo's Testimony

Counsel testified she represented Applicant on two sets of unrelated charges. She testified she received discovery. She testified Applicant was in the detention center and wrote letters to someone outside the jail asking to kill certain officers. She testified the notes were given to another inmate who turned him in to jail officials. Counsel testified the original plea offer was

for thirty years, which she believed to be too high, and the last offer was for a cap of eighteen years and dismissing many other charges. She testified a cap of eighteen years meant that consecutive time would have to be ordered. She testified Applicant received a big benefit by pleading guilty and having twelve other charges dismissed.

Counsel testified she explained what an Alford plea meant to Applicant. She testified she told him he was acknowledging a benefit by pleading and was not technically pleading guilty but the plea could still be used against him. She testified she explained he was maintaining his innocence but recognizing that if he went to trial they could likely lose based on the State's evidence. Counsel testified she believed Applicant understood what was going on during the plea hearing. She testified he understood what waiving presentment meant and she went over the plea waiver form with him.

Counsel testified she discussed with Applicant the likely outcomes of the plea, and that she would ask for concurrent time but the cap of eighteen years mandated some consecutive time. She testified she did not make any promises to Applicant about the sentence he would receive. She testified she did not hire a handwriting expert to examine the letters but discussed the possibility of doing so.

Counsel testified that her office did not represent the other inmate involved in these seven charges. She testified her office's policy is for an attorney to not discuss the charges with any attorney in their office who is representing a defendant related to her defendant's case.

#### IV. 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**

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective. Applicant alleged Counsel was ineffective because her office represented Applicant's codefendant. This Court finds Counsel provided credible testimony that her office did not represent anyone related to the seven solicitation charges to which Applicant pled guilty. This Court finds there is no evidence of any conflict of interest that existed in Counsel's representation. Applicant has failed to prove that Counsel was ineffective in this regard.

This Court finds Counsel's actions were not deficient regarding Applicant's plea. Counsel provided credible testimony that she explained the plea offers, the consequence of the negotiated eighteen year cap, waiving presentment to the Grand Jury, and meaning and consequences of an Alford plea. Counsel testified she went over the plea waiver form with Applicant. This waiver form is signed by Applicant and evidences his understanding of the charges he was pleading to, the charges being dismissed, and the negotiated cap of eighteen years. The form also indicates Applicant was not promised anything to plead guilty. Applicant acknowledged during the plea hearing that he understood the Alford plea after the judge thoroughly explained it to him. Plea transcript pp. 6-7. The plea hearing transcript also indicates Applicant understood his right to have his charges presented to the grand jury and that he was waiving this right. Plea transcript pp. 5-6. Applicant also indicated he understood when the plea judge discussed that the charges carry up to ten years imprisonment each and the negotiation was

for a cap of eighteen years. Plea transcript pp. 10-11. After reviewing the plea hearing transcript and the plea waiver form, this Court finds Applicant has failed to meet his burden of showing the plea was not made knowingly, freely, and voluntarily or that Counsel was ineffective in any way.

Furthermore, Applicant has failed to present any testimony or evidence to prove he was prejudiced by Counsel's actions, as he has failed to show he would not have pled guilty but would have proceeded to trial but for Counsel's actions. Accordingly, this application must be dismissed.

#### IV. CONCLUSION

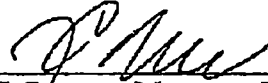
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry,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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

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

AND IT IS SO ORDERED this 30 day of March, 2018.



J. CORDELL MADDOX, JR.  
Presiding Judge  
Sixteenth Judicial Circuit

Anderson, South Carolina



84

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

CERTIFIED TRUE COPY  
2016 OCT 27 AM 9:13

INDICTMENT

DAVID J. [unclear]  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

SOLICITATION / SOLICITATION TO COMMIT A FELONY

The defendant, John Brooks Hall Duncan did in York County, on or about on or about June 20, 2015, advise or agree with or urge or hire or in some way aid, counsel, or encourage and thereby solicit the agency of another, to wit: the defendant did send or attempt to send a note instructing another to intimidate, harm, or kill a witness against him (Joshua Hamilton). This is in violation of the Common Law of South Carolina Code of Laws. All in violation of 17-25-0020, *South Carolina Code of Laws* (1976, as amended).

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

  
CHRISTOPHER W. EITING  
ASSISTANT SOLICITOR

**WITNESSES**

YCSO

Witnessing Officer: T.Hager

**ARREST WARRANT NUMBER**

2015A4610201019

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS46-03271

The State of South Carolina  
County of York

**COURT OF GENERAL SESSIONS**

NOVEMBER 12, TERM 2015

THE STATE

VS.

JOHN BROOKS HALL DUNCAN

**INDICTMENT FOR**

**SOLICITATION / SOLICITATION TO  
COMMIT A FELONY**

SC Code: § 17-25-0020  
CDR Code: 0795

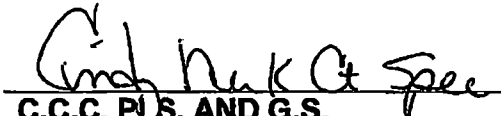
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

  
Defendant

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

  
Defendant

Witness:

  
C.C.C. PLS. AND G.S.

86

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

CERTIFIED TRUE COPY  
2016 OCT 27 AM 9:14

INDICTMENT

DAVID H. ...  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

**SOLICITATION / SOLICITATION TO COMMIT A FELONY**

The defendant, John Brooks Hall Duncan did in York County, on or about on or about June 20, 2015, advise or agree with or urge or hire or in some way aid, counsel, or encourage and thereby solicit the agency of another, to wit: the defendant did send or attempt to send a note instructing another to intimidate, harm, or kill a witness against him (Deputy M.A. Arbelo). This is in violation of the Common Law of South Carolina Code of Laws. All in violation of 17-25-0020, *South Carolina Code of Laws* (1976, as amended).

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

  
CHRISTOPHER WEEPING  
ASSISTANT SOLICITOR

**WITNESSES**

YCSO

Witnessing Officer: T.Hager

**ARREST WARRANT NUMBER**

2015A4610201020

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS46-03272

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 12, TERM 2015

THE STATE

VS.

JOHN BROOKS HALL DUNCAN

INDICTMENT FOR

SOLICITATION / SOLICITATION TO  
COMMIT A FELONY

SC Code: § 17-25-0020  
CDR Code: 0795

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

  
Defendant

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

  
Defendant

Witness:

  
C.C.C. PLS AND G.S.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

CERTIFIED TRUE COPY  
2015 OCT 27 AM 9:14  
INDICTMENT

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

**SOLICITATION / SOLICITATION TO COMMIT A FELONY**

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

  
CHRISTOPHER W. EPTING  
ASSISTANT SOLICITOR

**WITNESSES**

YCSO

Witnessing Officer: T.Hager

**ARREST WARRANT NUMBER**

2015A4610201021

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS46-03273

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 12, TERM 2015

THE STATE

VS.

JOHN BROOKS HALL DUNCAN

INDICTMENT FOR

SOLICITATION / SOLICITATION TO  
COMMIT A FELONY

SC Code: § 17-25-0020  
CDR Code: 0795

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

Defendant

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

Defendant

Witness:

*Crish Hank Ct Spec*  
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

CERTIFIED TRUE COPY  
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INDICTMENT

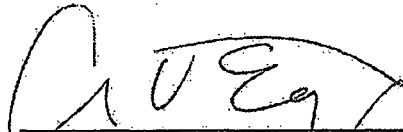
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

**SOLICITATION / SOLICITATION TO COMMIT A FELONY**

The defendant, John Brooks Hall Duncan did in York County, on or about on or about June 20, 2015, advise or agree with or urge or hire or in some way aid, counsel, or encourage and thereby solicit the agency of another, to wit: the defendant did send or attempt to send a note instructing another to intimidate, harm, or kill a witness against him (Detective Grady Gonzalez). This is in violation of the Common Law of South Carolina Code of Laws. All in violation of 17-25-0020, *South Carolina Code of Laws* (1976, as amended).

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



CHRISTOPHER W. EPTING  
ASSISTANT SOLICITOR

**WITNESSES**

YCSO

Witnessing Officer: T.Hager

**ARREST WARRANT NUMBER**

2015A4610201022

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS46-03274

**The State of South Carolina**  
**County of York**

**COURT OF GENERAL SESSIONS**

**NOVEMBER 12, TERM 2015**

**THE STATE**

**VS.**

**JOHN BROOKS HALL DUNCAN**

**INDICTMENT FOR**

**SOLICITATION / SOLICITATION TO  
COMMIT A FELONY**

SC Code: § 17-25-0020  
CDR Code: 0795

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

*[Signature]*  
Defendant

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

*[Signature]*  
Defendant

Witness:

*[Signature]*  
C.C.C. PLS. AND G.S.

92  
Name  
Date and Amount

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

SERIALIZED TRUE COINDICTMENT

2016 OCT 27 AM 9:14

DAVID H. HILL  
CLERK OF COURT  
YORK COUNTY, SC

At a Court of General Sessions convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

**SOLICITATION / SOLICITATION TO COMMIT A FELONY**

The defendant, John Brooks Hall Duncan did in York County, on or about on or about June 20, 2015, advise or agree with or urge or hire or in some way aid, counsel, or encourage and thereby solicit the agency of another, to wit: the defendant did send or attempt to send a note instructing another to intimidate, harm, or kill a witness against him (Raheem Parker). This is in violation of the Common Law of South Carolina Code of Laws. All in violation of 17-25-0020, *South Carolina Code of Laws* (1976, as amended).

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

  
CHRISTOPHER W. EPTING  
ASSISTANT SOLICITOR

**WITNESSES**

YCSO

Witnessing Officer: T.Hager

**ARREST WARRANT NUMBER**

2015A4610201023

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS46-03275

**The State of South Carolina**  
**County of York**

**COURT OF GENERAL SESSIONS**

**NOVEMBER 12, TERM 2015**

**THE STATE**

**VS.**

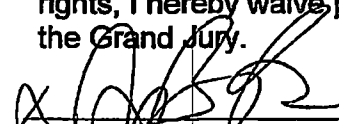
**JOHN BROOKS HALL DUNCAN**

**INDICTMENT FOR**


**SOLICITATION / SOLICITATION TO  
COMMIT A FELONY**

SC Code: § 17-25-0020  
CDR Code: 0795

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

  
Defendant

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

  
Defendant

**Witness:**

  
C.C.C. P.S. AND G.S.

Name of Surety  
94  
Type and Amount

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

CERTIFIED TRUE COPY  
INDICTMENT  
2016 OCT 27 AM 9:15

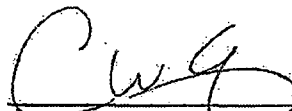
DAVID HARRIS  
CLERK OF COURT

At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

**SOLICITATION / SOLICITATION TO COMMIT A FELONY**

The defendant, John Brooks Hall Duncan did in York County, on or about on or about June 20, 2015, advise or agree with or urge or hire or in some way aid, counsel, or encourage and thereby solicit the agency of another, to wit: the defendant did send or attempt to send a note instructing another to intimidate, harm, or kill a witness against him (Jacob Sprouse). This is in violation of the Common Law of South Carolina Code of Laws. All in violation of 17-25-0020, *South Carolina Code of Laws* (1976, as amended).

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



CHRISTOPHER W. EPTING  
ASSISTANT SOLICITOR

**WITNESSES**

YCSO

Witnessing Officer: T.Hager

**ARREST WARRANT NUMBER**

2015A4610201024

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Grand Jury  
Date:

DOCKET NO. 2015-GS46-03276

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**NOVEMBER 12, TERM 2015**

**THE STATE**

**VS.**

**JOHN BROOKS HALL DUNCAN**

**INDICTMENT FOR**

**SOLICITATION / SOLICITATION TO  
COMMIT A FELONY**

SC Code: § 17-25-0020  
CDR Code: 0795

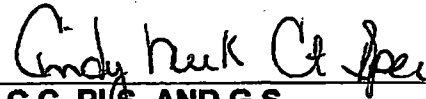
After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

  
Defendant

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

  
Defendant

Witness:

  
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA  
 COUNTY OF YORK

CERTIFIED TRUE COPY

INDICTMENT

2016 OCT 27 AM 9:15

DAVID H. STELLER  
 CLERK OF COURT

At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

**SOLICITATION / SOLICITATION TO COMMIT A FELONY**

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



CHRISTOPHER W. EPTING  
 ASSISTANT SOLICITOR