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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County

Honorable Daniel D. Hall, Circuit Court Judge

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ANTHONY B. LAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000430

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APPENDIX

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JOANNA K. DELANY  
Appellate Defender

ALAN WILSON  
Attorney General

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

DESHAWN H. MITCHELL  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
 COUNTY OF GREENVILLE )  
 State of South Carolina, )  
 )  
 v. ) Case No. 14-GS-23-6789 et al  
 )  
 Steve Sullivan, )  
 Anthony Bernard Lay, )  
 Junior Kidd, )  
 Michael Cannady, )  
 )  
 Defendants. )

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 14<sup>th</sup>, 2016, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Katrina Salisburg, Assistant Solicitor  
13th CIRCUIT SOLICITOR'S OFFICE  
... Appearing for State as to all Parties

Symmes Culbertson, Esq.  
... Appearing for Defendant Steve Sullivan

Symmes Culbertson, Esq.  
... Appearing for Defendant Bernard Lay

Randall Chambers, Public Defender  
... Appearing for Defendant Junior Kidd

Randall Chambers, Esq.  
... Appearing for Defendant Michael Cannady

Deborah Garrison  
Circuit Court Reporter - 13th Judicial Circuit  
P O Box 27145  
Greenville, South Carolina 29616  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)

State of South Carolina v Anthony Bernard Lay

Case No. 14-GS-23-6789 et al

Hearing of April 14, 2016

Before The Honorable Perry H. Gravely

1 THE COURT: Good morning.

2 CLERK: Your Honor, in the case of  
3 2014-GS-23-9187, the State versus Steven  
4 Edward Sullivan, indicted for ill treatment  
5 of animals, he is pleading to the same and  
6 this is a true bill.

7 In the case of 2014-GS-23-9188, Mr.  
8 Sullivan is indicted for burglary, second  
9 degree, violent. He is pleading to burglary,  
10 second degree building. And this is also a  
11 true bill.

12 In the case of 2014-GS-23-6789, the  
13 State versus Anthony Bernard Lay, indicted  
14 for attempted murder and possession of a  
15 weapon during the commission of a violent  
16 crime. He is pleading to attempted murder  
17 and possession of a weapon during the  
18 commission of a violent crime. And this is  
19 true billed.

20 In the case 2014-GS-23-0309, Mr. Lay  
21 is indicted for unlawful conduct towards a  
22 child. He is pleading to the same and this  
23 is also true bill.

24 In the case of 2016-GS-23-1873 and  
25 also 2015-GS-23-5380, the State versus Aaron

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1 Junior Kidd. On both indictments he's  
2 charged with possession of methamphetamine.  
3 He is pleading on both to possession of  
4 methamphetamine as a second offense and these  
5 are waivers.

6 And then in the case of 2016-GS-23-  
7 3023, the State versus Michael Robert Lee  
8 Cannady. He is indicted for domestic  
9 violence first degree. He is pleading to the  
10 same and this is a waiver.

11 All right. Gentlemen please, best  
12 you can, raise your right hand.

13 (WHEREUPON ALL DEFENDANTS SWORN)

14 THE COURT: All right. Are you  
15 Steven Edward Sullivan?

16 DEFENDANT SULLIVAN: Uh-huh.

17 THE COURT: How old are you, Mr.  
18 Sullivan?

19 DEFENDANT SULLIVAN: Fifty-six.

20 THE COURT: And how far did you go  
21 in school?

22 DEFENDANT SULLIVAN: Graduated.

23 THE COURT: All right. You're  
24 Anthony Bernard Lay?

25 DEFENDANT LAY: Yes, sir.

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1 THE COURT: And how old are you?

2 DEFENDANT LAY: Twenty-one.

3 THE COURT: How far did you go in  
4 school?

5 DEFENDANT LAY: Tenth grade.

6 THE COURT: Okay. You're Aaron  
7 Junior Kidd?

8 DEFENDANT KIDD: Yes, sir.

9 THE COURT: And how old are you?

10 DEFENDANT KIDD: I'm thirty-eight.

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

13 DEFENDANT KIDD: Ninth grade.

14 THE COURT: Okay. And Michael  
15 Robert Lee Cannady; is that you?

16 DEFENDANT CANNADY: Yes, sir.

17 THE COURT: And how old are you?

18 DEFENDANT CANNADY: Thirty-five.

19 THE COURT: And how far did you go  
20 in school?

21 DEFENDANT CANNADY: I graduated.

22 THE COURT: All right. Is anybody  
23 under the influence of any alcohol, drugs or  
24 medication of any type which would make them  
25 impaired to this afternoon? Mr. Sullivan?

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1                   DEFENDANT SULLIVAN:     I'm on some  
2 medication.

3                   THE COURT:        What kind of  
4 medication are you on?

5                   MR. CULBERTSON:     He's got a sack of  
6 things here, Your Honor.

7                   THE COURT:        Well, these -- all the  
8 medications, are they prescribed?

9                   MR. CULBERTSON:     Yes, sir.

10                  DEFENDANT SULLIVAN:     And blood  
11 thinner, too.

12                  THE COURT:        Let me ask him.

13                  DEFENDANT SULLIVAN:     I am having  
14 some circulation problems.

15                  THE COURT:        All right. And are  
16 you taking them as prescribed?

17                  DEFENDANT SULLIVAN:     Yes, sir.

18                  THE COURT:        Okay. And do any of  
19 these medications keep you from being able to  
20 appreciate what's going on? Do you have any  
21 problems with understanding what I'm doing?  
22 Make decisions? And what I'm asking you?

23                  DEFENDANT SULLIVAN:     No.

24                  THE COURT:        Clear-headed even when  
25 you're taking this medicine?

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1 DEFENDANT SULLIVAN: Yes, sir.

2 Yeah.

3 THE COURT: Okay. And Mr.  
4 Culbertson, in talking with him, do you think  
5 there's any issues there?

6 MR. CULBERTSON: I think he under-  
7 stands what he's doing today, Your Honor.  
8 He's on some medications for some issues he's  
9 just became aware of actually yesterday, but  
10 I think he understands what he's doing today.  
11 I don't think the medication is an impairment  
12 to his mental abilities.

13 THE COURT: All right. Well, I'll  
14 let you go forward.

15 Mr. Lay, how about you?

16 DEFENDANT LAY: I'm all right.

17 THE COURT: Any medication?

18 DEFENDANT LAY: No, sir.

19 THE COURT: Okay. I'm glad you're  
20 all right.

21 Now, let's start over here. Anybody  
22 on any medication, drugs or alcohol?

23 Anything that would make you impaired today?

24 Mr. Lay?

25 DEFENDANT LAY: No, sir.

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1 THE COURT: Okay. Mr. Kidd?

2 DEFENDANT KIDD: I take Lithium for  
3 bipolar and Seraquil for depression. But  
4 none of it today.

5 THE COURT: Okay. And does that  
6 keep you from being able to understand what's  
7 going on?

8 DEFENDANT KIDD: No, sir.

9 THE COURT: You're clearheaded and  
10 able to know what you're doing.

11 DEFENDANT KIDD: Yes, sir.

12 THE COURT: And Mr. Chambers, are  
13 you representing him?

14 MR. CHAMBERS: I do, Your Honor.

15 THE COURT: And do you have any  
16 issues with -- in talking with him today, the  
17 fact that he's not on his medication?

18 MR. CHAMBERS: Not at all, Your  
19 Honor.

20 THE COURT: Okay. And Mr.  
21 Cannady, how about you?

22 DEFENDANT CANNADY: Nothing.

23 THE COURT: Okay. And you're all  
24 right.

25 Other than what we've already

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1 discussed, does anybody have any health or  
2 mental issues which would keep him from  
3 understanding what's going on today?

4 Mr. Sullivan?

5 DEFENDANT SULLIVAN: No, sir.

6 THE COURT: Make sure you speak up  
7 loudly?

8 DEFENDANT SULLIVAN: No, sir.

9 THE COURT: Okay. Mr. Lay?

10 DEFENDANT LAY: No, sr.

11 THE COURT: Mr. Kidd?

12 DEFENDANT KIDD: No, sir, Your  
13 Honor.

14 THE COURT: And Mr. Cannady?

15 DEFENDANT CANNADY: No, sir.

16 THE COURT: Okay. Mr. Sullivan  
17 and Mr. Lay, y'all are both represented by  
18 Mr. Culbertson; is that correct?

19 DEFENDANT SULLIVAN: Yes, sir.

20 DEFENDANT LAY: Yes, sir.

21 THE COURT: All right. Have y'all  
22 had sufficient to talk with Mr. Culbertson  
23 about your cases? Has he answered all the  
24 questions you had and done all the  
25 investigation which you felt was appropriate?

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Mr. Sullivan?

DEFENDANT SULLIVAN: Yes, sir.

THE COURT: And Mr. Lay?

DEFENDANT LAY: Yes, sir.

THE COURT: Are you completely satisfied with his representation of you?

Mr. Sullivan?

DEFENDANT SULLIVAN: Yes, sir.

THE COURT: And Mr. Lay?

DEFENDANT LAY: Yes, Your Honor.

THE COURT: Do you have any complaints against Mr. Culbertson or anyone in his office? Mr. Sullivan?

DEFENDANT SULLIVAN: No, sir.

THE COURT: And Mr. Lay?

DEFENDANT LAY: No, Your Honor.

THE COURT: All right. The other two are represented by Mr. Chambers.

Mr. Kidd, you need to pay attention up here, okay?

DEFENDANT KIDD: Yes, Your Honor.

THE COURT: Now, have you had -- have both of y'all, have y'all had sufficient time to talk to Mr. Chambers about your charges? Has he answered all your questions

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1 and done all the investigation that you felt  
2 was appropriate? Mr. Kidd?

3 DEFENDANT KIDD: Yes, sir, Your  
4 Honor.

5 THE COURT: And, Mr. Cannady?

6 DEFENDANT CANNADY: Yes, sir.

7 THE COURT: Are you completely  
8 satisfied with his representation?  
9 Mr. Kidd?

10 DEFENDANT KIDD: (Affirmative nod).

11 THE COURT: Mr. Cannady?

12 DEFENDANT CANNADY: Yes, sir.

13 THE COURT: Do you have any  
14 complaints whatsoever against Mr. Chambers or  
15 anybody in his office? Mr. Kidd?

16 DEFENDANT KIDD: No, sir.

17 THE COURT: Mr. Cannady?

18 DEFENDANT CANNADY: No, sir.

19 THE COURT: All right. Mr.  
20 Sullivan, you're here for murder, second  
21 degree which carries a maximum of -- (pause)  
22 -- that's a question?

23 MR. CULBERTSON: Sir?

24 SOLICITOR SALISBURG: I'm sorry.

25 Up to ten years, Your Honor.

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1 THE COURT: Ten years.

2 MR. CULBERTSON: I'm sorry, Your  
3 Honor.

4 THE COURT: That's fine. And the  
5 treatment of animals?

6 SOLICITOR SALISBURG: Up to five,  
7 Your Honor.

8 THE COURT: All right. So those  
9 two charges, you understand that Mr. Sullivan  
10 what -- the burglary second, in the second,  
11 carries ten and treatment of animals carries  
12 a maximum of five years. Do you understand  
13 both of those charges?

14 DEFENDANT SULLIVAN: Yes, sir.

15 THE COURT: And how do you wish to  
16 plead?

17 DEFENDANT SULLIVAN: Guilty.

18 THE COURT: To both charges?

19 DEFENDANT SULLIVAN: Yes, sir.

20 THE COURT: Okay. Mr. Lay you  
21 have a charge for unlawful conduct towards a  
22 child, which carries up to ten years and a  
23 fine at the court's discretion; and an  
24 attempted murder, which carries up to thirty  
25 years. Okay. Do you understand both of

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1 those charges?

2 DEFENDANT LAY: Yes, sir.

3 THE COURT: And how do you wish to  
4 plead?

5 DEFENDANT LAY: Guilty.

6 THE COURT: To both charges?

7 DEFENDANT LAY: Yes, sir.

8 THE COURT: Mr. Kidd, you have  
9 possession of methamphetamine second offense,  
10 which carries up to five years and that's two  
11 of the same. And a second charge of  
12 possession of methamphetamine second offense,  
13 which carries up to five years as well. Do  
14 you understand both of those charges?

15 DEFENDANT KIDD: Yes, sir.

16 THE COURT: And how do you wish to  
17 plead?

18 DEFENDANT KIDD: Guilty, Your  
19 Honor.

20 THE COURT: All right. And Mr.  
21 Cannady, you have domestic violence first  
22 degree, which carries up to ten years. Do  
23 you understand that charge?

24 DEFENDANT CANNADY: Yes, sir.

25 THE COURT: And how do you wish to

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1 plead?

2 DEFENDANT CANNADY: Guilty.

3 THE COURT: All right. Gentlemen,  
4 even though there may be a recommendation in  
5 your case, you realize that I'm not bound by  
6 that recommendation. I can still sentence  
7 you to the maximum amount on your charges.  
8 You understand that, Mr. Sullivan?

9 DEFENDANT SULLIVAN: Yes, sir.

10 THE COURT: Mr. Lay?

11 DEFENDANT LAY: Yes, sir.

12 THE COURT: Mr. Kidd?

13 DEFENDANT KIDD: Yes, sir.

14 THE COURT: And Mr. Cannady?

15 DEFENDANT CANNADY: Yes, sir.

16 THE COURT: Did anybody promise  
17 you anything or direct you to plead guilty?  
18 Mr. Sullivan?

19 DEFENDANT SULLIVAN: No, sir.

20 THE COURT: Mr. Lay?

21 DEFENDANT LAY: No, sir.

22 THE COURT: Mr. Kidd?

23 DEFENDANT KIDD: No, sir.

24 THE COURT: Mr. Cannady?

25 DEFENDANT CANNADY: No, sir.

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1 THE COURT: Are you pleading  
2 guilty freely and voluntarily? Mr. Sullivan?

3 DEFENDANT SULLIVAN: Yes, sir.

4 THE COURT: Mr. Lay?

5 DEFENDANT LAY: Yes, sir.

6 THE COURT: Mr. Kidd?

7 DEFENDANT KIDD: Yes, sir, Your  
8 Honor.

9 THE COURT: And Mr. Cannady?

10 DEFENDANT CANNADY: Yes, sir.

11 THE COURT: All right. Okay.

12 Mr. Sullivan your matters have been sent to  
13 the grand jury and true billed.

14 Same with you Mr. Lay.

15 Mr. Kidd, your cases have not been  
16 sent to the grand jury and you've initialed  
17 your waiver.

18 And the same with you, Mr. Cannady,  
19 you've initialed that you've waived your  
20 right to a grand jury.

21 Mr. Kidd and Mr. Cannady, I want to  
22 make sure you understand that first you have  
23 a right for your charges to be submitted to  
24 the grand jury. And that is where your case  
25 could be sent to the grand jury and they

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1 would determine whether it was sufficient  
2 evidence for you cases to go forward. You  
3 understand that right and you understand  
4 you've waived that right by going forward  
5 with your plea today? Mr. Kidd?

6 DEFENDANT KIDD: Yes, sir, Your  
7 Honor.

8 THE COURT: And Mr. Cannady?

9 DEFENDANT CANNADY: Yes, sir.

10 THE COURT: All right. Now, this  
11 applies to all four of you again. You each  
12 have constitutional rights that you are  
13 giving up by pleading guilty today. You have  
14 a right to a jury trial where twelve people  
15 will hear your case and determine whether you  
16 are innocent or guilty. You have a right to  
17 make the State prove its case against you  
18 beyond a reasonable doubt. And you're  
19 presumed innocent up to that point. And that  
20 reasonable doubt is to each element of your  
21 charge.

22 You would also have the right to  
23 confront any and all witnesses that the State  
24 has against you. And the right to examine  
25 all evidence that the State has against you.



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1 have a right to appeal your plea and your  
2 sentence from ten days from today. You  
3 understand that, Mr. Sullivan?

4 DEFENDANT SULLIVAN: Yes, sir.

5 THE COURT: Mr. Lay?

6 DEFENDANT LAY: Yes, sir.

7 THE COURT: Mr. Kidd?

8 DEFENDANT KIDD: Yes, sir, Your  
9 Honor.

10 THE COURT: And Mr. Cannady?

11 DEFENDANT CANNADY: Yes, sir.

12 THE COURT: All right. I will now  
13 have the Solicitor set forth the facts on  
14 each of your charges independently. Then I  
15 will discuss your plea with each of you.  
16 So as to Mr. Sullivan?

17 SOLICITOR SALISBURG: May it please  
18 the Court, Your Honor. With respect to the  
19 allegations, on August 4<sup>th</sup> of 2014, police  
20 responded to a report of an alarm call at a  
21 business on Wade Hampton Boulevard in  
22 Greenville County.

23 Once on scene police found that  
24 someone had forced entry into some windows  
25 but that the perpetrator was gone.

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1           The owner of the business arrived on  
2 scene and told police that he has a pit bull  
3 that stays in the office while the business  
4 is closed. He suspected that the dog was  
5 able to run off the intruder.

6           The only thing disturbed was a cash  
7 box with approximately five hundred dollars  
8 in it.

9           Once police reviewed the  
10 surveillance video, the owner described that  
11 the Defendant was the one in the video  
12 breaking into his shop and taking the five  
13 hundred dollars. On that video the Defendant  
14 can be seen throwing part of a radiator at  
15 the dog inside that office. Those are the  
16 facts as they would be presented at trial.

17           THE COURT: All right. Do you  
18 agree with those facts, Mr. Sullivan?

19           DEFENDANT SULLIVAN: I wasn't  
20 throwing at the dog to hurt the dog.

21           THE COURT: I mean, do you agree  
22 that -- well, there's a charge for ill  
23 treatment of animals. Do you agree that  
24 there are facts sufficient to support that  
25 claim?

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1                   DEFENDANT SULLIVAN:     I gave a  
2                   statement. I don't know if that's here or  
3                   not. But I gave a statement as to what  
4                   happened.

5                   THE COURT:        Y'all want to chat a  
6                   second?

7                   MR. CULBERTSON:    Yeah, if you don't  
8                   mind, Your Honor.

9                   THE COURT:        Well, you want to just  
10                  chat -- we'll go off the record.

11                  (COURT AT-EASE)

12                  MR. CULBERTSON:    (Sidebar with  
13                  Defendant Sullivan), all right. Your Honor.  
14                  I think we're prepared.

15                  THE COURT:        All right. Again, you  
16                  know, what I'm saying is you pled guilty to  
17                  this. I realize that you may have some  
18                  issues with the details of the facts, but do  
19                  you agree that there are facts sufficient for  
20                  them to convict you of ill treatment animals,  
21                  and do you agree with those facts?

22                  DEFENDANT SULLIVAN:    Yes, sir.

23                  THE COURT:        All right. Now, I'm  
24                  not trying to force you or anything like  
25                  that, it's up to you.

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1 DEFENDANT SULLIVAN: Yes, sir.

2 THE COURT: Okay. And based on  
3 that, do you still wish to plead guilty to  
4 both burglary second degree and ill treatment  
5 of animals?

6 DEFENDANT SULLIVAN: Yes, sir.

7 THE COURT: And Mr. Culbertson,  
8 you've had sufficient time to talk with your  
9 client about his charges, any defenses or  
10 issues that he may have?

11 MR. CULBERTSON: Yes, sir.

12 THE COURT: You've talked with him  
13 about his rights?

14 MR. CULBERTSON: Yes, sir.

15 THE COURT: Do you believe he  
16 understands his rights and he's giving his  
17 rights up freely and voluntarily?

18 MR. CULBERTSON: I believe he does.  
19 Yes, sir.

20 THE COURT: All right. Mr.  
21 Sullivan, I'll accept your plea. I find it's  
22 been knowingly, intelligently and voluntarily  
23 made with the advice of competent legal  
24 counsel, with whom you've indicated that  
25 you're satisfied with his representation of

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1 you. And there's a substantial factual basis  
2 for the plea.

3 Prior record, time in jail and  
4 recommendation?

5 SOLICITOR SALISBURG: The  
6 Defendant's criminal history begins in 1990  
7 with disorderly conduct; 1993, grand larceny;  
8 '99, driving under suspension; 2002, assault  
9 with a concealed weapon, open container; and,  
10 2008, breach of trust.

11 The defendant served twenty-one days  
12 in jail before released.

13 The State's making no recommendation  
14 with respect to the sentencing.

15 THE COURT: All right.

16 MR. CULBERTSON: May it please the  
17 Court, Your Honor. Mr. Sullivan understands  
18 he's pleading today. He admits the  
19 allegations as set forth by the Solicitor's  
20 Office.

21 I think the confusion was over  
22 primarily cruelty towards animal charge. At  
23 one point in time he thought that there was a  
24 part in there -- in fact, there was a part in  
25 there talking about he actually hit the dog

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1 with the radiator and done some -- had  
2 harmed, physical injury to the dog. That's  
3 not true. He wanted me to be sure to point  
4 out he never actually harmed the dog in any  
5 way.

6 And what I'll tell Your Honor is  
7 that he's admitted to this. He admitted to  
8 breaking a window, trying to break in through  
9 the door, trying to go into the place. He  
10 was hungry. He needed some money. He was  
11 trying to get something to eat with.

12 He understands what he did was  
13 wrong. He's not making an excuse for it.  
14 I just offer that by way of somewhat  
15 justification. In his mind, he was just  
16 trying to get something to survive on.

17 The store had a dog in there for  
18 security reasons. When the dog, a Pit Bull  
19 started barking and charging at him, he did  
20 pick up something to throw it towards, to try  
21 to keep the dog from jumping on him. He did  
22 not intend nor did he cause any injury or  
23 damage to the dog.

24 He knows what he did was wrong.  
25 He's up here taking credit for his crime,

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1 admitting to the Court and to Your Honor that  
2 he knows what he did was wrong.

3 Your Honor, you heard a little bit  
4 about his physical, medical condition. He  
5 tells me that he went in yesterday or the day  
6 before for some MRI scans. They found some  
7 significant blockage in his heart. He talked  
8 to you about some of the medication he's on  
9 today. That's meant to try to help out that  
10 fairly serious health issue he has.

11 He tells me he's got a job now.  
12 He's doing better. I would point out to the  
13 Court that his criminal history is spotty at  
14 best. There has been long periods where he's  
15 done absolutely nothing that would justify  
16 him being arrested or charged with any crime.  
17 He's trying to do the right thing.

18 He understands that what he did this  
19 time was wrong. He shouldn't have done it.  
20 But it was just a matter of desperation. He  
21 apologizes to this Court, to the officers at  
22 the Police Department and certainly to the  
23 victim and to the dog in this case.

24 I'm just asking Your Honor to be as  
25 lenient as possible, take in consideration

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1 his health issues. And I would ask you to  
2 put him on a probationary sentence to let him  
3 make any kind of restitution payments might  
4 be due so he get whatever medical treatment  
5 he might need.

6 THE COURT: Is there any request  
7 for restitution?

8 SOLICITOR SALISBURG: No, sir, Your  
9 Honor.

10 THE COURT: Okay. Has the Victims  
11 Right Act been complied with?

12 SOLICITOR SALISBURG: Yes, sir.

13 THE COURT: Again, just -- and the  
14 recommendation here. Kind of go back over  
15 his criminal history with me.

16 SOLICITOR SALISBURG: Sure. 1990,  
17 disorderly conduct; '93, grand larceny; '99,  
18 DUS; '02, assault with a concealed weapon,  
19 open container; 2008, breach of trust.

20 THE COURT: Mr. Sullivan, anything  
21 you want to tell me?

22 DEFENDANT SULLIVAN: Just that all  
23 this stems from my alcohol use. I've been  
24 quit drinking now for a year and eight  
25 months. I've been on my job for a year and

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1 three months. I've never had anybody to help  
2 me or -- I've asked for help every time I  
3 went to Court in order to get in a program or  
4 something and nobody never would get me in a  
5 program. But Mr. Gay helped me to get in an  
6 AA program, to get myself together. And then  
7 I found out that I'm having some problems  
8 with my blood circulation now that I've been  
9 quit drinking. And I'm having to go back and  
10 forth to the doctor. But my boss man, he's  
11 trying to keep my job until I get myself  
12 together.

13 THE COURT: This happened August  
14 of 2014. I mean, there's no -- he hasn't  
15 been in any -- hasn't gotten a speeding  
16 ticket since then?

17 SOLICITOR SALISBURG: I don't have  
18 any information about any other charges  
19 incurred since the date of this arrest.

20 MR. CULBERTSON: No, sir. Nothing  
21 since that date. And just -- I'm not sure  
22 how familiar Your Honor is with David Gay but  
23 Mr. Gay is a minister over at Triune Mercy  
24 Center here. He is a great person who tries  
25 to reach out and render assistance to folks

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1 who are kind of in need. The fact that David  
2 has seen fit to try to help this guy out, I  
3 think, speaks volumes. I would just implore  
4 the Court to allow this man to try to stay  
5 healthy and try to get back on the right  
6 path.

7 DEFENDANT SULLIVAN: Yes.

8 THE COURT: And it sounds like  
9 that you have attempted to really turn things  
10 around with the fact that, you know, all this  
11 happened a year and half ago and you still  
12 seem to be doing okay. I'm going to give you  
13 chance. You better not let me down.

14 DEFENDANT SULLIVAN: Thank you.

15 THE COURT: All right. So on  
16 2014-9188, that's the burglary. Seven years  
17 suspended on time served and four-years  
18 probation, to run concurrent. Credit for  
19 time served and substance abuse counseling,  
20 random drug and alcohol testing, five hundred  
21 dollars (\$500) to the public defender fund.

22 On 2014-9187, five years suspended  
23 during probation.

24 MR. CULBERTSON: Thank you, Your  
25 Honor.

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1 THE COURT: Good luck to you with  
2 all your health issues doing okay, too.

3 SOLICITOR SALISBURG: May it please  
4 the Court, Your Honor. With respect to Mr.  
5 Lay, I believe that you may have reviewed  
6 with him the penalty with respect to unlawful  
7 conduct and attempted murder. He's also  
8 pleading guilty to a weapons charge. I  
9 wanted to make sure the record reflected that  
10 he was aware of the potential maximum penalty  
11 for that offense.

12 THE COURT: Okay. Those were  
13 together. I'm sorry.

14 MR. CULBERTSON: Thank you.

15 THE COURT: All right. Mr. Lay,  
16 I realize that those two -- I guess they're  
17 both on the same indictment. There's also a  
18 charge of possession of a weapon during the  
19 commission of a violent crime, which carries  
20 a penalty of five years? You understand that  
21 charge?

22 DEFENDANT LAY: Yes, sir.

23 THE COURT: And how do you wish to  
24 plead to that?

25 DEFENDANT LAY: Guilty.

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1 MR. CULBERTSON: Speak up.

2 DEFENDANT LAY: Guilty, sir.

3 THE COURT: All right. Now, you  
4 realize all the other rights and information  
5 that I discussed with you would apply to that  
6 charge as well?

7 DEFENDANT LAY: Yes, Your Honor.

8 THE COURT: Okay. And based on  
9 all of that, you still wish to plead guilty?

10 DEFENDANT LAY: Yes, sir.

11 THE COURT: On all three charges.

12 DEFENDANT LAY: Yes, sir.

13 THE COURT: I'll be glad to hear  
14 from you on the facts.

15 SOLICITOR SALISBURG: Yes, sir,  
16 Your Honor. On November 23<sup>rd</sup> of 2013 at about  
17 10:00 a.m. sheriff's office deputies were  
18 called to the Greenville County home the  
19 defendant shared with the mother of his one-  
20 year-old child. The child's mother called  
21 for help when she could not find the child in  
22 the apartment. The defendant had gone to  
23 work around 4:00 that morning and put the  
24 child in a closet and locked the door from  
25 the outside with a deadbolt, for which the

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1 child's mother did not have a key. The fire  
2 department had to pry the door open to get  
3 the child out of that room.

4 Then on May 11<sup>th</sup>, 2014 at about 2:30  
5 in the morning, the defendant went to the  
6 victim's apartment in Greenville County. He  
7 knocked on the door. When the victim  
8 answered, he fired several shots, hitting her  
9 twice in the face. The victim's two-year-old  
10 child was in the apartment at the time. The  
11 victim had to undergo surgery to have those  
12 bullets removed from her neck.

13 Those are the facts as the State  
14 would have presented them at their respective  
15 trials.

16 THE COURT: All right. Mr. Lay,  
17 do you agree with those facts?

18 DEFENDANT LAY: Yes, Your Honor.

19 THE COURT: All that happened as  
20 the Solicitor stated?

21 DEFENDANT LAY: Yes, Your Honor.

22 THE COURT: And based on that, you  
23 still wish to plead guilty?

24 DEFENDANT LAY: Yes, Your Honor.

25 THE COURT: All right. Mr.

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1 Culbertson, have you had sufficient time to  
2 talk with Mr. Lay about his case and any  
3 defenses and issues that he may have?

4 MR. CULBERTSON: Yes, sir.

5 THE COURT: Have you discussed  
6 with him his rights and believe he  
7 understands those rights and is giving those  
8 rights up freely and voluntarily?

9 MR. CULBERTSON: Yes, sir.

10 THE COURT: All right. Mr. Lay,  
11 I'll accept your plea. I find it's been  
12 knowingly, intelligently, and voluntarily  
13 made with advice of a competent attorney and  
14 you've indicated you're satisfied with his  
15 representation of you. And there's a  
16 substantial factual basis for the plea. How  
17 long has he been in jail?

18 SOLICITOR SALISBURG: I have six  
19 hundred and eighty-eight (688) days as of  
20 today.

21 MR. CULBERTSON: We believe that's  
22 correct.

23 THE COURT: And prior record?

24 SOLICITOR SALISBURG: No criminal  
25 record.

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1 THE COURT: And what's the  
2 recommendation?

3 SOLICITOR SALISBURG: The State is  
4 making no recommendation.

5 THE COURT: All right. Y'all have  
6 got a form here that says there is a  
7 recommendation. Do y'all want to ---

8 MR. CULBERTSON: And, Your Honor,  
9 there was initially a recommendation. Mr.  
10 Lay and I have discussed that.

11 THE COURT: Y'all need to mark  
12 that out and initial it that he has signed a  
13 form that says a recommendation has been  
14 waived.

15 MR. CULBERTSON: Yeah. But he's  
16 wishing to go ahead and enter a plea  
17 straight-up.

18 THE COURT: Okay.

19 SOLICITOR SALISBURG: Your Honor,  
20 it appears that the Solicitor gave the  
21 Defendant the option to enter the plea with  
22 the benefit of a recommendation or straight  
23 up.

24 THE COURT: He needs to initial.

25 SOLICITOR SALISBURG: Sure.

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1 MR. CULBERTSON: Tell me where you  
2 want him to initial.

3 SOLICITOR SALISBURG: I'll cross it  
4 out. All three.

5 DEFENDANT LAY: (Initials  
6 sentencing sheets).

7 THE COURT: Okay. I just want to  
8 clarify this, Mr. Lay, because you had  
9 previously signed a sentencing sheet on all  
10 three of these charges and there was an  
11 indication that there was a recommendation.  
12 The Solicitor's office and your attorney has  
13 now indicated that there -- the attorneys  
14 have indicated there is no recommendation on  
15 all three of these charges. It's a straight  
16 up plea. Is that what you understand?

17 DEFENDANT LAY: Yes, Your Honor.

18 THE COURT: And you wish to go  
19 forward today with your pleas?

20 DEFENDANT LAY: Yes, Your Honor.

21 THE COURT: All right. And has  
22 the Victims Right Act been complied with?

23 SOLICITOR SALISBURG: Yes, sir,  
24 Your Honor.

25 THE COURT: Any restitution?

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1 SOLICITOR SALISBURG: No, sir.

2 THE COURT: Is the victim here?

3 SOLICITOR SALISBURG: I don't  
4 believe she's present, Your Honor.

5 THE COURT: All right. Mr.  
6 Culbertson, I'll be glad to hear from you.

7 MR. CULBERTSON: Thank you, Your  
8 Honor, may it please the Court. First off,  
9 in regards to the child neglect charge, what  
10 Mr. Lay would like the Court to understand is  
11 that the child's mother and he -- he, the  
12 child and the mother all lived together in an  
13 apartment. Mom had gone to work. She wasn't  
14 there. Mr. Lay had to go to work. There was  
15 nobody there to take care of the child. It  
16 was a bad decision but he tried to make the  
17 best out of a bad situation. He took the  
18 child, put the child in the place he thought  
19 it would be safe, which was in the closet.  
20 Closed the door, locked the door to be sure  
21 nobody could get in to harm the child while  
22 everybody was gone. He understands that was  
23 probably not the smartest thing to do at that  
24 point in time. But he did it. He  
25 understands now why that was the wrong thing

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1 to do. He's entering a plea admitting to  
2 that event.

3 Obviously, Your Honor, in regard to  
4 the next two charges, this was a relationship  
5 fraught with conflict. He and the child's  
6 mother, his wife, had been arguing back and  
7 forth about various things going on in the  
8 family, going on with the marriage. He  
9 foolishly fired a couple of guns -- fired a  
10 couple of shots, several shots in her  
11 direction, some of which hit the -- hit her,  
12 causing serious damage to her. There was  
13 some surgery involved where bullets had to be  
14 removed from her neck. He understands that.  
15 He's pleading guilty to all of that. He's  
16 admitting he did that stuff. Again, it was a  
17 moment of stupidity.

18 He is now -- understands that's not  
19 the way to solve a problem. He has been in  
20 jail, Your Honor, as a result of his arrest  
21 on that like the Solicitor indicated, I  
22 believe, some six hundred and eighty-eight  
23 days.

24 During this whole time, the  
25 Solicitor, who was assigned the case and I,

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1 had various conversations about this case.  
2 At one point it got so far as to where they  
3 were going to make a recommendation to Your  
4 Honor for a sentence of fifteen years. Mr.  
5 Lay understands that he could get up to  
6 thirty on the attempted murder charge. He  
7 understands he'd get more subsequent time on  
8 the other two charges.

9 He wishes to tell Your Honor that he  
10 now understands what he did was wrong, that  
11 he and the mother have no contact whatsoever  
12 anymore. He does not foresee anything like  
13 this ever happening again in his life.

14 And I would like to urge the Court  
15 to give him a sentence that is certainly less  
16 than the fifteen years he turned down. I  
17 don't know what Your Honor is inclined to do.  
18 But I would think that somewhere in the range  
19 of seven years might be a more appropriate  
20 sentence given the facts of this case.

21 THE COURT: Is there anything you  
22 want to tell me, Mr. Lay?

23 DEFENDANT LAY: I apologize to my  
24 ex. Like my lawyer's saying, it was just  
25 irrelevant and decisions I made, I apologize

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1 for. If I could somehow take it back, I  
2 would. I just wasn't thinking right, in the  
3 right mind. And I had time to think over the  
4 two years I have sat in the county jail to  
5 know that I wouldn't make no crime like that  
6 ever again, you know. I apologize.

7 THE COURT: I am going to make  
8 sure you don't do that anytime soon. All  
9 right. Anything else?

10 MR. CULBERTSON: No, sir.

11 THE COURT: All right on attempted  
12 murder, the 2014-6789, the sentence of the  
13 Court is seventeen (17) years with credit for  
14 time served to run concurrent on the  
15 possession of a weapon during a violent  
16 crime, that's five (5) years, also to run  
17 concurrent, credit for time served. And on  
18 the unlawful neglect of child to run  
19 concurrent ten (10) years with credit for  
20 time served.

21 MR. CULBERTSON: Thank you, sir.

22 SOLICITOR SALISBURG: May it please  
23 the Court, Your Honor. With respect to Mr.  
24 Kidd on April 22<sup>nd</sup> of 2015, a sheriff's office  
25 deputy stopped a vehicle on West Blue Ridge

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1 Drive in Greenville County for a traffic  
2 violation. During a consensual search of the  
3 car, the deputy located a baggie containing  
4 what lab tests confirmed was .06 grams of  
5 methamphetamine between the seat cushions  
6 where this defendant had been seated.

7 Then on August 12<sup>th</sup> of 2015, a  
8 deputy with the sheriff's office stopped a  
9 vehicle again on West Blue Ridge Drive in  
10 Greenville County for a traffic violation.  
11 The driver consented to a search of the car  
12 and the deputy found in the sunroof concealed  
13 a blue plastic baggie containing what lab  
14 tests determined was .12 grams of  
15 methamphetamine.

16 Those are the facts as the State  
17 would have presented them at their respective  
18 trials.

19 THE COURT: All right. Do you  
20 agree with all those facts, Mr. Kidd?

21 DEFENDANT KIDD: Yes, sir, Your  
22 Honor.

23 THE COURT: And based on that you  
24 still wish to plead guilty?

25 DEFENDANT KIDD: Yeah.

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1 THE COURT: All right. Also I  
2 have been provided with a notice of violation  
3 for your probation. You were placed on  
4 probation as of August the 4<sup>th</sup>, 2014 for CDV  
5 third. You got five years suspended on  
6 service of four hundred and forty-six days  
7 and two-year's probation. Do you realize  
8 that ---

9 DEFENDANT KIDD: No, sir, that --  
10 can I say something, Your Honor? My plea was  
11 -- I sat at the county for a year. I got  
12 time served and two year's suspended, anger  
13 management classes. There was no five years.

14 THE COURT: Well, this form says  
15 five years suspended on all of that?

16 PROBATION OFFICER: You've got  
17 five years hanging over your head.

18 DEFENDANT KIDD: Oh, is that what  
19 it was? Okay. I'm sorry.

20 THE COURT: Really, what I'm just  
21 trying to make sure you understand is that  
22 you realize that these charges in your plea  
23 today violates that probation?

24 DEFENDANT KIDD: Right, sir.

25 THE COURT: Okay.

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1                   DEFENDANT KIDD:     But I'd like to  
2                   say one thing. I do have a job now ---

3                   THE COURT:       And I'll go over that  
4                   in just a minute. Let me get through with a  
5                   couple of little preliminary matters.

6                   DEFENDANT KIDD:     All right. I'm  
7                   sorry.

8                   THE COURT:       But you realize that  
9                   this violates your probation, your plea  
10                  today?

11                  DEFENDANT KIDD:     Yes, sir.

12                  THE COURT:       Okay. And based on  
13                  that, you still wish to plead guilty?

14                  DEFENDANT KIDD:     Yes, sir.

15                  THE COURT:       All right. And how  
16                  long has he been in jail?

17                  SOLICITOR SALISBURG:   Three hundred  
18                  and twenty-eight days.

19                  THE COURT:       And the prior record?

20                  SOLICITOR SALISBURG:   1998, failure  
21                  to stop; 2002, huffing; '03, criminal  
22                  domestic violence; '04, criminal domestic  
23                  violence; '05, shoplifting; 2010 possession  
24                  of drug paraphernalia, malicious damage,  
25                  breach of peace, resisting arrest, assault

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1 and battery; 2011, possession of crack, two  
2 counts of possession of marijuana, false  
3 information to police, malicious damage; and,  
4 2014, two counts of CDV for which the  
5 Defendant is currently on probation.

6 THE COURT: The recommendation?

7 SOLICITOR SALISBURG: The Solicitor  
8 has recommended a sentence suspended to the  
9 time that he's served with probation to  
10 follow it.

11 THE COURT: Okay.

12 PROBATION OFFICER: And just for  
13 the record also, he is in violation and the  
14 warrant's already been served him, back on  
15 October the 5<sup>th</sup>, 2015.

16 THE COURT: Okay. And that is  
17 just -- is that just -- are there other's  
18 issues just besides ---

19 PROBATION OFFICER: Yes, sir.  
20 There's failure to report since February of  
21 2015 or anytime thereafter. We've got four  
22 different occasions where he was positive for  
23 and admitted to the use of meth and  
24 marijuana. Supervision fees, surcharges.

25 THE COURT: Mr. Chambers, have you

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1 had sufficient time to talk to your client  
2 about his charges and any defense issues that  
3 he may have?

4 MR. CHAMBERS: Yes, sir, Your  
5 Honor.

6 THE COURT: You've also discussed  
7 with him his rights? Do you believe he  
8 understands those rights and is giving those  
9 rights up freely and voluntarily?

10 MR. CHAMBERS: I have, Your  
11 Honor.

12 THE COURT: All right. Mr. Kidd,  
13 I'll accept your plea. I find that it's been  
14 knowingly, intelligently and voluntarily made  
15 with the advice of a competent attorney and  
16 you've indicated you're satisfied with his  
17 representation of you. And that there's a  
18 substantial factual basis for the plea.

19 All right. I'll be glad to hear  
20 from you.

21 MR. CHAMBERS: Your Honor, as you  
22 heard earlier, he's thirty-eight years old.  
23 He's lived in this area his entire life, went  
24 to school to the ninth grade, works as a  
25 roofer. Has a job waiting on him with a

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1 roofing company, can go to work right now.  
2 He has three kids that he's supposed to  
3 support and take care of, ages four, five and  
4 seventeen. And he is on court-ordered child  
5 support. Significantly, he suffers from  
6 bipolar and ADHD. A lot of this -- I mean, I  
7 think a lot of this is self-medicating. He  
8 tells me he's on medication and things like  
9 that now.

10 He's also talked, just like you  
11 heard earlier today with David Gay, David Gay  
12 is trying to line him up with some drug  
13 treatment that he needs to go to. I mean,  
14 he's been a drug addict for a long time. And  
15 he's one of these people who you hear about  
16 that says, you know, when he's not getting  
17 high or drinking, he's one of the nicest guys  
18 you ever want to me. But, you know, he gets  
19 high and he does things like commits these  
20 domestic violence's or breach of peace or  
21 things like that. But for the most part,  
22 that's all that's on his record. You don't  
23 see a lot of thieving or -- you know,  
24 anything like that. I mean, it's just kind  
25 of what he does. He's always worked and

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1 managed to make enough money to get by and he  
2 just hasn't been able to get off of drugs.

3 I realize and we certainly  
4 appreciate the recommendation. It's asking a  
5 lot, quite frankly, and I told him this, to  
6 ask for him to continue on probation in light  
7 of this. He's not shown any ability to be  
8 able to do probation. But he swears up and  
9 down that things are different this time.  
10 That he does -- he can go back to his job;  
11 that he is going to get into drug treatment.  
12 He's been clean for a while now. It's clear  
13 to me that he feels better. He's on  
14 medication for his ADHD and his bipolar and  
15 he just feels much better about things. So  
16 I would ask you to take all of that into  
17 consideration, Your Honor.

18 THE COURT: You didn't seem to do  
19 too well on probation before, Mr. Kidd.  
20 Convince me why I need let you try that route  
21 again?

22 DEFENDANT KIDD: Well, for one  
23 thing, I didn't never have a job. I was  
24 always running from child support warrants.  
25 I was scared to go look for a job. But now



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1 THE COURT: All right. As to the  
2 probation violation, I do find that you're in  
3 violation of your probation. I'm going to  
4 revoke the time that you have served and let  
5 that satisfy the balance and any fees  
6 outstanding charges.

7 DEFENDANT KIDD: Thank you.

8 THE COURT: And then on the  
9 possession of meth, five (5) years suspended  
10 on time served, probation for three (3)  
11 years, continue with substance abuse  
12 counseling, random drug and alcohol testing,  
13 continue with mental health counseling and  
14 substance abuse treatment as needed, all  
15 right? To run concurrent and credit for  
16 three hundred and twenty-eight (328) days.

17 On the possession of meth, second  
18 offense, that's 2015-5380, that's going to be  
19 five (5) years suspended on one year of  
20 probation.

21 MR. CHAMBERS: Thank you, Your  
22 Honor.

23 THE COURT: Good luck to you.

24 DEFENDANT KIDD: Thank you, Your  
25 Honor.

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1 SOLICITOR SALISBURG: Finally, Your  
2 Honor, with respect to Mr. Cannady, the  
3 defendant and victim were living together at  
4 the time of this incident. On June 8<sup>th</sup> of  
5 2015, the two got into an argument at their  
6 Greenville County home, during which the  
7 defendant struck the victim in the side of  
8 her face and head. She was not seriously  
9 injured. Those are the facts as the State  
10 would present them at trial.

11 THE COURT: All right. Do you  
12 agree with that, Mr. Cannady?

13 DEFENDANT CANNADY: Yes, sir.

14 THE COURT: And based on that, do  
15 you still wish to plead guilty?

16 DEFENDANT CANNADY: Yes, sir.

17 THE COURT: Mr. Chambers, have you  
18 had sufficient time to talk with your client  
19 about his charges, any defenses or issues  
20 that he may have?

21 MR. CHAMBERS: Yes, Your Honor.

22 THE COURT: Have you discussed  
23 with him his rights?

24 MR. CHAMBERS: Yes, sir.

25 THE COURT: Do you believe he

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1 understands those rights and is giving them  
2 up freely and voluntarily?

3 MR. CHAMBERS: I do, Your Honor.

4 THE COURT: All right. Mr.  
5 Cannady, I'll accept your plea. I find it  
6 has been knowingly, intelligently, and  
7 voluntarily made with the advice of competent  
8 legal counsel, with whom you've indicated you  
9 are satisfied with his representation. And  
10 there's a substantial factual basis for the  
11 plea.

12 Has the Victims Right Act been  
13 complied with?

14 SOLICITOR SALISBURG: Yes, sir,  
15 Your Honor.

16 THE COURT: And no restitution?

17 SOLICITOR SALISBURG: No, sir, Your  
18 Honor.

19 THE COURT: All right. How long  
20 has he been in jail?

21 SOLICITOR SALISBURG: Two hundred  
22 and forty-seven days.

23 THE COURT: Prior record and the  
24 recommendation?

25 SOLICITOR SALISBURG: Sure. 1999,

## State of South Carolina v Anthony Bernard Lay

Case No. 14-GS-23-6789 et al

Hearing of April 14, 2016

Before The Honorable Perry H. Gravely

1 breach of trust, criminal domestic violence;  
2 2000, criminal domestic violence; 2006,  
3 malicious damage; 2013, criminal domestic  
4 violence; and, 2015 criminal domestic  
5 violence second offense.

6 THE COURT: And that's how many  
7 CDVs?

8 SOLICITOR SALISBURG: Four distinct  
9 priors. It's my understanding that each  
10 involves a different victim.

11 THE COURT: Is this one a  
12 different victim too?

13 MR. CHAMBERS: I don't know --  
14 this was his fiancée, Paula Graw (phonetic).

15 MR. CHAMBERS: This was his  
16 fiancé, Paula Grow.

17 THE COURT: All right. And what's  
18 the recommendation?

19 SOLICITOR SALISBURG: The State's  
20 recommendation is for a sentence suspended to  
21 one year with probation to follow, during  
22 which time the Defendant is to complete the  
23 twenty-six week batterer treatment program,  
24 drug and alcohol testing and have no contact  
25 with the victim.

State of South Carolina v Anthony Bernard Lay  
Case No. 14-GS-23-6789 et al  
Hearing of April 14, 2016  
Before The Honorable Perry H. Gravelly

1           The Solicitor has also asked that I  
2           put on the record that based on the  
3           provisions of 16-25-30 the defendant is  
4           prohibited from shipping, transporting,  
5           receiving or possessing firearms or  
6           ammunition for life.

7           THE COURT:     All right.  Do you  
8           understand that, Mr. Cannady, as far as the  
9           firearms?

10          DEFENDANT CANNADY:     Yes, sir.

11          THE COURT:     Suspended to one-year  
12          probation?  What did you say?

13          SOLICITOR SALISBURG:    Yes, sir.  A  
14          sentence suspended to one year with probation  
15          to follow with those special conditions to be  
16          completed during the probation.  I don't  
17          believe the Solicitor has identified a  
18          specific term of probation.

19          THE COURT:     Oh, you're saying --  
20          you ask for one year of active time?

21          SOLICITOR SALISBURG:    Yes, sir,  
22          Your Honor.

23          THE COURT:     I got you.  Okay.  
24          Mr. Chambers?

25          MR. CHAMBERS:     Well, Your Honor,

State of South Carolina v Anthony Bernard Lay  
Case No. 14-GS-23-6789 et al  
Hearing of April 14, 2016  
Before The Honorable Perry H. Gravely

1 I'd ask you to go along with probation. I  
2 mean, clearly, he's got an issue with  
3 aggression toward women. And he would freely  
4 admit that to you. He and I talked about  
5 that over at the jail.

6 You know, this is one of those  
7 situations that started out with a minor  
8 argument and then it just escalated.

9 Significantly, it wasn't the victim  
10 that called the police here. But my client,  
11 you know, as far as I can tell he was honest  
12 with the police about what happened. He's  
13 been honest and very straightforward with me.

14 He's a self-employed handyman and  
15 has a twelve-year-old child that he supports.

16 He will not be going back around  
17 this lady. I've actually had a talk to him  
18 about perhaps, at least for some time just  
19 staying away from women altogether. He tells  
20 me is ---

21 THE COURT: I mean, let me ask you  
22 this, Mr. Cannady, how many times have you  
23 taken this batterers program?

24 DEFENDANT CANNADY: Never, sir.

25 THE COURT: I mean, all these CDVs





FORM 5

STATE OF SOUTH CAROLINA )  
 GREENVILLE )  
 County of Anthony B. Lay )  
 )  
SCDC # 367845 )  
 Full name and prison number (if any) of Applicant )  
 )  
 v. )  
 )  
 State of South Carolina )  
 )  
 )  
 )

IN THE COURT OF COMMON PLEAS

2016-CP-23- 04950

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED-CRIM. CT. COURT  
 GREENVILLE CO. S.C.  
 PAUL S. WICKENSIMMER  
 2016 NOV 23 PM 2 20

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 LEE County Inst., FLA-2124, 990  
Wisacky Hwy, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Greenville County Court  
House, 305 E north st greenville SC 29601
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) Attempted Murder "warrant"
  - (b) child neglect "warrant"

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 14<sup>th</sup> 2016 17 yrs.
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO

- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. N/A
    - 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) My Lawyer Never Advised me to Appeal Before or After my Sentence.
  - (b) \_\_\_\_\_

(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) SEE Attachment A

(c) \_\_\_\_\_

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

(a) SEE Attachment A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

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

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

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

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

N/A

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

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

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

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

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

N/A

10.

a. The Applicant received Ineffective of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

11.

a. Counsel failed to provide effective assistance of counsel prior to and during his guilty pleas proceeding. The Applicant's plea of guilt were coerced by counsel's failure to provide adequate representation. The Applicant's plea of guilty were not voluntary and intelligently entered. The judgement and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

(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?  
NO

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. N/A  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_



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

Sentence to be vacated and a New Trial

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

NO

STATE OF SOUTH CAROLINA )

County of Greenville, SC )

VERIFICATION

I, Anthony B. Lay, 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.

*Anthony B. Lay*

SWORN to and subscribed before me this 11 day of Aug, 2014.

*Debra Eastwood* (L.S.)  
Notary Public

My Commission Expires: 8/3/2024

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

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

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

  
Applicant

SWORN or affirmed to and subscribed before me this

11 day of Aug, 2014.

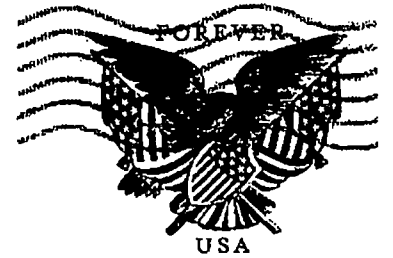
  
Notary Public

My Commission Expires: 3/3/2014

Anthony Lay 367845  
Lee Correctional Inst  
990 Wisacky Hwy  
Bishopville, SC 29010

COLUMBIA SC 290

12 AUG 2016 PM 3 L

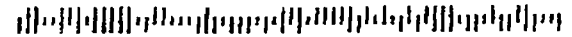


Greenville County Clerk of Court  
305 East North St  
Greenville, SC 29601

2016-CP-23-04950

LEGAL

29601-219099



STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 Anthony B. Lay, #367845, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-4950

RETURN

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2017 APR 12 PM 4 09

In response to the post-conviction relief application filed on August 23, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Greenville County Grand Jury for one (1) count of unlawful conduct towards a child (2014-GS-23-000309). Applicant was subsequently indicted by the September 2014 term of the Greenville County Grand Jury for one (1) count of attempted murder (2014-GS-23-006789) and one (1) count of possession of a weapon during the commission of a violent crime (2014-GS-23-006789). Symmes Culbertson, Esquire, represented him. On April 14, 2016, Applicant pled guilty as indicted to all charges. The Honorable Perry H. Gravely sentenced Applicant to ten (10) years for unlawful conduct towards a child, seventeen (17) years for attempted murder, and five (5) years for possession of a weapon during the commission of a violent crime. The sentences were pursuant to recommendations by the State and are set to run concurrently. Applicant did not appeal his

convictions or sentences.

## II.

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

1. "Ineffective Assistance of Counsel"
  - a. "The Applicant received Ineffective of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution."
  - b. "Counsel failed to provide effective assistance of counsel prior to and during his guilty pleas proceeding. The Applicant's plea of guilt were coerced by counsel's failure to provide adequate representation. The Applicant's plea of guilty were not voluntary and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel."

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. 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; SCRCP 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. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. For the purpose of this Return, Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## III.

Applicant's first allegation alleges ineffective assistance of trial counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, 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).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4<sup>th</sup> Cir.1985). The Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective

standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

## V.

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

## VI.

WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

*{Signature Block on Following Page}*

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

DON ZELENKA  
Deputy Attorney General

DESHAWN H MITCHELL  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

March 30, 2017



STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2016-CP-23-4950
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
	)	
ANTHONY B. LAY,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

June 29, 2017  
Greenville, South Carolina

B E F O R E:

THE HONORABLE DANIEL DEWITT HALL, JUDGE

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

SUSANNAH C. ROSS, ESQ  
Attorney for the Applicant

DESHAWN MITCHELL, ESQ  
Attorney for the Respondent

CHERYL A. SMITH  
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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COURT'S EXHIBIT

1	Guilty Plea Summary and Offer Letter	13	
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P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 11:16 a.m.)

THE COURT: Mr. Mitchell?

MR. MITCHELL: Thank you, Your Honor. This is 2016-CP-23-4950, Anthony B. Lay. Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County clerk of court order of commitment. He was indicted by the April 2014 term of the Greenville County grand jury for one count of unlawful conduct towards a child. He was subsequently indicted by the September 2014 term of the Greenville County grand jury for one count of attempted murder and one count of possession of a weapon during the commission of a violent crime. Mr. Culbertson represented him.

On April 14, 2016, applicant pled guilty as indicted to all charges. The Honorable Perry H. Gravely sentenced applicant to ten years for unlawful conduct towards a child, 17 years for attempted murder, and five years for possession of a weapon during the commission of a violent crime. The sentences were pursuant to recommendations -- pardon me -- not by the State, and are set to run concurrently. Applicant did not appeal his sentence or conviction. He is present in the courtroom today and

1 represented by Ms. Ross.

2 THE COURT: Ms. Ross, you represent Mr. Lay?

3 MS. ROSS: Yes, Your Honor.

4 THE COURT: All right. And what is his position  
5 today in regards to his petition?

6 MS. ROSS: He's alleging ineffective assistance of  
7 counsel. There was a 15-year plea offer, and he states he  
8 was not given an opportunity to accept that plea offer.

9 THE COURT: All right. And you're ready to proceed?

10 MS. ROSS: Yes, Your Honor.

11 THE COURT: Call your first witness.

12 MS. ROSS: Okay. We call Anthony Lay.

13 THE CLERK: Mr. Lay, please place your left hand on  
14 the Bible and raise your right hand.

15 WHEREUPON,

16 ANTHONY LAY

17 After having been duly sworn, testified as follows:

18 THE CLERK: Thank you. You may be seated.

19 Please state your full name for the record.

20 THE WITNESS: Anthony Lay.

21 DIRECT EXAMINATION

22 BY MS. ROSS:

23 Q Good morning, Mr. Lay. You understand you're going  
24 forward here with a PCR, postconviction relief?

25 A Yes, ma'am.

1 Q And the relief that the judge can give you is a  
2 remand that puts you back into the position you were in  
3 before you entered this guilty plea, so you'd be facing  
4 30 years?

5 A Yes, ma'am.

6 Q Do you still want to go forward?

7 A Yes, ma'am.

8 Q Okay. What are your allegations in this PCR?

9 THE COURT: Let me make sure he understands that if I  
10 grant the relief, it would be -- you just asked him about  
11 30 years. He pled to an unlawful conduct, carries up to  
12 ten years, the attempted murder which carries up to  
13 30 years, that would be 40. He also has possession of  
14 meth which carries five which would be 45, possession of  
15 meth second carries five, up to 50, so -- and then  
16 domestic violence first degree carries up -- so 60 years.  
17 Do you understand that?

18 THE WITNESS: You say possession of meth?

19 THE COURT: All those charges that you pled to, if I  
20 grant the relief, I want to be sure that you understand  
21 that you could be facing up to 60 years in prison.

22 THE WITNESS: Yes, sir.

23 THE COURT: All right.

24 THE WITNESS: You said I had a possession of meth  
25 charge?

1 THE COURT: Unlawful neglect of a child, attempted  
2 murder, possession of a weapon during the commission of a  
3 violent crime. Okay. I'm sorry. I was looking at the  
4 transcript.

5 MS. ROSS: I believe that was Mr. Kidd, another ---

6 THE COURT: Okay. I'm sorry. Yeah. That's the  
7 downside of these ---

8 MS. ROSS: So it's down to 55 years, Your Honor.

9 THE COURT: --- lining people up to -- yeah. Okay.  
10 I'm sorry.

11 Again, what was the total on the charges that he pled  
12 to that he'd be facing, Ms. Ross?

13 MS. ROSS: Well, you might have said two possession  
14 charges that were Mr. Kidd's, but I think it was ---

15 THE COURT: In other words, you told him 30.

16 MS. ROSS: I think it was more like 50, Your Honor.

17 THE COURT: The indictment is unlawful neglect of a  
18 child which would be ten, attempted murder which would be  
19 30, that's 40, possession of a weapon during the  
20 commission of a violent crime which is five, which should  
21 be 45 years.

22 MS. ROSS: Yes, Your Honor.

23 THE COURT: Do you understand that, Mr. Lay?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right go ahead.

1 BY MS. ROSS:

2 Q And you still wish to go forward?

3 A Yes, ma'am.

4 Q Okay. Now, what is your allegation of ineffective  
5 assistance of counsel in this case?

6 A I received a plea from Mr. Culbertson -- or I  
7 received a plea from the Solicitor's Office, I should say,  
8 and he denied it because he said I wouldn't have wanted to  
9 take that plea because he said he could get me a better  
10 deal.

11 Q So when you pled guilty, you wanted to plea with the  
12 recommendation of 15 years that the State had offered?

13 A No. He told me he was going to get me seven years  
14 when I went to court. That's why he denied the 15 plea.

15 Q Okay. So you're saying he turned down the 15-year  
16 plea without giving you an opportunity to accept it.

17 A A consent -- well, yes, ma'am.

18 Q Okay. So was it your choice to plea straight up or  
19 would you have wanted the 15-year ---

20 A That was our joint decision.

21 Q It was your joint decision?

22 A Me and my lawyer.

23 MS. ROSS: Okay. I've got no further questions.

24 THE COURT: All right. Thank you.

25 Mr. Mitchell?

1 MR. MITCHELL: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. MITCHELL:

4 Q So you said that there was an outstanding plea offer,  
5 15 years; is that correct?

6 A Yes, sir.

7 Q So Mr. Culbertson turned down the offer?

8 A Yes, sir.

9 Q So what was the basis of the conversation you had  
10 with him?

11 A He came to visit me and told me that there was a plea  
12 of 15 years on the table, but he denied it considering  
13 that he didn't think I would want to take the plea.

14 Q What did you say to him about it?

15 A I went with my lawyer.

16 Q You went with your lawyer and decided to turn it  
17 down?

18 A No. He said he already turned it down. It was  
19 already denied when he came to visit me.

20 MR. MITCHELL: Okay. Thank you.

21 No further questions, Judge.

22 THE COURT: All right. Thank you.

23 Mr. Lay, you can step down.

24 Ms. Ross, any other witnesses?

25 MS. ROSS: No, Your Honor.

1 THE COURT: All right.

2 Mr. Mitchell?

3 MR. MITCHELL: Thank you, Your Honor. At this time,  
4 we would call Mr. Culbertson to the stand.

5 THE CLERK: Mr. Culbertson, please place your left  
6 hand on the Bible and raise your right hand.

7 WHEREUPON,

8 SYMMES CULBERTSON, SR.

9 After having been duly sworn, testified as follows:

10 THE CLERK: Thank you. You may be seated.

11 Please state your full name for the record.

12 THE WITNESS: My name is Symmes Culbertson.

13 DIRECT EXAMINATION

14 BY MR. MITCHELL:

15 Q Mr. Culbertson, how are you this morning?

16 A Pretty good. Thank you. I apologize for being late.

17 Q That's quite okay. I understand.

18 How long have you practiced law here in South  
19 Carolina?

20 A I don't know. 25-plus years going on 30 years. I  
21 don't -- I don't remember. A number of years.

22 Q Have all of those years been dedicated to criminal  
23 defense?

24 A Yes, sir. For the most part.

25 Q Tell me how you became acquainted with this case.

1 A I do some part-time work for the Greenville County  
2 Public Defender's Office. I assist them on a part-time  
3 basis, and this was one of the cases that was assigned to  
4 me through that office.

5 Q And do you recall the facts of this case?

6 A Yes, I do.

7 Q Just give me a brief synopsis of it, please.

8 A Yeah. Well, as far as the facts of this case, the  
9 specific incident that led up to this, my understanding  
10 was that the victim in this case, a young lady and the  
11 defendant, Mr. Lay, in this matter had an ongoing romantic  
12 relationship. At some point in time, they'd kind of  
13 fallen apart. There was a small child involved.

14 Apparently, at some point in time, Mr. Lay had to go  
15 to work. He took the child, apparently locked the child  
16 in a closet and the mother wasn't there. She was also at  
17 work. Mother returned, found the child locked in the  
18 closet. She didn't have a key to be able to open the door  
19 and get the child out.

20 There is a number of conversations between Mr. Lay  
21 and the mother of the child. He ultimately showed up at  
22 the house, knocked on the door. There may have been a few  
23 words exchanged between the two of them at the door. She  
24 answered it. There were some shots fired. She was struck  
25 at least once, I think twice by the gun that Mr. Lay had

1 brought to the door.

2 Q And were these two separate incidences or did they  
3 occur concurrently?

4 A Well, they -- the shooting was, obviously, one  
5 incident. The locking the child in the door had occurred  
6 previous to the shooting.

7 Q How many times did you meet with Mr. Lay; do you  
8 recall?

9 A If you don't mind, I'd like to refer to my notes.

10 Q Go right ahead.

11 A I initially met with Mr. Lay on June the 18th of  
12 2014. I met with him again a couple months after that, on  
13 9/15/14. I met with him on 12/15/14, I met with him again  
14 on 12/24/14, met with him on 5/12 of '15, met with him on  
15 1/26 of '16, met with him on 2/1 of '16, met with him on  
16 2/19/16, met -- and, again, I'm here today.

17 During that time, I'd had a couple of telephone  
18 conversations with members of his family, his mother  
19 specifically to talk about this case.

20 So that's what I had documented in the file about the  
21 number of times I actually met with him personally.

22 Q And during these meetings, you discussed with him the  
23 charges and the potential sentences for them?

24 A Yes, I did. And specifically in regards to today's  
25 proceedings. On -- my notes indicate that on 1/26 of '16,

1 I met with Mr. Lay at the Greenville County Detention  
2 Center. We discussed the plea offer that was out there  
3 from the Solicitor's Office. He indicated to me at that  
4 time that although he wanted to enter a plea, he wanted to  
5 enter a plea without a recommendation from the Solicitor's  
6 Office. I probably explained to him at that time that was  
7 not necessarily the best decision to make since I thought  
8 there was going to be an offer forthcoming, or there was  
9 an offer from them that was worth thinking about. He may  
10 want to take that. But my notes indicate he wanted to  
11 enter a plea without recommendation.

12 Q He said ---

13 A And, again -- I'm sorry. Again, I met with him on  
14 2/19 of '16, again, at the Greenville County Detention  
15 Center. On that day, he signed the plea agreement that  
16 had been provided to me from the Solicitor's Office. I'm  
17 not sure there's a copy of that in the file today or not.  
18 But that plea agreement indicated that the Solicitor's  
19 Office was wishing for him to enter a guilty plea to three  
20 charges: the unlawful neglect of a child, to attempted  
21 murder and to the possession of a weapon during the  
22 commission of a violent crime. That agreement indicated  
23 they were going to make a recommendation of 15 years. And  
24 I went over that recommendation with him on that date down  
25 at the LEC.

1 MR. MITCHELL: May I approach, Judge?

2 BY MR. MITCHELL:

3 Q This is it?

4 A Yes, it is. That's to which I'm referring.

5 MR. MITCHELL: Your Honor, the State would move this  
6 into evidence at this time.

7 THE COURT: Let Ms. Ross take a look at it.

8 MS. ROSS: No objection.

9 THE COURT: All right. It will be marked Court's  
10 Exhibit 1.

11 (WHEREUPON, Court's Exhibit No. 1 was marked for  
12 identification.)

13 BY MR. MITCHELL:

14 Q Mr. Culbertson, obviously, you can't make decisions  
15 for your clients. Was it your client's decision to accept  
16 this?

17 A I always express to my clients it's strictly their  
18 decision. The best I can ever do for them is try to work  
19 out as good a deal or as good a recommendation as I can.  
20 But it's truly and only up to them as to whether to accept  
21 it or not.

22 Q And circling back around to that initial meeting with  
23 the first offer, was it his decision to not accept that  
24 plea offer?

25 A Again, that's -- and I can only refer to my notes ---

1 Q Sure.

2 A --- to clarify my memory on this matter. But my  
3 notes indicate that -- as I indicated before, that on  
4 January the 26th of 2016, he had indicated to me that he  
5 wanted to plea but to plea without a recommendation from  
6 the Solicitor's Office.

7 Q Okay. And so moving forward to the actual plea date  
8 itself ---

9 A Yes.

10 Q --- you guys were there pleading with no  
11 recommendation or a recommendation?

12 A No. Actually, on February the 19th of 2016, I,  
13 again, met with Mr. Lay at the Greenville County Detention  
14 Center and, again, discussed the recommendation of the  
15 plea offer from the Solicitor's Office. And at that time,  
16 he had -- my notes indicate that he signed the plea  
17 agreement as it stood at that time.

18 Q Okay. All right. And now moving towards the date of  
19 the plea itself ---

20 A Yes.

21 Q --- could you give me a brief summary of what you  
22 remember from that day?

23 A And, again, just referring to my notes, it was in  
24 front of Judge Gravely. Mr. Lay indicated, sorry, go  
25 ahead with the plea. Judge Gravely accepted his guilty

1 plea on that day, on 4/14/16. He sentenced him on all  
2 three charges. My notes, again, indicate that he gave him  
3 a sentence of 17 years on the attempted murder charge,  
4 gave him, I believe, ten years on the child neglect  
5 charge, gave him five years on the possession of a weapon  
6 during the commission of a violent crime.

7 I believe -- although my notes don't indicate it, I  
8 believe that he ran all those concurrent, and I believe he  
9 also -- in fact, my notes indicate that he was given  
10 credit for the 688 days that he had already served at the  
11 Greenville County Detention Center.

12 Q And it was Mr. Lay's decision to plea without  
13 recommendation, correct?

14 A That's my -- yes. I believe that's correct.

15 Q That's your understanding?

16 A Yes, sir.

17 MR. MITCHELL: Please answer any questions Ms. Ross  
18 may have.

19 CROSS EXAMINATION

20 BY MS. ROSS:

21 Q Good morning, Mr. Culbertson.

22 So I'm just confused. I heard your testimony before,  
23 but on February 19th, you believe your notes reflect that  
24 Mr. Lay actually signed a plea agreement or signed a  
25 recommendation?

1 A Well, Ms. Ross, as you know, oftentimes we're  
2 provided -- as a defense attorney in Greenville County, we  
3 get a packet from the Solicitor's Office that has the  
4 charges and the recommendation. I had that with me when I  
5 talked with Mr. Lay on that date, reviewed that with him.  
6 My notes, my memory is that he signed that agreement  
7 indicating to me his willingness to proceed in that  
8 manner.

9 Q Okay. With that sort of an acceptance of that  
10 recommendation, so to speak?

11 A That's -- that's the way I took it. Yes, ma'am.

12 Q Okay. And then by the time of his plea date, that  
13 recommendation was no longer in effect. Though I believe  
14 the transcript reflects that the judge noted that the  
15 sentencing sheet had a recommendation, but there was, in  
16 fact, no recommendation.

17 A That's my understanding. Yes, ma'am.

18 Q All right. And do you recall specifically whether it  
19 was then no recommendation at Mr. Lay's request or someone  
20 else's?

21 A I honestly don't recall that.

22 MS. ROSS: All right. Okay. I've got no further  
23 questions.

24 THE COURT: All right. Mr. Mitchell?

25 MR. MITCHELL: Nothing further, Your Honor.

1 THE COURT: All right. Thank you, Mr. Culbertson.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: You can step down.

4 RULING BY THE COURT

5 THE COURT: All right. It's the order of the Court I  
6 deny the petition for relief in this particular case. The  
7 petitioner has failed to meet his burden of proof in order  
8 to grant the relief he's requested. So I deny the  
9 petition. Thank you.

10 Mr. Mitchell, if you'll prepare an order.

11 MR. MITCHELL: Absolutely.

12 MS. ROSS: Thank you, Your Honor.

13 (WHEREUPON, proceedings adjourned at 11:36 a.m.)  
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 29th day of June, 2017.

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

September 8, 2017

*Cheryl A. Smith*  
\_\_\_\_\_  
Cheryl A. Smith, CVR-M  
Court Reporter

STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 Anthony B. Lay, #367845, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-4950

**ORDER OF DISMISSAL**

ENTERED COMPUTER

FILED-CLERK  
 PAUL B. HARRIS  
 CLERK OF COURT  
 2018 MAR 15 AM 10:27  
*JW*

This matter comes before the Court by way of an application for Post-Conviction Relief filed on August 23, 2016. Respondent made its Return on or about March 30, 2017. An evidentiary hearing into the matter was convened on June 29, 2017 at the Greenville County Courthouse in Greenville, SC at which time the Applicant was present in court and represented by Susannah C. Ross, Esquire. The Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General’s Office.

At the hearing, Applicant testified on his own behalf. Applicant’s plea counsel, Symmes W. Culbertson, Sr., Esquire also testified. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant’s convictions, the transcript from Applicant’s guilty plea, the PCR application, Respondent’s Return, and Applicant’s records from the Department of Corrections.

**PROCEDURAL HISTORY**

Applicant is presently confined with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court’s orders of commitment. Applicant was indicted by the April 2014 term of the Greenville County Grand Jury for one (1) count of unlawful conduct towards a child (2014-GS-23-000309). Applicant was subsequently indicted by

the September 2014 term of the Greenville County Grand Jury for one (1) count of attempted murder (2014-GS-23-006789) and one (1) count of possession of a weapon during the commission of a violent crime (2014-GS-23-006789). Symmes Culbertson, Esquire, represented him. On April 14, 2016, Applicant pled guilty as indicted to all charges. The Honorable Perry H. Gravely sentenced Applicant to ten (10) years for unlawful conduct towards a child, seventeen (17) years for attempted murder, and five (5) years for possession of a weapon during the commission of a violent crime. The sentences are set to run concurrently.

### **ALLEGATIONS**

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

1. "Ineffective Assistance of Counsel"
  - a. "The Applicant received Ineffective of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution."
  - b. "Counsel failed to provide effective assistance of counsel prior to and during his guilty pleas proceeding. The Applicant's plea of guilt were coerced by counsel's failure to provide adequate representation. The Applicant's plea of guilty were not voluntary and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel."

### **SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING**

#### **Applicant's Testimony**

Applicant testified he received a fifteen year plea from the solicitor's office through Counsel and Counsel denied the plea because he told Applicant he would not have wanted to take that plea because he could get him a better deal. Applicant testified that Counsel told him he was going to get him a plea offer of seven years when he went to court. He further testified that it was a joint decision between him and his lawyer to plea straight up as oppose to taking the

fifteen year offer.

#### Counsel's Testimony

Counsel testified he had practiced law twenty-five plus years going on thirty in South Carolina in which almost all of those years had been dedicated to criminal defense. Counsel testified he recalled the facts of the case and that he met with Applicant eight times. Additionally, Counsel testified he had a couple of telephone conversations with members of Applicant's family regarding Applicant's case as well. Counsel testified he discussed the potential charges and potential sentences for the crimes the Applicant was charged with. Counsel testified on January 26, 2016, he met with Applicant at the Greenville Detention Center and discussed the plea offer that was out there from the solicitor's office. Counsel testified that Applicant indicated to him that he wanted to plea but he wanted to enter a plea without a recommendation from the solicitor's office. Counsel further testified that he probably explained to Applicant at that time that was not necessarily the best decision to make since he thought there would be a forthcoming plea offer that would be worth thinking about. However, Counsel testified that his notes indicated Applicant wanted to enter a plea without recommendation. Counsel then testified that he met Applicant on February 19, 2016 at the Greenville Detention Center. Counsel testified Applicant signed a plea agreement for a recommendation of fifteen years for pleading guilty to all of the charges that Applicant was indicted for. However, during the day of the plea Counsel testified that Applicant ultimately decided to plea without a recommendation.

#### 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 can weigh 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).

### **Involuntary Guilty Plea**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. *Id.* Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” *Id.* (quoting *Strickland v. Washington*, 466 at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable

probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." *Lockhart*, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. *Dalton*, at 137-38, 654 S.E.2d at 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions

“made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” *Id.* at 138–39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant also failed to prove he was prejudiced by the alleged deficiencies. Below are this Court’s specific finding regarding each of Applicant’s allegations of ineffective assistance of counsel:

This Court finds Counsel provided effective assistance in this case. Counsel testified that he advised Applicant of all the charges and the potential sentences the charges carried. Counsel testified that it was ultimately Applicant’s decision to plead guilty, based on their discussions. Counsel testified he met with Applicant on eight different occasions. This Court also notes that after a review of the transcript of the Guilty Plea and the colloquy between Judge Perry H. Gravely and the Applicant, Judge Gravely clarified with the Applicant that the sentencing sheets on all of the charges indicated that there was a recommendation but Applicant ultimately decided to plead straight up. This Court finds that Applicant accomplished this by verbally telling Judge

Gravely he intended to plead straight up and by also initialing the sentencing sheets indicating a plea without a recommendation.

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

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's

knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegations are denied and dismissed.

#### CONCLUSION

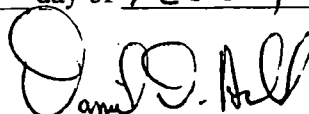
Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that 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 Notice of Appeal on the Applicant’s behalf. *See* Rule 71.1 (g), SCRCR. Refer to 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 13<sup>th</sup> day of February, 2018.



DANIEL D. HALL  
Presiding Judge  
Thirteenth Judicial Circuit

York, South Carolina

State of South Carolina  
Solicitor, Thirteenth Judicial Circuit

13th Circuit Public Defender

FEB 08 2016

Telephone: 864-467-8647  
Telefax: 864-467-8610



Greenville County Courthouse  
305 E. North Street, Suite 325  
Greenville, SC 29601-2185

Solicitor  
**W. WALTER WILKINS**

February 5, 2016

Symmes Culbertson, Esq.  
305 E. North Street Ste 123  
Greenville, Sc 29602

Re: State vs. Anthony Bernard Lay  
Warrant # 2013A2330209976 etc.

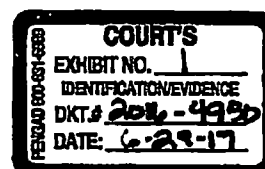
Dear Symmes,

I am enclosing sentence sheet, a guilty plea summary and offer letter in the above case. If your client intends to enter a guilty plea it will be very difficult to get him transported unless he is signed up. I am sending along these documents to facilitate that as much as I can. I am hope we can dispose of the case by guilty plea the week of February 29, 2016. Judge Miller will be on the bench.

If he wishes to have a trial, just let me know and I will work on scheduling.

Sincerely,

  
\_\_\_\_\_  
Judy Munson  
Assistant Solicitor



State of South Carolina  
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647  
Telefax: 864-467-8610



Greenville County Courthouse  
305 E. North Street, Suite 325  
Greenville, SC 29601-2185

Solicitor  
W. Walter Wilkins

2/12/2015

SYMMES CULBERTSON  
305 E. NORTH STREET STE 123  
GREENVILLE, SC 29602

RE: Plea Offer for State v. Anthony Bernard Lay

Dear Symmes Culbertson :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2013A2330209976	CHILDREN/LEGAL CUSTODIAN, UNLAWFUL NEGLECT OF CHILD OR HELPL
2014A2330204146	Murder/Attempted Murder
2014A2330204148	Weapons / Poss. Weapon During Violent Cr

The State will make the following sentence recommendations/negotiation:

15 years

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 5/30/2015 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

---

Judy Munson  
Assistant Solicitor

## GUILTY PLEA SUMMARY SHEET

DEFENDANT: ANTHONY BERNARD LAY

LEC: X

SCDC:

BOND:

JAIL TIME: 618 days on 02/04/2016

CO-DEFENDANT:

DISPOSITION:

DEF. ATTY: CULBERTSON,  
SYMMES

PH#

INVESTIGATOR:

PH #

**FACTUAL SUMMARY (ALL ELEMENTS):** 11/23/2013 at about 10:00 a.m. GCSO was called to the Greenville County home the Defendant shared with the mother of his 1 year old son. The child's mother called for help when she could not find the 1 year old in the apartment. The Defendant had gone to work at around 4 that morning and put the child in a closet and locked the door from the outside with a deadbolt for which the child's mother did not have a key. The fire department had to pry the door open to get to the child.

Mother's Day (5/11/2014) at about 2:30 in the morning the Defendant went to the victim's apartment in Greenville County. He knocked on the door and when she answered he fired several shots hitting her twice in the face. He two year old child was in the apartment at the time.

**IMPORTANT RECORD (CRIMINAL HISTORY ATTACHED): NO PRIORS**

**PLEA AGREEMENT:** 15 years or straight up

CHARGE	CODE	INDICTMENT	SENTENCE
Unlawful Conduct toward child	63-05-0070	2014GS2300309	0 - 10 years
Attempted murder	18-03-0029	2014GS2306789	0 - 30 y
PWDCVC	18-23-0490	2014GS2306789	5 years

OFFICER	DATE NOTIFIED	INPUT	PRESENT
S Hodge Newman		Both recommend prison	

VICTIM	DATE NOTIFIED	PRESENT	INPUT	REST	CWVRA
Lilla Cordova				\$	

JUDGE: \_\_\_\_\_ DATE: \_\_\_\_\_ CT. REPORTER: \_\_\_\_\_

SENTENCE: \_\_\_\_\_

SUBMITTED BY: Judy Munson

SOLICITOR PRESENTING PLEA: \_\_\_\_\_

(INITIALS)

State of South Carolina  
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647  
Telefax: 864-467-8610



Solicitor

W. Walter Wilkins

Greenville County Courthouse  
305 E. North Street, Suite 325  
Greenville, SC 29601-2185

02/04/2016

Symmes Culbertson  
Attorney at Law  
305 E. North Street Ste 123  
Greenville, Sc 29602

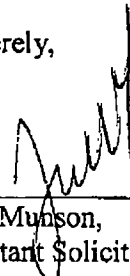
Re: State v. Anthony Bernard Lay

Dear Symmes,

Please be reminded that the outstanding plea offer in the above referenced matter **IS EXPIRED**. I must have signed sentence sheets by the end of this month to avoid trial.

If guilty pleas are not entered during the aforementioned term, these cases are subject to being placed on the trial docket without further negotiation. If you have any further questions or concerns regarding this Defendant's case, please do not hesitate to contact me.

Sincerely,

  
\_\_\_\_\_  
Judy Munson,  
Assistant Solicitor



WITNESSES

S Hodge

Greenville County Sheriffs Office

11/23/2013

ARREST WARRANT NUMBER  
2013A2330209976

ACTION OF GRAND JURY  
**TRUE BILL**

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2014-GS-23-

000309

CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2014

THE STATE

vs.

ANTHONY BERNARD LAY

Indictment for

2481 ✓

UNLAWFUL CONDUCT TOWARDS A CHILD

VIOLATION § 63-05-0070

**FILED**

**JAN 24 2014**

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. Anthony Bernard Lay

INDICTMENT/CASE#: 2014GS2300309
A/W#: 2013A2330209976
Date of Offense: 11/23/2013
S.C. Code §: 63-05-0070
CDR Code #: 2481

AKA:
Race: BLACK Sex: M Age: 21
DOB: -1994 SS#:
Address:
City, State, Zip: Taylors, SC 29687-5932
DL#: SID#:

SENTENCE SHEET 0-10.1 +100 fine

\*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: CHILDREN/LEGAL CUSTODIAN, UNLAWFUL NEGLECT OF CHILD OR HELPL

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481
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, Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Munson, Judge SC Bar# 64040 Defendant X Anthony Bernard Lay Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 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: 4/14/16
The Defendant is to be given credit for time served pursuant to S.C. Code §124-13-40 to be calculated and applied by the State Department of Corrections. 688 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
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Table with 2 columns: Description and Amount. 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

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:

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

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

Presiding Judge [Signature] 2755
Judge Code: 2130 2162 2130
Sentence Date: 3-3-2016 5/17/16 41416

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

**INDICTMENT FOR  
ATTEMPTED MURDER AND POSSESSION OF A WEAPON  
DURING THE COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on **SEP 16 2014** the Grand Jurors of Greenville  
County present upon their oath:

**COUNT ONE**

**ATTEMPTED MURDER**

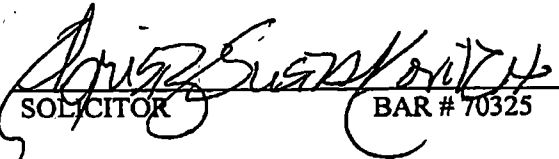
That ANTHONY BERNARD LAY did in Greenville County, on or about the 11th day of May 2014,  
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Lilia Cordova. This is in  
violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO**

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

That ANTHONY BERNARD LAY did in Greenville County, on or about the 11th day of May, 2014,  
possess or visibly display a firearm during the commission or attempted commission of a violent crime,  
to wit: Attempted Murder. This is in violation of §16-23-0490 of the South Carolina Code of Laws  
(1976) as amended.

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

  
SOLICITOR BAR # 70325

**WITNESSES**

Lloyd C Newman

Greenville County Sheriffs Office

5/27/2014

**ARREST WARRANT NUMBER**

2014A2330204146, 2014A2330204148

**ACTION OF GRAND JURY  
TRUE BILL**



FOREMAN GRAND JURY

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

Date:

DOCKET NO. 2014-GS-23-

CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September

TERM 2014

THE STATE

vs.

ANTHONY BERNARD LAY



Indictment for

3410, 0549

**ATTEMPTED MURDER AND POSSESSION OF A  
WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME**

**VIOLATION § 16-03-0029 and § 16-23-0490**

**FILED**

**JUL 25 2014**

Clerk of Court  
Greenville County

1509618

5v

STATE OF SOUTH CAROLINA )  
 COUNTY OF Greenville )  
 STATE VS. )  
 Anthony Bernard Lay )  
 AKA: )  
 Race: BLACK Sex: M Age: 21 )  
 DOB: [REDACTED]-1994 SS#: [REDACTED] )  
 Address: [REDACTED] )  
 City, State, Zip: Eastpoint, GA 30344-7020 )  
 DL#: [REDACTED] SID#: [REDACTED] )  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: 2014GS2306789  
 A/W#: 2014A2330204146  
 Date of Offense: 5/11/2014  
 S.C. Code § : 16-03-0029  
 CDR Code #: 3410

SENTENCE SHEET 0-304

CONVICTED OF or  PLEADS

In violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410  
 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.  AL (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTEST: \_\_\_\_\_ 64040 X Anthony 209 \_\_\_\_\_ 100-98  
 Munson, J. C. 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 17 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: 4/14/16  
 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. 688 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 \_\_\_\_\_  
 Recipient: \_\_\_\_\_

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: \_\_\_\_\_

*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 (SCCJA Surcharge)	\$5	\$ 5.00
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: Paul BW  
 Court Reporter: [REDACTED]  
 SCCA/217 (03/2011)

Presiding Judge: [Signature]  
 Judge Code: 2170 2162 2130 2185  
 Sentence Date: 3-3-2016 3/17/16 4-14-16

3v

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2014GS2306789

Anthony Bernard Lay

A/W#: 2014A2330204148

AKA:

Date of Offense: 5/11/2014

Race: BLACK Sex: M Age: 21

S.C. Code §: 16-23-0490

DOB: -1994 SS#:

CDR Code #: 0549

Address:

City, State, Zip: Eastpoint, GA 30344-7020

SENTENCE SHEET 5 years

DL#: SID#:

\*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: Weapons / Poss. Weapon During Violent Cr

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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, AL (defendant's initials)

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

ATTEST: Munson, Judge SC Bar# 64040 Defendant Anthony Bernard Lay Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 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: 4/14/16
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. 28 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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

Set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

\*Fine: Substance Abuse Counseling

§ 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 (SCCJA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$3.90

TOTAL \$133.90

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 Paul B W
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2150 2216 2 2130 2755
Sentence Date: 3/3 2016 3/17/16 4-14-16