

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Grace Gilchrist Knie, Circuit Court Judge

JOHNNY JAMES HEMPHILL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000514

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3

4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2015-GS-42-5208
6 JOHNNY HEMPHILL,) 2015-GS-42-5214
7 DEFENDANT.) 2015-GS-42-5217
8) MARCH 29, 2016
9) SPARTANBURG, SOUTH CAROLINA

10

B E F O R E:

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THE HONORABLE J. MARK HAYES, II, JUDGE.

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14

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

17

DEREK BULSA, DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

18

19

ROGER POOLE, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

20

21

22

23

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

24

25

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WITNESSES

PAGE

(NO WITNESSES CALLED)

EXHIBITS

1

2

NO. DESCRIPTION

ID. EV.

3

(NO EXHIBITS MARKED)

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1 (PROCEEDINGS, MARCH 29, 2016)

2 THE COURT: Just raise your hand and let me
3 eyeball you right now.

4 Roy Arrowood.

5 Johnny Hemphill.

6 Tre Lewis.

7 Derrick Rector.

8 Jacob West.

9 Matthew Moorehead.

10 Anybody sitting over there whose name I did not
11 call?

12 (No response).

13 THE COURT: Now, when I call your name, if you
14 would come forward and have a seat in the jury box.

15 Gabriela Baumgartner.

16 Jimmy Johnson.

17 James Robbins.

18 Adrian Jennings.

19 Russell Davis.

20 Bradley St. Pierre.

21 Lisa Faulks.

22 Brenda Morgan.

23 Christopher Foote.

24 Toby Roberts.

25 All right, I need for each one of you to please

1 listen to me for a few moments.

2 I have been told that each one of you has one or
3 more matters that are presently pending in the Court of
4 General Sessions. I have also been told that each one of
5 has expressed a desire or an intent to want to enter a plea
6 to those matters.

7 I need to let you know that as part of every plea
8 that's presented in front of me we make a recording. This
9 gentleman who is sitting over here to my right, he's the
10 court reporter. He's taking down everything that's said. I
11 tell you that because if ever during this process now or
12 later today if you need to speak to me, you need to speak up
13 loud enough so that both he and I can hear you, because if
14 we can't hear you, I cannot accept your plea.

15 But, likewise, if ever during that process if you
16 cannot hear me, immediately let me know and I will speak up
17 as well.

18 Now, in just a few moments I'm going to ask you a
19 series of questions. I'm going to ask you these questions
20 as a group. I do not wish for you to think nor conclude
21 that simply because I'm asking you these questions as a
22 group that for some reason these questions are not
23 important, because these questions are very important. The
24 questions that I ask you and the answers that you give me to
25 these questions help me decide whether or not I can, in

1 fact, accept your plea, so please listen to them.

2 If you need to respond to the questions, I'm going
3 to ask if you would to please stand up and let me call on
4 you one at a time. Just don't everybody speak out at once,
5 but stand up and let me call on you.

6 Now, if ever during this process if any of you
7 feel the need to want to speak with your lawyer, you just
8 let me know and I'll allow you to talk to your lawyer in
9 private.

10 I'm now going to call your names one more time.
11 This time when I call your name I'm going to ask if you
12 would to please stand and remain standing. After
13 everybody's name has been called and the court reporter has
14 your names written down, the lady on this side of the
15 courtroom, the Clerk of Court, she's going to swear you in,
16 so please respond out loud when she asks you to do so.

17 All right, we have Roy Arrowood.

18 Johnny Hemphill.

19 Tre Lewis.

20 Derrick Rector.

21 Jacob West.

22 Matthew Moorehead.

23 Gabriela Baumgartner.

24 Jimmy Johnson.

25 James Robbins.

1 Adrian Jennings.

2 Russell Davis.

3 Bradley St. Pierre.

4 Lisa Faulks.

5 Brenda Morgan.

6 Christopher Foote.

7 Toby Roberts.

8 Please raise your right hand.

9 JACOB WEST, BRADLEY ST. PIERRE, LISA FAULKS,
10 BRENDA MORGAN, TOBY ROBERTS, CHRISTOPHER FOOTE, JR., JIMMY
11 JOHNSON, JAMES ROBBINS, RUSSELL DAVIS, ROY ARROWOOD, JOHNNY
12 HEMPHILL, TRE LEWIS, DERRICK RECTOR, GABRIELA BAUMGARTNER,
13 ADRIAN JENNINGS, MATTHEW MOOREHEAD, having been first duly
14 sworn, testified as follows:

15 THE CLERK: You may be seated.

16 THE COURT: Here are the questions that I need you
17 to please listen to.

18 During the last twenty-four hours have you
19 consumed any type of substance that is adversely or
20 negatively affecting your ability to understand what we are
21 doing today? If you have taken something, then I need for
22 you to please stand at this time.

23 Yes, sir, Your Honor name again?

24 DEFENDANT CHRISTOPHER FOOTE, JR.: Christopher
25 Foote.

1 THE COURT: And Mr. Foote, you have taken
2 something that interferes with your ability to understand
3 what we are doing today?

4 DEFENDANT CHRISTOPHER FOOTE, JR.: No. No, Your
5 Honor. Not interfered with.

6 THE COURT: All right. What have you taken?

7 DEFENDANT CHRISTOPHER FOOTE, JR.: Marijuana.

8 THE COURT: Okay. Do you understand what we are
9 doing?

10 DEFENDANT CHRISTOPHER FOOTE, JR.: Yes, sir.

11 THE COURT: All right. Thank you, sir. You may
12 have a seat.

13 If you have ever received any type of substance
14 abuse treatment in the past for a drug or alcohol problem, I
15 need for you to please stand at this time.

16 Your, ma'am, your name?

17 DEFENDANT BRENDA MORGAN: Brenda Morgan.

18 THE COURT: And Ms. Morgan, did you receive
19 treatment for drugs, alcohol, or both?

20 DEFENDANT BRENDA MORGAN: Alcohol.

21 THE COURT: And where did you receive that last
22 treatment?

23 DEFENDANT BRENDA MORGAN: SADAC.

24 THE COURT: About how long ago was that,
25 approximately?

1 DEFENDANT BRENDA MORGAN: Four years.

2 THE COURT: And was it successful at the time?

3 DEFENDANT BRENDA MORGAN: Yes, sir.

4 THE COURT: Thank you, ma'am. You may be seated.

5 Yes, sir, your name?

6 DEFENDANT DERRICK RECTOR: Derrick Rector.

7 THE COURT: And Mr. Rector, did you receive
8 treatment for drugs, alcohol, or both?

9 DEFENDANT DERRICK RECTOR: Drugs.

10 THE COURT: And where did you receive that last
11 treatment?

12 DEFENDANT DERRICK RECTOR: Phoenix Center in
13 Greenville.

14 THE COURT: About how long ago was that?

15 DEFENDANT DERRICK RECTOR: About seven, eight
16 months ago.

17 THE COURT: And was it successful at the time?

18 DEFENDANT DERRICK RECTOR: Yes, sir.

19 THE COURT: Thank you, sir. You may be seated.

20 Yes, sir, your name on the end?

21 DEFENDANT JIMMY JOHNSON: My name is Jimmy
22 Johnson.

23 THE COURT: Mr. Johnson, did you receive treatment
24 for drugs, alcohol, or both?

25 DEFENDANT JIMMY JOHNSON: Drugs.

1 THE COURT: Where did you receive that last
2 treatment?

3 DEFENDANT JIMMY JOHNSON: I go to Dr. Dillon on
4 Woodruff Road.

5 THE COURT: And is it being successful?

6 DEFENDANT JIMMY JOHNSON: Yes, sir.

7 THE COURT: Thank you, sir. You may be seated.
8 Yes, sir, your name?

9 DEFENDANT JAMES ROBBINS: James Robbins.

10 THE COURT: Mr. Robbins, did you receive treatment
11 for drugs, alcohol, or both?

12 DEFENDANT JAMES ROBBINS: Just drugs.

13 THE COURT: Where?

14 DEFENDANT JAMES ROBBINS: Spartanburg Methadone
15 Clinic.

16 THE COURT: About how long ago was that?

17 DEFENDANT JAMES ROBBINS: It was recent.

18 THE COURT: Is it being successful?

19 DEFENDANT JAMES ROBBINS: Yes.

20 THE COURT: I beg your pardon?

21 DEFENDANT JAMES ROBBINS: Yes, sir.

22 THE COURT: Thank you, sir. You may be seated.
23 Yes, ma'am, your name?

24 DEFENDANT GABRIELA BAUMGARTNER: Gabriela
25 Baumgartner.

1 THE COURT: Ms. Baumgartner, did you receive
2 treatment for drugs, or alcohol, or both?

3 DEFENDANT GABRIELA BAUMGARTNER: Alcohol.

4 THE COURT: And where did you receive that
5 treatment?

6 DEFENDANT GABRIELA BAUMGARTNER: Well, I attended
7 SADAC and Patrick B. Harris back in the nineties.

8 THE COURT: And the most recent was SADAC?

9 DEFENDANT GABRIELA BAUMGARTNER: Yes, sir.

10 THE COURT: When was that?

11 DEFENDANT GABRIELA BAUMGARTNER: Pardon?

12 THE COURT: When was that?

13 DEFENDANT GABRIELA BAUMGARTNER: Over a year ago.

14 THE COURT: Was it successful at the time?

15 DEFENDANT GABRIELA BAUMGARTNER: Yes, it was.

16 THE COURT: Thank you, ma'am.

17 Yes, sir, your name?

18 DEFENDANT ROY ARROWOOD: Roy Arrowood.

19 THE COURT: Mr. Arrowood, did you receive
20 treatment for drugs, alcohol, or both?

21 DEFENDANT ROY ARROWOOD: Yes, sir.

22 THE COURT: Both?

23 DEFENDANT ROY ARROWOOD: No, drugs.

24 THE COURT: Where?

25 DEFENDANT ROY ARROWOOD: SADAC.

1 THE COURT: How long ago was that, approximately?

2 DEFENDANT ROY ARROWOOD: It was eight, nine months
3 ago.

4 THE COURT: Was it successful at the time?

5 DEFENDANT ROY ARROWOOD: Yes.

6 THE COURT: Thank you, sir. You may be seated.

7 If you are satisfied with the work that your
8 lawyer has done for you, I need for you to please stand at
9 this time. If you are satisfied with the work that your
10 lawyer has done, please stand.

11 Let the record reflect that everyone stood.

12 Thank you very much. You may be seated.

13 If anybody has come to you and threatened you in
14 any way or if they have made you any promises in order to
15 get you to make the decision to enter the plea, then I need
16 for you to please stand at this time. If you have been
17 promised anything or threatened in any way, please stand.

18 (No response).

19 THE COURT: If the decision by you to enter the
20 plea is a free and voluntary decision on your part, then I
21 need for you to please stand at this time. If this is a
22 free and voluntary, please stand.

23 Let the record reflect that everyone stood.

24 Thank you very much. You may be seated.

25 I need for you each to understand that under the

1 law you are presumed innocent of each and every charge
2 that's presently against you and you are entitled to have a
3 jury trial on each and every one of those charges.

4 Now, at any jury trial that would take place it
5 would be the State that has the burden of proof and the
6 State would have to convince all twelve members of a jury
7 that you are, in fact, guilty beyond a reasonable doubt of
8 each and every one of the charges that are presently against
9 you.

10 Now, in order to enter a plea, however, you have
11 to give up your right to that jury trial, but if you wish to
12 have a jury trial on any of the charges that are presently
13 against you, that is perfectly fine. We will simply
14 schedule a jury trial for you.

15 Is there anyone who wishes to have a jury trial on
16 any of the charges that are presently against them? If you
17 do wish to have a jury trial, please stand at this time.

18 (No response).

19 THE COURT: In addition to giving up your right to
20 that jury trial there are other very important
21 Constitutional Rights that you are entitled to but that you
22 have to give up in order to enter a plea.

23 You have to give up your right to confront and
24 cross-examine the State's witnesses. You also have to give
25 up your right to present evidence which you or your lawyer

1 might feel would establish a defense to the charge or
2 charges against you, and you have to give up your right of
3 subpoena, as well as your right to remain silent.

4 Now, if you understand those rights and you wish
5 to give up those rights and go forward with entering a plea,
6 then I need for you to please stand at this time.

7 Let the record reflect that everyone stood.

8 Thank you very much. You may be seated.

9 Again, if ever during this process you need to
10 speak with your lawyer, just let me know and I'll allow you
11 to do so in private.

12 Those of you who joined us from the gallery, you
13 can return back to the gallery.

14 (Off the record).

15 (Back on the record)

16 MR. BULSA: Johnny Hemphill.

17 THE COURT: You are Mr. Hemphill?

18 DEFENDANT JOHNNY HEMPHILL: Yes.

19 THE COURT: Come on down, sir.

20 MR. BULSA: If it please the court, Your Honor?

21 THE COURT: Yes.

22 MR. BULSA: This is State versus Johnny James
23 Hemphill, Indictment 2015-5217. That's an indictment for
24 stalking and it has been True Billed.

25 Indictment 2015-5214, a True Billed indictment for

1 assault and battery in the first degree.

2 2015-5208, a True Billed indictment for
3 discharging a firearm into a dwelling.

4 He's represented by Roger Poole.

5 There's a couple other matters.

6 The State is asking for a permanent restraining
7 order. I have shared it with the defense and I have a
8 summary of incidents that would relate to the stalking
9 charge, Your Honor.

10 THE COURT: You are Mr. Hemphill?

11 DEFENDANT JOHNNY HEMPHILL: Yes, sir, Your Honor.

12 THE COURT: Sir, you do understand that you remain
13 under oath?

14 DEFENDANT JOHNNY HEMPHILL: Yes, sir, Your Honor.

15 THE COURT: And it is your intent to enter a plea
16 to the charges that were announced by the solicitor?

17 DEFENDANT JOHNNY HEMPHILL: Yes, sir, Your Honor.

18 THE COURT: How old are you?

19 DEFENDANT JOHNNY HEMPHILL: Forty-six.

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

21 DEFENDANT JOHNNY HEMPHILL: Eleventh grade.

22 THE COURT: Did you ever obtain a GED?

23 DEFENDANT JOHNNY HEMPHILL: No, sir.

24 THE COURT: Married, single, divorced, widowed?

25 DEFENDANT JOHNNY HEMPHILL: Single.

1 THE COURT: Children?

2 DEFENDANT JOHNNY HEMPHILL: One.

3 THE COURT: How old?

4 DEFENDANT JOHNNY HEMPHILL: Twenty-seven.

5 THE COURT: And do you have a job, or did you have
6 a job outside the home prior to your arrest on these
7 charges?

8 DEFENDANT JOHNNY HEMPHILL: Yes, sir.

9 THE COURT: What were you doing?

10 DEFENDANT JOHNNY HEMPHILL: I was working at
11 Augusta Road Detail and Dugout Bar & Grill.

12 THE COURT: Military?

13 DEFENDANT JOHNNY HEMPHILL: No, sir.

14 THE COURT: How long have you been in jail on
15 these charges?

16 DEFENDANT JOHNNY HEMPHILL: A year.

17 MR. POOLE: Your Honor, my calculations are
18 368 days. He's been incarcerated since April 3 of last
19 year.

20 MR. BULSA: It couldn't be 365 because it's not a
21 year yet.

22 DEFENDANT JOHNNY HEMPHILL: It's 361.

23 MR. POOLE: It's 361, according to Mr. Hemphill.

24 THE COURT: Sir, please listen to the solicitor.
25 He is going to tell us the facts and then I'll have some

1 more questions for you.

2 MR. BULSA: Thank you, Your Honor.

3 This case involves a multitude of incidents.

4 The victims, Lisa McCray, was a former girlfriend
5 of the defendant. They had a long-term relationship. She
6 tried to break it off way back in 2012, but they still saw
7 each other off and on.

8 When she finally tried to end it for good there
9 was some incidents that actually occurred in Greenville
10 County. She was living in Greenville back in 2014. The
11 house she was actually living in burned in Greenville. The
12 police didn't make no charges.

13 She left Greenville to come to Spartanburg County
14 to live with her daughter. Her daughter is Angelona
15 Williams. She was buying a house on Allen Street, which is
16 in the Cleveland Park area just outside of the city limits.
17 Angelona has three children, small children, that stay with
18 her.

19 Ms. McCray came over to stay with Angelona. That
20 was in June of 2014. A series of incidents began, shooting
21 incidents into the house in the nighttime hours, early
22 morning hours. There were several occasions where tires
23 were being slashed. The police put out surveillance cameras
24 to try to capture who was doing this. They believed Mr.
25 Hemphill was involved. However, the surveillance cameras,

1 when they did capture an image, it was not Mr. Hemphill. We
2 had some information we couldn't verify. We think he was
3 getting people to come over to commit these acts, but on one
4 occasion, the occasion he's pleading guilty to on the
5 assault and battery and discharging a firearm, the police
6 were able to use GPS information off of his telephone that
7 put him one street over at the time of the incident. That
8 is the October 5th, 2014 incident that occurred at 1:30, the
9 shooting into the house. Ms. Williams and her kids were
10 there. The police found eight shell casings in the roadway,
11 three fragments. There was a gunshot that went through the
12 living room window.

13 Your Honor, there were six separate shooting
14 incidents. All the shell casings that were recovered
15 matched the pistol that was found when the defendant's house
16 was finally searched by police on April the 3rd, 2015.

17 The police actually got the phone company to give
18 them realtime information where they tracked where he was.
19 They got a search warrant drawn up by the Greenville Police
20 Department, the Greenville sheriff's office. They worked in
21 conjunction with the Greenville Sheriff's Office. They
22 executed that search warrant. No one would come to the
23 door. Eventually there were two other men in the house with
24 Mr. Hemphill. They eventually came out, once the police
25 kept basically almost kicking the door in. They finally

1 actually did have to kick the door in. They found the
2 defendant hiding in a bedroom with a mattress pulled over
3 him trying to hide.

4 They found the pistol that was used in these
5 shootings inside the defendant's car in the driveway.

6 There was a phone that he had used to send
7 threatening messages, text messages, to Ms. McCray and Ms.
8 Williams. That phone was found in the bedroom nearby where
9 he was found hiding on the floor. That phone had been
10 broken. I guess he was trying to destroy it so it couldn't
11 be traced, but forensics was able to pull up the text
12 messages from that phone. That was actually a different
13 phone that was used to track him back in October of 2014.

14 Your Honor, as you can see, this is a serious
15 case. The State asks for a serious significant sentence.

16 Ms. McCray would like to speak. Ms. Williams
17 would like to speak, and then their pastor would like to
18 speak on behalf of the impact this had on the children.

19 He does have a criminal history I'll share with
20 you at the appropriate time.

21 THE COURT: Sir, do you believe that as the
22 solicitor stated the facts, that he's substantially correct?

23 DEFENDANT JOHNNY HEMPHILL: Yeah.

24 THE COURT: And, sir, do you understand that on
25 the attempted assault and battery in the first degree, that

1 I could sentence up to ten years?

2 DEFENDANT JOHNNY HEMPHILL: Yes, sir.

3 THE COURT: And on the stalking I could sentence
4 you up to five years?

5 DEFENDANT JOHNNY HEMPHILL: Yes, sir.

6 THE COURT: And on the discharging of a firearm
7 into a dwelling I could sentence you up to ten years?

8 DEFENDANT JOHNNY HEMPHILL: Yes, sir.

9 THE COURT: And understanding the possible
10 sentences I could impose, do you still wish to enter these
11 pleas?

12 DEFENDANT JOHNNY HEMPHILL: Yes, sir.

13 THE COURT: These are all under Alford?

14 MR. POOLE: Yes, sir.

15 THE COURT: Sir, in regards to the stalking
16 charge, the attempted assault and battery in the first
17 degree charge, and the discharging of a firearm into a
18 dwelling, do you believe that the State could produce
19 sufficient evidence to prove your guilt of these charges
20 beyond a reasonable doubt and that if you went to trial, a
21 jury would most probably find you guilty of these charges?

22 DEFENDANT JOHNNY HEMPHILL: Yes, sir.

23 THE COURT: Have all your answers to my questions
24 been truthful?

25 DEFENDANT JOHNNY HEMPHILL: Yes, sir.

1 THE COURT: Discovery has been shared with the
2 defense?

3 MR. BULSA: Yes, sir.

4 THE COURT: Prior record?

5 MR. BULSA: Yes, sir, Your Honor.

6 It dates back to 1987. Grand larceny, breaking
7 into a motor vehicle, petit larceny, burglary second,
8 receiving stolen goods. In August of '87 he received a
9 youthful offender sentence.

10 And then in 1989 he has convictions for malicious
11 injury to personal property, possession of stolen goods,
12 petit larceny, resisting arrest, assault and battery,
13 attempting to escape. Your Honor, on those offenses he
14 received another Department of Corrections sentence of ten
15 years, suspended to three years, and five years probation.

16 And then in 1991 he was convicted of robbery and
17 assault and battery with intent to kill. He received a
18 twenty year sentence on that offense.

19 He had a parole violation in 2013 on that charge.
20 Also a probation violation the same day on 2013.

21 Your Honor, pending -- while this case was being
22 investigated there was a charge in Rock Hill made in June of
23 2014 for pointing and presenting a firearm and unlawful
24 possession of a pistol. They pled him guilty to the pistol
25 charge, once he was arrested in Spartanburg, I believe. He

1 was sentenced on that to time served.

2 THE COURT: Did you say that the victims did wish
3 to address the court?

4 MR. BULSA: Yes, they do.

5 While they are coming up I wanted to address the
6 court to the restraining order. We believe that's
7 appropriate. I believe the defendant has consented, with
8 his attorney.

9 THE COURT: If you would, we are making a
10 recording of everything that happens here, so please speak
11 up loud enough so that both the court reporter and I can
12 hear you, and just start by giving us your full name.

13 ANGELONA WILLIAMS: Angelona Williams.

14 THE COURT: Yes, ma'am, Ms. Williams.

15 ANGELONA WILLIAMS: Your Honor, I would like to
16 ask for the maximum punishment for all of the charges, not
17 only for the safety of my family, but for other innocent
18 families as well.

19 The events that took place over a period of time
20 has been either stressful, traumatizing and life changing
21 experience to my neighbors, my family, myself, and most
22 importantly my children.

23 We recently was able to return home about two
24 months ago after living with the children's grandparents and
25 we are still not able to sleep in the home alone. And when

1 we do, we sleep in one bedroom, in one bed, with all the
2 lights on.

3 It has affected me mentally, because we are always
4 thinking someone is following us in cars, or when strangers
5 walk down the street we panic. We are not for sure if he
6 has sent someone or not.

7 It has affected me physically, because I toss and
8 turn all night. I cannot sleep and I've fallen asleep at
9 work.

10 It has affected me spiritually, because I walk in
11 fear and I feel like I'm just being tormented all the time.

12 It has affected my children the greatest, because
13 they do not have the liberty to walk through the house
14 without being afraid. They cannot go outside and play with
15 freedom. My son wets the bed at night, because he is afraid
16 to get up. I feel they are all emotionally unstable and do
17 not understand why someone they loved and called family
18 would want to harm them.

19 THE COURT: Thank you, ma'am.

20 ANGELONA WILLIAMS: That's it, Your Honor.

21 THE COURT: Thank you.

22 LISA MCCRAY: Your Honor, my name is Lisa McCray.

23 THE COURT: Yes, ma'am.

24 LISA MCCRAY: I would like the max sentence on
25 every charge.

1 And -- well, it has affected me and my family and
2 my friends. My mom is depressed from thinking that he was
3 trying to kill the family. And I have lost a job behind it
4 because he was calling up on my job.

5 And I'm a nervous wreck, emotionally disturbed,
6 and I still stay up most of the night, even though that he
7 was in jail. It did not stop mentally, because I still get
8 up when I hear sounds, people slamming their doors. Knowing
9 someone is getting to knock on the door I'm afraid. I'm
10 still afraid.

11 And I go to counseling in Greenville and I take
12 depression pills. And I'm afraid. I'm even more afraid if
13 he get out.

14 My grand kids don't sleep in their room. They
15 don't want to sleep in their room. They don't want to walk
16 through the house. I don't want to be out at night because
17 I don't know. I look over my shoulder. I don't feel safe.
18 I don't feel safe. And it's very --

19 My friends don't want to come around me. And I
20 have to explain on my job, because sometimes I cry a lot and
21 I'm a nervous wreck and so I did lose another CNA job behind
22 that because I could not keep my composure, Your Honor.

23 THE COURT: Thank you, ma'am.

24 JERRY TATE: My name is Jerry Tate. I'm the
25 associate pastor at the ministry that they attend.

1 I just come to give witness to the trauma that,
2 you know, they went through; you know, the slashing of the
3 tires, the shooting through the house. You know, it was --
4 it was really traumatic towards them. I mean, for it seemed
5 like six months just misery, and I just -- you know, whoever
6 did this, I just pray that they come to repentance and come
7 to a change of heart, because, I mean, what these two ladies
8 went through, you know -- I mean, women, you know, I see a
9 man -- another man, but this is -- these are women and it's
10 just -- it was just -- it was just traumatic for them.

11 THE COURT: Thank you, sir.

12 MR. BULSA: As well as the children, Your Honor.

13 THE COURT: Thank you.

14 Yes, sir.

15 MR. POOLE: May it please the court, I would like
16 to address the issue of the victims that said Mr. Hemphill,
17 who of, course, I had a conversation with him is extremely
18 sorry and he's repentive and he's contrite about the impact
19 that has been perceived to be initiated by him.

20 Along that line I will hand up to the court
21 certificates of completion for several consecutive months
22 while he's been in the Department of -- been in the
23 Spartanburg County detention facility.

24 Victim impact classes.

25 In talking about these classes to him, he says

1 that he is fully come to appreciate the ripple effect that
2 always affects the victims, both within their own psyche and
3 in the community at large.

4 He's also undergoing and has undergone a long
5 treatment program from Westgate Counselors. They come and
6 visit inmates. He's been seeing a counselor since he's been
7 incarcerated and he's seeing that counselor and their making
8 some progress towards some issues that he has.

9 So I want the court and the victims to understand
10 that he really is sorry about the way that they feel.

11 Now, there are -- I don't know how many cases that
12 are on the docket, twelve, thirteen cases here that Mr.
13 Bulsa and I have talked about. I have received the
14 discovery, and I want the court to realize that he's really,
15 by entering this plea, saving the court a lot of time in the
16 prosecution of these cases.

17 By this plea he's wrapping up all of these cases
18 and he also, if were to go to trial, there is evidence that
19 at the preliminary hearing a deputy or law enforcement
20 testified that the cell phone was detected at certain
21 locations as a result of some sort of triangulation of the
22 cell phone towers. Now, that is scientific evidence that
23 would have to be introduced at court through a scientist who
24 is qualified to testify on those issues -- or not
25 necessarily a scientist, but an expert. Expert testimony

1 would be required, which would require money. We would have
2 to petition the court for funds to hire our own expert,
3 because I don't think that that technology is settled as
4 good science at this point. I don't know what is going to
5 happen to the status of that in the future, but he's saving
6 the court and the State a lot of money by entering this plea
7 in that regard.

8 Furthermore, there was no identification of him
9 being the actual individual who committed these acts. It's
10 a circumstantial evidence case, and he realizes that and we
11 have talked about that, but with the opportunity to plead
12 under Alford to wrap these cases up he feels that it's in
13 his best interests to do this right now.

14 And as far as contact with the victims, he doesn't
15 have any reason to contact them. He will be living in Rock
16 Hill, South Carolina with his sister when all this is over
17 with and he's not going to be anywhere in Spartanburg
18 County, nor near it.

19 Mr. Hemphill has four brothers and two sisters.
20 He's the third one. He has an eleventh grade
21 identification. He's worked at Carolina Pride, Piedmont
22 Mobile Detailers, Craft Food, Augusta Road Detailers, Dugout
23 Bar & Grill, so he can get work.

24 And I'm asking the court to do two things; that
25 is, to sentence him to these charges, on these charges

1 concurrently, and to recognize what progress he has made and
2 understand the nature and consequences of what are his
3 perceived acts.

4 I would ask for mercy on his behalf, and I have --
5 there is in the courtroom a Ms. Rosemond and a Ms. Dover
6 that would like to say a few words on his behalf at the
7 appropriate time, which I believe would be right now.

8 THE COURT: Mr. Hemphill, do you agree with the
9 statements that were just made by your lawyer?

10 DEFENDANT JOHNNY HEMPHILL: Yes, sir, Your Honor.

11 THE COURT: All right. If you want to bring them
12 forward?

13 MR. POOLE: Ms. Rosemond?

14 COURTROOM SECURITY OFFICER: One at a time.

15 MR. POOLE: One at a time.

16 THE COURT: Ma'am, we are making a recording of
17 everything that happens here, so please speak up loud enough
18 so that both the court reporter and I can hear you, and just
19 start by giving us your full name.

20 ANGELA DOVER: Say what?

21 THE COURT: Just start by giving us your full
22 name.

23 ANGELA DOVER: Angela Dover.

24 THE COURT: Yes, ma'am.

25 ANGELA DOVER: I mean, I can't speak on anything

1 else that's going on. I can speak on the person that I
2 knew.

3 He was a good person to me. He was compassionate
4 there in times of my need. When I lost my mother he was
5 right there for me. He went through the process with me.
6 Anything that we went through, we needed, he would come,
7 watch -- in New York. I mean, he was just a good person, as
8 far as I knew, the person that I knew. I can't speak on
9 anything else. I just know how he treated us. He treated
10 us as family.

11 Anything that we asked of him or anything that we
12 could do for him. We spent time together. We -- we had a
13 lot of good times, and I just know that he does have a good
14 heart. I know that he could be productive. I know that he
15 will work a job. I know that he has a good heart, but I
16 can't -- I mean, that's -- that's what I know, and I can
17 only speak on what I know.

18 And I just -- you know, I know everybody falls
19 short. Nobody is perfect. No man is perfect. You know,
20 there's a lot of things you got look at in life and you got
21 to make better judgment and better choices, but I -- I can't
22 just say that he's an awful person, as far as the person I
23 know. He was a good friend to me and he still is.

24 THE COURT: Thank you, ma'am.

25 MR. POOLE: Ms. Rosemond.

1 THE COURT: Ma'am, if you would, just start by
2 giving us your full name.

3 STEPHANIE ROSEMOND: My name is Stephanie
4 Rosemond.

5 THE COURT: Yes, ma'am.

6 STEPHANIE ROSEMOND: My name is Stephanie
7 Rosemond. I met Johnny Hemphill in about 2010, 2011. And
8 when I met him, he's like a brother to me. And upon him
9 being like a brother to me, he has helped me. I have a set
10 of boys, twin boys. He's helped me teach them how to do
11 yard work. They just graduated from college. He's always
12 been able -- they could call him. When they had a problem,
13 they would be able to go talk to him. He was more of a
14 mentor figure towards them in my life.

15 And what I can say about Johnny Hemphill is he got
16 a heart of gold, but he's going to have to learn to make
17 better choices and better decisions, because I went to see
18 him a couple of weeks ago and we had this conversation, that
19 God has a chance for all of us, but we have to be obedient
20 to the Word of the Lord and know that God is watching us. I
21 don't care if man don't see us, God sees us, and we have to
22 be careful and be mindful of the choices that we make.

23 But as far as him and what he's did for me, he's
24 been a brother. He's been closer than a brother to me and I
25 love him and I just want him, whatever God has for him, to

1 get it right.

2 THE COURT: Thank you, ma'am.

3 MR. POOLE: Your Honor, is there another Mr.
4 Hemphill in here? His brother was to be here today, but --
5 that's all we have, Your Honor.

6 THE COURT: Mr. Hemphill, is there anything else
7 that you would like to say or want me to know or consider?

8 DEFENDANT JOHNNY HEMPHILL: Yes, Your Honor. I
9 would like to speak, Your Honor.

10 I mean, since I have been locked up, I mean, I
11 took the victim impact crime class. I mean, it showed me
12 the ripple effect that it does have on victims.

13 And what happened to Lisa McCray and Angelona
14 Williams, I'm really sorry for it. I mean, I don't wish
15 that upon no one. I mean, this class has really taught me a
16 lot and I went through counseling. It's helped me.

17 I'm not -- you know, I'm not perfect. You know, I
18 have issues, but I -- you know, since I have been locked up
19 a year I having been doing things to try to better myself.
20 I want to do right. I mean, I know I can do right.

21 THE COURT: Thank you, sir.

22 MR. POOLE: I want to mention also, Your Honor,
23 that Mr. Hemphill is not in good health at all. He has some
24 serious health problems that are of a very private nature,
25 and, as you can see, he cannot stand.

1 THE COURT: Do the lawyers want to approach?

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: I'll find that there is a substantial
5 factual basis for the plea.

6 I also find that the defendant's decision to enter
7 the plea has been made freely, voluntarily, knowingly and
8 intellectually by him.

9 On the assault and battery first case and the
10 stalking case, these will be concurrent sentences, it would
11 be a ten year sentence on the attempted assault and battery.

12 Credit for 360 days.

13 Five year sentence on the stalking case. They
14 will run concurrent with the other case.

15 He gets credit for 360 days.

16 I have indicated also there is not to be any
17 contact with the victim.

18 Then under the discharging of a firearm into a
19 dwelling, that case would be a ten year sentence that will
20 run consecutive to the attempted assault and battery case.

21 I have indicated on the sentencing sheet there is
22 not to be any contact with the victim.

23 I have also executed the permanent restraining
24 order that was presented to the court. I have reviewed the
25 order. I added the additional finding of his address was at

1 [REDACTED] Confederate Avenue in Rock Hill. That has not been a
2 finding, so I added that one so that the York County
3 sheriff's, Greenville sheriff, and the Spartanburg sheriff's
4 office can be notified.

5 MR. BULSA: Thank you, Your Honor.

6 THE COURT: Good luck to you, sir.

7 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of General Sessions for SPARTANBURG County, South Carolina, on the 29th day of March, 2016.

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

JANUARY 13, 2017



Michael R. Watts
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Johnny Hemphill #141723

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2017-CP-42-1000

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Corr. Inst
2. Name and location of Court which imposed sentence Spartanburg County 7th Judicial Cir. Court.
3. 180 MAGNOLIA STREET, P.O. Box 3483, SPARTANBURG, S.C. 29304-3483
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) 2015 GS-42-05217 - Stalking
 - (b) 2015 GS-42-05208 - Weapons / Discharging Firearms into a dwelling
 - (c) 2015 GS-42-05214 - Assault / Attempt Assault & Battery 1st. degree
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 29, 2016 2015-GS-42-05214 0-10 yrs Concurrent;
 - (b) March 29, 2016 2015-GS-42-05208 0-10 yrs Consecutive

Revised 3/2003

(c) March 24, 2016 2015-BS-42-05217 0.5 yrs. Concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ALFORD PLEA
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

Yes

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

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

- i. South Carolina Court of Appeals
- ii. _____
- iii. _____

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

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

(c) the date of each such result:

- i. August 31, 2016
- ii. _____
- iii. _____

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

- i. The above referenced matter is hereby remitted to the lower
- ii. court or tribunal. See Exhibit
- iii. _____

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of Counsel, Denial of Due Process, Brady,
 (b) Incompetent Guilty Plea,
 (c) _____

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

- (a) See Exhibits
 (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? Yes
 (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. _____
 (b) the name and location of the Court in which each was filed:
 i. The South Carolina Court of Appeals
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Remittitur
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. August 31, 2016
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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

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

- (a) the name and address of each attorney who represented you:
- i. Roger Poole, Seventh Judicial Circuit Public Defender, 366
- ii. North Church Street, Suite 3000, Spartanburg, S.C. 29303
- iii. Prose, Johnny Hemphill, SCDC #141723, Ashley A-44, Lieber Corr. Inst. P.O. Box
205, Ridgelyville, S.C. 29472
- (b) the proceedings at which each such attorney represented you:
- i. Plea and Sentencing with Roger Poole
- ii. Direct Appeal with "Prose" Johnny Hemphill.
- iii. _____

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

Vacate

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

NO

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STATE OF SOUTH CAROLINA

County of SPARTANBURG

VERIFICATION

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

Johnny J. Hemphill

SWORN to and subscribed before me this 17th
day of March, 2017.

Lois K. R. (L.S.)
Notary Public

My Commission Expires: 6-20-26

2017 MAR 27 PM 12:55
NOTED

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

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

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

Johnny J. Hemphill
Applicant

SWORN or affirmed to and subscribed before me this
17th day of March, 2017.

Notary Public

My Commission Expires: 6-20-26

2077007 21 PM 12-55
HARRIS COUNTY TEXAS

42 STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Johnny Hemphill,

Applicant,

VS.

State of South Carolina,

Respondent.

SUPPORTING FACTS OF
INEFFECTIVE ASSISTANCE
OF COUNSEL

EXHIBITS 1

FILED
2016 MAR 27 PM 12:55
CLERK OF COURT

In particular, Johnny Hemphill allegation of Roger Poole ineffectiveness were:

10(a): Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, § 3 and § 14 of the South Carolina Constitution - During the Alford Plea on March 29, 2016.

11(a): Supporting Facts: Roger Poole performance during the Alford Plea was both unreasonable and prejudicial. See Strickland VS. Washington, 466 U.S. 668 (1984).

Roger Poole's acts or omissions included, but are not limited to, the following:

1) It was a conflict of interest between Johnny Hemphill and Roger Poole. There was his own sympathie to oppose the state's case; See (Exhibit 1-IEADC) Page 27 of Transcript of Record, Line 5 to 7; Roger Poole sympathie is; "but he's saving the court and the State a lot of money by entering this plea in that regard."

2) Sympathie to oppose the State's case; See Exhibit 1-A-IEAOC) Page 27 of Transcript of Record, Line 24 & 25; Roger Poole sympathie is, "And I'm asking the court to do two things; that is, to sentence him to these charges.

3) For Sympathie to oppose the State's case, the Sixth Amendment still requires that counsel "hold the prosecution to its heavy burden of proof beyond a reasonable doubt."

Cronic, 466 U.S. at 657 n.19, 104 S.Ct. 2039. Look at Exhibit 1-B-IEAOC) Page 17 of Transcript of Record, Line 23 to 25; Deputy Solicitor stated; "The police put out surveillance cameras to try to capture who was doing this. THEY BELIEVED Mr. Hemphill was involved. However, the surveillance cameras," Look at (Exhibit 1-C-IEAOC) Page 18 of Transcript of Record, Line 1 & 2. "when they did capture an image, IT WAS NOT MR. HEMPHILL. WE HAD SOME INFORMATION WE COULDN'T VERIFY. WE THINK.... On the advice of Roger Poole, I plead guilty, and at this time I wish to withdraw my guilty plea on; Bad advice of Roger Poole. If Roger Poole was not total failure to advocate on my behalf on circumstantial evidence and challenge the State Circumstantial Evidence in my trial, the outcome would been different but failed to subject the prosecution's case to adversarial testing, and had me plead guilty. Ineffective Assistance of Counsel. See Strickland VS Washington: 466 U.S. 668 (1984).

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CLERK

Exhibit-1-TEAOC

1 would be required, which would require money. We would have
2 to petition the court for funds to hire our own expert,
3 because I don't think that that technology is settled as
4 good science at this point. I don't know what is going to
5 happen to the status of that in the future, but he's saving
6 the court and the State a lot of money by entering this plea
7 in that regard.

8 Furthermore, there was no identification of him
9 being the actual individual who committed these acts. It's
10 a circumstantial evidence case, and he realizes that and we
11 have talked about that, but with the opportunity to plead
12 under Alford to wrap these cases up he feels that it's in
13 his best interests to do this right now.

14 And as far as contact with the victims, he doesn't
15 have any reason to contact them. He will be living in Rock
16 Hill, South Carolina with his sister when all this is over
17 with and he's not going to be anywhere in Spartanburg
18 County, nor near it.

19 Mr. Hemphill has four brothers and two sisters.
20 He's the third one. He has an eleventh grade
21 identification. He's worked at Carolina Pride, Piedmont
22 Mobile Detailers, Craft Food, Augusta Road Detailers, Dugout
23 Bar & Grill, so he can get work.

24 And I'm asking the court to do two things; that
25 is, to sentence him to these charges, on these charges

Exhibit-1-B-IEAOC

1 more questions for you.

2 MR. BULSA: Thank you, Your Honor.

3 This case involves a multitude of incidents.

4 The victims, Lisa McCray, was a former girlfriend
5 of the defendant. They had a long-term relationship. She
6 tried to break it off way back in 2012, but they still saw
7 each other off and on.

8 When she finally tried to end it for good there
9 was some incidents that actually occurred in Greenville
10 County. She was living in Greenville back in 2014. The
11 house she was actually living in burned in Greenville. The
12 police didn't make no charges.

13 She left Greenville to come to Spartanburg County
14 to live with her daughter. Her daughter is Angelona
15 Williams. She was buying a house on Allen Street, which is
16 in the Cleveland Park area just outside of the city limits.
17 Angelona has three children, small children, that stay with
18 her.

19 Ms. McCray came over to stay with Angelona. That
20 was in June of 2014. A series of incidents began, shooting
21 incidents into the house in the nighttime hours, early
22 morning hours. There were several occasions where tires
23 were being slashed. The police put out surveillance cameras
24 to try to capture who was doing this. They believed Mr.
25 Hemphill was involved. However, the surveillance cameras,

Exh. 6.1-1-C IEAOC

1 when they did capture an image, it was not Mr. Hemphill. We
2 had some information we couldn't verify. We think he was
3 getting people to come over to commit these acts, but on one
4 occasion, the occasion he's pleading guilty to on the
5 assault and battery and discharging a firearm, the police
6 were able to use GPS information off of his telephone that
7 put him one street over at the time of the incident. That
8 is the October 5th, 2014 incident that occurred at 1:30, the
9 shooting into the house. Ms. Williams and her kids were
10 there. The police found eight shell casings in the roadway,
11 three fragments. There was a gunshot that went through the
12 living room window.

13 Your Honor, there were six separate shooting
14 incidents. All the shell casings that were recovered
15 matched the pistol that was found when the defendant's house
16 was finally searched by police on April the 3rd, 2015.

17 The police actually got the phone company to give
18 them realtime information where they tracked where he was.
19 They got a search warrant drawn up by the Greenville Police
20 Department, the Greenville sheriff's office. They worked in
21 conjunction with the Greenville Sheriff's Office. They
22 executed that search warrant. No one would come to the
23 door. Eventually there were two other men in the house with
24 Mr. Hemphill. They eventually came out, once the police
25 kept basically almost kicking the door in. They finally

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Johnny Hemphill,
Applicant,

VS

State of South Carolina,
Respondent.

SUPPORTING FACTS OF
INEFFECTIVE ASSISTANCE
OF COUNSEL

EXHIBIT 2

2016 MAR 21 PM 10:56
K. NOTE GELMAN

In particular, Johnny Hemphill allegation of Roger Poole ineffectiveness were:

10(b): Applicant was denied the right to effective assistance of counsel - Guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, § 3 and § 14 of the South Carolina Constitution - During the Alford Plea on March 29, 2016.

11(b): Supporting Facts: Roger Poole performance during the Alford Plea was both unreasonable and prejudicial. See Strickland VS Washington, 466 U.S. 668 (1984).

Roger Poole acts or omissions included, but are not limited to, the following:

FAILURE TO DO COMPETENCY HEARING

2) In Blazak VS Ricketts, 1 F.3d 891 (9th Cir. 1993); Filed for writ of Habeas Corpus. The United States District Court for the District Of Arizona, found that failure of State trial Court to conduct competency hearing violated petitioner's Due Process Rights.

The Due Process Clause Rights of South Carolina Constitution, Article 1, § 3

and therefore; I'm Guaranty the Equal Protection Clause of the Fourteenth Amendment; Guarantying that no person shall "be deprived of life, liberty, or property without Due Process of law". All of this evidence indicates to this Court that there were reasonable grounds to question Johnny Hemphill competency at time of hearing. The State can argue that none of this evidence was before the judge at the Alford guilty plea hearing and the State can not argue that regarding Johnny Hemphill was incompetent prior to day of guilty plea..

See Dusky VS. United States, 362 U.S. 402 (1960); A defendant is competent if "he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceeding against him." I was unable to fully understand the charges, what circumstantial evidence ment, what the elements are of the charges ment, and I was unable to cooperate in my defense.

See Moore VS. United States, 464 F.2d 663 (9th Cir. 1972); In Moore, we held that the defendant's Due Process Rights had been violated by a Court's failure to hold a competency hearing. Further, in Moore, we held that the failure to conduct a competency hearing deprived the defendant of his right to a Fair Trial. 18 U.S.C.A., U.S.C.A. Const. Amend. 5TH.

Unless this P.C.R. Court can show that there was a competency hearing before the March 29, 2016 Alford Plea evidence casting doubt upon Johnny Hemphill incompetency at any time before he plead or was sentenced.

Clearly, a evaluation of....this man is considered competent and able to stand trial report was never brought up before the Alford Plea Court prior to Johnny Hemphill entered the Alford Plea and not holding a competency hearing deprived Johnny Hemphill of my right to a fair hearing. "The test of competency to enter plea is the same as required to stand trial". Jeter VS. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992); 18 U.S.C.A. § 4244, 18 U.S.C.A. § 4241(b); South Carolina Code Ann. § 44-23 410.

This "substantial right" refers to a particular class of rights which are essential to a fair trial and argue that errors which "affect" these rights cannot be disregarded on appeal. Reference to whether error "affected the substantial rights of the parties". Error which "affected the substantial rights of the parties" was generally understood to refer, not to errors respecting a particular class of rights, but rather to any error which affected the fairness of the trial as a whole by calling into question the reliability of the result.

- 1) The question is; Was I competent to stand trial?
- 2) Or was I not denied a fair hearing by the Judge, Solicitor, and Counsel denying me Due Process of law by South Carolina Constitution, Article 1, § 3.

S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

50 STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Johnny Hemphill,
Applicant,
VS.
State of South Carolina,
Respondent.

SUPPORTING FACTS OF
INEFFECTIVE ASSISTANCE
OF COUNSEL

EXHIBIT 3

In particular, Johnny Hemphill allegation of Roger Poole ineffectiveness were:

10(c): Applicant was denied the right to effective assistance of counsel - Guaranteed by the Sixth and Fourteenth Amendments to the United State's Constitution and by Article 1, § 3 and § 14 of the South Carolina Constitution - During the Alford Plea on March 29, 2016.

11(c): Supporting Facts: Roger Poole performance during the Alford Plea was both unreasonable and prejudicial. See Strickland VS. Washington, 466 U.S. 668 (1984).

Roger Poole acts or omissions included, but are not limited to, the following

1). In (Exhibit 3-IEAOC); of hard core proof beyond a reasonable doubt; Roger Poole performance was deficient an so serious as to deprive me of a fair hearing. This (Exhibit 3-IEAOC) show's Roger Poole deficient of duty of loyalty, trustworthiness, The guiding hand of counsel, and total failure to advocate on Johnny Hemphill's behalf. In (Exhibit 3-IEAOC) Roger Poole performance was so deficient that this is evidence that Roger Poole did not try to challenge and pointing to the holes in the State's case

Page 2

and show in this act of ineffective assistance of counsel of a hidden advocate with sympathy for the State, prosecutor, and victim's and with his personal feeling that Johnny Hemphill should be convicted no matter what law's, error's, substantial rights, or United States Constitutional violation, South Carolina Constitutional violation right was all violated. See no evil, speak no evil, hear no evil, is exactly what Roger Poole did.

See (Exhibit 3 IEAOC) could have been used to counter the prosecution's case by South Carolina Constitution. Article 1, § 3 of a "substantial right's"; The privileges and immunities of citizens of this state and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without Due Process Of Law, nor shall Any Person Be Denied The Equal Protection Of The Law's. (1970(56)2684; 1971(57)315. Roger Poole denied Johnny Hemphill Due Process and Violated the Equal Protection Clause of the Fourteenth Amendment.

If Roger Poole would have told me the above information, I would not have took the bad advice of Roger Poole and I would have gone to trial.

Roger Poole was my advocate and my voice. The advocate and voice sent this...". On the STALKING charge I do not see where the STATE issued an indictment whatsoever but at any rate you did not enter a plea to that CHARGE PER PUBLIC INDEX.

(19)(b) Vacate, Terminate and Immediate Release.

No Indictment, No charge and No Conviction per Public Index. Gone to Trial, whole different outcome.

S.C. Code Ann. 17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

2017 MAR 27 PM 12:56
M. J. E. C. M. J. E. C.

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER**CLAY T. ALLEN**
CIRCUIT PUBLIC DEFENDER366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG, SC 29303Telephone: (864) 596-2561
Fax: (864) 596-2284

June 29, 2016

Re: The State v. Johnny Hemphill

Exhibit 3 - IEAOC

Dear Mr. Hemphill,

I have reviewed the sentencing sheets in your cases. Although indictment # 2015GS4205214 is checked concurrent the intent of Judge Hayes was to impose a sentence of ten years. The other indictment is clearly marked consecutive and therefore his intent was to make that sentence consecutive to the first sentence.

On the stalking charge I do not see where the State issued an indictment whatsoever but at any rate you did not enter a plea to that charge per Public Index.

I did file an Appeal in your case and I recently sent you a letter regarding same.

I hope you are doing well despite your circumstances.

Sincerely,

J. Roger Poole
Assistant Public Defender

H.M.C. CLERK/17

2017 JUL 27 PM 12:56

Johnny Hemphill,

Applicant,

VS.

State of South Carolina,

Respondent.

SUPPORTING FACTS OF
INEFFECTIVE ASSISTANCE
OF COUNSEL

EXHIBIT 4

2016-03-21 File: 53
11:03:00 AM

In particular, Johnny Hemphill allegation of Roger Poole ineffectiveness were:

10(d): Applicant was denied the right to effective assistance of counsel - Guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, § 3 and § 14 of the South Carolina Constitution - During the Alford Plea on March 29, 2016.

11(d): Supporting Facts: Roger Poole performance during the Alford Plea was both unreasonable and prejudicial. See Strickland VS Washington, 466 U.S. 668 (1984).

Roger Poole acts or omissions included, but are not limited to, the following:

1) In Indictment 2015 GS-42-5214, I Johnny Hemphill never waived presentment to the Grand Jury. See (Exhibit-APSS-4). If you look at the Indictment 2015-GS-42-5214 under witnesses and you go to State VS. Anderson, 312 S.C. 185, 439 S.E.2d 835 (S.C. 1993), We take this opportunity to explicitly PROHIBIT the practice of prosecutors appearing as the sole witness before the grand jury. I told Roger Poole I wanted to be present when the prosecutor went before the Grand Jury.

Why does this Indictment got two different dates; Dec. 4, 2015 and Dec. 14, 2015?

Where is the True Bill STAMP at? Where is the Court Seal at on this Indictment 2015-GS-42-5214? See (Exhibit-NTBIS-4).

If Roger Poole would have told me about the above information, I would have gone to trial and I would have not took the Alford Plea.

S.C. Code Ann. § 17-27-80 (1976) requires the PCR court to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

2017 MAR 27 PM 12:56
N. ROSE BLANCHET

prosecution disclosing material evidence within a timely manner to plea guilty or go to TRIAL.

IF I would have known about the above information; I Johnny Hemphill would have gone to trial.

S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented."

2017 MAR 27 PM 12:56
M. HITE CLERK

STATE OF SOUTH CAROLINA

Exhibit - APSS 4

IN THE COURT OF GENERAL SESSIONS

57

COUNTY OF
STATE

SPARTANBURG

VS.

Johnny James Hemphill

AKA:

Race: BLACK Sex: M Age: 46

DOB: SS#

Address: Confederate Avenue

City, State, Zip: Rock Hill SC 29370

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault / Attempt Assault & Battery 1st degree

INDICTMENT/CASE#: 2015GS4205214

A/W#: 2015A4210101441

Date of Offense: 10/5/2014

S.C. Code §: 16-03-0600(CX1)

CDR Code #: 3412

ALFORD

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

0-10 yrs

in violation of § 16-03-0600(C)(1)

of the S.C. Code of Laws, bearing CDR Code #

3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BULSA, DERRICK

SC Bar#

15264 Johnny Hemphill

Defendant

Rogers Poole

Attorney for Defendant

SC Bar# 4499

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:☒ 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. 363☐ 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:

*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	\$
§ 56-3-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (03/2011)

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:

no contact with victim

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

Presiding Judge

Judge Code:

Sentence Date:

DOCKET NO.

15-GS-42-5214**The State of South Carolina****County of Spartanburg*****Barry Barnette, Solicitor*****COURT OF GENERAL SESSIONS****DEC 14 2015 TERM****THE STATE
vs.****Johnny James Hemphill****Indictment for****ASSAULT AND BATTERY 1st Degree**

SC Code: 16-3-600

CDR Code: 3412

Class FEL/E

FILED
CLERK OF COURT

2015 DEC -9 PM 2:50

M. HOPE BLACKLEY

Exhibit-AP55-4

2017 MAR 27 PM 12:56
M. HOPE BLACKLEY

Exhibit-NTBIS-4

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on DEC 04 2015 the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY 1st Degree

That Johnny James Hemphill did in Spartanburg County on or about October 5, 2014 offer or attempt to injure Anguwana Williams, the victim, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, in that he caused multiple gunshots to be fired into the dwelling the victim was occupying at ■ Allen Ave, Spartanburg, SC, in violation of Section 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

2015 MAR 27 PM 12:56
11:00:00 AM EDT

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


DEPUTY SOLICITOR

69
STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Johnny Hemphill,
Applicant,
VS.
State of South Carolina,
Respondent.

SUPPORTING FACTS OF
INEFFECTIVE ASSISTANCE
OF COUNSEL

EXHIBIT 5

2017 MAR 21 PM 12:56
H. MORE ELLIOTT

In particular, Johnny Hemphill allegation of Roger Poole ineffectiveness were:

10(e): Applicant was denied the right to effective assistance of counsel - Guaranteed by the Sixth and Fourteenth Amendments to the United State's Constitution and by Article 1, § 3 and § 14 of the South Carolina Constitution - During the Alford Plea on March 29, 2016.

11(e): Supporting Facts - Roger Poole performance during the Alford Plea was both unreasonable and prejudicial. See Strickland VS. Washington, 466 U.S. 668 (1984).

Roger Poole acts or omissions included, but are not limited to, the following:

1). In Indictment 2015 GS 42-5217, I Johnny Hemphill never waived presentment to the grand jury. See (Exhibit - APSS-5). This is a Direct Indictment. Prosecutor Derrick Balsa never disclose a Motion of Discovery SC Crim. P. Rule 5 on this Arrest Warrant Number "Direct Indictment" or Docket/Indictment Number 2015-GS-42-5217. The Brady disclosure rule requires the Prosecution to provide to the defendant any evidence in the prosecution's possession that MAY be favorable to the

Page 2

accused and material to guilt, or punishment. See Brady VS Maryland, 373 U.S. 83 (1963). The government's obligation to make disclosures of exculpatory material under Brady VS Maryland, 373 U.S. 83 (1963) is pertinent not only to an accused's preparation for trial but also to his determination of whether to plead guilty; the defendant is entitled to make that decision with full awareness of favorable material evidence known to the government. When a defendant lacks knowledge of material evidence in the prosecution's possession, the waiver of Constitutional Rights cannot be deemed knowing and voluntary.

2). If you look at (Exhibit-5217-5) under Witnesses; all the witnesses is from the State; In violation of State VS. Anderson, 312 S.C. 185, 439 S.E.2d 835 (S.C. 1993), We take this opportunity to explicitly PROHIBIT the practice of prosecutors appearing as the sole witness before the grand jury.

In (Exhibit-5217-5) of hard core proof beyond a reasonable doubt; Roger Poole performance was deficient and so serious as to deprive Johnny Hemphill of a fair hearing and very bad advice from Roger Poole to a Alford Plea instead of going to trial. How can the P.C.R. Court say; Johnny Hemphill had Equal Protection Clause of the Fourteenth Amendment, be deprived of life, liberty, or property without Due Process. The Due Process Clause Rights of South Carolina Constitution, Article 1, § 3 and therefore Guaranty the Equal Protection Clause in Brady VS. Maryland, 373 U.S. 83 (1963) refer to

DOCKET NO. **15-CS-42-5217****The State of South Carolina****County of Spartanburg****Barry Barnette, Solicitor****COURT OF GENERAL SESSIONS****DEC 14 2015****TERM****THE STATE
vs.****Johnny James Hemphill****Indictment for****STALKING****SC Code: §16-3-1700****CDR Code: 2406****Class: MIS-C****FILED
CLERK OF COURT****2015 DEC -9 PM 2:50****M. HOPE BLACKLEY****Exhibit 5217-5****2017 MAR 27 PM 12:56
M. HOPE BLACKLEY**

STATE OF SOUTH CAROLINA Exhibit APSS 5
COUNTY OF SPARTANBURG
STATE VS.
Johnny James Hemphill
AKA:
Race: BLACK Sex: M Age: 46
DOB: SS#
Address: Confederate Avenue
City, State Zip: OK Hill SC 29370
DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4205217
A/W#: 2015GS4205217
Date of Offense: 6/2/2014
S.C. Code § : 16-03-1700(C)
CDR Code #: 2406

ALFORD
SENTENCE SHEET

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

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-03-1700(C) of the S.C. Code of Laws, bearing CDR Code # 2406
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST: B. B. Bulsa 15264 Johnny James Hemphill Roger Poole 4499
BULSA, DERRICK SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 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:
☒ 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. 50 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: no contact with victims

Recipient: _____

*Finc:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCC/V217 (03/2011)

Presiding Judge: _____
Judge Code: 2132
Sentence Date: 3/29/16

Exhibit-5217-5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

DEC 04 2015

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

STALKING

That Johnny James Hemphill, did in Spartanburg County between the dated of June 2, 2014 and April 2, 2015 engage in a pattern of conduct that served no legitimate purpose and was intended to cause and did cause Lisa McRae to fear: (1) death or the death of a family member; and/or (2) assault or assault of a family member; and/or (3) bodily injury or bodily injury to a family member; and/or (4) damage to her property or damage to the property of a family member, all in violation of §16-3-1700 & 16-3-1730, THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

2015 MAR 27 PM 12:57
 J. H. BLACKNEY

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Johnny Hemphill,

Applicant,

VS.

STATE OF SOUTH CAROLINA,

Respondent.

SUPPORTING FACTS OF
INEFFECTIVE ASSISTANCE
OF COUNSEL

EXHIBIT 6

2017 MAR 27 PM 12:51
M. POOLE BAR/CA/ET

In particular, Johnny Hemphill allegation of Roger Poole ineffectiveness were:

10(a): Applicant was denied the right to effective assistance of counsel - Guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, § 3 and § 14 of the South Carolina Constitution - Not Filing A Direct Appeal.

11(a): Supporting Facts: Roger Poole performance "NOT FILING A DIRECT Appeal; was both unreasonable and prejudicial. See Strickland VS. Washington, 466 U.S. 668 (1984). Roger Poole acts or omissions included, but are not limited to, the following:

In Frazer VS. South Carolina, 430 F.3d 696 (2005), The Fourth Circuit ruled that counsel has a duty to consult with a defendant regarding an appeal from a guilty plea. Counsel can be deficient and Johnny Hemphill was prejudiced because Roger Poole fail to file a Direct Appeal.

Where is all the paper work from Roger Poole filing Johnny Hemphill Direct Appeal?

See (Exhibit - DAPT-6)

Exhibit-DAPT-6

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG, SC 29303Telephone: (864) 596-2561
Fax: (864) 596-2284

June 29, 2016

Re: The State v. Johnny Hemphill

Dear Mr. Hemphill,

I have reviewed the sentencing sheets in your cases. Although indictment # 2015GS4205214 is checked concurrent the intent of Judge Hayes was to impose a sentence of ten years. The other indictment is clearly marked consecutive and therefore his intent was to make that sentence consecutive to the first sentence.

On the stalking charge I do not see where the State issued an indictment whatsoever but at any rate you did not enter a plea to that charge per Public Index.

I did file an Appeal in your case and I recently sent you a letter regarding same.

I hope you are doing well despite your circumstances.

Sincerely,

J. Roger Poole
Assistant Public Defender2016 MAR 27 PM 12:51
U. MORE CIRCULAR

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Johnny Hemphill,

Applicant,

VS.

STATE OF SOUTH CAROLINA,

Respondent.

SUPPORTING FACTS OF
INEFFECTIVE ASSISTANCE
OF COUNSEL

EXHIBITS 7

2011 MAR 27 PM 12:51
CLERK OF COURT

In particular, Johnny Hemphill allegation of Roger Poole ineffectiveness were:

10(a): Johnny Hemphill was denied the right to effective assistance of counsel - Guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, § 3 and § 14 of the South Carolina Constitution - THE TOTALITY OF CONFLICT OF INTEREST IN THE SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER OFFICE.

11(a): Supporting Facts: The Seventh Judicial Circuit Public Defender Office Staff's performance during the totality of State representation was both unreasonable and prejudicial. See Strickland VS Washington, 466 U.S. 668 (1984).

Roger Poole and Clay Allen acts or omissions included, but are not limited to, the following:

Johnny Hemphill CONFLICT OF INTEREST IS, (Exhibit-CFOIPDO-7) Seventh Judicial Circuit Public Defender Office. In (Exhibit-CFOIPDO-7) I wrote Clay T. Allen about Roger Poole's representation of Johnny Hemphill. In the third paragraph; The Circuit Public Defender Mr. Allen state's; "you may not be charged in an arrest warrant for Stalking;

the prosecutor may later seek a direct indicted on it". This was dated on November 17, 2015 and on Dec. 4, 2015 was direct indicted for Stalking. Mr. Allen further state's; "If the grand jury returns a "true bill" for that charge, you will be indicted."

Where is the True Bill stamp, but Mr. Allen, Mr. Poole; Johnny Hemphill was still charged without a True Bill Indictment. Proof of helping hand in STATE'S case.

Further more of CONFLICT OF INTEREST is Page 2; Mr. Poole believes that, based upon the allegations of the prosecution and your criminal record, you have received a reasonable surety bond. What happen to innocent until proven guilty? The Sixth Amendment still requires that counsel "hold the prosecution to its heavy burden of proof beyond a reasonable doubt." Quot United States VS. Cronis, 466 U.S. at 657 n. 19, 104 S.Ct. 2034. Counsel's duty of loyalty includes not only the duty to operate free of conflict of interest, but also the duty to act as an adversary vis-a-vis the state.

Equal Protection Clause of South Carolina Constitution. Article 1, § 3. Further more, Why is Mr. Allen putting words or actions of STATE when Mr. Allen is The Circuit Public Defender for me in my defense, unless the Seventh Judicial Circuit Public Defender Office employees are Master-In-Disguise for the Solicitor's Office.

If it is not a Conflict of Interest of the TOTALITY of the Seventh Judicial Circuit Public Defender Office, Then why would the Head Circuit Public Defender; Clay T. Allen; "I do not intend to get involved in any additional complaints you have about your representation.

Page 3

Is this not Mr. Allen's J.D.B. to fix any and all Conflict between Client and Counsel.

Where is the Equal Protection Clause, Due Process Clause and Counsel Clause of duty of loyalty?

This (Exhibit-CFOIPDO-7) does show Conflict of Interest from the Seventh Judicial Circuit Public Defender Office of hostility, sympathy and assistance for the STATE'S case and failed to act as a reasonable diligent and professional advocate.

2017 MAR 27 PM 12:57
M. J. B. CLARK

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER**CLAY T. ALLEN**
CIRCUIT PUBLIC DEFENDER366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG SC 29303

TELEPHONE (864) 596-2561

FAX (864) 596-2284

November 17, 2015

Mr. Johnny J. Hemphill
Spartanburg County Detention Facility
950 California Avenue
Spartanburg, South Carolina 29303Exhibit-CFOIPDO-7
2011 MAR 21 PM 12:57
ALICE B. AUSTINRe: State v. Johnny Hemphill
Warrant Numbers 2015A4210101432 - 2015A4210101443

Dear Mr. Hemphill:

Because you have repeatedly tried to contact me concerning Mr. Poole's representation of you, I have decided to respond to your letter to me of November 11, 2015. As I understand it, you are complaining about Mr. Poole's discussion with you about a plea offer that the prosecutor has made and about your request for a bond reduction.

An attorney is required to inform a client about any plea offer that the prosecutor makes, even if the client has previously told the attorney that the client does not want to plead guilty. I expect all my attorneys to provide effective and ethical representation of all their clients. Although you disagree with the offer or believe that the prosecutor should not change your charge, you need to understand that Mr. Poole is doing his job by telling you about the offer and discussing it with you. Although you are not required to plead guilty or to accept any particular offer that the prosecutor makes, Mr. Poole is required to let you know about any offer he receives and allow you to make that decision.

You also need to understand that, although you have been arrested and charged with certain charges, the prosecutor may offer to allow you to plead guilty to different charges if he wants to do so. It is not unusual for prosecutors to offer to reduce charges or to offer a plea to different charges, provided that there is evidence to support the proposed charge. Furthermore, a prosecutor is also allowed to present any charge to the grand jury that the prosecutor believes is supported by the evidence. This means that, although you may not be charged in an arrest warrant with charges such as stalking, the prosecutor may later seek a direct indictment for that charge. If the grand jury returns a "true bill" for that charge, you will be indicted on it, and the prosecutor will then be required to have you arraigned on that direct indictment. If you have any questions about that process or the likelihood of the solicitor to seek a direct indictment against you, you need to discuss it with Mr. Poole.

Lastly, you are complaining that Mr. Poole has not made a motion for a bond reduction. As I understand it, you currently have a surety bond of \$30,000 with special conditions, including GPS monitoring. According to Mr. Poole, you are not really asking for a reduction of

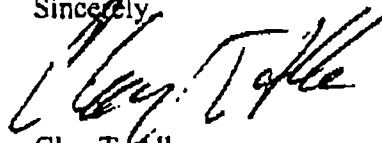
Mr. Johnny J. Hemphill
November 17, 2015
Page 2

Exhibit-CFOIPDO-7

the amount of the surety bond, but you want the special condition of GPS monitoring removed and you want to be allowed to live with your sister in Rock Hill. You need to understand that when and how to make motions are strategic decisions which the attorney makes. You may (and should) ask your attorney about motions that you would like to have raised in your case, but the attorney is not required to make the motion if he does not believe the motion is supported by the law or evidence or if he does not believe the motion is in your best interest. Mr. Poole believes that, based upon the allegations of the prosecution and your criminal record, you have received a reasonable surety bond. It is unlikely, in my opinion, that our judges will delete the GPS requirement. I understand that Mr. Poole will try to verify if you can reside with your sister in Rock Hill, and he may decide to make a motion for some change in your bond conditions. You need to understand, however, that if a motion is made to change any condition of your bond, the judge may decide to change other conditions of your bond, including raising the surety bond amount. Mr. Poole will be talking with you more about a motion to modify your bond, but he may want to wait until he believes that we will have a judge who may be more likely to grant the relief he is seeking.

In summary, I believe that Mr. Poole is doing everything that he can reasonably do to represent you. I expect you to cooperate with Mr. Poole and, at least, listen to what he has to tell you. I do not intend to get involved in any additional complaints you have about your representation. Mr. Poole is an excellent and experienced attorney, and he is fully capable of providing proper legal advice in this matter.

Sincerely



Clay T. Allen
Circuit Public Defender

CTA:

cc: Roger Poole, Esquire

2017 MAR 27 PM 12:57
M. HOPE BRADLEY

72
STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Johnny Hemphill,

Applicant,

VS.

State of South Carolina,

Respondent.

SUPPORTING FACTS TO
SPEEDY TRIAL

SOUTH CAROLINA CONSTITUTION

ARTICLE 1, § 14

2017 MAR 27 PM 12:51
H. HOPE BLACKBET

In particular, Johnny Hemphill allegation of Roger Poole ineffectiveness were:

PLEASE TAKE NOTICE, Johnny Hemphill was denied the right "TO SPEEDY TRIAL" in South Carolina Constitution, Article 1, § 14; "Guarantees" that "Any person charged with an offense shall enjoy the right to a speedy... trial." This is also violates State VS Langford, 400 S.C. 421, 735 S.E.2d 471 (2012); or by South Carolina Code Annotation § 1-7-330.

Supporting Facts: In (Exhibit 1-MFST); Johnny Hemphill; Pro se at time requested a Motion For Speedy Trial on June 22, 2015 and was Clock Stamp on June 29, 2015 at 1:15 P.M. by the Clerk of Court Office of Spartanburg County of South Carolina. Arrest Warrant # 2015A4210101440 was issued on 4-29-2015; See (Exhibit - 2-MFST) for facts and on 6-16-2015 sign by Applicant.

The clock starts running on a defendant's speedy trial right when he is "Indicted," "Arrested" or otherwise officially accused," and therefore we are to include time between

Page 2

arrest and indictment. U.S. VS. MacDonald, 456 U.S. 1, 6, 102 S.Ct. 1497 (1982).

Johnny Hemphill was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, §3 and §14 of the South Carolina Constitution - Roger Poole failed to present Johnny Hemphill, "Prose" at time "MOTION FOR SPEEDY TRIAL" was written which would VACATE the Totality of the whole case.

See United States VS. Cronin, 466 U.S. 648 (1984); Unless the accused receives effective assistance of counsel, a serious risk of injustice infects the trial itself. Counsel had nothing to lose and everything to gain, if counsel would have enlightened the court about the Prose "MOTION FOR SPEEDY TRIAL"; and I suffered actual prejudice as a result of counsel's total failure to advocate on my behalf and counsel has a duty to investigate all reasonable lines of defense and an effective attorney "must play the role of an active advocate, rather than a mere friend of the court" and my counsel had sympathy and assisted for the State's case. I did not have the loyalty and the guided hand of counsel. I was denied my Sixth Amendment right to effective assistance of counsel.

Roger Poole failed to inform me about the Speedy Trial clause and Equal Protection Clause or the Due Process Clause. I did not have a fair Alford Plea hearing because Roger Poole's performance fell below objectively reasonable standards for professional attorney conduct in failure to Present "MOTION FOR SPEEDY TRIAL".

S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to "make specific findings of fact, and state expressly its conclusions of law relating to each issue presented."

2017 MAR 27 PM 12:58
H. HOPE ELLISLEY

DATE: MAR 27 1968
 TIME: 12:58 PM
 FROM: H. HOFFE ELACKLEY
 TO: [illegible]

Exhibit 1-MFST Page 4

Clear [illegible]
 Post office [illegible]
 [illegible]

NOT CLOCKED IN ERROR
 MAR 27 PM 12:58
 H. HOFFE ELACKLEY

[Faint, mostly illegible text body consisting of several paragraphs]

~~CONFIDENTIAL~~ Exhibit 1-MFST Page 5

The following information was obtained from the
Miami, Florida, Office of the
Attorney General, dated 1/11/78.

On 1/11/78,
- 11:00 a.m.
- 1:50 p.m.

Please check the following information
for the Miami, Florida, Office of the
Attorney General, dated 1/11/78.

11:00 a.m.

CONFIDENTIAL

01440

ROLINA
unicipality of

14100270

1533

N [redacted]
3 Weight 243

4

SC0420000

ty Sheriff

159

ns into a dwelling

ERVICE in the

The accused
to me to

AL.S.

AFFIDAVIT

DEFENDANT
COPY 77

Spartanburg

Personally appeared before me the affiant: Richie Foster

being duly sworn deposes and says that defendant: Johnny James Hemphill

did within this county and state on or about 10/5/2014 violate the criminal laws of

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg

in the following particulars

DESCRIPTION OF OFFENSE: Weapons / Discharging firearms into a dwelling

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

That on October 5, 2014 in the county of Spartanburg, one Johnny James Hemphill did intentionally discharge a firearm at or into a dwelling house located at [redacted] Lichen Avenue Spartanburg, SC 29303 occupied by a person or persons.

Warrant based on police investigation: RR

Exhibit 2-MFST Page 6

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Spartanburg

Affiant's Address: 45 Howard Street
Spartanburg, SC 29303-
Affiant's telephone: (815) 503-4500

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/5/2014 defendant Johnny James Hemphill

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

☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Discharging firearms into a dwelling

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

Sworn to and subscribed before me
on 4/29/2015

Kerry J. Gaffney
Judge Code 7247

Judge's address: Magnolia Street
Spartanburg, SC 29306-
Judge's telephone: (815) 506-2228

Issued Court Magistrate Municipality Circuit

T COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

2017 MAR 27 PM 12:59

78
STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Johnny Hemphill,
Applicant,

VS.

State of South Carolina,
Respondent.

SUPPORTING FACTS OF
BRADY VIOLATION

ON

INDICTMENT # 2015-GS-42-0521

STALKING

2017 MAR 28 PM 12:15:56
M. HOFFER, CLERK

In particular, Johnny Hemphill allegation of Roger Poole Brady Violation. See Brady VS. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).

Johnny Hemphill was denied the right under Rule 5 of the South Carolina Rules of Criminal Procedure that is guaranteed by Brady VS. Maryland, 373 U.S. 83 (1963) and is pertinent only to an accused's preparation for trial but also to his determination of whether to plead guilty; the defendant is entitled to make that decision with full awareness of favorable material evidence known to the government. Thus, the prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial.

10(a): Johnny Hemphill was denied the right to effective assistance of counsel - Guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, § 3 and § 14 of the South Carolina Constitution - Counsel failed to file for discovery motion for Rule 5, S.C.R. Criminal Procedure for Brady material.

11(a) Supporting Facts: Roger Poole performance during the Alford Plea was both unreasonable and prejudicial of a fair Alford Plea. See Strickland VS. Washington, 466 U.S. 668 (1984), See Brady VS Maryland, 373 U.S. 83. Roger Poole acts or omission included, but are not limited to, the following:

1) Roger Poole failed to provide Johnny Hemphill with a Rule 5 of the S.C. Rules of Criminal Procedure for Indictment # 2015-GS 42-05217. This is a violation of Brady VS. Maryland, 373 U.S. 83, (1963); Gribson VS. State, 334 S.C. 515 (S.C. 1999); United States VS. Agurs, 427 U.S. 97 (1976), United States VS. Bayley, 473 U.S. 675 (1985); Giaglio VS. United States, 405 U.S. 150 (1972); That evidence withheld from defendant to negate the guilt of the accused or mitigates the offense the governments obligation to make such disclosures [of Brady material] is pertinent not only to an accused's preparation for trial but also to his determination of whether or not to plead guilty. It was Roger Poole professional responsibility and obligation of the guiding hand of counsel to provide me with a proper disclosure of Rule 5 of S.C. Rules of Criminal Procedure. How can the court say my Alford Plea was enter voluntarily, knowingly, and intelligently made when Roger Poole failed to inform me that he does not have a Request For Disclosure (Recip. Rule 5) for Indictment # 2015-GS-42-05217 for a proper defense and Roger Poole "ought to have" disclosed the withheld information so I could have had all evidence to make a proper judgment, but If I would have know this; I would have gone to trial. I did not have a full understanding of the consequences of

my Alford Plea and the charges against me. See Baykin VS. Alabama, 395 U.S. 238 (1969); Dover VS. State, 304 S.C. 433 (1991). Additionally, the South Carolina Supreme Court requires that a defendant entering a guilty plea be made aware of the nature and crucial elements of the offense, the maximum and any minimum penalty, and the nature of the constitutional rights being waived. Pittman, 337 S.C. at 599, 524 S.E. 2d at 624; Dover VS. State, 304 S.C. 433, 405 S.E. 2d 391 (1991); State VS. Hazel, 275 S.C. 392, 271 S.E. 2d 602 (1980).

First, and most importantly, constitutional errors are governed by the Due Process Clauses of the Fifth and Fourteenth Amendments, violates the Equal Protection Clause of the Fourteenth Amendment. (Quoting from Brady VS. Maryland, 373 U.S. 83 (1963).

I Johnny Hemphill was born in the United State's and there for I am Guaranteed all the United State's Constitution's as well as the South Carolina Constitution, Article, 1, § 3 and therefore; I am Guaranty the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment.

See (Exhibit 6 - Brady) for J. Roger Poole requested discovery for the Warrant's 2015A4210101432-1443. See (Exhibit 7 - Brady) of Assistant Solicitor Derrick Bulba return for Warrant's 2015A4210101432-1443 and I do not see NO (Recip. Rule 5) For Disclosure for WARRANT 2015 GS-42-05217 and that; is a Brady Violation.

2017 MAR 27 PM 1:59
 M. HOPE BLACKEY

Exhibit 7-Brady

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA)

Indictment No(s):

Warrant No(s):2015A4210101432-1443

VS.)

REQUESTS

FOR DISCLOSURE

(Recip. Rule 5)

JOHNNY HEMPHILL

TO: DEFENDANT AND HIS ATTORNEY ROGER POOLE:

Pursuant to Rule 5, Rules of Criminal Procedure, the State in the above captioned matter requests the disclosure of the following evidence to the State by the Defendant:

1) That the Defendant permit the prosecution to inspect and copy books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the Defendant and which the Defendant intends to introduce as evidence in chief at the trial;

2) That the Defendant permit the prosecution to inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the Defendant, which the Defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the Defendant intends to call at trial when the results or reports related to his testimony.

3) The prosecution requests that the Defendant serve upon the prosecution a written notice if he intends to offer an alibi defense, stating the specific place or places at which the Defendant claims to have been on April 1, 2015, March 24, 2015, February 21, 2015, July 13, 2014, October 5, 2014 & June 2, 2014 the names, address, and birthdays of the witnesses upon whom he intends to rely to establish such alibi.

4) That any and all evidence is available for viewing at the arresting agency or the South Carolina Law Enforcement Division.

The State further requests that the Defendant notify the State of the Defendant's intention to rely upon the defense of insanity or plea of guilty but mentally ill at the time of the crime.

These requests are continuing requests for disclosure and any relevant matters arising subsequent to the date hereof should be regarded as included in this request.

M. HOPE CLARKE

2015 JUL -6 AM 11:37

Spartanburg, South Carolina
Dated: July 6, 2015

Alex Bulsa
Derrick Bulsa
Assistant Solicitor
Seventh Judicial Circuit

2017 MAR 27 PM 12:59
M. HOPE CLARKE

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG, SC 29303TELEPHONE (864) 596-2561
FAX (864) 586-2284
FAX (864) 562-4412

June 24, 2015

Johnny Jame Hemphill
P6/13
Spartanburg County Detention Center
950 California Avenue
Spartanburg, South Carolina 29303

Exhibit 6 - Brady

2015 MAR 27 PM 12:59
A. HOWE CLARKERe. State v. Johnny Jame HemphillWarrant/Ticket No(s): 2015A4210101432; 2015A4210101433; 2015A4210101434;
2015A4210101435; 2015A4210101436; 2015A4210101441;
2015A4210101442; 2015A4210101443; 2015A4210101439;
2015A4210101438; 2015A4210101437; 2015A4210101440

Dear Mr. Hemphill:

I have been assigned to represent you on the above charges. I have requested discovery, that is evidence, in your case. As my schedule allows, I will come visit you.

I have also requested a preliminary hearing on your behalf. You will be notified of the date and time of the hearing when it is scheduled. If you are in the Spartanburg County Detention Center on the scheduled date of your hearing, you will be transported to the hearing. At your arraignment, before magistrate, you were given an initial appearance date. The preliminary hearing is not the initial appearance. Since you are now represented by an attorney, you are not required to appear at the initial appearance on the date you were given.

Please do not discuss (talk about) your charges with anyone, or have any conversation about your case on the jail's telephone system. Anything you say about your charges to those who are not employed by this office could be used in court as evidence against you. If you bond out, please keep the office advised of any address and phone number changes you may have as this is the only way you will be notified of court appearances.

Please do not hesitate to contact me should you have any questions.

Sincerely,
J. Roger Poole
Assistant Public Defender

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Johnny James Hemphill, #141723,	)	Case No.: 2017-CP-42-1000
Applicant,	)	
	)	RETURN AND PARTIAL
v.	)	MOTION TO DISMISS
	)	
State of South Carolina,	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed on March 27, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In December 2015, the Spartanburg County Grand Jury indicted Applicant for six counts of discharging a firearm into a dwelling (2015-GS-42-5205, -5206, -5207, -5208, -5209, -5210), six counts of assault and battery in the first degree (2015-GS-42-5211, -5212, -5213, -5214, -5215, -5216), and one count of stalking (2015-GS-42-5217). Assistant Public Defender Roger Poole represented Applicant. Deputy Solicitor Derek Bulsa prosecuted the case. On March 29, 2016, Applicant pleaded guilty as indicted, pursuant to Alford¹, to one count of discharging a firearm into a dwelling (2015-GS-42-5208), one count of assault and battery in the first degree (2015-GS-42-5214), and one count of stalking (2015-GS-42-5217) in exchange for all other counts being dismissed (2015-GS-42-5205, -5206, -5207, -5209, -5210, -5211, -5212, -5213, -5215, -5216) before the Honorable J. Mark Hayes, II. Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for assault and battery

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

in the first degree and five years for stalking with a consecutive term of ten years for discharging a firearm into a dwelling.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on August 11, 2016. The remittitur was returned to the circuit court on August 31, 2016.

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's direct appeal records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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. Plea counsel's "performance during Alford Plea was both unreasonable and prejudicial."
- b. There was a conflict of interest between Applicant and plea counsel because plea counsel was sympathetic toward saving the court and the State money by entering an Alford Plea.
- c. Plea counsel was sympathetic to the State's case.
- d. Applicant plead guilty on the bad advice of plea counsel
- e. Plea counsel failed to advocate on Applicant's account concerning circumstantial evidence and failed to challenge the State's circumstantial evidence.
- f. Plea counsel failed to subject the State's case to adversarial testing.
- g. Plea counsel showed toward Applicant deficient duty of loyalty, trustworthiness, "the guiding hand of counsel," and failure to advocate on Applicant's behalf.
- h. Plea counsel showed through ineffective assistance of counsel that he felt Applicant should be convicted no matter what the law said or which of Applicant's rights he violated.
- i. "The totality of conflict of interest in the Seventh Judicial Circuit Public Defender Office."
 - i. There is no true bill stamp on indictments Applicant plead guilty to, even

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M. HOPE BLACKLEY

though the State proceeded with true billed indictments, showing that the public defender office was sympathetic with the State's case.

- j. Plea counsel did not uphold duty of loyalty by not upholding duties to act as an adversary and to operate free of conflict of interests.
- k. Seventh Judicial Circuit Public Defender Office failed to act as a reasonable, diligent, and professional advocate by showing "sympathy and assistance for the State's case."
- l. Plea counsel failed to present to the court Applicant's motion for speedy trial, which Applicant wrote when he was represented pro se.
- m. Plea counsel failed to present Applicant with indictment 2015-GS-42-5217 (stalking).
- n. Plea counsel failed to have a competency hearing when there was reasonable grounds to question Applicant's competency at the time of trial.
- o. Applicant was denied the right to a speedy trial.
 - i. Plea counsel failed to present to the court Applicant's motion for speedy trial, which Applicant wrote when he was represented pro se.
- 2. Involuntary Guilty Plea
 - a. If plea counsel had told Applicant of due process and equal rights protections, Applicant would have gone to trial.
 - b. If plea counsel had told Applicant that indictment 2015-GS-42-5217 (assault and battery, first degree) had two different dates and no "true bill" stamp, even though Applicant did not waive presentment to the grand jury, Applicant would have gone to trial.
- 3. Due Process Violations
 - a. The prosecutor appeared as the sole witness before the grand jury, which is not allowed.
- 4. Brady Violation
 - a. The State did not disclose a motion of discovery or any evidence for indictment 2015-GS-42-5217 (stalking).
 - b. Plea counsel failed to present Applicant with indictment 2015-GS-42-5217 (stalking).
- 5. Failure to Appeal from a Guilty Plea
 - a. Plea counsel failed to file a direct appeal.

III.

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

undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, (1985).

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

IV.

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a

constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or 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, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38, 654 S.E.2d at

874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue.

V.

Applicant alleges a Brady v. Maryland, 373 U.S. 83 (1963) violation. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Respondent submits that this ground for relief is without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief.

VI.

Applicant alleges that plea counsel did not file a timely appeal. The record indicates that plea counsel did file a timely appeal to the South Carolina Court of Appeals, which the Court of Appeals dismissed. State v. Hemphill, Appellate Case No. 2016-000733 (S.C. Ct. App. filed August 11, 2016). Therefore, Respondent requests that this allegation be summarily dismissed because it is conclusively refuted by the record and therefore no genuine issue of material fact is in dispute.

VII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be

provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel, involuntary guilty plea, and due process and Brady violations. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

IX.

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

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M. HOPE BLACKLEY

X.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel, involuntary guilty plea, and due process and Brady violations.

Respectfully submitted,

ALAN WILSON
Attorney General

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1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF COMMON PLEAS NONJURY

3
4 JOHNNY JAMES HEMPHILL,)
5 APPLICANT,)
6 VS.)
7 STATE OF SOUTH CAROLINA,)
8 RESPONDENT.)

9

10
11
12

TRANSCRIPT

OF

RECORD

2017-CP-42-1000

January 29th, 2018
Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE GRACE GILCHRIST KNIE, Judge.

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

16 RODNEY W. RICHEY
17 ESQ.
18 Attorney for the Applicant

19 VALERIE GIOVANOLI
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the State

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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P R O C E E D I N G S

MS. GIOVANOLI: May it please the Court?

THE COURT: Yes, ma'am.

MS. GIOVANOLI: This is the case of Johnny James Hemphill versus The State of South Carolina. Docket Number 2017-CP-42-1000.

We're before the Court on an Application for Post-Conviction Relief that was filed on March 27th, 2017. Applicant was indicted in December of 2015 for six counts of discharging a firearm into a dwelling, six counts of assault and battery in the first degree, and one count of stalking. Assistant Public Defender Roger Poole represented Applicant, and, on March 29th, 2016, Applicant pleaded guilty as indicted, pursuant to Alford, to one count of discharging a firearm into a dwelling, dwelling, one count of assault and battery in the first degree, and one count of stalking. In exchange, all the other counts were dismissed.

The Honorable J. Mark Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for the assault and battery, five years for stalking, and a consecutive term of ten years for discharging a weapon -- a firearm into a dwelling. Applicant did file a timely Notice of Appeal, and the South Carolina Court of Appeals dismissed Applicant's appeal on August 11th, 2016.

1 The State is present and ready to proceed. Applicant
2 is also present and is represented by Mr. Rodney Richey. I
3 would just request that he clarify what allegations they'll
4 be pursuing today as there are a number included in his Pro
5 se Application, and, at this point, I'll hand it over to Mr.
6 Richey.

7 THE COURT: Okay. Good morning, Mr. Richey.

8 MR. RICHEY: Thank you, Your Honor.

9 Your Honor, there's -- our issues center around the
10 advice he got in terms of pleading guilty to this case.
11 Also, there was a direct indictment for stalking that was --
12 he was never arraigned for, and, as to the plea, that there
13 was an inducement to the plea that -- to get him to plead
14 that was unreasonable.

15 THE COURT: Thank you, sir.

16 MR. RICHEY: We call Mr. Hemphill.

17 THE COURT: Good morning, Mr. Hemphill.

18 THE APPLICANT: Good morning.

19 THE COURT: If you'll just come over here if -- to your
20 right. Before you're seated, sir, I'll ask you to raise
21 your right-hand for me.

22 JOHNNY HEMPHILL, being first duly
23 sworn, testified as follows:

24 THE COURT: Okay. Thank you, sir. Just make yourself
25 comfortable right there, as comfortable as you can be. You

Johnny Hemphill - Direct examination
by Mr. Richey

1 might need some help adjusting that microphone.

2 You ready?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: All right. Yes, sir, Mr. Richey.

5 MR. RICHEY: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. RICHEY:

8 Q Can you state your name please?

9 A Johnny James Hemphill.

10 Q And, Mr. Hemphill, are you currently incarcerated in
11 the Department of Corrections?

12 A Yes, sir.

13 Q And what are you incarcerated for, the charges?

14 A Discharging a firearm into a dwelling, assault, attempt
15 (sic) assault and battery first degree, stalking.

16 Q And what type of sentence did you receive?

17 A Two tens and a five year concurrent.

18 Q Did you plead guilty or have a trial?

19 A It was Alford North Carolina plea.

20 Q Okay. And who represented you on those cases?

21 A Roger Poole.

22 Q And you have filed an Application for Post-Conviction
23 Relief because you believe that Mr. Poole did not
24 effectively represent you.

25 Is that correct?

Johnny Hemphill - Direct examination
by Mr. Richey

1 A Yes, sir.

2 Q And, and one of the issues in your case -- this was a
3 case that involved a -- I'll say old girlfriend, right?

4 A Yes, sir.

5 Q A prior girlfriend you had a relationship with,
6 correct?

7 A Yes, sir.

8 Q And, and the State alleged that you somehow went to her
9 house, fired shots, and did -- and assaulted her and stalked
10 her, correct?

11 A Yes, that's what they alleged.

12 Q Okay. And you denied those cases -- charges.
13 Is that correct?

14 A Yes, sir.

15 Q Okay. And what type of case was it?
16 We, we had talked about it.

17 Was it a circumstantial evidence case?

18 A Yes, sir, it was a circumstantial evidence case.

19 Q Was, was there any direct evidence, eye witness,
20 anything, that placed you at the scene of these, of these
21 crimes?

22 A No, sir.

23 Q Okay. And you discussed that with Mr. Poole, correct?

24 A Yes, sir.

25 Q And, ultimately, you determined -- you decided to plead

Johnny Hemphill - Direct examination
by Mr. Richey

1 guilty under Alford.

2 Is that correct?

3 A Yes, sir.

4 Q And you pled, you pled to Alford under advice of Mr.
5 Poole, correct?

6 A Yes, sir.

7 Q And during your discussions about pleading guilty, did
8 y'all have discussion about what sentence you would get?

9 A Yes, sir.

10 Q And, and did he talk to you about concurrent sentences?

11 A Yes, sir.

12 Q And what other type of sentences did he talk to you
13 about?

14 A He had asked me did I have anyway -- if he -- if, if I
15 could -- if he could get my probation or leg monitor, did I
16 have anywhere to stay. If not, if I was to get a sentence,
17 it would, it would be concurrent.

18 Q And that, that, that discussion about probation, was
19 that based -- did you use that to determine whether to plead
20 guilty or not?

21 A Yes, sir.

22 Q Okay. And the -- and you were charged with stalking,
23 correct?

24 A Yes, like eight months later when I was in the County.

25 Q And, and that stalking charge, were you indicted on

Johnny Hemphill - Direct examination
by Mr. Richey

1 that charge?

2 A They -- I mean they say I was indicted on it.

3 Q Okay. And it, and it was a direct in, direct
4 indictment?

5 A Yeah, they said it was a direct indictment.

6 Q Okay. Were you ever arraigned on that indictment?

7 A No, sir.

8 Q Did you ever go in front of a judge for bond for that
9 indictment?

10 A No, sir.

11 Q Was there any objection to the indictment being
12 included in your case?

13 A No, sir.

14 Q Did you, did you talk to Mr. Poole about that stalking
15 indictment?

16 A Yes, I had wrote -- after Mr. Poole talked to me, I
17 talked to -- I took and wrote Mr. Clay Allen about the
18 directed indictment. He was telling me that the prosecutor,
19 prosecutor can direct, directly indict you. I forget what
20 he said. The prosecutor can directly indict you, that you
21 got to be arraigned on the indictment. I mean the
22 indictment's got to be true billed.

23 Q And, and you never were arraigned?

24 A No, sir, I was never arranged (sic) on that. Never
25 went --

Johnny Hemphill - Direct examination
by Mr. Richey

1 Q Okay.

2 A -- before a judge or nothing for a bond or never got
3 arrest warrant or nothing for it.

4 Q As to the, as to the discovery, did you, did you ever
5 receive any discovery in the case, the stalking case?

6 A No, sir, I never did get a discovery pertaining to the
7 stalking charge.

8 Q And that stalking charge -- so, it never -- they're
9 never any separate material about how you actually stalked
10 her?

11 A No, sir, it was nothing.

12 Q And you requested that from Mr. Poole?

13 A Yes, I had asked him about a discovery about that
14 charge, and I never heard nothing else about it.

15 Q But you have maintained your innocence on all these
16 cases, correct?

17 A Yes, sir.

18 Q And, and can you tell me why you did not have a jury
19 trial?

20 A The reason why I didn't have a jury trial because
21 when -- like so Mr. Poole, Mr. Poole took and told me he
22 felt like that the State had enough evidence, if I was to go
23 to a jury trial, that I would be found, that I would be
24 found guilty. And he think it would be in my best interest
25 to plead to that plea. And if I was to get any time, it

Johnny Hemphill - Direct examination
by Mr. Richey

1 would be concurrent or he would try to seek probation or leg
2 monitor.

3 Q And, and on Page 27 of the transcript, do you---

4 THE COURT: Does he have the transcript?

5 MR. RICHEY: Ma'am?

6 THE COURT: Does he have the transcript?

7 MR. RICHEY: Yeah, he -- I'm gonna read, I'm gonna read
8 this to you, sir, so I can get an answer.

9 A I got it. Go ahead.

10 Q On Page 27 of the transcript where's discuss -- your
11 lawyer says, furthermore, they're no identification of him
12 being the actual individual who committed these acts. It's
13 a circumstantial evidence case.

14 so, y'all, y'all talked about there was nobody who
15 could actually fingerprint you, or not fingerprint, but
16 point out that you were there, correct?

17 A Yes, sir.

18 Q But still, with that, based on your discussions with
19 Mr. Poole, you decide to plead guilty?

20 A Yes, sir.

21 Q Is it your intention today to get a new trial?

22 A Yes, sir.

23 Q And, and to have these convictions vacated?

24 A Yes, sir.

25 Q And, and start the process over?

Johnny Hemphill - Direct examination
by Mr. Richey

1 A Yes, sir.

2 Q Okay. And, and you are more than willing to defend all
3 the cases, even the ones that were dismissed, correct?

4 A Yes, sir.

5 Q And do you believe that, that your, your attorney had
6 your best interest at heart in this case?

7 A Say that again, sir.

8 Q Do you believe your attorney had your best interest in
9 this case?

10 A Talking about you or---

11 Q No, Mr. Poole.

12 A No.

13 Q You do not?

14 A No, sir.

15 Q And why is that?

16 A Because, because of the circumstantial evidence in the
17 case when I had told him that I wanted to take a jury trial.
18 I felt like that I could of had a better chance on winning,
19 you know, that jury trial.

20 Q And do you believe that the probation talk was an
21 inducement to get you to plead guilty?

22 A Yes, sir.

23 Q Thank you. Answer any questions the Attorney General
24 will have for you.

25 THE COURT: Yes, ma'am.

Johnny Hemphill - Cross-examination
by Ms. Giovanoli

1 MS. GIOVANOLI: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. GIOVANOLI:

4 Q Good morning.

5 A Good morning.

6 Q Now, you, you were facing six counts of discharging a
7 firearm, and six counts of assault and battery, and a
8 stalking charge.

9 Is that correct?

10 A Yes, I was, I was facing six counts of discharging a
11 firearm into a dwelling, and six counts of assault, attempt
12 (sic) assault and battery first degree. The stalking came
13 up eight months down the line.

14 Q But those are all the charges you were facing at the
15 time of your guilty plea, correct?

16 A No, I was facing three charges at the time of my guilty
17 plea.

18 Q Did the State -- didn't the State dismiss ten charges
19 in exchange for your guilty pleas to the charges that you
20 did plead guilty to?

21 A No, it wasn't a -- it wasn't a negotiated plea.

22 Q Okay. But the State did dismiss ten of your charges---

23 A Yes, they did.

24 Q ---after you pled guilty?

25 A Yes, they did, ma'am.

Johnny Hemphill - Cross-examination
by Ms. Giovanoli

1 Q Okay. And you realize that you were facing, on all of
2 those charges, 125 years?

3 Did Mr. Poole discuss that with you?

4 A Yes, I mean I knew about the -- each charge carried ten
5 years.

6 Q Okay. I'm gonna call your attention to Page 25 of the
7 transcript.

8 A 25?

9 Q Yeah, and I can just read it if that's easier.

10 A If I can get it?

11 It's on the table.

12 MR. RICHEY: Can I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 MR. RICHEY: Thank you.

15 Q Down to Line -- starting on Line 15. That's where your
16 attorney, Mr. Poole, is talking, and he had says that he had
17 a conversation with you and that you were extremely sorry.

18 And then it you turn over to Page 28?

19 A (Witness complies.)

20 Q The judge asked you do you agree with the statements
21 that were just made by your lawyer, and you responded yes,
22 sir.

23 Is that correct?

24 A Yeah, I did.

25 Q And also on Page 31, you actually said, starting on

Johnny Hemphill - Cross-examination
by Ms. Giovanoli

1 Line 13, and what happened to Lisa McCray and Angelona
2 Williams I'm really sorry for it.

3 Is that correct?

4 Is that what you said?

5 A Yes, I did. I did.

6 Q And also, on Page 20, Line 23, the Court asked you if
7 you were being truthful. Not only were you under oath, but
8 the Court asked you if you were being truthful, and you
9 responded yes, sir.

10 Is that correct?

11 A Yes, ma'am.

12 Q So, now, today, is -- are those statements -- are you
13 saying those statements are not correct, that you're not
14 really sorry?

15 A No, ma'am.

16 Q Okay. So, when you -- your attorney, he discussed with
17 you the potential sentence that you were facing.

18 Is that correct?

19 The 125 years?

20 A I wasn't facing the 125.

21 Q If you calculate all charges that you were facing, it
22 would of totaled---

23 A I mean yeah, if I still -- if I'd of had all charges,
24 yeah, it, it was the total. It would of been the total of
25 120 cause I didn't have the stalking charge, like I said,

Johnny Hemphill - Cross-examination
by Ms. Giovanolì

1 until eight months later.

2 Q Okay.

3 A That charge came up eight months later on a direct
4 indictment.

5 Q Okay. But you were facing 125 years altogether with
6 all of the charges that you were facing?

7 A Yeah, without the ten---

8 Q And your---

9 A Without that, you know---

10 Q And your attorney discussed that with you, correct?

11 A Yes, ma'am.

12 Q And he also discussed with you the minimum and the
13 maximum for each charge that you could be sentenced to.

14 Is that correct?

15 A Yeah.

16 Q And, based on that discussion, you decided to take the
17 State's offer and plead guilty?

18 A Yeah, after I consulted with him, yeah.

19 Q Okay. I have no further questions. Thank you.

20 THE COURT: Mr. Richey.

21 MR. RICHEY: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. RICHEY:

24 Q Mr. Hemphill?

25 A Yes, sir.

Johnny Hemphill - Direct examination
by Mr. Richey

1 Q On the transcript, when you were saying that you were
2 sorry, you were saying -- were you saying that you were
3 sorry the house got shot up?

4 A Yes, that's what I -- that's what I was saying. I was
5 saying that I was sorry that the house got shot up. I
6 wasn't saying that I was sorry because I did it.

7 Q All right. So, so, so, those answers were truthful,
8 that you were sorry that that house---

9 A That the house, yes, sir.

10 Q And also you did plead under Alford, correct?

11 A Yes, sir.

12 Q And you did maintain your innocence?

13 A Yes, sir.

14 Q And, and, and at no point in this case have you said
15 you did this, correct?

16 A No, I haven't. I ain't said -- I ain't never one time
17 said I did it.

18 Q And you maintain that today, correct?

19 A Yes, sir.

20 Q Thank you.

21 MS. GIOVANOLI: Nothing further.

22 THE COURT: Okay. Mr. Hemphill, sir, you can step
23 down. Watch your step.

24 THE WITNESS: Can I get somebody to put this up?

25 THE OFFICER: I'll do it for you.

Roger Poole - Direct examination
by Mr. Richey

1 MR. RICHEY: We call Mr. Poole at this time, Your
2 Honor.

3 THE COURT: Okay. Mr. Poole, if you'll please come
4 forward.

5 (Witness complies.)

6 THE COURT: Raise your right-hand please.

7 ROGER POOLE, being first duly
8 sworn, testified as follows:

9 THE COURT: Thank you, sir. Please be seated and make
10 yourself comfortable.

11 THE WITNESS: Thank you.

12 DIRECT EXAMINATION

13 BY MR. RICHEY:

14 Q Sir, will you state your name please?

15 A My name is James Roger Poole.

16 Q And, Mr. Poole, on March the 29th, 2016, were you
17 employed?

18 A I was employed in the Spartanburg Public Defender's
19 office.

20 Q Okay. And, and during the course of your employment,
21 did you have an opportunity to represent Johnny Hemphill?

22 A Yes, I represented Mr. Hemphill.

23 Q And, and you've been in the courtroom and all the
24 charges have been talked about.

25 Did you represent him on those charges?

Roger Poole - Direct examination
by Mr. Richey

1 A Yes, sir, I did.

2 Q Okay. And those charges concluded with a guilty plea.

3 Is that correct, Mr. Poole?

4 A Yeah, it was a plea under Alford.

5 Q Okay. And, and, during your representation -- during

6 your representation of Mr. Hill (sic), did he ever admit

7 guilt to these charges?

8 A I don't recall that he did.

9 Q Okay. And, and that was the basis for the Alford plea,
10 correct?

11 A Yes, sir. And plus the benefit of offering an Alford
12 plea because of the reduction of charges.

13 Q Okay. And, and, and that plea went through, correct?

14 A Yes, sir.

15 Q Okay. During your discussions with Mr. Hemphill, did

16 you relay to him that he had an opportunity to get a

17 concurrent sentence and probation with a leg monitor?

18 Do you recall any of that?

19 A I probably, I probably, as in all cases, talked to him
20 about the whole spectrum of what a judge could do.

21 Q Okay.

22 A And the most lenient outcome as a result of an Alford
23 or a guilty plea, we probably did discuss that. While -- I
24 remember we discussed where he could live. He said he'd
25 lived in Rock Hill. He could live in Rock Hill. I think he

Roger Poole - Direct examination
by Mr. Richey

1 had lived there previously, and not lived in Spartanburg.

2 And we probably did discuss that as well as the total
3 exposure that a judge could give him.

4 Q Okay. And this case was a circumstantial evidence
5 case?

6 A Yes, it was.

7 Q There was no eye witnesses that Mr. Hemphill had
8 actually fired his gun or anything?

9 A No, it started out, there were like 12 to 13 warrants,
10 and they included multiple cases of firing or discharging a
11 firearm into a dwelling, the stalking that we've mentioned,
12 and they, they occurred at night. And there were no really
13 eye witnesses there.

14 The circumstantial evidence consisted of basically a
15 gun was found in Mr. Hemphill's possession that matched the
16 projectiles and shells that had been ejected and shot from
17 that gun. And a cell phone was found on him that had been
18 used to make certain phone calls near the time.

19 And another aspect of the case was we had a preliminary
20 hearing in it, and the investigating officer testified that
21 the cell phones, via live time, they were tracking where the
22 cell phone was located through a type of triangulation of
23 cell towers, and they, they got that cell phone attached to
24 some of those communications. Although Mr. Hemphill lived
25 in Greenville, it was in Spartanburg --

Roger Poole - Direct examination
by Mr. Richey

1 Q Okay.

2 A -- where the location was.

3 Q Okay. And, and based off that -- the information y'all
4 had, did you relay to him it was in his best interest to
5 plead guilty under Alford?

6 A Well, I said, you know well, you know, it's a
7 circumstantial evidence case. It's one heck of a
8 circumstantial evidence case. It was just piled up there.

9 Q And the stalking charge, do you recall him being
10 directly indicted on that later in the process?

11 A I think so. I think that was Derrick Bulsa's deal
12 there.

13 Q And do you recall whether he was -- actually went
14 through an arraignment on that charge or anything prior?

15 A I do not recall. I'm sorry.

16 Q Okay. Do you, do you remember whether there was any
17 discovery on that -- on the stalking charge?

18 A There was a lot of discovery, and I made copies of it,
19 and I sent it to Mr. Hemphill. I will say that Mr. Hemphill
20 was a good client. I talked to him. He was very open with
21 me. We would communicate freely. We talked about every
22 aspect of everything. He was a very polite client, and I
23 have nothing against him whatsoever, but we had free
24 communication between us.

25 Q What was that last part?

Roger Poole - Direct examination
by Mr. Richey

1 A Free and thorough communication between us.

2 Q So, do you believe that he understood the facts that
3 would make this stalking?

4 A Yes, sir, the, the alleged victim in the case was a
5 former girlfriend.

6 Q Uh-huh. (Affirmative).

7 A And also a witness in the case was the girlfriend's
8 daughter. Both of whom, I think, at one time lived in
9 Greenville --

10 Q Okay.

11 A -- and moved to Spartanburg in order to get away.

12 Q And this was an assault and battery of the case --
13 assault and battery first, correct?

14 A Yes, sir.

15 Q Were, were any of the alleged victims injured to any
16 point?

17 Do you recall?

18 A Luckily, they were not although there were primarily
19 females and children inside the house when the discharging
20 was going on.

21 Q And so they got assaulted, but is that -- was there any
22 evidence that there was a battery occurred that you recall?

23 A That's correct.

24 Q Okay. So, there's no evidence of a battery.

25 Okay. Thank you. No other questions.

Roger Poole - Cross-examination
by Ms. Giovanoli

1 THE COURT: Yes, ma'am.

2 MS. GIOVANOLI: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. GIOVANOLI:

5 Q Can I just get a little background information?

6 How long have you been practicing criminal law?

7 A Really too long. 38 years.

8 Q Okay. And is that -- all of that been criminal law?

9 A Mostly.

10 Q Okay. And you're still currently employed with the
11 Public Defender's Office?

12 A I am right now.

13 Q And you were at the time of this case?

14 A That's correct.

15 Q Can you -- let's go to the discussion regarding
16 sentencing.

17 So, you had kind of an overall conversation with him
18 regarding the minimums and the maximums of each charge he
19 was facing.

20 Is that correct?

21 A Certainly. That's wrote in what we do.

22 Q Okay. Did you get his hopes up in anyway that he would
23 get probation for all these charges?

24 A I tried not to get anybody's hopes up because that can
25 be devastating to them. I say we can do this, we can ask

Roger Poole - Cross-examination
by Ms. Giovanolì

1 for this and that, and all that.

2 Q Did you tell him that probation was likely or even
3 guaranteed?

4 A I don't remember that type of language.

5 Q Did you discuss with him concurrent versus consecutive?

6 A Yes.

7 Q And regarding the maximum that he could face, what,
8 what was your discussion regarding max time he could face?

9 A Well, just apply the arithmetic to it. You know,
10 multiply the three indictments times what the maximum would
11 be and there you go. And then, at one time, I mean I don't
12 think six of the -- we had six indictments facing, facing us
13 at one time, and then I think three were dismissed as a
14 result of this plea. And, again, that's down from the total
15 of 12 to 13 warrants.

16 Q Regarding the discovery and State's evidence, did you
17 review it all with your client?

18 A Yes.

19 Q And after you reviewed it, did he want to pursue a
20 trial or did he want to get an offer?

21 A After we talked about everything, he -- I talked to him
22 about his options, a jury trial, and all that type of thing.
23 He had an absolute right to it. I explained to him what a
24 guilty plea was, what an Alford plea was. He decided
25 that, if the charges -- some charges were going to be

Roger Poole - Cross-examination
by Ms. Giovanoli

1 dismissed, that he would go the Alford route.

2 Q Did you discuss with him the benefits that he was
3 receiving by having numerous charges dismissed in exchange
4 for his guilty pleas?

5 A Oh, yes.

6 Q With regard to the -- you were talking about the
7 evidence. Some of the evidence was that there were six
8 different shooting, shooting incidents at the victim's home,
9 and the casing there matched a gun that was found in the
10 defendant's house.

11 Is that correct?

12 A Uh-huh. (Affirmative).

13 Q And then also that he lived in Greenville during the
14 time of the incidents. His cell phone was pinged off of
15 Spartanburg County towers showing that he was in that
16 location circumstantially.

17 A A search warrant was obtained, and the, as a result of
18 the execution of that search warrant, the gun and the phone,
19 I do believe, were obtained, and the phone matched the phone
20 that -- from which data had been received at one of the --
21 some of the cell towers.

22 Q And was there any other cell phone evidence regarding
23 text messages?

24 A There were some text messages I think, and I think that
25 might be the one I'm talking about.

Roger Poole - Cross-examination
by Ms. Giovanoli

1 Q Weren't they threatening text messages to the victim?

2 A I think they were, but the -- a phone had attempted --
3 it appeared to have, have been attempted to be destroyed,
4 but they were able to obtain certain information from it.

5 Q And the Applicant brought up that he was later
6 indicted, directly indicted, for stalking.

7 Is that something unusual, to have a later direct
8 indictment come?

9 A No.

10 Q Okay. And so did you review the indictment?

11 A Yes.

12 Q And did you discuss the charges, the stalking charge,
13 with the Applicant?

14 A Yes.

15 Q And you reviewed the discovery regarding the stalking
16 with the Applicant?

17 A Yes, sir. Yes, ma'am.

18 Q And whose decision was it to plead guilty under Alford,
19 yours or the client?

20 A It was Mr. Hemphill's.

21 MS. GIOVANOLI: Beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 Q And in your review of the indictments, you didn't
25 notice any discrepancies?

Roger Poole - Redirect examination
by Mr. Richey

1 A Not to my recollection.

2 MS. GIOVANOLI: Okay. I have no further questions.

3 Thank you, Mr. Poole.

4 MR. RICHEY: One moment, Your Honor.

5 THE COURT: Yes, sir.

6 (Pause.)

7 REDIRECT EXAMINATION

8 BY MR. RICHEY:

9 Q Mr. Poole, just one question.

10 On this identification, there were other
11 identifications and descriptions given in this case to the
12 people who had done this, correct?

13 A I'm sorry. I don't understand the question.

14 Q During -- okay. During the time of the investigation
15 of this case, there were other identifications given to
16 people who had done this other than Mr. Hemphill?

17 A There may have been. I don't recall that right now
18 though.

19 Q Okay. Thank you, sir.

20 A Yes, sir.

21 MS. GIOVANOLI: And just briefly.

22 RECROSS EXAMINATION

23 BY MS. GIOVANOLI:

24 Q Was the State's theory that he may have instructed
25 other people to go shoot at the victim's house?

Roger Poole - Recross examination
by Ms. Giovanoli

1 A Yes.

2 Q Thank you. Nothing further.

3 THE COURT: Anything else?

4 MR. RICHEY: No other questions.

5 THE COURT: Okay. May this witness be excused?

6 MS. GIOVANOLI: Yes, Your Honor. No objection---

7 MR. RICHEY: Without objection.

8 MS. GIOVANOLI: ---from the State.

9 THE COURT: Okay. Thank you, Mr. Poole.

10 THE WITNESS: Thank you.

11 THE COURT: You may be excused, sir.

12 THE WITNESS: Thank you.

13 THE COURT: Anything else, counsel?

14 MR. RICHEY: No other witnesses, Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. GIOVANOLI: And there's no witnesses from the

17 State, Your Honor.

18 THE COURT: Okay.

19 MS. GIOVANOLI: But, at this time, I have a motion if
20 you would entertain, for a directed verdict only on certain
21 allegations for which no evidence was presented.

22 THE COURT: Counsel, do you-all want to do brief
23 closings?

24 MS. GIOVANOLI: Sure. I mean---

25 THE COURT: Okay.

1 MS. GIOVANOLI: It's your case.

2 THE COURT: I'm happy to hear from you if you'd like
3 to.

4 MR. RICHEY: No, Your Honor.

5 THE COURT: Okay.

6 All right. Yes, ma'am.

7 MS. GIOVANOLI: Okay. So, at the -- the state would
8 move for a directed verdict for the allegation of a failure
9 to appeal from the guilty plea. The record shows that
10 counsel did file an appeal and that appeal was dismissed,
11 not for being untimely, but just because there was an
12 insufficient basis.

13 And also, with regard to a Brady violation, that the
14 state did not disclose any discovery regarding the stalking,
15 there was no evidence presented to that effect. Applicant
16 essentially failed to meet his burden of proof on that. So,
17 we would move to have that allegation dismissed, and that's
18 it.

19 THE COURT: Okay. Thank you.

20 MR. RICHEY: Judge, I'll respond to that one about the
21 stalking.

22 I think there was testimony that we asked him did he
23 receive the discovery cause we never got it. So, I don't
24 think, in terms of there was no evidence presented on the
25 Brady issue, it was presented that counsel did not provide

1 us with the discovery.

2 THE COURT: Yes, sir.

3 Anything else?

4 MS. GIOVANOLI: Nothing further.

5 MR. RICHEY: No, ma'am.

6 THE COURT: Okay. Does that conclude the hearing?

7 MS. GIOVANOLI: Yes, ma'am.

8 MR. RICHEY: Yes, ma'am.

9 THE COURT: All right.

10 Okay. Mr. Hemphill, sir?

11 THE APPLICANT: Yes, ma'am.

12 THE COURT: I want you to understand that I have the

13 transcript from your guilty plea. I have copies of the

14 indictments and the sentencing sheets. I also have

15 discovery materials. And so I -- and I have your

16 Application, sir, and other documents. I want to review all

17 that before I issue my decision.

18 The way this works is several of these hearings are set

19 each day, and so there's really not an opportunity for me to

20 preview the information. I'll review it as I'm hearing it

21 from you. And so I really do want to take my time and

22 review it all. I hope you understand that, sir.

23 THE APPLICANT: Yes, ma'am.

24 THE COURT: I know it's important to you, and I take it

25 very seriously. I wish you the best of luck. I will be

1 issuing instructions and, Mr. Richey and Ms. Giovanoli, will
2 be getting a copy of that. And so you will hear from Mr.
3 Richey after I, I issue my decision, sir.

4 THE APPLICANT: Okay.

5 THE COURT: Good luck to you.

6 THE 'APPLICANT: Thank you.

7

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9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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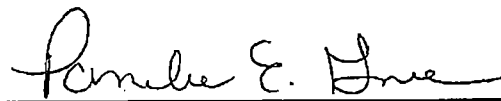
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 29th day of January, 2018.

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

April 20th, 2018

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Johnny James Hemphill, #141723,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

2017-CP-42-1000

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 MAR 19 PM 12:04
M. HOPE BLACKLEY

This matter comes before the Court by way of an application for post-conviction relief filed on March 27, 2017 by Johnny James Hemphill (Applicant). Respondent made its Return requesting an evidentiary hearing be convened. An evidentiary hearing into the matter was convened on January 29, 2018, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Valerie Garcia Giovanoli, Esquire, of the South Carolina Office of the Attorney General, represented Respondent.

Applicant testified on his own behalf. Applicant's plea counsel, J. Roger Poole, Esquire, also testified. This Court had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, the transcript from Applicant's guilty plea, the PCR application, and Respondent's Return. Following a review of all materials, testimony, and evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In December 2015, the

Spartanburg County Grand Jury indicted Applicant for six counts of discharging a firearm into a dwelling (2015-GS-42-5205, -5206, -5207, -5208, -5209, -5210), six counts of attempted assault and battery in the first degree (2015-GS-42-5211, -5212, -5213, -5214, -5215, -5216), and one count of stalking (2015-GS-42-5217). Assistant Public Defender Roger Poole represented Applicant. Deputy Solicitor Derek Bulsa prosecuted the case. On March 29, 2016, Applicant pleaded guilty as indicted, pursuant to Alford¹, to one count of discharging a firearm into a dwelling (2015-GS-42-5208), one count of attempted assault and battery in the first degree (2015-GS-42-5214), and one count of stalking (2015-GS-42-5217) in exchange for all other counts being dismissed (2015-GS-42-5205, -5206, -5207, -5209, -5210, -5211, -5212, -5213, -5215, -5216) before the Honorable J. Mark Hayes, II. Judge Hayes sentenced Applicant to imprisonment for concurrent terms of ten years for assault and battery in the first degree and five years for stalking with a consecutive term of ten years for discharging a firearm into a dwelling.

Applicant filed a timely notice of appeal. On August 11, 2016, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was returned to the circuit court on August 31, 2016.

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

1. "Ineffective Assistance of Counsel"
 - a. Plea counsel's "performance during Alford Plea was both unreasonable and prejudicial.
 - b. There was a conflict of interest between Applicant and plea counsel because plea counsel was sympathetic toward saving the court and the State money by entering an Alford Plea.
 - c. Plea counsel was sympathetic to the State's case.
 - d. Applicant plead guilty on the bad advice of plea counsel
 - e. Plea counsel failed to advocate on Applicant's account concerning

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

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SPARTANBURG COUNTY
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K. HOPE BLACKLEY

circumstantial evidence and failed to challenge the State's circumstantial evidence.

- f. Plea counsel failed to subject the State's case to adversarial testing.
- g. Plea counsel showed toward Applicant deficient duty of loyalty, trustworthiness, "the guiding hand of counsel," and failure to advocate on Applicant's behalf.
- h. Plea counsel showed through ineffective assistance of counsel that he felt Applicant should be convicted no matter what the law said or which of Applicant's rights he violated.
- i. "The totality of conflict of interest in the Seventh Judicial Circuit Public Defender Office."
 - i. There is no true bill stamp on indictments Applicant plead guilty to, even though the State proceeded with true billed indictments, showing that the public defender office was sympathetic with the State's case.
- j. Plea counsel did not uphold duty of loyalty by not upholding duties to act as an adversary and to operate free of conflict of interests.
- k. Seventh Judicial Circuit Public Defender Office failed to act as a reasonable, diligent, and professional advocate by showing "sympathy and assistance for the State's case."
- l. Plea counsel failed to present to the court Applicant's motion for speedy trial, which Applicant wrote when he was represented pro se.
- m. Plea counsel failed to present Applicant with indictment 2015-GS-42-5217 (stalking).
- n. Plea counsel failed to have a competency hearing when there was reasonable grounds to question Applicant's competency at the time of trial.
- o. Applicant was denied the right to a speedy trial.
 - a. Plea counsel failed to present to the court Applicant's motion for speedy trial, which Applicant wrote when he was represented pro se.

2. "Involuntary guilty plea Counsel"

- a. If plea counsel had told Applicant of due process and equal rights protections, Applicant would have gone to trial.
- b. If plea counsel had told Applicant that indictment 2015-GS-42-5217 (assault and battery, first degree) had two different dates and no "true bill" stamp, even though Applicant did not waive presentment to the grand jury, Applicant would have gone to trial.

3. Due Process Violation Involuntary guilty plea Counsel"

- a. The prosecutor appeared as the sole witness before the grand jury, which is not allowed.

4. Brady violation Violation

- a. The State did not disclose a motion of discovery or any evidence for indictment 2015-GS-42-5217 (stalking).

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SPARTANBURG COUNTY
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M. HOPKINS
DAVID A. GALEY

- b. Plea counsel failed to present Applicant with indictment 2015-GS-42-5217 (stalking).

5. Failure to Appeal from a Guilty Plea

- a. Plea counsel failed to file a direct appeal.

At the start of the hearing, Respondent request Applicant clarify what allegations he would be pursuing. Applicant indicated he would be pursuing his claims of ineffective assistance of counsel, that his guilty plea was involuntary and unreasonable, and that he was never arraigned on the direct indictment for stalking.

SUMMARY OF TESTIMONY

I. Applicant testified to the following:

Applicant testified the case against him was a circumstantial evidence case because there were no eye witnesses to the incidents. He discussed the circumstantial evidence with Counsel before deciding to plead pursuant to Alford. The discussions with Counsel involving probation were a basis for his decision to plead guilty. He was charged with stalking eight months later after his original arrest. He was directly indicted for stalking and claims he was never arraigned on that charge. Applicant claims he is innocent and now believes he would have won a jury trial. He asserts he only pled guilty based on discussions he had with Counsel. He acknowledged he potentially faced 125 years.

II. Counsel testified to the following:

Counsel has been practicing criminal law for 38 years. He is currently, and was at the time he represented Applicant, an Assistant Public Defender. Counsel testified he discussed the "whole spectrum" of sentencing with Applicant prior to him pleading under Alford. He discussed the minimum probation sentence as well as the maximum time he was facing, which if ran consecutively was 125 years. Counsel did not, in any way, promise Applicant probation or

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SPARTANBURG COUNTY
2018 MAR 19 PM 2:04
M. HOPE BLACKLEY

get his hopes up that he would likely receive probation. Counsel advised Applicant to plead under Alford because he was receiving the benefit of Alford, many charges would be dismissed, and the circumstantial evidence was overwhelming and would lead to a likely conviction at trial. Counsel explained that although the evidence was all circumstantial, it was a strong case of circumstantial evidence. The evidence included Applicant's cell phone being pinged off of cell towers in Spartanburg at the time of the shootings, although Applicant lived in Greenville. The victims in the case had actually moved to Spartanburg from Greenville in an effort to get away from Applicant. Additionally, the victim received threatening text messages from Applicant which were found on Applicant's cell phone. Lastly, the shell casings from the six different shooting incidents all matched a gun found in Applicant's possession. Although security cameras captured someone during one shooting incident that was not Applicant, the State's theory was Applicant sent others to shoot up the victim's house at his direction.

Although Counsel did not recall if Applicant was formally arraigned on the stalking charges, he did review the indictments and the charge with Applicant. The charge arose from the same evidence and set of facts. After discussing the pros and cons of pleading under Alford, Applicant made the decision to plead.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Specifically, this Court finds Counsel's testimony was credible. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was

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prejudiced by any deficiency. A post-conviction relief application is not a venue for questioning each and every action of counsel. Rather, an applicant must demonstrate by a preponderance of the evidence that counsel was deficient. Applicant has failed to do so.

Ineffective Assistance of Counsel

In his amended application filed by PCR counsel, Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, an 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 (1985).

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton, 376 S.C. 138, 654 S.E.2d at 874 (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, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, 376 S.C. 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 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, 528 S.E.2d 728, 731 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal

cases.” Hill, 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.

Applicant alleged Counsel had some conflict of interest that prevented him from adequately representing him. Applicant also claimed Counsel was sympathetic to the State's case. Applicant has failed to meet his burden on these claims. Applicant has provided no evidence of any true conflict of interest or evidence of Counsel's sympathy for the State's case.

Applicant also alleged Counsel failed to have Applicant arraigned on his charges. An arraignment consists of calling the defendant to court, reading the indictment to the defendant so that the defendant may understand the charge against the defendant, and requesting that the defendant enter an initial plea of guilty or not guilty. See State v. Brock, 61 S.C. 141, 39 S.E. 359 (1901). Arraignment is neither a constitutional nor a statutory right, but merely a formality. Thus, arraignment is subject to waiver. State v. Ariail, 311 S.C. 35, 426 S.E.2d 771 (1993). “[I]n proceeding to trial, defendant waived any objections to the lack of his arraignment.” The United States Supreme Court has held that arraignment is a “mere formality” so that the failure to arraign does not result in a due process violation “so long as it appears that the accused had sufficient notice of the accusation and an adequate opportunity to defend himself in the prosecution.” Garland v. Washington, 232 U.S. 642, 645 (1913).

Because the discovery rules ensure that a defendant has notice of the charge or charges and the docket management system insures proper notification of court appearances, the

necessity for formal arraignment is obviated. In fact, it is quite common for a defendant to waive arraignment. Aside from not finding Applicant's claims credible that he was unknowingly denied arraignment, the underlying purpose of arraignment was served by alternative means; namely, Applicant was represented by Counsel who reviewed the indictments, evidence, and discovery surrounding the stalking charge with Applicant and discussed his options. Most importantly, Applicant was on notice of the accusations and evidence against him. Therefore, this Court cannot find Applicant was either denied due process of the law or that Counsel was ineffective for failing to ensure Applicant was formally arraigned. As noted above, waiver is common and an attorney's performance is based on a standard of reasonableness in light of professional norms. Therefore, it would have been reasonable to waive formal arraignment and ensure Applicant was aware of the charges and had a sufficient opportunity to defend himself.

Applicant also alleged Counsel failed to bring Applicant's *pro se* motion for a speedy trial to the court's attention, failed to challenge the State's case, failed to present Applicant with a stalking indictment, and failed to request a competency evaluation. However, Applicant has wholly failed to prove these allegations by a preponderance of evidence. In fact, the Court has reviewed the entire record and finds it discredits Applicant's claims. Based on the record and the testimony from the hearing, this Court finds Counsel represented Applicant diligently. Counsel believed the case against Applicant was strong, despite being made up of circumstantial evidence. Counsel reviewed each indictment with Applicant and thoroughly discussed the case and Applicant's options with him.

This Court also finds the record further supports Applicant's plea was made knowingly, voluntarily and upon the sound advice from Counsel. This Court finds the transcript of the plea hearing is thorough as to the Applicant's understanding of his right to a trial and his willingness

to forgo the trial, and further, Applicant stated that he understood the potential sentence on each offense, and stated that he agreed with the factual recitation of the offenses by Deputy Solicitor Bulsa. Applicant has failed to give a sufficient reason to now be allowed to depart from the truth of his statements from his plea hearing. Counsel advised Applicant to plead under Alford because he was receiving the benefit of Alford, many charges would be dismissed, and the circumstantial evidence was overwhelming and would lead to a likely conviction at trial.

Likewise, Applicant has failed to present any evidence to meet his burden of proving the remainder of his allegations of prosecutorial misconduct, due process violations, and failure to appeal a guilty plea.

CONCLUSION

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

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 16 day of March, 2018.



GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 MAR 19 PM 12:04
M. HOPE BLACKLEY

Spartanburg County

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



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

M. Hope Blackley
Clerk of Court

March 19, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Johnny James Thompson
#141723

Applicant

7TH JUDICIAL CIRCUIT

CASE # *2018CP42 1000*

vs.
Stille

Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the
In this action dated *3-16* *2018* on *3-19-18*

Clerk Dismissed w/ prejudice

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

Valerie Constanoti
Heather McCoy
Andrew Pickney

3-19-18

(Date)

Carrie Dean
(Signature)

WITNESSES

SCSO

Kevin L. Lott

ARREST WARRANT NUMBER

2015A4210101432

ACTION OF GRAND JURY

Lehto
Foreperson of Grand Jury
Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

15-GS-42-5205

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE

vs.

Johnny James Hemphill

*NP-pled to related charges
3/29/16 Det B. B. Baker*

Indictment for

DISCHARGING FIREARM
INTO DWELLING

SC Code:16-23-440(A)

CDR Code: 0052

Class FEL/E

FILED
CLERK OF COURT

2015 DEC -9 PM 2:49

M. HOPE BLACKLEY

M. HOPE BLACKLEY

2016 MAR 30 AM 11:42

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

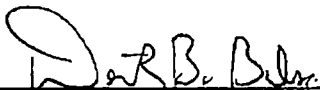
INDICTMENT

At a Court of General Sessions, convened on DEC 04 2015 the
Grand Jurors of Spartanburg County present upon their oath:

DISCHARGING A FIREARM INTO A DWELLING

That Johnny James Hemphill did in Spartanburg County on or about April 1, 2015 discharge or cause to be discharged unlawfully a firearm at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons located at [REDACTED], Spartanburg, South Carolina, in violation of §16-23-440(A) of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin R. [Signature]

ARREST WARRANT NUMBER

2015A4210101435

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-GS-42-5206

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE

vs.

Johnny James Hemphill

NP-pled to related charges
3/29/16 Det B. Bulsa

Indictment for

DISCHARGING FIREARM
INTO DWELLING

SC Code:16-23-440(A)

CDR Code: 0052

Class FEL/E

FILED
CLERK OF COURT

2015 DEC -9 PM 2:49

M. HOPE BLACKLEY

2016 MAR 30 AM 11:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

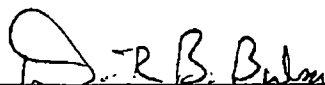
DEC 04 2015

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

DISCHARGING A FIREARM INTO A DWELLING

That Johnny James Hemphill did in Spartanburg County on or about March 24, 2015 discharge or cause to be discharged unlawfully a firearm at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons located at [REDACTED], Spartanburg, South Carolina, in violation of §16-23-440(A) of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

[Signature]

ARREST WARRANT NUMBER

2015A4210101440

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-CS-42-5208

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE

vs.

Johnny James Hemphill

Indictment for

DISCHARGING FIREARM
INTO DWELLING

SC Code:16-23-440(A)

CDR Code: C052

Class FEL/E

2015 DEC -9 PM 2:49

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 04 2015

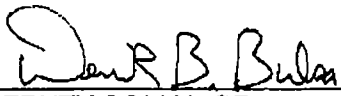
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

DISCHARGING A FIREARM INTO A DWELLING

That Johnny James Hemphill did in Spartanburg County on or about October 5, 2014 discharge or cause to be discharged unlawfully a firearm at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons located at [REDACTED] Spartanburg, South Carolina, in violation of §16-23-440(A) of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin R. [Signature]

ARREST WARRANT NUMBER

2015A4210101439

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **15-GS-42-5209**

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE

vs.

Johnny James Hemphill

*NP- pled to related charges
3/29/16 Det B Bulx*

Indictment for

DISCHARGING FIREARM
INTO DWELLING

SC Code: 16-23-440(A)

CDR Code: 0052

Class FEL/E

FILED
CLERK OF COURT
SPARTANBURG, S.C.

2015 DEC -9 PM 2:49

M. HOPE BLACKLEY

2016 MAR 30 AM 11:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 04 2015

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

DISCHARGING A FIREARM INTO A DWELLING

That Johnny James Hemphill did in Spartanburg County on or about July 13, 2014 discharge or cause to be discharged unlawfully a firearm at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons located at [REDACTED] Spartanburg, South Carolina, in violation of §16-23-440(A) of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin L. Lott

ARREST WARRANT NUMBER

2015A4210101443

ACTION OF GRAND JURY

Lehto
Foreperson of Grand Jury
Date: DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-GS-42-5210

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE
vs.

Johnny James Hemphill

*MP - pleads related charges
3/29/16 Det B. Bullock*

Indictment for

DISCHARGING FIREARM
INTO DWELLING

SC Code: 16-23-440(A)

CDR Code: 0052

Class FEL/E

FILED

CLERK OF COURT

2015 DEC -9 PM 2:49

M. HOPE BLACKLEY

2016 MAR 30 AM 11:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 04 2015

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

DISCHARGING A FIREARM INTO A DWELLING

That Johnny James Hemphill did in Spartanburg County on or about June 2, 2014 discharge or cause to be discharged unlawfully a firearm at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons located at [REDACTED] Spartanburg, South Carolina, in violation of §16-23-440(A) of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin L. Soto

WARRANT NUMBER

2015A4210101433

ACTION OF GRAND JURY

Seh
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **13-GS-42-5211**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE
vs.

Johnny James Hemphill

*NP-related charges
3/29/16 Det B. Bullock*

Indictment for

ASSAULT AND BATTERY 1st Degree

SC Code: 16-3-600

CDR Code: 3412

Class FEL/E

FILED
CLERK OF COURT

2015 DEC -9 PM 2:49

M. HOPE BLACKLEY

FILED
2016 MAR 30 AM 11:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 04 2015

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY 1st Degree

That Johnny James Hemphill did in Spartanburg County on or about April 1, 2015 offer or attempt to injure Lisa Mcrae, the victim, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, in that he caused multiple gunshots to be fired into the dwelling the victim was occupying at [REDACTED], Spartanburg, SC, in violation of Section 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin Pote

WARRANT NUMBER

2015A4210101434

ACTION OF GRAND JURY

Lehto
Foreperson of Grand Jury
Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-GS-42-5212

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

**THE STATE
vs.**

Johnny James Hemphill

*NP - pled to related charges
3/29/16 Det B. Bulen*

Indictment for

ASSAULT AND BATTERY 1st Degree

SC Code: 16-3-600

CDR Code: 3412

Class FEL/E

CLERK OF COURT
SPARTANBURG COUNTY

2015 DEC -9 PM 2:50

M. HOPE BLACKLEY

2016 MAR 30 AM 11:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

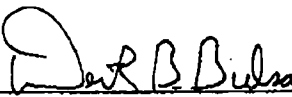
INDICTMENT

At a Court of General Sessions, convened on DEC 04 2015 the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY 1st Degree

That Johnny James Hemphill did in Spartanburg County on or about March 24, 2015 offer or attempt to injure Anguwana Williams, the victim, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, in that he caused multiple gunshots to be fired into the dwelling the victim was occupying at [REDACTED], Spartanburg, SC, in violation of Section 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin Gots

WARRANT NUMBER

2015A4210101437

ACTION OF GRAND JURY

DEC 04 2015

Lehto
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-GS-42-5213

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015 TERM

THE STATE
vs.

Johnny James Hemphill

*NP-pled to related charges
3/29/16 Det B. Bux*

Indictment for

ASSAULT AND BATTERY 1st Degree

SC Code: 16-3-600
CDR Code: 3412
Class FEL/E

CLERK OF COURT

2015 DEC -9 PM 2:50

M. HOPE BLACKLEY

FILED
2016 MAR 30 AM 11:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 04 2015

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

ASSAULT AND BATTERY 1st Degree

That Johnny James Hemphill did in Spartanburg County on or about February 21, 2015 offer or attempt to injure Anguwana Williams, the victim, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, in that he caused multiple gunshots to be fired into the dwelling the victim was occupying at [REDACTED], Spartanburg, SC, in violation of Section 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin L. [Signature]

WARRANT NUMBER

2015A4210101441

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 15-30-12-5214

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015 TERM

THE STATE
vs.

Johnny James Hemphill

Indictment for

ASSAULT AND BATTERY 1st Degree

SC Code: 16-3-600
CDR Code: 3412
Class FEL/E

2015 DEC -9 PM 2:50

H. HOPE BLACKWLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

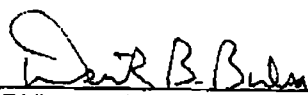
INDICTMENT

At a Court of General Sessions, convened on DEC 04 2015 the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY 1st Degree

That Johnny James Hemphill did in Spartanburg County on or about October 5, 2014 offer or attempt to injure Anguwana Williams, the victim, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, in that he caused multiple gunshots to be fired into the dwelling the victim was occupying at [REDACTED] Spartanburg, SC, in violation of Section 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin B. [Signature]

WARRANT NUMBER

2015A4210101438

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-GS-42-5215

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE
vs.

Johnny James Hemphill

*NP - pled to related charges
3/29/16 Det. B. Bullock*

Indictment for

ASSAULT AND BATTERY 1st Degree

SC Code: 16-3-600

CDR Code: 3412

Class FEL/E

FILED
CLERK OF COURT

2015 DEC -9 PM 2:50

M. HOPE BLACKLEY

FILED
2016 MAR 30 AM 11:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on DEC 04 2015 the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY 1st Degree

That Johnny James Hemphill did in Spartanburg County on or about July 13, 2014 offer or attempt to injure Lisa Mcrae, the victim, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, in that he caused multiple gunshots to be fired into the dwelling the victim was occupying at [REDACTED] Spartanburg, SC, in violation of Section 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

DeR. B. Baker
DEPUTY SOLICITOR

WITNESSES

SCSO

Kevin Gots

WARRANT NUMBER

2015A4210101442

ACTION OF GRAND JURY

Keptor
Foreperson of Grand Jury
Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **15-GS-42-5216**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

**THE STATE
vs.**

Johnny James Hemphill

*NP- pled to related charges
3/29/16 Det B. Bulm*

Indictment for

ASSAULT AND BATTERY 1st Degree

SC Code: 16-3-600

CDR Code: 3412

Class FEL/E

FILED
CLERK OF COURT

2015 DEC -9 PM 2:50

M. HOPE BLACKLEY

FILED
2016 MAR 30 AM 11:41
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

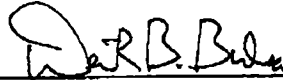
INDICTMENT

At a Court of General Sessions, convened on DEC 04 2015 the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY 1st Degree

That Johnny James Hemphill did in Spartanburg County on or about June 2, 2014 offer or attempt to injure Anguwana Williams, the victim, with the present ability to do so and the act was accomplished by means likely to produce death or great bodily injury, in that he caused multiple gunshots to be fired into the dwelling the victim was occupying at [REDACTED], Spartanburg, SC, in violation of Section 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

WITNESSES

SCSO

1. JEREMY B. BARNETTE

2. JEREMY BARNETTE

3. CLAD FOLEY

4. JEREMY BARNETTE

5. CLAD FOLEY

6. JEREMY BARNETTE

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 15 GS-42-5217

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE

vs.

Johnny James Hemphill

Indictment for

STALKING

SC Code: §16-3-1700

CDR Code: 2406

Class: MIS-C

FILED
CLERK OF COURT

2015 DEC -9 PM 2:50

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

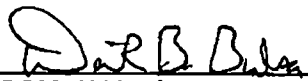
DEC 04 2015

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

STALKING

That Johnny James Hemphill, did in Spartanburg County between the dated of June 2, 2014 and April 2, 2015 engage in a pattern of conduct that served no legitimate purpose and was intended to cause and did cause Lisa McRae to fear: (1) death or the death of a family member; and/or (2) assault or assault of a family member; and/or (3) bodily injury or bodily injury to a family member; and/or (4) damage to her property or damage to the property of a family member , all in violation of §16-3-1700 & 16-3-1730, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


ASSISTANT SOLICITOR