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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge

COURTNEY LAMONT PAULING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000190

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
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Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS
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) 2014 GS 42 3536; 3538; 3539

4 STATE OF SOUTH CAROLINA)
 5)
 6 versus) TRANSCRIPT OF RECORD
 7)
 8 COURTNEY LAMONT PAULING)
 9 Defendant)

Spartanburg, South Carolina
 February 11, 2015

B E F O R E :

HONORABLE LETITIA H. VERDIN, Judge Presiding

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

For the State: BULSA, Esq
 Assistant Solicitor

For the Defendant: SHEALY, Esq.

Reporter Present: PAMELA FAUCETTE

HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 Summerville, S.C. 29485

1 (The within matter came before the Court for hearing
2 on February 11, 2015)

3 (TRANSCRIPTION NOTE: The beginning of the plea does
4 not appear on disc where the Solicitor usually calls the
5 case and the Court begins speaking with the Defendant.
6 I have transcribed what appears on the disc.)

7 THE COURT: You are also here today to plead to kid-
8 napping. That is also a most serious and violent offense
9 and carries up to thirty years and assault and battery,
10 second degree, which carries up to three years.

11 Is that your understanding?

12 DEFENDANT: Yes, maam.

13 THE COURT: Have you discussed these charges with your
14 lawyer?

15 DEFENDANT: Yes, maam.

16 THE COURT: Are you happy with what your lawyer has
17 done for you?

18 DEFENDANT: Yes, maam.

19 THE COURT: Are you under the influence of drugs or
20 alcohol here today?

21 DEFENDANT: No, maam.

22 THE COURT: Has anyone forced you to plead guilty?

23 DEFENDANT: No, maam.

24 THE COURT: Has anyone promised you anything to get
25 you to plead guilty?

1 DEFENDANT: No, maam.

2 THE COURT: When you plead guilty, you give up certain
3 constitutional rights. One is your right to remain si-
4 lent. Do you know that?

5 DEFENDANT: Yes, maam.

6 THE COURT: You are entitled to a jury trial on these
7 charges. At that trial, your attorney would call wites-
8 ses to the stand who would testify against you. You would
9 not have to testify in the trial, and the State would have
10 to prove you guilty beyond a reasonable doubt.

11 When you plead guilty, you give up your right to a
12 jury trial. Do you know that?

13 DEFENDANT: Yes, maam.

14 THE COURT: This sheet says you are twenty-seven years
15 old. If that right?

16 DEFENDANT: Yes, maam.

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

18 DEFENDANT: I went to the eleventh grade but I also
19 earned my GED.

20 THE COURT: Good. What kind of work have you done?

21 DEFENDANT: I have worked at McDonalds and also worked
22 at (inaudible).

23 THE COURT: Okay. Have you ever been treated for a
24 mental illness?

25 DEFENDANT: No, maam.

1 THE COURT: Have you ever been treated for substance
2 abuse problems?

3 DEFENDANT: No, ma'am.

4 THE COURT: All right. Listen to the facts as the
5 Solicitor relates them, and you will have ten days from
6 today's date to appeal this plea if you so choose.

7 MR. BULSA: Thank you, Your Honor. May it please the
8 Court?

9 These offenses occurred in the summer of 2013, or the
10 kidnapping and assault charges. That occurred on July 6,
11 2013, at the (inaudible) Apartments here in the City of
12 Spartanburg.

13 The victim is a Leslie Alexander. She was an ex-
14 girlfriend of the Defendant. She resided in one of the
15 apartments at that location.

16 She had had some trouble with the Defendant and had
17 actually parked her car in a different part of the apart-
18 ment complex. She was afraid the Defendant would be com-
19 ing over. He was essentially basically stalking her.

20 She actually called the police and asked the police to
21 come to the apartment so she could move her car back to
22 the closer parking lot.

23 When a police officer arrived, she did do just that.
24 She went and got her car and drove it back to the parking
25 lot and left it behind her apartment.

1 She got out of her car and walked around to the front.
2 When she got to the front door of her apartment unfortun-
3 ately for her the officer drove away at that time.

4 As she was coming around the building the Defendant
5 was laying in wait for her. He came up and began assault-
6 ing her in the roadway. The apartments face each other,
7 and there is not much parking, so it was essentially on
8 the sidewalk in front of the apartment.

9 He assaulted her, punched her in the face, broke a
10 bone in her face.

11 A neighbor actually saw what was going on and called
12 the police or called nine one one during the assault, and
13 the Defendant then grabbed the victim by the hair and
14 drug her into her apartment, closing the door.

15 Fortunately for our victim, two of her neighbors came
16 to her aid. She tells us that one neighbor went to the
17 back door and one went to the front dcor. Essentially
18 that got him away or disrupted what he was doing when they
19 knocked on the dcor.

20 He -- his attention was diverted by them knocking on
21 the door which allowed the victim to leave the apartment
22 with one of the neighbors and went to the neighbor's
23 apartment and also called nine one one.

24 The Defendant, knowing the police were en route, was
25 able to go and steal the victim's car. The victim tells

1 me he drove her car away after taking the key to start
2 it.

3 He was able to drive away and flee the scene. The
4 victim went to the hospital and was treated. Her eye was
5 swollen so much she had to wait about a week before she
6 could have it actually operated on. She had to undergo
7 surgery for that injury.

8 Your Honor, that occurred and while the police were
9 investigating that case -- that was the City Police Depart-
10 ment investigating that case, and in the meantime there
11 had been a series of robberies out in the county.

12 According to the Sheriff's Office they had a number
13 of robberies, up to six, that they essentially contributed
14 to Mr. Pauling. We are pleading him guilty to two of
15 those offenses.

16 The first of the robberies he was a suspect in dated
17 to June 7th of 2013, and the last one was July 9th of
18 2013. One occurred on June 18th of 2013, and that was at
19 a Domino's, and he went in basically masked and held up
20 the manager, stole money and got away. He stole a cell
21 phone, and afterwards fled scene.

22 The police were called again and investigated the case
23 along with the others. The second case we are pleading
24 was on July 9th, and that occurred at the Kangaroo Ex-
25 press, which was a similar type robbery.

1 There was a video at the Kangaroo Express, so the
2 police had some video but they could not identify him based
3 on the video.

4 They also had a video from a local business that did
5 show the vehicle he was driving, so they were able to put
6 a BOLO out. Then approximately five days later, an offi-
7 cer saw the vehicle.

8 The officers then began to follow that vehicle to try
9 to determine if it was in fact the suspect. During that
10 stake-out, so to speak, the following of the vehicle, the
11 Defendant got out of the vehicle and fired shots into the
12 air, and then the vehicle sped away from the officer who
13 was tailing him undercover.

14 Other officers moved in to take down the vehicle and
15 were able to stop him. The Defendant jumped out of the
16 vehicle and ran. Other officers chased him and ended up
17 capturing him and found a pistol. The pistol matched the
18 shell casings in the roadway where the shots were fired.

19 Your Honor, he was arrested, and the lady that was
20 driving the car during the chase -- she was another ex-
21 girlfriend -- she viewed the video at the Kangaroo Express
22 and while you can't see the face she could tell by his
23 mannerisms and his voice -- she identified the Defendant
24 as being the person who committed the crime.

25 She gave the police consent to search her apartment,

1 and inside her apartment they found some items linking
2 him to other robberies.

3 One of those items was the victim's cell phone that
4 was stolen from the Domino's case that we talked about.

5 He was charged with those six robberies, and with his
6 guilty plea -- he is pleading to two of these.

7 He was actually placed on the trial docket basically
8 and facing life without parole if he went to trial and
9 was convicted.

10 We are withdrawing that for this plea, and we will
11 have a few more things prior to sentencing him.

12 THE COURT: All right.

13 SOLICITOR: Your Honor, while he was in custody he
14 sent letters to . . .

15 THE COURT: That's all right.

16 You have heard a statement of the facts in both of the
17 cases. Is that what you did?

18 MR. SHEALY: Your Honor, there would be some factual
19 differences, but he is pleading to the kidnapping, the
20 assault and battery and the two armed robberies.

21 THE COURT: All right, and how does he plead to each
22 of these charges, guilty or not guilty?

23 DEFENDANT: Guilty.

24 THE COURT: All right, what is his prior record if he
25 has one?

1 SOLICITOR: Your Honor, he was convicted or pled
2 guilty in Lexington County in 2007 on an attempted armed
3 robbery. It was actually an attempted armed robbery of a
4 fried chicken place.

5 He got a seven year sentence, and at that same time
6 he also pled to criminal conspiracy.

7 He apparently did his time, got out and violated that
8 parole in 2012.

9 That would be the prior record and the basis for the
10 life without parole sentence on the prior offense.

11 THE COURT: All right, Mr. Pauling. Is that your crim-
12 inal record that you have?

13 DEFENDANT: Yes.

14 THE COURT: And are your pleas freely, voluntarily and
15 intelligently made?

16 DEFENDANT: Yes.

17 THE COURT: I find that your guilty pleas are freely
18 made and that you had the advice of competent counsel,
19 with whom you say you are satisfied. I find there is a
20 sufficient factual basis for the plea.

21 I'll be glad to hear from you.

22 SOLICITOR: He had sent letters to some comrades of
23 his, trying to get them to influence the State's witnes-
24 ses. He also sent a letter to Ms. Alexander, the victim
25 in the assault case, trying to buy her off and also making

1 a veiled threat that led to intimidation of a witness's
2 charge that we would have proceeded on next week as well,
3 and we are dismissing that as a result of this plea.

4 Additionally, he's been cut a break in the past and we
5 cut him a break here. We think he deserves a significant
6 sentence.

7 Officer Clark is here and I believe he would like to
8 address the Court.

9 OFFICER: I was the lead investigator in the case,
10 ma'am, and the night that we were -- we put the BOLO out
11 on the car and we were following the victim, and I was ac-
12 tually present when the gunshots were fired.

13 At that time, it was unclear if the shots were being
14 fired at us, me and another officer close by, or being
15 fired just to do it. We were never able to determine
16 that.

17 The officer who tried to make the traffic stop when Mr.
18 Pauling fled, myself and another officer gave chase, and
19 as he was running he had a handgun and parts of it started
20 coming apart. We don't know if he was trying to pull it
21 out or what, but then he went over a fence and we were
22 able to catch him.

23 There was the gun left there, and we just ask that
24 based on the crimes he's committed and his disregard for
25 law enforcement and the public that he get the maximum

1 time allowed.

2 THE COURT: All right. Anything else from the State?

3 SOLICITOR: No, maam.

4 THE COURT: I'll be glad to hear from you.

5 MR. SHEALY: Thank you, maam.

6 The Defendant has been in jail for five hundred and
7 seventy-eight days. They addressed this shooting in the
8 air thing, and you have to understand what was happening.
9 They were in the car and they were being followed by some-
10 one and it was not a marked car. He followed them all
11 over the place, and they didn't know what was going on.

12 They didn't know this stuff was going on, and, yes,
13 maam, he tried to scare them off. He didn't know that it
14 was police.

15 Once they tried to arrest him, he figured it out, and
16 he took off running. He did, and it was a matter of his
17 scaring somebody off that they didn't know what he was
18 doing.

19 Too, this is just what happened, and, yes, he took
20 on off.

21 Judge, as for the armed robberies, I will tell you
22 some of them -- well, there were three guys essentially
23 on armed robberies, and there was actually a fourth person
24 who was committing armed robberies.

25 My client is pleading guilty to those armed robberies

1 but there would have been some problems on them at a
2 trial. He was charged with six, and I like to think I am
3 not a bad trial attorney but I don't know that Clarence
4 Darrow could go six for six on armed robberies.

5 The search -- what was left out was that the items
6 that were found were found in a duffle bag, and it is un-
7 clear whether it might have been suppressed at trial.

8 They may not have taken that into account in this case,
9 and as for the kidnaping and assault and battery what
10 happened there is -- Judge, my client informed me of some
11 things.

12 He got this armed robbery or this attempted armed rob-
13 bery, which, as you heard, is this twenty-seven year old's
14 only charge.

15 He was in a situation and he tried to move and to
16 leave the situation that was bad for him. Then the street
17 reached out and grabbed him. Then, I'll be honest, he
18 reached out and grabbed them, and there is no doubt about
19 that. He is guilty of that.

20 He wasn't living particularly at this house, and it is
21 my understanding that he had a large amount of money and
22 it is my understanding he is very good at that but she
23 took the money away from him, and that is what the dispute
24 was about. It was Nine Hundred Dollars.

25 Now, that doesn't explain what he did. He beat her up,

1 He admits to that, and that is why he's pleading guilty
2 to assault and battery, second. That's what it was all
3 along, and he admitted that is what he did. He pleaded
4 to that.

5 Now, as for the kidnapping, he wouldn't dispute being
6 outside and then inside, and it would be our position that
7 the fight occurred right at the doorway area and he pushed
8 her inside.

9 But that is still kidnapping and that fulfills the
10 statute. But there are kidnappings and then there are
11 kidnappings. A kidnapping is where you take somebody and
12 throw them in a car and take off, you know. This was a
13 fight, and it qualifies under the law. He understands
14 that and he has to pay for it.

15 That is why we are pleading here today. He didn't
16 put her in the car and drive away with her, but he fought
17 with her and took the car and he admits he took the car.
18 He is pleading guilty to the car.

19 Judge, he's pleading guilty because he is guilty, and
20 I think it's important to understand the context and why
21 he did what he did what he did, and I have tried to give
22 you some context.

23 He's been in for 578 days because of this. He was
24 originally charged with attempted murder on the unmarked
25 police officer. He has been 578 days of solitary confinement

1 time. He has lived 578 days in very hard time, Judge,
2 and we would ask that you consider -- I know they have
3 asked for significant jail time, and we understand he's
4 going to prison, but we're asking for something on the
5 lighter end of that mandatory or somewhere in there. Ten
6 or fifteen -- somewhere in there.

7 Judge, at twenty-seven he had one single charge. I
8 see 27 year olds up here all the time and some of them
9 have records the size you can't believe, and it is just
10 -- Judge, he went in the street and he admits he's got to
11 pay for that.

12 We ask that you be lenient. Thank you.

13 THE COURT: Thank you. Mr. Pauling, is there anything
14 you'd like to say?

15 DEFENDANT: (Inaudible)

16 THE COURT: I need you to speak up for me.

17 DEFENDANT: I am sorry that all of this occurred. I
18 am sorry for the assault and battery charge. I know I have
19 to pay for what I did, and I take responsibility for what
20 I did.

21 At the same time, I am not guilty of some of the
22 charges that occurred. I'm here today because I am ^{taking} respon-
23 sibility for some, and I just ask for your mercy.

24 THE COURT: Well, I have to sentence you on what you
25 have pleaded guilty to today, and I want to be one hundred

1 percent clear on it.

2 On the first Indictment it says the Defendant did .
3 in Richland County on or about July 9, 2013, while armed
4 with a pistol, dirk, slingshot, metal knuckles or knife,
5 or while alleging through actions that I was armed, did
6 take from the person or presence of Jeannette Gianopolis
7 employed at the Kangeroo Express located at 2195 East
8 Main Street, by force, threats or intimidation, goods or
9 moneys of Kangeroo Express, described as follows: U. S.
10 currency and/or cigarettes, with intent to deprive the
11 owner permanently of such property.

12 Were you involved in that armed robbery at the Kangeroo
13 Express with Jeannette Gianopolis?

14 DEFENDANT: Yes, Your Honor.

15 THE COURT: And you are pleading guilty to that?

16 DEFENDANT: Yes, maam.

17 THE COURT: Okay, and I just want to be absolutely
18 clear that we're talking about the same charges.

19 Hold on one second. And that you did on June 18,
20 2013, while armed with a pistol or other weapon, take from
21 the person or presence of Joel Gregory, an employee of
22 Domino's Pizza, located at 2309 Reedsville Road, by means
23 of force or intimidation, goods or moneys of Domino's
24 Pizza described as follows: U. S. Currency, with the in-
25 tent to deprive the owner of such property, in violation

1 of the law of South Carolinao.

2 You are pleading guilty to that one? You did that
3 one too?

4 DEFENDANT: Yes.

5 THE COURT: That are more but you are pleading to
6 those two. I'm not worried particularly about the other
7 ones.

8 I want to know how you plead to those two charges?
9 These two armed robberies?

10 DEFENDANT: I'm guilty.

11 THE COURT: All right. Go ahead. I interrupted you.

12 DEFENDANT: I am guilty of the charges and I am taking
13 responsibility for them. I'm just asking for your con-
14 sideration.

15 THE COURT: Anything else?

16 DEFENDANT: No, maam.

17 THE COURT: I have taken into account the seriousness
18 of the crimes involved here, and they are very serious.
19 I also take into account the risks to those around you
20 at the time these crimes were committed.

21 I take into consideration your prior record. It is
22 the one charge, but it is a very serious one on your re-
23 cord.

24 You don't have a lengthy record like some folks I see,
25 and I take that into consideration, as well as the break

1 you are getting from the State by their agreeing to allow
2 you to plead to these charges and avoiding a life without
3 parole sentence.

4 In this case, I am taking into consideration all of
5 those things, and the sentence of the Court on the two
6 armed robberies and on the kidnapping is twenty-five years,
7 with credit for time served, and I run those concurrent.
8 Then time served on the assault and battery and use of
9 vehicle.

10 Good luck to you.

11 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

12

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CERTIFICATE

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I, HARRIET P. BENNETT, Court Reporter for the South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Pamela Faucette to the best of my ability, having been heard in the Court of General Sessions, Spartanburg County, on February 11, 2015.

FURTHER, I certify that I am neither of kin nor counsel to any party to this matter, nor do I have any interest in the same.

November 1, 2016

Harriet P Bennett

The South Carolina Court of Appeals

M. HOPE BLACKLEY

The State, Respondent,

v.

Courtney Lamont Pauling, Appellant.

Appellate Case No. 2015-000573

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Courtney Lamont Pauling, 314748
Matthew William Shealy, Esquire
Robert Michael Dudek, Esquire
Derrick Bruce Balsa, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire

FILED
5/15/15

SCACR

W



The South Carolina Court of Appeals

2015 JUN -5 AM 10:19

M. HOPE BLACKLEY

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JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

June 02, 2015

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Courtney L. Pauling *2013A4210102685* ✓
Lower Court Case No. *2013GS4204816, 2013GS4204917, 2013A4210102669* ✓
DI 2014GS4203536, 2014GS4203538, 2014GS4203539 *PF* *2013A4210202422*
Appellate Case No. 2015-000573

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

- cc: Courtney Lamont Pauling, 314748
- Matthew William Shealy, Esquire
- Robert Michael Dudek, Esquire
- Derrick Bruce Balsa, Esquire
- Salley W. Elliott, Esquire
- Alan McCrory Wilson, Esquire

SCAN

W

FORM 5

STATE OF SOUTH CAROLINA)
County of Spartanburg)
Courtney Lamont Pauling #314748)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2016-CP-42-2102

v.

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correction Institution
2. Name and location of Court which imposed sentence 7th Judicial Circuit
180 Magnolia St. Spartanburg, South Carolina 29306
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013GS4204816, 2013GS4204817, 2014GS4203536, 2014GS4203538,
(b) 2014GS4203539

2016 JUN -2 AM 8:54
M. IREPE BLACKLEY
CLERK OF COURT
SPARTANBURG DISTRICT

procell

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 02-11-15 25 yrs
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty yes
 - (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 "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. 5/15/15
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) _____

CLERK OF COURT
 SPARTANBURG COUNTY
 2016 JUN -2 AM 8:54
 M. HOPE BLACKLEY

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective Assistance of Counsel
 - (b) _____
 - (c) _____
- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) Ineffective Assistance of Counsel
 - (b) _____
 - (c) _____
- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? N/A
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 - (d) any other petitions, motions or applications in this or any other Court? N/A
- 13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

CLERK OF COURT
 SPARTANBURG COUNTY
 2016 JUN -2 AM 8:54
 M. HOPE BLACKLEY

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. N/A
- 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?

N/A

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

(a) which grounds have been presented:

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

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

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

CLERK OF COURT
 SPARTANBURG COUNTY
 2016 JUN -2 AM 8:54
 M. HOPE BLACKLEY

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) N/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? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 - i. Matthew W. Shealy
366 N. Church St. Suite 3000, Spartanburg SC 29303
 - ii. Robert M. Dudek
P.O. Box 11589, Columbia SC 29211
 - iii. _____

- (b) the proceedings at which each such attorney represented you:
 - i. Matthew W. Shealy
plea & sentencing
 - ii. Robert M. Dudek
Appeal
 - iii. _____

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

I would like to be granted a trial by jury; sentence vacated;

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

I was sentence to 10 yrs. federal time on the behalf the same charges, violation of fire-arms;

STATE OF SOUTH CAROLINA)
County of Spartanburg)

VERIFICATION

I, Courtney Lamont Pauling, 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.

Courtney Lamont Pauling
Courtney Lamont Pauling

SWORN to and subscribed before me this 24th day of May, 2016.

Nancy C. Marshant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

CLERK OF COUNTY
SPARTANBURG COUNTY
2016 JUN -2 AM 8:55
M. HOPE BLACKLEY
Revised 3/2003

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

I, Courtney Lamont Pauling, 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.

Courtney Lamont Pauling
Applicant

SWORN or affirmed to and subscribed before me this

24th day of May, 2016.

Nancy C. Murchett
Notary Public

My Commission Expires: 1-23-2023

CLERK OF COURT
SPARTANBURG COUNTY
2016 JUN -2 AM 8:54
M. HOPE BLACKLEY

CLERK OF COURT
SOUTH CAROLINA SPARTANBURG COUNTY
2017 SEP 22 AM 9:12

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

COURTNEY LAMONT PAULING,)
M. HOPE BLACKLEY)
APPLICANT.) SUPPLEMENTAL APPLICATION

v.)

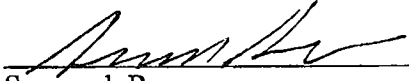
THE STATE OF SOUTH CAROLINA,)
RESPONDENT.)

CASE # 2016-CP-42-2102

This matter comes before the Court by way of application of post conviction relief filed June 2, 2016, alleging ineffective assistance of trial counsel. A Return was made on May 16, 2017, requesting a more definite statement of the allegations. This application is intended to incorporate and add to Mr. Pauling's application allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to:

- 1) ineffective assistance of trial counsel in the failure to investigate and look into multiple robberies in Spartanburg occurring after his arrest with similar descriptions as the one in his cases.
- 2) Due Process violations due to the plea not being knowingly and voluntarily made.

Respectfully submitted,


 Susannah Ross
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 22 day of September, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Courtney Lamont Pauling, #314748,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2016-CP-42-2102

**RETURN AND MOTION FOR
 MORE DEFINITE STATEMENT**

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

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the November 2013 term of the Grand Jury for Spartanburg County for two counts of armed robbery (2013-GS-42-4816, -4817). Applicant was indicted at the August 2014 term of the Grand Jury for Spartanburg County for assault and battery of a high and aggravated nature (ABHAN) (2014-GS-42-3536), use of a vehicle without owner's permission (2014-GS-42-3538), and kidnapping (2014-GS-42-3539). Matthew W. Shealy, Esquire, represented Applicant.

On February 11, 2015, Applicant pleaded guilty before the Honorable Letitia H. Verdin to two counts of armed robbery, operating a motor vehicle without a permit, kidnapping and the lesser offense of assault and battery, second degree. Judge Verdin sentenced Applicant to imprisonment for a term of twenty-five years for both counts of armed robbery and kidnapping

to be served concurrently and time served for assault and battery and operating a motor vehicle without a permit.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv). State v. Pauling, Appellate Case No. 2015-000573 (S.C. Ct. App. Order dated May 15, 2015). The Remittitur was returned on June 2, 2015.

II.

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

1. Ineffective Assistance of Counsel

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

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged 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, 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, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant simply alleges that he received ineffective assistance of counsel and nothing more. This allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the PCR application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to that question, Applicant fails to set forth any specific facts to explain his allegations. Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCF 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCF Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

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

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

May 16, 2017

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STATE OF SOUTH CAROLINA)	
COUNTY OF SPARTANBURG)	IN THE COMMON PLEAS COURT
Courtney Lamont Pauling,)	
Applicant,)	TRANSCRIPT OF RECORD
)	2016-CP-42-2102
-vs-)	
The State,)	November 14, 2017
)	Spartanburg, South Carolina

B E F O R E:

HONORABLE G. THOMAS COOPER, JR., JUDGE

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

SUSANNAH C. ROSS, ESQUIRE
Attorney for the Applicant

VALERIE GIOVANOLI, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

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1 THE COURT: Yes, ma'am.

2 MS. GIOVANOLI: Thank you, Your Honor.

3 This is Courtney Lamont Pauling vs. the State of South
4 Carolina, docket No. 2016-CP-42-2102.

5 We're before the Court on an application for post
6 conviction relief filed on June 2nd of 2016. Applicant was
7 indicted in November of 2013 for two counts of armed
8 robbery.

9 Applicant was also indicted in August of 2014 for
10 assault and battery of a high and aggravated nature, use of
11 a vehicle without the owner's permission and kidnapping.

12 Matthew Shealy represented applicant, and on
13 February the 11th of 2015 applicant pled guilty before the
14 Honorable Letitia H. Verdin to two counts of armed robbery,
15 operating a motor vehicle without a permit or permission
16 and kidnapping and the lesser offense of assault and
17 battery second degree.

18 In exchange for applicant's guilty plea the state
19 dismissed four other robbery charges and an intimidating a
20 witness charge.

21 Judge Verdin sentenced applicant to imprisonment for a
22 term of 25 years for both counts of armed robbery and
23 kidnapping to be served concurrently, and time served for
24 assault and battery second degree and operating a motor
25 vehicle without permission.

1 Applicant filed a timely notice of appeal, and the
2 South Carolina Court of Appeals dismissed the appeal
3 pursuant to Rule 203.

4 Applicant is present and ready. I mean, applicant is
5 present and represented by Ms. Susannah Ross. Since the
6 filing of the application Ms. Ross filed a supplemental
7 application alleging a failure to investigate multiple
8 robberies and also a due process violation due to the plea
9 not being knowing and voluntarily made. I believe we're
10 proceeding on those allegations.

11 The state is also present and ready to proceed. At
12 this point I'll hand it over to Ms. Ross.

13 THE COURT: Ms. Ross.

14 MS. ROSS: Thank you, Your Honor. May it please the
15 Court.

16 Mr. Pauling first would point out and request a
17 summary judgment for the defense, because pursuant to
18 17-27-70 the reply was not filed within 30 days of the
19 application, which was made June 2nd of 2016, with the
20 reply not filed until May 16th of 2017.

21 THE COURT: What's the state's position?

22 MS. GIOVANOLI: Your Honor, the applicant must prove
23 prejudice, and I don't believe he can do so. We're here
24 ready to proceed on his P.C.R. hearing. Unfortunately,
25 with the amount of P.C.R.s that are filed, they rarely are

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 responded to within 30 or 60 days as required by the
2 statute. It's also a procedural rule, so it's in the
3 discretion of the Court to dismiss -- to grant summary
4 judgment on that basis.

5 THE COURT: Motion is overruled. Denied.

6 MS. ROSS: Thank you, Your Honor.

7 His allegations, as you've heard, were that his plea
8 wasn't knowingly and voluntarily made -- voluntarily made
9 due to his attorney's failure to investigate or prepare for
10 trial and to get alibi witnesses for him.

11 He also states that there was a failure to communicate
12 discovery and review that fully with him, as well as the
13 plea.

14 So at this point we would call Courtney Pauling to the
15 stand.

16 COURTNEY LAMONT PAULING,
17 having been first duly sworn, testified as follows:

18 THE COURT: State your full name for the record.

19 THE WITNESS: Courtney Pauling.

20 DIRECT EXAMINATION BY MS. ROSS

21 Q Okay. Mr. Pauling, we've reviewed this, but I want us
22 to put it on the record.

23 You fully understand that your relief here at P.C.R.
24 will put you back into the position before a plea where you
25 could potentially face an automatic life-without-parole

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 sentence under the three-strikes rule.

2 A Yes, ma'am.

3 Q All right. And what's your wish to do knowing that?

4 A Go forward with my P.C.R.

5 Q Okay. And let's talk about your allegations for
6 P.C.R.

7 You first started -- stated that there was -- you were
8 advised to plead incorrectly. Can you explain that to the
9 judge?

10 A I was advised to plead to the charges that I initially
11 pled to due to the fact of, like, my attorney not believing
12 that he can basically refute all of the charges due to all
13 of the charges having, like, maybe technicalities and
14 severe loopholes within them.

15 I pled guilty under Alford vs. Davey [sic] because I
16 didn't assume that my attorney was reliable enough to
17 overcome these charges.

18 Q Okay. Expand on that more. What did he -- do you
19 mean Alford vs. North Carolina -- North Carolina vs.
20 Alford?

21 A Yes, ma'am.

22 Q Okay. And what do you understand that to be? What
23 did your attorney explain to you?

24 A I mean, at that particular time I was under the
25 impression that, like, due to the fact that, I mean, there

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 was allegations brought forth against me but there was no
2 sufficient, like, evidence to even prove that I was guilty.
3 I brought upon all of the allegations against me that there
4 was, like, refutable, but they was not attacked or
5 challenged in no form or fashion.

6 Q All right. Can you give us some details on that?

7 A Okay. Like, when I was first initially charged or
8 under investigation for these charges, there were four
9 individuals, like, allegedly charged with these charges
10 before me. I have no codefendants.

11 These individuals -- there were two individuals that
12 was convicted of these charges, charges that was supposedly
13 connected to these charges.

14 There was a couple of individuals that was cleared of
15 the charges after this took place.

16 I was initially charged with this. I didn't know upon
17 this at the particular time until I got my Brady material,
18 my Rule 5. I brought this, upon, to Mr. Shealy himself.
19 When I did bring this, upon, to him, he let me know that
20 there was some type of procedure that people were cleared
21 and certain individuals were convicted of the charges.

22 I also brought up to him why was I still being charged
23 with numerous charges when there was no sufficient evidence
24 against me.

25 Once I did get into Spartanburg County, like four or

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 five months afterwards, there was a newspaper clipping in
2 the Herald-Journal of two thousand -- I think it was 2014.
3 I brought to Mr. Shealy's attention. In this newspaper
4 clipping allegedly --

5 MS. GIOVANOLI: Objection. Hearsay.

6 THE COURT: Overruled.

7 Go ahead -- go ahead.

8 THE WITNESS: Continue?

9 THE COURT: You may proceed.

10 A When I was apprehended -- and this is on record. This
11 is scientific fact. When I was apprehended there was
12 alleged individuals who committed these crimes before me.

13 Once I did -- got placed in the Spartanburg County's
14 custody these crimes were continuously happening. I
15 brought this to my attorney, Mr. Matthew Shealy's,
16 attention. I gave him the newspaper clippings and also
17 alibi witnesses in my defense to, basically, bring forth
18 that I wasn't upon the crime scene when all of this took
19 place. I was elsewhere. These people was not summoned to
20 court.

21 Q Okay. Just to clarify. Armed robberies continued to
22 happen to this day while you're in prison. How were the
23 ones in the Herald-Journal that you handed Mr. Shealy
24 different?

25 A Distinctive?

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 Q Yes. How were they distinctive?

2 A They fit the same description as I. I was allegedly
3 supposedly having black parents, gray hoody, supposedly a
4 red bandanna, so they say.

5 When I was in the county after all of this time, after
6 all of these robberies supposedly that I've done took
7 place, once I was placed in the county or custody of
8 Spartanburg County these robberies continuously kept
9 happening. And I gave this description after I got this
10 newspaper clipping that described the description of the
11 alleged assailant. I gave it to Mr. Shealy. It was no
12 longer looking for it.

13 Q Okay. And is it your feeling that he hadn't followed,
14 assisted you in your defense properly?

15 A Those are ways that I could have proved my innocence,
16 and the outcome of my charges would have been totally
17 different.

18 Q And if he had done those things for you, what would
19 you have done differently?

20 A Trial. I recommended a trial from day one.

21 Q Now, going back to the discovery in the Brady
22 information, when did you receive that during the process
23 of your case?

24 A My Brady material?

25 Q Your discovery and Brady, Rule 5 and Brady material.

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 A A couple of months after I was initially charged, like
2 because when I went to Spartanburg County I didn't get -- I
3 didn't go to general population. They immediately put me
4 in solitary confinement.

5 So I did receive a visit from Mr. Shealy at that
6 particular time notifying me that I would get my motion of
7 discovery, like, I think like, 35, I mean 30 to 35 days
8 after I had got locked up and he came and visited me
9 initially.

10 He told me that I possibly get my motion of discovery
11 like 30 to 30 -- I mean, 45 days afterwards. But I didn't
12 get it. So after I did initially get into the general
13 population and he came and visited me again, that's when I
14 brought all of this to his attention about the newspaper
15 clipping and the alibi witnesses, who did I need to
16 subpoena. I also seen some black guy that was supposedly
17 investigator, a part of the --

18 Q Public defender's office?

19 A -- public defender's office. This -- these -- these
20 requests and things of sort that I needed in my behalf was
21 not pursued at all.

22 Q All right. And when -- but you did, in fact, get your
23 Rule 5 and Brady material prior to your guilty plea,
24 correct?

25 A Yeah.

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 Q Now, you mentioned something about a preliminary
2 hearing. Did you actually have a preliminary hearing --

3 A No.

4 Q -- on any of your charges?

5 A No, I didn't. I initially -- I asked, requested for
6 that before I was even -- before my charges were even sent
7 to the grand jury.

8 Once I did ask for, like, a preliminary hearing I was
9 told by Mr. Shealy that my charges were forwarded to the
10 grand jury of general sessions and I was already indicted.
11 But I'm curious. According to the law, my constitutional
12 rights, my rights, like -- like, they prohibit these things
13 going on. How could I possibly request for a preliminary
14 hearing, and my preliminary hearing disregarded and I go
15 ahead and, like, indicted by the jury? How is that
16 possible?

17 Q All right. And you put that. Your opinion was that
18 it was an integral part of the criminal process and that
19 had been left out in your case?

20 A Under my due process rights, yes, ma'am.

21 Q Okay. Now, I want to talk a little bit about the plea
22 offer. Did you receive a plea offer?

23 A I initially did, yes, ma'am.

24 Q Was it the 25 years that you pled to with Alford?

25 A The plea offer that I initially received was a

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 10-to-30 plea. It was an open cap. Okay. I mean, I could
2 receive no lower than ten years or I can get no more than
3 30 years.

4 Q All right.

5 A Mr. Shealy told me he was fighting for at least 10 to
6 15 years, which was one of the reasons why I decided to,
7 like, take the plea other than, like, him not even being
8 able to, like, do proper investigation, look into things
9 more, summon different people that I needed in my behalf.

10 There was no -- again, that was unduly suggestive
11 identification. Nobody identified me upon a crime scene
12 doing anything. Neither was my fingerprints lifted from
13 any of the crimes. And my motion of discovery also have
14 individual that was charged that I've said prior. They did
15 fully investigation upon them. They even went as far as to
16 search their premises.

17 And, finally, multiple evidence and things pertaining
18 to a robbery. I have no codefendants. So, I mean, I'm
19 wondering, like, why was a full-throttle investigation
20 brought forth upon another supposed suspect and this is
21 cleared, eradicated. And then I'm laid with these charges.

22 Q Okay. And so you felt that you had strong issues at
23 trial such that even though there were a number of charges
24 you could have won those charges one by one.

25 A Yes, ma'am. There were major technicalities.

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 Q Now, as far as the suppression hearing or an effort
2 under Moore to suppress the identifications, there was an
3 identification of you. Was that from a lineup?

4 A No, ma'am.

5 Q It was just the girl -- your girlfriend?

6 A Supposedly, there was a statement within my motion of
7 discovery in the time of me being within S.C.D.C. and from
8 all of my transfers and stuff from different institutions,
9 my motion of discovery was misplaced, so the staff members
10 of S.C.D.C. say.

11 Honestly, once I, like, transferred, I have no full
12 capacity of, like, where my things at.

13 Q Okay. So you don't have those specifically. I guess
14 you mentioned to me something about your attorney at trial
15 not -- your trial attorney not discussing what could be an
16 outcome of a suppression hearing or any kind of pretrial
17 motions in your case.

18 A Yes, ma'am.

19 Q Now, what was that? What did you think would -- how
20 would that help your case?

21 A I mean, lead to suppression of the motion. Prior to
22 this incident even taking place with me being charged there
23 was allegedly a car that is connection to someone that I
24 dealt with.

25 All right. This car and a residence was being

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 supposedly under investigation or under surveillance.

2 Okay. I did not stay at this residence, and neither did
3 the individual that gave consent to search this residence.

4 Initially, after investigation or surveillance was
5 ongoing they supposedly -- the law, Spartanburg Sheriff's
6 Department, supposedly said that this car was allegedly a
7 part of armed robbery.

8 They had no identification of a selling or suspect due
9 to the fact of this. The car was followed under
10 surveillance. All right. Once the car was followed or
11 under surveillance for a couple of days or so, I'm assuming
12 that this is reasonable suspicion, probable cause to go get
13 a warrant, to have premises searched, to have this car
14 searched. This car or premises was never searched in the
15 midst of this investigation due to the fact of this, like,
16 the sheriff's department having alleged probable cause to
17 search these premises, due to the fact of armed robberies
18 taking places.

19 I'm wondering, like, why was, and it's by record of my
20 motion of discovery. Why was a -- a search warrant or an
21 affidavit, wasn't like pursued by a magistrate judge to
22 give him the authority to go search the premises or the
23 property, or search and seize anything. That's -- that's
24 totally, like, a blatant disregard to the constitutional
25 right or amendments of the law.

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 Q Okay.

2 A But, I mean, on the account of that within the record
3 of my motion of discovery Lashavetta Grant gave authority
4 to search someone else's premises when photographically
5 according to her identification there wasn't her address.
6 She not -- she never stayed there. Never was I amongst
7 this residence. I was never saw at this residence. I
8 never stayed at this residence. So how could anything
9 belong to me there?

10 And not only that. I'm wondering how could possibly,
11 like, someone else give consent to search the residence of
12 another individual and that individual isn't upon the
13 lease.

14 Q Okay. Now, I wanted to say. Did Mr. Shealy mention
15 to you anything about being released on community
16 supervision upon your release at the end of this sentence
17 or going to the amount of time that you might do off your
18 sentence? Did he discuss with you whether it was parole
19 eligible or not or anything of that nature?

20 MS. GIOVANOLI: I'm going to object at this point.
21 Outside the scope of the allegations. There's been no
22 allegation that counsel ever --

23 THE COURT: I'm not sure I understand. I don't see
24 the relevance of it. What's -- what's the purpose of
25 the --

Courtney Lamont Pauling
Direct examination by Ms. Ross

1 MS. ROSS: Just the thoroughness of the preparation
2 for the plea.

3 THE COURT: All right. I'll allow it.

4 MS. ROSS: Whether it was knowingly and voluntarily
5 made.

6 THE COURT: I'll allow it. Go ahead.

7 A Could you, please?

8 Q Did your -- did your lawyer discuss the ramifications
9 of the plea to a violent offense with you?

10 A Well, he let me know that it would be a violent
11 offense, but he never let me know about any community
12 supervision. Or what did you just say?

13 Q Did he ever discuss that you would be released under
14 supervision for a number of years after the end of your
15 sentence?

16 A I don't recall, no.

17 Q Okay. Now, I just want to talk about your alibi
18 witness. I did not -- you told me of a witness, Darrius
19 Carson, who I was unable to get here today because you had
20 no idea where he was.

21 A Uh-huh.

22 Q Did you ever have any idea where he was closer to the
23 time of your trial?

24 A Due to the fact that I've been incarcerated I
25 wasn't -- I'm not able to keep up with individuals. I had

Courtney Lamont Pauling
Cross-examination by Ms. Giovanoli

1 his last address.

2 Q Did you give Mr. Shealy his last address?

3 A I gave him all of this information, including multiple
4 other individuals -- Alexis Alexander. She could prove a
5 couple of these crimes. She could prove my whereabouts.

6 Q Okay. I believe that's all of the questions that I
7 have for you at this time.

8 Is there anything else you want to put on the record
9 about the basis for your P.C.R. case?

10 A No, ma'am, other than that, no, ma'am.

11 Q All right. Please answer any questions the attorney
12 general has for you.

13 CROSS-EXAMINATION

14 BY MS. GIOVANOLI

15 Q Good morning.

16 A Good morning.

17 Q Do you recall testifying under oath at your guilty
18 plea hearing?

19 A Yes, ma'am.

20 Q Okay. And during that hearing on page 16 after you --
21 (Pause for defendant coughing.)

22 A Excuse me.

23 Q -- answered all of the judge's questions you actually
24 said, and I'm quoting, "I'm guilty of the charges and I'm
25 taking responsibility for them. I'm just asking for your

Courtney Lamont Pauling
Cross-examination by Ms. Giovanoli

1 consideration." Was that not the truth?

2 A That was partially truth due to the fact of the
3 wrongful advisement of my lawyer, yes, ma'am. I took full
4 responsibility for the charges on behalf of my lawyer
5 having doubt that he can keep the charges.

6 Q Okay. That statement was a partial lie.

7 A Yeah.

8 Q And you lied based on advice from your counsel.
9 That's your testimony today?

10 A On the advice of my counsel, yes, ma'am.

11 Q Okay. And going to -- you talked about pleading under
12 Alford. To what charge did you plead under Alford?

13 A Like, I know, armed robbery, use of vehicle without
14 owner's consent. I think it was five charges in all.

15 Q So do you know what you pled -- pled guilty to?

16 A Armed robbery, kidnapping, use of vehicle without
17 owner's consent. I think assault second. And I think
18 that's it.

19 Q Do you know the difference between a guilty plea and
20 an Alford plea?

21 A A guilty plea and an Alford plea? From what I
22 recollect, I think I was offered a plea by Mr. Bodeck
23 [sic].

24 Q Okay. I think there might be a little bit of
25 confusion. Counsel asked you about Alford vs. North

Courtney Lamont Pauling
Cross-examination by Ms. Giovanoli

1 Carolina.

2 A Uh-huh, the Alford, the case -- the case.

3 Q Yeah.

4 A The part.

5 Q And you testified that you pled pursuant to Alford.

6 A Uh-huh.

7 Q Is that your testimony today?

8 A I pled guilty according to Alford vs. North Carolina
9 case.

10 Q Okay. You were originally charged with six different
11 counts of armed robbery, is that correct?

12 A I guess, yes, ma'am.

13 Q But you only pled to two, is that correct?

14 A Uh-huh.

15 Q And the state actually dismissed the other four
16 charges.

17 A Yes, ma'am. They were reviewed.

18 Q And you admitted guilt to only two of them, not to the
19 other four, is that correct?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes, ma'am.

23 Q Okay. Just for the court reporter. She needs to have
24 answers.

25 But, now, today you're contesting. You're taking some

Courtney Lamont Pauling
Cross-examination by Ms. Giovanoli

1 issues with some armed robberies. So the issues that you
2 take based on that discovery regarding the four robbery
3 charges that were dismissed?

4 A Uh-huh.

5 Q They are?

6 A Four. I pled guilty to, according to you, upon your
7 paperwork two armed robberies, right?

8 Q Well, according to me did you plead guilty to two
9 armed robberies?

10 A Initially, I had how many armed robberies?

11 Q I'm asking you the question. You were charged with
12 six armed robberies, is that correct?

13 A Uh-huh.

14 Q So how many did you plead to?

15 A Two.

16 Q Okay. So you take issue with a few of -- the
17 discovery with regard to a few of those robberies.

18 A Uh-huh.

19 Q The evidence that you're talking about related to the
20 four armed robberies that were dismissed or the two to
21 which you pled guilty?

22 A The two that -- that I plead guilty.

23 Q Okay. And you said -- you said that the law
24 enforcement was investigating other people involved in
25 armed robberies, is that correct?

Courtney Lamont Pauling
Cross-examination by MS. Giovanoli

1 A This is before I was charged, yes, ma'am.

2 Q Before you were charged.

3 A Yes, ma'am.

4 Q Okay. And they were wearing black pants, gray hoodies
5 and read bandannas?

6 A That's what alleged they was supposed to wear.

7 Q Are red bandannas a symbol of gang membership?

8 A At least that's what they say.

9 Q That what who says?

10 A That's what they got me stereotyped as. That's what
11 they picked me up for.

12 Q Okay. I'm not asking if you are a member of a gang.
13 I'm asking you if those red bandannas are symbolic of gang
14 membership.

15 A Yes, ma'am.

16 Q Okay. Now, how -- how do you know that only one
17 person was doing these robberies and not multiple people?

18 A I don't know that.

19 Q Well, you're saying that they were investigating other
20 people.

21 A I'm saying that four people before I was charged
22 initially were charged or under investigation. I'm not
23 saying that I --

24 Q Okay. Well, it's possible that you had committed the
25 armed robberies either in conjunction with them or separate

Courtney Lamont Pauling
Cross-examination by MS. Giovanoli

1 and apart from them, is that correct?

2 A No. I did not commit them at all.

3 Q I'm not asking if you did. But it's possible that you
4 did.

5 A No, it's not possible.

6 Q So it's not possible for them to have committed some
7 of the robberies and you to have committed the two you pled
8 guilty to?

9 A No. How could I? If I'm already within society and
10 these charges are continuously going on, I mean, I'm in
11 custody of Spartanburg County and these charges are
12 continuously going on, how could I, I mean, unless the
13 officers are giving me the keys to go do them?

14 Q Okay. You're taking issue with the armed robbery
15 charges. What about the kidnapping and the
16 beating-of-your-girlfriend charges?

17 A All wrong.

18 Q So it's your testimony today that you didn't beat up
19 your girlfriend.

20 A My girlfriend has nothing to do with the armed
21 robberies.

22 Q Oh, I'm sorry. Ex-girlfriend.

23 A Yeah.

24 Q But you pled to the kidnapping and the assault upon
25 your ex-girlfriend, is that correct?

Courtney Lamont Pauling
Cross-examination by Ms. Giovanoli

1 A Uh-huh.

2 Q Okay. So how did they not have anything to do with
3 one another? You pled to all of these charges.

4 A These are separate incidents.

5 Q Right.

6 A The armed robberies were allegedly separate individual
7 incidents.

8 Q Right.

9 A The kidnapping, the assault is a separate incident.

10 Q Right. You pled guilty to all of them.

11 A Yeah.

12 Q And you had a global resolution with the solicitor's
13 office.

14 A I refuted that also. I brought challenges and issues
15 up to him upon that that he did not pursue.

16 Q Wait. To whom?

17 A Mr. Shealy.

18 Q Okay. So you mentioned that they're separate
19 incidents, and you're correct. They are.

20 were you aware that you could have been sentenced to
21 life without parole on either one of those charges had you
22 been convicted?

23 A Yeah. I was notified of that, but those are one of
24 the reasons why I didn't, like, pursue the charges in
25 trial, because it's diligence. Did not give me the reason

Courtney Lamont Pauling
Cross-examination by Ms. Giovanoli

1 to want to pursue those charges.

2 Q Okay. So you pled guilty because you wanted to avoid
3 life without parole, is that correct?

4 A Upon his advice, correct.

5 Q Well, without his advice. If you had to go to trial
6 facing life without parole --

7 A I would have took it to trial. I pressured that
8 multiple times. I been in Spartanburg County 22 months.

9 Q Okay. So why not during your guilty plea, didn't you
10 stop the proceedings then when the judge was advising you
11 about your right to a jury trial and say, "Hey, Judge. I
12 want a jury trial. This lawyer's not giving me one."

13 A If you go back a couple of pages, I made that
14 statement. They paused the Court for a second. Mr. Shealy
15 told me that I would be basically facing everything the
16 agreement -- the -- the plea at harm's way or in jeopardy
17 if I didn't take the plea. Upon his advice --

18 Q His advice was that you were going to lose the offer
19 if you pursued trial.

20 A Yeah, basically, or --

21 Q That advice was correct, was it not?

22 A I didn't --

23 Q What's that?

24 A I didn't comprehend.

25 Q That advice was correct, was it not?

Courtney Lamont Pauling
Cross-examination by MS. Giovanoli

1 A No. There's a possibility that everything could be
2 refuted. Why would I possibly -- I should have been
3 representing myself if it was like that.

4 Q Okay. After the recess that you took to talk to
5 Mr. Shealy you came back and you still pled guilty, is that
6 correct?

7 A Yes, ma'am.

8 Q Okay. Even after being advised of all of your rights,
9 correct?

10 A Uh-huh.

11 Q And you waived all of your rights on the record.

12 A On behalf of him having doubt with himself of
13 pleading --

14 Q It was all your lawyer's fault, right?

15 Okay. So let's see. Do you recall the solicitor
16 giving a recitation of the facts of these cases on the
17 record? And then after that you agreed with those facts
18 under oath.

19 A I don't recollect it.

20 Q Okay. Well, I'll refer you to page eight, line 18.
21 This was after the state recited all of the facts of the
22 cases. Actually, your attorney answered for you.

23 "There will be some factual differences, but he is
24 pleading to the kidnapping, the assault and battery and the
25 two armed robberies."

Courtney Lamont Pauling
Cross-examination by Ms. Giovanoli

1 And whenever the Court asked you, "How do you plead,"
2 you said guilty.

3 A Upon my kidnapping and upon my assault, which is what
4 I initially wanted to plead guilty to. All of the other
5 charges were separate.

6 He came at me with a negotiated plea by my prosecutor
7 with a collective plea to -- a collective, like, to plead
8 guilty to all of the charges. What I initially wanted to
9 plead guilty to was basically just assault and battery
10 second.

11 Q Okay. So you wanted to plead guilty with regard to
12 the incident, beating of your girlfriend and kidnapping
13 her.

14 A I did not beat her up.

15 Q She did -- she did have injuries after the
16 altercation, is that correct?

17 A Yeah, she did.

18 Q Okay. So how did she get those injuries?

19 A She slipped and fell according to her. She proved
20 that.

21 Q Okay.

22 A Which I think it's hideous.

23 Q Okay. You also complain about not having a
24 preliminary hearing. Do you know what the purpose of a
25 preliminary hearing is?

Courtney Lamont Pauling
Cross-examination by MS. Giovanoli

1 A Discovery. If there's enough evidence to be
2 sufficient to go to general sessions to be indictment
3 placed upon individual.

4 Q Okay. And you received all of your discovery prior to
5 your guilty plea, is that correct?

6 A Yes, I did.

7 Q And you got to review it with Mr. Shealy, is that
8 correct?

9 A He did not pursue everything I needed pursuing.

10 Q No. Not pursuit. But you reviewed the discovery with
11 him.

12 A Yes, ma'am.

13 Q Okay. And you talked to him about your concerns
14 regarding the cases.

15 A And a lot of questions too.

16 Q And you said that your plea counsel is fighting for 10
17 to 15 years for you. Unfortunately, you didn't get that.
18 But he told you he was fighting to get 10 to 15 years?

19 A Basically, it was a lure to get me to plead guilty.

20 Q And in your direct testimony you said that, "Based on
21 that advice, that was why I decided to take the plea."
22 That was what you said, is that correct?

23 A Uh-huh.

24 Q So in that you decided to take a plea, not Mr. Shealy.

25 A Yes, ma'am. Getting around his ineffectiveness here.

Courtney Lamont Pauling
Cross-examination by MS. Giovanoli

1 Q Okay. And then you also brought up Darrius Carson.
2 You're claiming he was an alibi witness?

3 A Amongst other individuals that he did not pursue to
4 get in contact with.

5 Q Okay. So Darrius Carson was one of them.

6 A Alexis Alexander was another one.

7 Q Alexis Alexander was another one.

8 A Lashavetta Grant was another one; Todd Richardson was
9 another one.

10 Q What was the third name you said? You said Arias
11 Carson.

12 A Darrius Carson.

13 Q Alexis Alexander, Todd Richardson.

14 A Lashavetta Grant.

15 Q Okay. And these people were your alibi witnesses for
16 the kidnapping?

17 A The kidnapping, one kidnapping.

18 Q Your ex-girlfriend. Estranged from her apartment and
19 beat her up.

20 A They wasn't around. The only person that was around
21 when this took place was me and her.

22 Q Okay.

23 A I don't want to be no misconstruing here.

24 Q And you got concurrent time. The armed robberies
25 are -- you're serving that concurrently with the kidnapping

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 and the assault and battery.

2 A Uh-huh.

3 Q Okay. No further questions. Thank you.

4 MS. ROSS: Nothing further, Your Honor.

5 THE COURT: All right. You may come down. Thank you.

6 Next witness.

7 MS. ROSS: Mr. Pauling is the only witness for that.

8 THE COURT: All right.

9 MS. GIOVANOLI: The state will call Matthew Shealy to
10 the stand.

11 MATTHEW WILLIAM SHEALY, having
12 been first duly sworn, testified as follows:

13 THE COURT: State your full name for the record.

14 THE WITNESS: Thank you, Judge. Matthew William
15 Shealy.

16 DIRECT EXAMINATION BY MS. GIOVANOLI

17 Q Good morning, Mr. Shealy.

18 A Good morning.

19 Q How long have you been practicing law?

20 A About eight years.

21 Q And how much of that has been criminal law?

22 A All of it.

23 Q Okay. And what was your position at the time of this
24 guilty plea when you represented the applicant?

25 A I was an assistant public defender.

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 Q Okay. So you were appointed to this case, right?

2 A I was, yes.

3 Q And whenever you were appointed to this case was the
4 applicant in custody?

5 A Yes, ma'am.

6 Q Okay. Was he ever released on bond?

7 A No, ma'am.

8 Q Okay. Do you recall approximately how many times you
9 guys met?

10 A I don't have the file. I'm not sure what happened to
11 it at the public defender's office. But it would have been
12 roughly somewhere between six or eight.

13 Q Okay. And at that time did you have the discovery in
14 this case?

15 A I did. We got some late discovery and I went over
16 that with the defendant as well.

17 Q What do you mean by late discovery?

18 A Well, there were some letters that were allegedly
19 written by Mr. Pauling to Ms. Alexander but we -- the way
20 that the case shook out was he was arrested for an incident
21 where -- and he allegedly took some shots at an officer who
22 was following him in an undercover car.

23 Q When you say shots, what do you mean, shots?

24 A Gunshots.

25 Q Okay.

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 A He allegedly fired at. Now, I thought we had some
2 defenses to that case. Ultimately, he was charged with the
3 armed robberies and he was also charged with the
4 kidnapping. Well, I believe at the time it was an assault
5 and battery. He was ultimately indicted for kidnapping and
6 assault and battery of a high and aggravated nature and
7 things like that.

8 He had allegedly written some letters to Ms. Alexander
9 who was the victim in that kidnapping and assault and
10 battery case.

11 Q Is that who he referenced as the alibi witness?

12 A That was one of them, yes, ma'am.

13 Q Okay.

14 A That -- and part of the problem is Mr. Pauling's
15 handwriting is very distinctive. It's just very
16 distinctive handwriting. So we wouldn't have an issue
17 there. And in those letters it -- and that's where the
18 intimidation of witness charge came from. He says you need
19 to not prosecute, you know, why you -- basically, it
20 references his motive for beating her up was that she had
21 stolen some money from him at some point.

22 Q So the state was in the possession of these letters?

23 A Yes.

24 Q And they intended to use them at trial.

25 A Yes, ma'am, they did.

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 Q And this trial, is the incident that we're talking
2 about -- can you kind of elaborate on the facts that led up
3 to the charges for kidnapping and assault and battery?

4 A Sure. Mr. Pauling had a prior attempted armed robbery
5 conviction, so that was a most serious.

6 As to the facts of this case, now, again, I don't have
7 the discovery, so I can't read you the actual incident
8 report. But there was -- he allegedly went to her
9 apartment and, basically, beat her up, threw her. And she
10 hit the ground, and broken her orbital bone. So her eye
11 was pretty well swollen shut, at least, again, according to
12 the photographs.

13 And there was another -- a witness who would have
14 testified that he grabbed her, I believe, by the hair and
15 pulled her. As she left the apartment, he grabbed her by
16 the hair and pulled her back into the apartment. Now --

17 Q The encounter began outside?

18 A I believe so. It either began outside or it began
19 inside and it traveled outside and then went back inside.

20 I'm not -- I don't remember exactly how that -- but I
21 do know that there was a witness who was prepared to
22 testify as to having seen him grab her by the hair and pull
23 her back into the apartment, which is obviously kidnapping.
24 It's not much of a kidnapping, but it does fit the
25 statutory requirements.

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1 I believe she'd also said that he'd stopped her from
2 leaving at other times during the altercation, which would
3 have also been kidnapping. And that was the case that the
4 state was planning on trying. That was what we were going
5 to go to trial first.

6 Q Okay. And on that charge he was facing life without
7 parole.

8 A Yes, ma'am.

9 Q Okay. And so then there were also six armed robbery
10 charges.

11 A Yes, ma'am.

12 Q And did you feel that you had defenses on those
13 charges?

14 A Well, I do recall him giving me the article for the
15 other person, or there were other -- basically, other
16 stores that were being robbed at the time. And I do
17 remember at that period there were a lot of stores being
18 robbed.

19 They were basically just store armed robberies. I
20 mean, we always defenses because they can't -- they don't
21 necessarily have great identifications, things like that.

22 I don't remember the exact two that he actually pled
23 guilty to. I remember him -- I remember Judge Verdin
24 asking, well, you understand you're pleading guilty to
25 those, and he said, yes, I'm pleading guilty to those two.

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 So I don't remember if we had two killer defenses to those
2 two versus the other four.

3 Q So you don't recall any reason why he pled guilty or
4 why you guys came to the negotiation that he plead guilty
5 to two and four others being dismissed.

6 A Not to these particular two verses those other four,
7 no, ma'am.

8 Q All right. So why did you advise him to plead guilty?

9 A Because I think we were going to lose the kidnapping,
10 assault and battery. We were going to lose it at his own
11 hand. I mean, those letters were ultimately, just they
12 were really, really bad. And, again, his handwriting is
13 distinctive enough that we weren't going to get around
14 that.

15 Q So the evidence against him in that case was you got a
16 victim with injuries, significant injuries. She was going
17 to testify against him.

18 A Yes, ma'am.

19 Q Also, the independent witness that also saw her being
20 dragged into the apartment complex. He or she was going to
21 testify.

22 A Yes, ma'am.

23 Q And then there's letters being written afterwards
24 intimidating her not to testify and to drop the charges.

25 A And explaining why he had beaten her up.

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 Q Okay. And that reason was because she had stolen
2 money, is that correct?

3 A She had gotten either bands or stacks.

4 Q Okay. So, and you proceeded to negotiate with the
5 state for a plea offer, is that correct?

6 A It's -- that's correct.

7 Q Okay. And so although you found that there were
8 defenses to certain armed robberies, were you seeking a
9 global resolution?

10 A That's what I would have preferred. Now, you know,
11 the way that the plea actually came about is that was the
12 offer that Mr. Bulsa had extended to me. I told
13 Mr. Pauling. He said he was going to think about it. And
14 that's fine. He's allowed to think about it.

15 So we brought him over. We had Judge Verdin who was
16 generally considered a pretty good plea judge. We brought
17 him over, and I spoke with him again in the jail room,
18 which is where we meet with our clients prior to their
19 plea. And he told me he didn't want to do it. I said
20 fine, we'll try the case. That's what I get paid to do.
21 I'll try any case I've got.

22 And I thought I had communicated that to the person in
23 charge of the jail room. I apparently had not, so they
24 brought him around into the courtroom.

25 I left at that point because I thought I didn't need

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 to be there any more because he wasn't going to plea.

2 He saw Judge Verdin do a number of pleas. I found out
3 he was in the courtroom. I went in to get him back out of
4 the courtroom because he wasn't supposed to be in the
5 courtroom. And he told me that he wanted to do a plea.

6 Well, it was way too late at that point. It was
7 4:00 or 4:30. I said I can't -- I can't get you in now
8 because, you know, but I'll bring you back tomorrow morning
9 and if you still want to do it, we'll do it. I think it
10 was in the morning. It was some point thereafter. And I
11 told Mr. Bulsa that he told me he wants to plead. And
12 that's what we did.

13 I don't avoid trials. That's just -- that's what I've
14 always gotten paid to do. If he had wanted a trial, we
15 would have tried the heck out of that case.

16 Yes. I told him we'd lose, because we would have
17 lost. I think we would have lost at least. But if he had
18 wanted to roll those dice, we would have rolled those dice.

19 Q So he indicated to you that he wanted to plea before
20 Judge Verdin after witnessing her sentencing other
21 defendants.

22 A Yes, ma'am.

23 Q Okay. And the next day he was brought before that
24 judge and he pled guilty to these five charges, right?

25 A Yes.

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 Q Let's -- talking about the discovery. You reviewed it
2 with the applicant, correct?

3 A Yes, ma'am.

4 Q Okay. And you said that you were going to prepare for
5 trial. What independent investigation did you do?

6 A Well, we drove out to the various -- and, again, I
7 don't have my notes, so I can't tell -- to be precise.

8 Q Right.

9 A I can't tell you necessarily who all I called. I
10 can't. And, again, we would have been preparing for the
11 kidnapping trial.

12 Q Right.

13 A I went. I familiarized myself with the area that --
14 because I thought initially before those letters came to
15 light, I thought we would probably try it, and I explained
16 this to him, that I thought that they would initially try
17 the shooting-at-the-police-officer case, which I thought
18 was their weakest case. So I went and familiarized myself.

19 It allegedly happened at a 4-way stop over here in
20 Una. I used to -- where I lived prior, I used to live,
21 that's how I went home. And so I drove around in that area
22 a little bit so I could get a feeling for what the police
23 officer could have seen, where he said that he was. And I
24 came to the conclusion that he could not have seen
25 Mr. Pauling shooting at him.

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 So, and we had developed a theory of that case where
2 it's an undercover truck. So it's not marked at all. It
3 gets behind Mr. Pauling. And if you drive that area you
4 can see it's a fairly long stretch of roadway that he said
5 he was behind him.

6 They stopped at the 4-way stop. He drove through, was
7 being followed. And so it was going to be our contention
8 that, basically, he -- he got scared, maybe fired shots to
9 scare the guy off, something like that, but that there was
10 never any fire directed at the police officer or anything
11 like that.

12 So we had prepared that case for trial. And then,
13 again, those letters came out.

14 So we went out to the scene so that I could see where
15 this alleged independent witness would have been able --
16 what they would have been able to see. I can't tell you we
17 took pictures or not. We generally do, but I can't speak
18 to what --

19 THE COURT: Sir, I can't -- you're going to have to
20 speak up a little bit or get a little closer to the mic.

21 THE WITNESS: I apologize, Judge.

22 THE COURT: I couldn't quite hear your last answer.

23 THE WITNESS: Yes, sir.

24 A We went to -- and I don't know that we took pictures
25 or whether we took pictures or not -- they would be in the

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Direct examination by Ms. Giovanoli

1 file -- to the scene of the alleged kidnapping, assault and
2 battery, and familiarize yourselves with that area.

3 Again, there weren't any other witnesses to deal with.
4 Ms. Alexander was not cooperative with our defense. She
5 was the one who turned over the letters to the police.

6 And I forgot the independent witness' name, or the
7 alleged witness. I think she gave -- she was a friend of
8 hers or something. So there would have been some question
9 as to how independent she was. But she was a witness.

10 Q Okay. Did the witness and the victim give statements
11 to law enforcement?

12 A I believe so.

13 Q And were those part of the discovery?

14 A Yes, ma'am.

15 Q Okay. Did -- did the applicant ever tell you that
16 these people were alibi witnesses for him?

17 A I believe he told me that Ms. Alexander was.

18 Q Okay. And what did you do with that information?

19 A Well, I mean, I tried to speak with Ms. Alexander, I
20 believe, but/and, again, I can't point to the time because
21 I don't have the file. I turned it -- I turned the file in
22 the last time this was supposed to go to P.C.R.

23 Q Right.

24 A And it didn't. It's been lost by somebody.

25 Q Just for clarification, you've since moved to private

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1 practice.

2 A I have, yes, ma'am.

3 Q Okay. So the file is with the public defender, and
4 you're testifying based on your memory.

5 A Yes, ma'am.

6 Q Okay. And that's fine. So he told you Alexander was
7 going to be an alibi witness, but she had gotten these
8 letters that are basically threatening her to drop charges.

9 A Correct. And I don't remember if he told me what
10 alibi -- I don't recall him giving me a breakdown of his
11 alibi defense.

12 I was -- this alibi goes with this armed robbery --
13 this alibi goes with this armed robbery. Sometimes getting
14 him pinned down is, was difficult.

15 Q Okay. And then there was some brief allegation about
16 a preliminary hearing. Were you representing him at the
17 time?

18 A I believe so.

19 Q Okay. Did you waive the preliminary hearing?

20 A I don't believe so. I believe he was indicted prior
21 to his preliminary hearing. I may have waived it. I
22 don't -- I don't think I did but...

23 Q How important are preliminary hearings in your
24 opinion?

25 A Not very. I mean, these cases would not have been

Matthew William Shealy
Direct examination by Ms. Giovanoli

1 dismissed at a preliminary hearing. Even if they had been,
2 the state would have indicted them anyway.

3 Q How about the maximum time he was facing? Did you
4 discuss the possible penalties with him?

5 A Yes. I mean, I always explain what an 85 percent,
6 no-parole offense is. I explain what the violent offense
7 is. I explain the two-strikes-three-strikes rule. I have
8 a form that I generally fill out that lists all of the
9 various things, whether the cases are nonviolent or
10 violent, whether it's no-parole, whether it's two strikes,
11 three strikes. And we would have gone over all of that.

12 Q Okay. So you discussed each one of those things
13 regarding each one of the charges that he had.

14 A Yes, ma'am.

15 Q Okay. So he -- he testified that you were trying to
16 get 10 to 15 years for him, is that correct?

17 A Yes, ma'am.

18 Q And did you promise him that time?

19 A No. I can't promise anybody anything.

20 Q Did you lead him to believe that you were going to
21 succeed in getting 10 to 15 years?

22 A I don't believe so. I mean, no, I did not say that
23 this is what we -- I said this is what we would ask for,
24 you know, we got a judge who is generally a pretty good
25 plea judge but...

Matthew William Shealy
Cross-examination by Ms. Ross

1 Q But you told him the maximum he could get with --

2 A Yes, ma'am.

3 Q -- Judge Verdin.

4 A Yes, ma'am.

5 Q And that's also in the record. And I believe I've
6 asked you all the questions that I can think. Is there
7 anything you'd like to add before I sit down?

8 A Nothing.

9 Q Okay. Nothing further. Thank you. Answer any
10 questions counsel may have.

11 CROSS-EXAMINATION

12 BY MS. ROSS

13 Q Mr. Shealy, okay. So I believe I recall you having
14 the file at the prior hearing. But you can't locate it at
15 this time.

16 A No, ma'am. The public defender's office has told me
17 that they couldn't find it.

18 Q All right. And then the -- the checklist that you're
19 talking about, do you specifically recall having a
20 checklist in that file?

21 A I believe I did. What the checklist is is my dad was
22 a public defender for many, many years. And he came up
23 with a sheet of paper that lists, basically, everything on
24 an interview form. And I stole it, and I use it for -- I
25 even use it now.

Matthew William Shealy
Cross-examination by Ms. Ross

1 Q Okay. So you believe you did one, but you don't
2 specifically have it.

3 A I can't point to it.

4 Q I just wanted to ask you. It sounds like you said
5 that you were originally preparing for trial on the one
6 case about shooting back at a law enforcement officer or
7 something.

8 A Correct.

9 Q But then it changed and it became apparent that you
10 were going to trial on the kidnapping.

11 A Yes, ma'am.

12 Q Now, was that on the trial docket?

13 A They were all on the trial docket, at least -- they
14 were either on a trial list or I had been informed that
15 they were going to be placed on a trial list.

16 Q Okay. So that Monday Mr. Pauling was brought over to
17 court essentially to go to trial?

18 A No. But I believe that it was that week, was his
19 trial.

20 Q Okay.

21 A I think it was that his trial week was either two
22 weeks from that week -- we have court every-other week. So
23 it would have been -- I believe it was two weeks after that
24 that he would have actually been up for trial.

25 Q For trial. And that week, you stated that he came

Matthew William Shealy
Cross-examination by Ms. Ross

1 back and at some point asked to plea and that plea ended up
2 happening on February 11th, which I believe was a
3 Wednesday. Does that sound correct?

4 A That sounds. That very well could have been the way.
5 I don't remember the exact dates. I just remember the
6 conversations that I had. And I remember that I was told
7 that he was going to be on a trial list.

8 In our circuit the solicitor's office controls the top
9 ten percent, and so they -- and this would have been a
10 ten-percent kind of case. So they would have told me when
11 they were going to schedule it.

12 Q And they had -- they had told you they were scheduling
13 the kidnapping next.

14 A Yes, that that was the next. That that was the case
15 that he was going to be tried for.

16 Q Had they served you or Mr. Pauling notice to seek life
17 without parole?

18 A Without my file, I can't. I don't remember that.

19 Q Okay. You don't recall getting that in the file?

20 A I don't remember if I got that or not.

21 Q Now, but you are testifying that there was a prior
22 serious or most serious offense such that the kidnapping as
23 a most serious would trigger automatic life if they served
24 him notice.

25 A That's my recollection of his record, is that there

Matthew William Shealy
Cross-examination by Ms. Ross

1 was an attempted armed robbery from -- I want to say it was
2 Columbia.

3 Q Now, how many times had you met with him after his
4 arrest?

5 A Again, I think it was six or eight.

6 Q And then he gave you that list of alibi witnesses.

7 A I don't recall him giving me a list of alibi
8 witnesses, per se. I remember him telling me that Alexie
9 Alexander could tell -- could shed some light on this case,
10 that kind of thing. If he gave me a list, again, it would
11 have been in my file. I don't want to say that he didn't,
12 because I don't have the file.

13 Q Did you ever speak to Ms. Alexander personally or have
14 an investigator of your office do so?

15 A I can't recall if I did. I believe that I did, but I
16 can't recall.

17 Q How about any of the other witness, any other alibi
18 witnesses that you or someone from your office interviewed?

19 A I don't recall having interviewed those.

20 Q Now, as far as discovery, did you review the discovery
21 with Mr. Pauling?

22 A Yes, ma'am.

23 Q How about the new supplemental letter that you
24 received in discovery?

25 A Yes, ma'am.

Matthew William Shealy
Cross-examination by Ms. Ross

1 Q Now, and it is your testimony that you were prepared
2 to go forward with that kidnapping trial if he so wished?

3 A Yes, ma'am. Again, we didn't have an alibi for those.
4 I do specifically recall that.

5 Q Okay. Now, with the appeal, I see in the transcript
6 you asked for 10 to 15 years. Clearly, that's not what --
7 there was no recommendation or agreement to that.

8 A Correct.

9 Q And I've missed it. What was the plea offer for him?

10 A It was to dismiss everything except for -- and, again,
11 I don't have an email form, so it was whatever. I believe
12 he pled to two armed robberies, a kidnapping, assault and
13 battery second. There may have been a use of a vehicle
14 without owner's consent that he pled to as well. I believe
15 that was with Ms. Grant. You'll have to check the warrant
16 on that. But I believe and then they dismissed everything
17 else. So the shooting-at-the-police-officer case was
18 dismissed and several of the armed robbery cases were
19 dismissed.

20 Q And I asked you earlier about community supervision.
21 Did you advise him about community supervision?

22 A Yes.

23 Q And as far as the appeal, you filed notice of appeal,
24 but that was not perfected.

25 A Well, we filed notice of appeal. We sent it to -- we

Matthew William Shealy
Cross-examination by Ms. Ross

1 sent him the letter, the requests giving him grounds for an
2 appeal as we're required to through the -- we sent it to
3 appellate defense. So we did -- those are things that we
4 do in every case if the client asks for an appeal.

5 Q So you didn't make any special, specific basis for the
6 request in your notes?

7 MS. GIOVANOLI: Objection. Outside the scope of the
8 allegations.

9 THE COURT: Sustained.

10 Q All right. Now, Mr. Pauling after his arrest -- did
11 you request a preliminary hearing within ten days?

12 A Yes, ma'am. Well, I mean, we requested it within the
13 time period. Once we got appointed we requested them
14 immediately thereafter.

15 Q Were you appointed upon his arrest?

16 A Not upon his -- well, the way that our office works
17 is, I believe, the magistrate judge may appoint us, but we
18 send an investigator over there, interviews them. And then
19 we get appointed. It's usually something closer to ten
20 days after they've been arrested that we get assigned the
21 cases.

22 Sometimes it's longer than that. But we would have
23 requested. Our administrative order actually allows us to
24 request a preliminary hearing before the first appearance.
25 The problem is not the requesting. It's when the state

Matthew William Shealy
Cross-examination by Ms. Ross

1 sends it to the grand jury, which, obviously, they're
2 allowed to do. The indictment cuts off the right to a
3 preliminary hearing.

4 Q So you can't say whether you made a timely
5 within-ten-days-of-his-arrest preliminary hearing arrest --
6 preliminary hearing request. There's a standing order that
7 you will be given that hearing unless the indictment has
8 already been --

9 A Well, the rules cut off.

10 Q -- true billed. I'm sorry.

11 A I mean, the rules of criminal procedure say you don't
12 get a preliminary hearing if the case has been indicted.
13 But we do have a standing administrative order that says we
14 can request a preliminary hearing within -- prior to the
15 first appearance.

16 Q Okay. And -- and for some reason he was indicted
17 before that preliminary hearing was heard.

18 A Yes. That's my recollection.

19 Q And Mr. Pauling wanted to go -- as far as the armed
20 robbery, was there any forensic evidence of his guilt of
21 the two armed robberies that he pled guilty to?

22 A I can't speak to that. I don't have the discovery.
23 If I did, I'd be able to go over it with you a little bit
24 better. I'm sorry.

25 Q And as far as any chances of the suppression motion or

Matthew William Shealy
Cross-examination by Ms. Ross

1 winning a suppression motion, did you review that with Mr.
2 Pauling?

3 A For what case?

4 Q For either of the two armed robberies that he pled to.

5 A I don't know that there's any evidence to be
6 suppressed in that. I don't believe that there was any --
7 that there was an eyewitness identification or anything
8 like that. If there had been an issue I would have gone
9 over it certainly. I don't recall there being any issue.

10 Q Okay. And do you recall what Mr. Pauling was talking
11 about, about investigation of a presumed vehicle that was
12 being followed in one of the armed robbery cases?

13 A Well, the -- what I think he was talking about is when
14 the unmarked police car got behind his vehicle out in Una.
15 I think that's what he's speaking of. And I believe that
16 the reason they got behind his car, they were out, staking
17 out that area because of these robberies that had been
18 occurring.

19 They had gotten a description of a vehicle. They got
20 behind that vehicle. I think that's what he's speaking of.
21 But there was -- that the description of the car was put
22 out. The surveillance van or the surveillance truck got
23 behind him and then followed him to the Una stop signs. I
24 assumed that that's what he's speaking of, what he means,
25 he's talking about, investigation.

Matthew William Shealy
Cross-examination by Ms. Ross

1 Q Now, was that one of the charges that he pled guilty
2 to?
3 A No. That was -- that -- again, the alleged assault on
4 the police officers was dismissed.
5 MS. ROSS: I have no further questions at this time.
6 MS. GIOVANOLI: Nothing further from the state.
7 THE COURT: You may come down. Thank you.
8 Anything further from the state?
9 MS. GIOVANOLI: No, Your Honor. The state rests.
10 THE COURT: Anything from the applicant?
11 MS. ROSS: No, Your Honor.
12 THE COURT: Thank you very much, Counsel. I'll expect
13 proposed orders within 30 days.
14 END OF REQUESTED TRANSCRIPT OF RECORD

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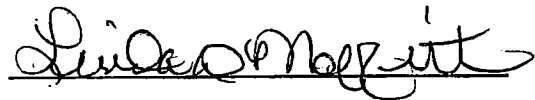
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 14th day of November 2017.

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

February 19, 2018



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Courtney Lamont Pauling, #314748

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-2102

**ORDER OF DISMISSAL
WITH PREJUDICE**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Courtney Lamont Pauling (Applicant) on June 2, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 14, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Susannah Ross, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Matthew W. Shealy, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's direct appeal records, the PCR application, Respondent's return, and Applicant's supplemental application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the November 2013 term of the Grand Jury for Spartanburg County for two counts of armed robbery (2013-GS-42-4816, -4817). Applicant was indicted at the August 2014 term of the

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Grand Jury for Spartanburg County for assault and battery of a high and aggravated nature (ABHAN) (2014-GS-42-3536), use of a vehicle without owner's permission (2014-GS-42-3538), and kidnapping (2014-GS-42-3539). Matthew W. Shealy, Esquire, represented Applicant.

On February 11, 2015, Applicant pleaded guilty before the Honorable Letitia H. Verdin to two counts of armed robbery, operating a motor vehicle without a permit, kidnapping and the lesser offense of assault and battery, second degree.¹ Judge Verdin sentenced Applicant to imprisonment for a term of twenty-five years for both counts of armed robbery and kidnapping to be served concurrently and time served for assault and battery and operating a motor vehicle without a permit.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv). State v. Pauling, Appellate Case No. 2015-000573 (S.C. Ct. App. Order dated May 15, 2015). The Remittitur was returned on June 2, 2015.

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

1. Ineffective Assistance of Counsel

The State made a motion for more definite statement in its return. A hearing was scheduled September __, 2017 before the Honorable Grace Gilchrist Knie at the Spartanburg County Courthouse. The State asserted Applicant failed to present any specific allegations of ineffective assistance of counsel as required by S.C. Code Ann. § 17-27-50 (1985) and Rule 8(a), SCRPC. Applicant requested a continuance. Judge Knie granted Applicant's continuance and ordered an

¹ In exchange for Applicant's guilty pleas, the State dismissed four other robbery charges, an intimidating a witness charge, and an attempted murder charge arising from an incident in which Applicant fired shots at police officers while attempting to flee.

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amended application to be filed. Thereafter, on September 22, 2017, Applicant filed a supplemental application alleging the following as grounds for relief:

1. "Ineffective assistance of trial counsel in the failure to investigate and look into multiple robberies in Spartanburg occurring after his arrest with similar descriptions as the one in his cases."
2. "Due Process violations due to the plea not being knowingly and voluntarily made."

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified Counsel advised him to plead guilty. Applicant testified he pled guilty pursuant to Alford v. North Carolina. He believes Counsel was ineffective for failing to challenge the charges and evidence against him. Applicant testified that when he was arrested for the robberies, four other people had also been charged and cleared of the same crimes. He learned about this from his discovery he received from Counsel prior to pleading guilty. He brought it to Counsel's attention but Counsel explained it wouldn't help his case. Applicant also read a newspaper clipping saying that other suspects had been arrested for the robberies. Applicant also brought this to Counsel's attention. Applicant also explained that after he was arrested, robberies continued to occur. Applicant believes all of this evidence proved his innocence.

Applicant testified he had alibi witnesses for the robberies and gave those names to Counsel. However, according to Applicant, Counsel did not do anything with them. Applicant testified he received his discovery a couple months after being charged, but before his guilty plea. He complained he was not given a preliminary hearing and when he asked Counsel about a preliminary hearing, Counsel told him it was too late because he had already been indicted.

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Applicant testified he knew he could be sentenced to no more than 30 years, but that Counsel told him he was fighting for 10-15 years. Applicant testified that was why he decided to take the plea and not pursue defenses. Applicant testified Counsel never discussed with him the ability to have a suppression hearing to suppress evidence against him. Applicant also complained he didn't believe there was reasonable suspicion or probable cause to search a car and residence of another female he knew. Applicant also testified the female who gave consent to search the apartment was not on the lease and therefore did not have the right to consent to a search.

Applicant did not recall if he had any discussion with Counsel regarding pleading to a violent offense which would require community supervision. Applicant named multiple alibi witnesses, but could not provide their last known addresses so that PCR Counsel could contact them.

II. Counsel testified to the following:

Counsel has been practicing criminal law exclusively for eight years. Counsel was an Assistant Public Defender at the time he represented Applicant, but has since moved on to private practice. Counsel testified he did not have the file at this hearing, but had it when the case was previously scheduled for hearing. He attempted to retrieve the file from the Public Defender's Office for this hearing, but they were unable to locate it. Therefore, Counsel testified based on his memory.

Counsel recalled meeting Applicant about 6-8 times. He received all the discovery and reviewed all of it with Applicant. Counsel also received some late discovery which consisted of letters Applicant had written to the victim of the assault and battery/kidnapping case in which he threatened her to drop charges and expressed his motive for having attacked her. The State intended to use the letters at trial. Counsel was concerned because Applicant's handwriting was

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very distinctive and he did not believe there was any basis upon which he could get the incriminating letters suppressed.

Originally, Counsel was preparing to go to trial on the case involving Applicant firing gun shots at police when they were following his car. Counsel went to the scene to familiarize himself in preparation for trial. Counsel explained they were going to pursue a theory that the police were in an unmarked car and Applicant was fearful so he fired shots to scare them. However, it became evident the State was going to try the assault and battery and kidnapping case first in order to seek a life without parole (LWOP) sentence based on his prior criminal history. The victim was not cooperative with the defense and Counsel does not recall if he actually spoke to the other witness.

Counsel also investigated the evidence the State had with regard to the multiple robberies. Counsel was aware there were other people implicated in the robberies and he believed Applicant may have defenses to some of them, but not others. Applicant initially wanted a trial and Counsel was preparing for same. However, after Applicant sat in a courtroom in which Judge Verdin was accepting guilty pleas and imposing sentences, Applicant told Counsel he wanted to plead guilty before her. Counsel arranged for him to plead before Judge Verdin shortly thereafter. Because the likelihood of conviction was high on the other charges and the risk of facing LWOP, Counsel tried to negotiate a global resolution for Applicant. Counsel asked for 10-15 years, but he always made sure his client understood his potential exposure. Counsel testified he always addresses the ramifications of pleading, including violent versus non-violent offenses, parolable and non-parole offenses, maximum sentences and parole issues with his clients.

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Counsel recalled Applicant had been indicted by the time he represented him and he could not request a preliminary hearing. Counsel remembered Applicant mentioning multiple names as "alibi witnesses" which he was planning to pursue had Applicant not decided to plead guilty and ask for a trial instead. One of the names Applicant claimed was an alibi witness to one of the robberies was the victim of the kidnapping and assault case. Without his notes, Counsel could not specifically recall if he had met with the victim/alibi witness, but he believed he did. However, he was preparing to go to trial on the first case to be tried – the assault and battery/kidnapping case – and there were no alibi witnesses in that case. Counsel testified Applicant had many charges, but only pled to 5 of them. The rest were dismissed as part of the plea. Among the dismissed charges were the charges arising from him shooting at police.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel in hindsight. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

I. Ineffective Assistance of Counsel

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 SPANISH CREEK COUNTY

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to investigate

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First, this Court notes any claims surrounding the failure to investigate alleged alibi witness assumes the testimony from the alleged alibi witnesses would have been favorable to the defense and therefore affected the outcome of the trial. However, this contention is based on pure conjecture and speculation. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Because Applicant failed to produce the testimony of the alleged alibi witness, any prejudiced derived from any of Counsel's actions leading to her not testifying is purely speculative.

Additionally, this Court finds Counsel's testimony with regard to his investigation of Applicant's multiple criminal charges more credible than that of Applicant's self-serving testimony. Counsel testified he was first preparing for trial on the charges arising from Applicant shooting at the police. During his investigation and preparation, the State informed him they would try Applicant on the kidnapping and assault incident first in order to secure a LWOP sentence. Counsel shifted focus and began preparing for trial on these charges. Counsel and his investigator went to the scene of the crime to determine if the witness who gave a statement that she had seen Applicant drag the victim into her apartment could actually see such

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events unfold. Counsel vaguely recalled speaking to the witness and recalled the victim not being cooperative. Counsel also reviewed all of the State's evidence with Applicant. It was during trial preparations that Applicant informed Counsel he wanted to plead guilty before the Honorable Judge Verdin. Counsel also worked hard to arrange a global plea arrangement so Applicant could dispose of all of his pending charges. As part of the plea arrangements, Counsel was able to get four of the burglary charges, an intimidating a witness charge, and an attempted murder charge dismissed.

This Court finds Counsel's investigation and preparation for trial to be reasonable in light of the circumstances in which Applicant found himself. Furthermore, any cessation in the investigation can be attributed to Applicant's change of heart in wanting to plead guilty before Judge Verdin rather than pursue trial with an LWOP notice on the kidnapping and assault case. Interestingly, Applicant takes issue with his armed robbery convictions, but the sentences for those are the same as and concurrent to the sentence for kidnapping. Therefore, Applicant has failed to meet his burden of proving either deficiency or prejudice.

II. Involuntary Guilty Plea

Applicant also asserts his plea was involuntary. The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 396 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the

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SPARTANBURG COUNTY

charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” *Id.* at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not “within the competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, “[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing.” McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, “whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or

FILED
 STATE OF SOUTH CAROLINA
 11/17/11 11:51 AM
 HANCOCK COUNTY

wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” Id. at 771.

The record fully supports the knowing and voluntary nature of Applicant's plea. Applicant has failed to give a sufficient reason to be allowed to depart from the truth of his statements made during his guilty plea. To the extent Applicant is attacking his guilty plea based on ineffective assistance of counsel, this Court finds Counsel was in no way ineffective, as more fully addressed above. This Court further finds Counsel's advice to plead guilty was sound in light of the LWOP sentence Applicant faced on the kidnapping charge alone as well as the evidence the State had against him and the benefit he received by way of the dismissal of various other criminal charges and concurrent sentences. Applicant has failed to meet his burden of proving his guilty plea was involuntary.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a

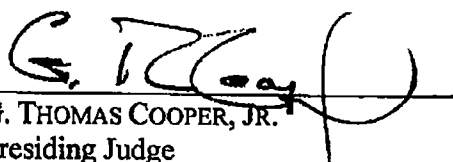
RECEIVED
CLERK OF COURT
STATE OF SOUTH CAROLINA
J. HOPE H. ACHARY
DEC 16 4 58 PM '11

Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRPC. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 12 day of December, 2017.


 G. THOMAS COOPER, JR.
 Presiding Judge
 Seventh Judicial Circuit

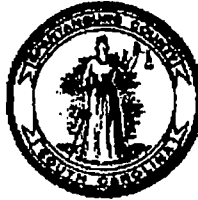
Candor, South Carolina

FILED
 CLERK OF COURT
 CHARLESTON COUNTY
 2017 DEC 14 PM 4:54
 M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

January 9, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Courtesy Kamert Hauling
Applicant # 214748

CASE # *2016-CP-427102*

State vs
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Ord. of Dismissal w/ prejudice*
In this action dated *12-12* 2017 on *1-9-18*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Valerie Costantini
Kirsten McCoy
Suzanne Ross

1-9-18
(Date)

Carrie Seay
(Signature)

WITNESSES

1. SENTENCE MADE

2. REPORTED

3. CARD FILLED

Spartanburg County Sheriff's Office

5. CHECKED WARRANTS

6. CHECKED SIGNATURES

7. ASSESSMENT AND FINE CARD MADE

9. TRAFFIC VIOLATION COPY

Computer
Computer

ARREST WARRANT NUMBER

2013A4210102685

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

NOV 01 2013

VERDICT

Foreperson of Petit Jury
Date:

DICTIONET
13-GS-42-4814

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 01 2013

TERM

THE STATE
vs.

Courtney Lamont Pauling

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 NOV -5 PM 2:40
M. HOPE BLACKLEY

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 01 2013

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Courtney Lamont Pauling, did in Spartanburg County, on or about June 18, 2013, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Joel Gregory, an employee of Domino's Pizza located at _____, by means of force or intimidation goods or monies of Domino's Pizza, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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



DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. **Computer**

INDICTMENT/CASE#: 2013GS4204816

Courtney Lamont Pauling

A/W#: 2013A4210102685

AKA:

Date of Offense: 6/18/2013

Race: BLACK Sex: M Age: 27

S.C. Code §: 16-11-0330(A)

DOB: [redacted] SS#: [redacted]

CDR Code #: 0139

Address: [redacted]

City, State, Zip: Spartanburg, SC

DL#: [redacted] SID#: [redacted]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon (10-30 yrs)

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

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

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

ATTEST: BULSA, DERRICK (15264 SC Bar#) Courtney J. Pauling (Defendant) [Signature] (Attorney for Defendant) 77724 (SC Bar#)

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 05 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 578 days The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.3 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 335.90
		RL 193.90

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]

Presiding Judge [Signature]
Judge Code: 2162
Sentence Date: 2/11/15

WITNESSES

1. SENTENCE MADE

2. REPORT MADE

3. CARD POLLED

Spartanburg County Sheriff's Office

5. CHECKED WARRANTS

6. CHECKED MINUTES

7. ASSESSMENT FINE CARD MADE

TRAFFIC VIOLATION COPY

Computer
Computer

10
10
10
10
10
10
10

ARREST WARRANT NUMBER

2013A4210102669

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

NOV 01 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

13-GS-42-4817

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 01 2013

TERM

THE STATE
vs.

Courtney Lamont Pauling

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class FEL/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 NOV -5 PM 2:40
M. HOPE BLACKLEY

SCANNED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. Courtney Lamont Pauling

INDICTMENT/CASE#: 2013GS4204817 A/W#: 2013A4210102669 Date of Offense: 7/9/2013 S.C. Code § : 16-11-0330(A) CDR Code #: 0139

AKA: Race: BLACK Sex: M Age: 27 DOB: SS#: Address: City, State, Zip: Spartanburg, SC 29301 DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon CONVICTED OF or PLEADS (10-30 yrs)

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: BULSA, DERRICK SC Bar# 15264 Courtney L Pauling Defendant Attorney for Defendant SC Bar# 77724

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 578 days The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS

PTUP days/hours Public Service Employment

Recipient:

Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

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

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

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (03/2011)

Presiding Judge Judge Code: 2162 Sentence Date: 2/11/15

DOCKET NO
14-GS-42-3536

The State of South Carolina
County of Spartanburg
Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 25 2014

TERM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 AUG 27 AM 10:04
M. HOPE BLACKLEY

WITNESSES

1. SENTENCE MADE

2. REPORT MADE **Computer**

SDPS 3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE **Computer**

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

WARRANT NUMBER

THE STATE
vs.

Direct Indictment

Courtney Pauling

ACTION OF GRAND JURY


Atty Gen **True Bill**
For person of Grand Jury
Date: AUG 21 2014

Indictment for
ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE

VERDICT

SC Code: 17-25-30
CDR Code: 0013
Class MIS/UNC

Foreperson of Petit Jury
Date:

COPIED 

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 21 2014

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY OF HIGH AND AGGRAVATED NATURE

That Courtney Pauling did in Spartanburg County on or about July 6, 2013 did unlawfully injure the victim, [REDACTED] and that great bodily injury did result or the act was accomplished by means likely to produce death or great bodily injury, in violation of 16-3-600(B)(1) of the Code of Laws of the State of South Carolina, 1976, as amended.

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


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. COURTNEY LAMONT PAULING

INDICTMENT/CASE#: 2014GS4203536
A/W#: 2014GS4203536
Date of Offense: 7/6/2013
S.C. Code § : 00-00-0000
CDR Code #: 0013

AKA:
Race: BLACK Sex: M Age: 27
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Assault/Assault and Battery-2nd degree

CONVICTED OF or PLEADS

in violation of § 16-03-0600(D)(1) of the S.C. Code of Laws, bearing CDR Code # 3413
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: BULSA, DERRICK SC Bar# 15264 Courtney L. Pauling Defendant Attorney for Defendant SC Bar# 727724

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 578 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waiver Hearing Ordered
Total: \$ plus 10% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP days/hours Public Service Employment

Recipient:

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$31, TOTAL \$133.

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

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2162
Sentence Date: 2/11/15

WITNESSES

1. SENTENCE MADE

2. REPORT FILED

City of Spartanburg

4. INDEXED

5. CHECKED WARRANT

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

2013A4210202422

ACTION OF GRAND JURY

Cheryl **True Bill**
 Foreperson of Grand Jury
 Date: AUG 21 2014

VERDICT

Foreperson of Petit Jury
 Date:

DUCKET NO **14-GS-42-3538**

The State of South Carolina
 County of Spartanburg
 Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 25 2014

TERM

THE STATE
 vs.

Courtney Pauling

Indictment for
USE OF VEHICLE WITHOUT OWNERS PERMISSION

SC Code: 16-21-60 (B)
 CDR Code: 0222
 Class: MIS/c

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 AUG 27 AM 10:04
 M. HOPE BLACKLEY

RECORDED

RP

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG VS. STATE

INDICTMENT/CASE#: 2014GS4203538

Courtney Lamont Pauling

A/W#: 2013A4210202422

AKA:

Date of Offense: 7/6/2013

Race: BLACK Sex: M Age: 27

S.C. Code §: 16-21-0060(B)

DOB: SS#:

CDR Code #: 0222

Add:

City, State, Zip:

DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Vehicle / Use of vehicle without permission for temp. purpose only, unconnected to other crime

in violation of § 16-21-0060(B) of the S.C. Code of Laws, bearing CDR Code # 0222

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST: BULSA, DERRICK SC Bar# 15264 Courtney Lamont Pauling Defendant Matthew Z. My Attorney for Defendant SC Bar# 27724

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 115 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 578 days The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and public defender fees. Total: \$133.00

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

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (03/2011)

Presiding Judge Judge Code: 2162 Sentence Date: 2/11/15

WITNESSES

SENTENCE MADE

2. REPORT FINED
City of Spartanburg

3. CARD PULLED

4. INDEXED

5. ARREST WARRANT

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

Computer
Computer

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Copy True Bill

Foreperson of Grand Jury
Date: AUG 21 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

14-GS-42-3539

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 25 2014

TERM

THE STATE
vs.

Courtney Lamont Pauling

Indictment for

KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class: FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 AUG 27 AM 10:04
M. HOPE BLACKLEY

COPIED

Handwritten mark

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT


AUG 21 2014

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

That Courtney Pauling did in Spartanburg County on or about July 6, 2013 did unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away another person, [REDACTED], by any means whatsoever without authority of law in violation of 16-3-910 of the Code of Laws of the State of South Carolina, 1976, as amended.

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


DEPUTY SOLICITOR

COUNTY OF SPARTANBURG
STATE VS.
Courtney Lamont Pauling

INDICTMENT/CASE#: 2014GS4203539
A/W#: 2014GS4203539
Date of Offense: 7/6/2013
S.C. Code § : 16-03-0910
CDR Code #: 0095

AKA:
Race: BLACK Sex: M Age: 27
DOB: SS#: [REDACTED]
Address: [REDACTED]
City, State: [REDACTED]
DL#: SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnapping

CONVICTED OF or PLEADS

(10-30yrs)

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lowd Act)

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

ATTEST: B. B. Bulsa 15264 Courtney Lamont Pauling [Signature] 27701
BULSA, DERRICK SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 578 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5%)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.70
TOTAL		\$ 133.70

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

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2162
Sentence Date: 2/11/15

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

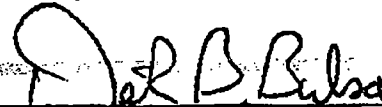
THE STATE)
)
v.)
)
Courtney Pauling,)
Defendant.)

Notice of Life Sentence
Pursuant to Section 17-25-45(A)

2014-GS-42-3539

TO: THE DEFENDANT AND HIS ATTORNEY, Matthew Shealy:

YOU WILL PLEASE TAKE NOTICE that pursuant to Section 17-25-45(A) and (H) of the South Carolina Code of Laws, 1976, as amended, the State will seek a life sentence for the Defendant if he is convicted of Kidnapping on the above listed indictment. This mandatory sentence is based on a prior conviction for Attempted Armed Robbery (2005-GS-32-4097), a most serious offense, in April 2006.



Derrick B. Balsa
Deputy Solicitor

August 29, 2014

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 AUG 29 PM 3:32
M. HOPE BLACKLEY

SCANNER

