

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Fairfield County

R. Knox McMahon, Circuit Court Judge

**RECEIVED**

OCT 15 2018

S.C. SUPREME COURT

BOYD WILLIAM ROWE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000437

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

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1 STATE OF SOUTH CAROLINA

2 -----x

3 BOYD WILLIAM ROWE,

4 Plaintiff,

5 Case No.

6 -against-

2014-GS-20-0191

7 STATE OF SOUTH CAROLINA,

8 Defendant.

9 -----x

10 May, 2016

11 Fairfield, S.C.

12

13 B E F O R E:

14 HONORABLE ROGER M. YOUNG, Judge.

15

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

17 RILEY J. MAXWELL, Esquire

18 Assistant Solicitor

19

20 DERRICK CHIARENZA, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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4	NO EXHIBITS RECEIVED		
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1 MR. MAXWELL: May it please the court.

2 THE COURT: Yes, sir.

3 MR. MAXWELL: Your Honor, this is Boyd Rowe. He  
4 is represented by Derrick Chiarenza. Mr. Rowe has  
5 been -- he was indicted for entering a financial  
6 institution with the intent to steal. Docket number  
7 2014-GS-20-0191. I drew a count two indictment for  
8 strong arm robbery. He is entering a plea to that.  
9 It carries up to 15 years and the State is asking for  
10 a 15-year sentence in this case.

11 THE COURT: So you are dismissing the entering the  
12 financial institution with intent to steal charge.

13 MR. MAXWELL: I think the way we do it is count  
14 two it acts like a lesser included offense using the  
15 same indictment number.

16 THE COURT: I don't know that I ever heard of  
17 doing that. You are taking one plea to two charges.

18 MR. MAXWELL: This is how we've always done it.  
19 When a lesser offense is not a lesser included offense  
20 we can draw up a count two indictment with the same  
21 indictment number. We do a sentencing sheet for just  
22 that count two indictment that is what he is pleading to  
23 and both are filed in the same folder at the clerk's  
24 office.

25 THE COURT: Which is accomplished by the same

1 thing. Waiving presentment to the grand jury?

2 MR. MAXWELL: On the strong arm, yes.

3 THE COURT: Everybody does something little  
4 different and I learn something new every week so that  
5 is this week's new thing.

6 All right. Mr. Boyd William Rowe, is that you/.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Rowe, you are here today, you got  
9 charged originally with entering a financial  
10 institution with intent to steal charge, and they are  
11 letting you to plead to strong arm robbery which is a  
12 zero to 15-year offense. I am told that you want to  
13 waive presentment to the Grand Jury on the strong arm  
14 robbery charge and your right to a jury trial; is  
15 that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Now, as I said you have the  
18 right to a jury trial. You give it up when you plead  
19 guilty. If you want a trial you stop me and we will  
20 arrange that for you. The State then has to present  
21 enough evidence to convince 12 jurors that you are  
22 guilty beyond a reasonable doubt. All 12 jurors would  
23 have to agree that you are guilty in order to convict  
24 you and if convicted you would have the right to  
25 appeal.

1           You could challenge the State's evidence, put  
2 up evidence of your own, testify if you want and if  
3 you don't want to testify the judge would instruct the  
4 jury not to hold that against you while they are  
5 deliberating.

6           Do you understand those rights?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: And you wish to give those rights up  
9 and plead guilty today?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: Are you pleading guilty to this charge  
12 because you are guilty of it?

13          THE DEFENDANT: Yes, I am guilty.

14          THE COURT: Are you under the influence of any  
15 drugs or alcohol today?

16          THE DEFENDANT: No. I just take medication.

17          THE COURT: What do you take it for?

18          THE DEFENDANT: I take tramadol. I had a brain  
19 operation and I take elavil. The doctor put me on  
20 medication and I was -- I was -- I had a brain  
21 operation and I take -- I was on dilaudid and  
22 gabapentin but I had to quite taking it because it  
23 made me like a zombie, and I take lomax. I'm having  
24 problems with my prostate. I can't urine and stuff.

25          Yeah, I take medication because I have bad

1                   migraines and stuff like that.

2                   THE COURT: Let's just go over that for a minute  
3 because I need to make sure you understand and you  
4 know what you are doing and that you are not under the  
5 influence of your drugs. I am not trying to get you  
6 to change your mind I just have a duty to make sure  
7 that you understand what you are doing here today.

8                   How long ago did you have this brain operation.

9                   THE DEFENDANT: About two and a half years ago.

10                  THE COURT: Okay, and at the time you did it you  
11 were taking medication?

12                  THE DEFENDANT: Yes, sir. As we go on my lawyer is  
13 going to tell you that my mom is about to pass away.  
14 She has got a Hepatitis C and I was going through some  
15 problems around my house and I caught my sister  
16 smoking crack in the house. That is what caused one  
17 problem, and my girlfriend is an alcoholic and she  
18 went to the hospital and stuff like that. I was in  
19 depression of where my heart was on the floor. Do you  
20 know what I am saying?

21                  THE COURT: Let's talk about the medication that  
22 you are taking now. You are taking prescription  
23 medication?

24                  THE DEFENDANT: Yes, sir.

25                  THE COURT: And they give it to you at the jail?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And when is the last time you took  
3 some?

4 THE DEFENDANT: This morning. A little while ago.

5 THE COURT: And you took what they gave you in  
6 the prescribed amount.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, when you take that medication do  
9 you remember what it is call.

10 THE DEFENDANT: Tramadol.

11 MR. CHIARENZA: Tramadol.

12 THE COURT: And that's for what?

13 THE DEFENDANT: For migraine headaches I get.

14 THE COURT: Are you having a migraine now?

15 THE DEFENDANT: I am under a lot of pressure right  
16 now, yes. I have been in the cell for 13 months by  
17 myself and I am about to go crazy in there. That's  
18 why I take elavil and stuff.

19 THE COURT: Well, I know. I don't suffer from  
20 migraines but my son has them occasionally and he  
21 tells me he can't do anything but go lay down. There  
22 is a difference between having a migraine right now  
23 and just saying well, I am under a lot of pressure.

24 Are you having just stress issues right now or --

25 THE DEFENDANT: I have been having stress issues

1 for years.

2 THE COURT: I understand. Are you having a  
3 migraine headache right now that is the kind you  
4 usually have where you just have to go lay down in a  
5 quiet room some place.

6 THE DEFENDANT: It's not that bad. I have them all  
7 the time so I just try to deal with it.

8 THE COURT: Okay. So you are taking medicine for  
9 that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, and you took that medication  
12 this morning?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You said earlier you took some that  
15 kind of left you in a zombie state?

16 THE DEFENDANT: I'm sorry.

17 THE COURT: You are not taking that any more, are  
18 you?

19 THE DEFENDANT: No.

20 THE COURT: This medicine doesn't do that to you,  
21 does it?

22 THE DEFENDANT: No, I have been taking elavil. The  
23 doctor prescribed me elavil.

24 THE COURT: So the medication you are taking right  
25 now does it help you deal with things better or does

1 it make it worse?

2 THE DEFENDANT: It helps me.

3 THE COURT: So today you understand why you are  
4 here in court?

5 THE DEFENDANT: Yeah.

6 THE COURT: And do you understand what you are  
7 doing in Court?

8 THE DEFENDANT: Yeah, I know I walked in to the  
9 bank and took money over the counter.

10 THE COURT: Well, we will get to that in a minute,  
11 but as far as the proceedings go do you understand  
12 what the proceedings are here today? That is a guilty  
13 plea. Do you understand that?

14 THE DEFENDANT: Yes. I am pleading guilty. Yes,  
15 sir.

16 THE COURT: And this is something that you  
17 understand why you are here and what you are doing  
18 today, is that right?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Now, do you need any more time  
21 with your lawyer?

22 THE DEFENDANT: No.

23 THE COURT: Are you satisfied with his  
24 representation?

25 THE DEFENDANT: (Shaking head in the negative). I

1 just --

2 THE COURT: I need you say out loud whether or  
3 not you are because one of the things that people do  
4 is after they go to jail then they start thinking  
5 about, well, I didn't get the right sentence or I  
6 didn't get the right deal and I should have had a  
7 better lawyer. I want to know right now if you think  
8 your lawyer should have done something then we can  
9 deal with it. If we got to do something down the road  
10 road and do it all over again then I want to avoid  
11 doing that.

12 THE DEFENDANT: Your Honor, I don't want to make  
13 the solicitor or nobody mad at me because I got  
14 to plead down. I have to go with what he is going to  
15 ask so will I take the plea.

16 THE COURT: Tell me if you are disappointed  
17 with your lawyer?

18 THE DEFENDANT: Some things is he didn't even know  
19 my birth date. If he's going to help me he should  
20 already have everything written down. You know what  
21 I'm saying?

22 I will go ahead and plead, Your Honor. I just ask  
23 that you give me mercy.

24 THE COURT: We will get to that. But again, I got  
25 some questions I got to ask in order to make sure

1 you understand what you are doing because there are  
2 some consequences to it. Mainly you are going to  
3 prison. So first thing is going to happen if you go  
4 to prison somebody is going to put it in your mind,  
5 man, your lawyer didn't do you right and you need to  
6 file a PCR. So we are going to avoid that if we can.

7 If you ask your lawyer to do something and he  
8 refused to do it then I need to know about that.

9 THE DEFENDANT: Well, I felt he should have done a  
10 better job and got me a better sentence.

11 THE COURT: Well, I don't know that he could done  
12 some things like that but, if like for instance some  
13 times you go, well, here is a name of an alibi  
14 witness. I wasn't even there. It was not me. All  
15 right, and you gave him the name of somebody who can  
16 prove that you were somewhere else. Well, then he  
17 wouldn't be doing a good job if you gave him the name  
18 of somebody that can prove that you weren't there and  
19 he never went and talked with him. It is not either  
20 one of the situations, is it?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. So, kind of tell me what the  
23 nature is of the beef that you have with your lawyer  
24 today. That's what I need to get to the bottom of.

25 THE DEFENDANT: Well --

1 THE COURT: Because what I am getting at some  
2 times people have unreasonable expectations of what  
3 they think their lawyer can do for them. They are  
4 guilty, they did it and they think well, on TV lawyers  
5 get people off. Well, that isn't the real world, but  
6 if he hasn't done something that you want him to do,  
7 that's one thing. If you just think, well, I would  
8 like it if he had gotten me a better deal or may be he  
9 didn't interview these people or we have a defense and  
10 he is refusing to pursue it.

11 I want to know what the nature of your gripes are  
12 about your lawyer.

13 THE DEFENDANT: Your Honor, all I know is if I  
14 plead now to I get -- I will get it, but I don't want  
15 it be no more than what I am getting today.

16 THE COURT: Is that the only thing you have as a  
17 criticism of your lawyer?

18 THE DEFENDANT: Well, I'm just scared for if I  
19 don't take this either I get more time. I'm just  
20 scared.

21 THE COURT: I understand that, because I sure  
22 wouldn't want to be in your shoes but you are there.

23 THE DEFENDANT: Yes, sir. I would like to proceed  
24 with what I get today.

25 THE COURT: Did anybody promise you something in

1 order to get you to plead?

2 THE DEFENDANT: We they came to my house honestly I  
3 just opened the door, and Keith Lewis came to my house  
4 and four of them came. I just opened the front door  
5 and said I'm guilty. At first I talked to Keith Lewis  
6 he said he would help me out. I would get a lower  
7 sentence and stuff like that. Yeah, I'm guilty.

8 THE COURT: But for like today, has somebody  
9 said if you plead guilty today this is what your  
10 sentence is going to be? Did anybody tell you that?

11 THE DEFENDANT: No, sir. They just told me I  
12 would -- what he said, I would get what you give me so  
13 I don't want 30 years and they did knock it down.

14 THE COURT: Well, you are not facing thirty years  
15 you are facing up to 15. Now at some point I gather  
16 the State is making -- what is your recommendation?

17 MR. MAXWELL: The State is recommending a 15 year  
18 sentence.

19 THE COURT: Okay. So the State is going to ask me  
20 to give you 15 years. I don't know what I am going to  
21 give you yet because I haven't heard anything about  
22 the facts in the case so it might be 15 years. It  
23 might be something less. But nobody has promised you  
24 that if you plead guilty I will give you a certain  
25 number of years, have they?

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. All right. Did anybody threaten  
3 you to get you to plead?

4 THE DEFENDANT: I take this today.

5 THE COURT: Take it or today or the offer is off  
6 the table?

7 THE DEFENDANT: Get right back to where we are at  
8 the beginning.

9 THE COURT: So you potentially face more time.  
10 That is just normal. At some point the process has to  
11 end and you either go to trial or you plead guilty and  
12 your sentence to pleading guilty today is facing no  
13 more than 15 years.

14 THE DEFENDANT: Yes.

15 THE COURT: The penalty with intent to steal what  
16 was that?

17 MR. MAXWELL: I believe it is thirty years.

18 THE COURT: Thirty years. So you were facing 30  
19 years?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: So now the most you are facing is 15.  
22 Your lawyer did a good job there for you.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Cut that in half. That's your  
25 exposure. So, you were in a bad place. You are in a

1 little better place but you are still not in a place  
2 that you want to be here but --

3 THE DEFENDANT: I keep turning. I'm deaf in my  
4 left ear.

5 THE COURT: That's okay. I'm a little hard of  
6 hearing. If you need me to speak up I will. My wife  
7 is always saying she gets a little irritated because I  
8 am always asking her to repeat something so I don't take  
9 offense when people ask me to repeat it. Okay.

10 Now, how old are you?

11 THE DEFENDANT: I just turned 53 on the third of  
12 this month.

13 THE COURT: All right. And how far did you get in  
14 school?

15 THE DEFENDANT: I went to college and stuff.

16 THE COURT: All right. Now before you got arrested  
17 did you have a job?

18 THE DEFENDANT: Yes, sir. I been working for  
19 myself.

20 THE COURT: Doing what?

21 THE DEFENDANT: I rebuild houses, remodel houses,  
22 add on houses, build decks. Anything to do with  
23 building a house.

24 THE COURT: Are you married?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you have children?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right.

4 THE DEFENDANT: I have one daughter that's what's  
5 killing me right now.

6 THE COURT: Okay.

7 THE DEFENDANT: She is having problems with why I  
8 am in jail now.

9 THE COURT: I understand well. Some times these  
10 things cause a lot of consequences.

11 THE DEFENDANT: I messed up bad.

12 THE COURT: Now, does this gentleman understand  
13 what he is doing here today in your opinion?

14 MR. CHIARENZA: I believe so Your Honor. We've  
15 had extensive conversations about his case. I think  
16 on three occasions here at the courthouse including  
17 today, and also at the detention center.

18 I'm quite certain he understands what he is doing  
19 here today.

20 THE COURT: As far as his health issues any  
21 question in your mind about his ability to understand  
22 what he is doing or assist you today.

23 MR. CHIARENZE: Your Honor, Mr. Rowe does have  
24 numerous health issues. I don't think any of them rise  
25 to the level that would present him from understanding

1 what he is doing today. I think that what the Court  
2 has seen up to this point and what the Court will see  
3 during the course of this plea are really more than  
4 anything a lot of frustration on Boyd's part. A lot  
5 of regret. I know he is frustrated with me. I will  
6 address that at the proper time, but I've been doing  
7 this for 23 years and I have no concerns regarding his  
8 competency with him going forward.

9 THE COURT: Did you have any reason to think that  
10 his ability to understand the difference between right  
11 and wrong had anything to do with this his decision.

12 MR. CHIARENZE: No, Your Honor, and obviously that  
13 was something that had to be evaluated in sizing up  
14 this case, in fact at one point I discussed with  
15 solicitor Maxwell that I was pondering perhaps an  
16 evaluation, however I don't believe that I could have  
17 in good faith sought one for the purposes of seeking a  
18 defense.

19 I think just factually just the way the State would  
20 testify to the facts and events that occurred  
21 afterward also given that I think the State would in  
22 all likelihood be able to successfully argue that  
23 there was a degree of voluntarily intoxication based  
24 on as the Court will hear he took some medication on  
25 that day that was not prescribed. He shouldn't have

1           been taking. So, in short, Your Honor, no, I do not  
2           believe that it would have been fruitful to proceed to  
3           trial with any sort of a mental health or insanity  
4           defense or a guilty but mentally ill or by reason of  
5           insanity.

6           THE COURT: Fair enough. I find his plea is  
7           freely and voluntarily made.

8           MR. MAXWELL: This incident took place on May the  
9           8th of 2014 at the First Citizen Bank on Palmer Street  
10          in Ridgeway area in Fairfield County. About  
11          mid-afternoon a person described as a white male at  
12          the time approach a teller -- Fannie Ford was the  
13          teller, approached her window inside the bank and said  
14          give me all the money. No die pack or funny money.  
15          She complied. Provided him with the money. The  
16          person she described was a white male, gave a clothing  
17          description, picked up the money and left the store.  
18          Some other people in the store or in the bank saw him  
19          but I don't think they realized what was going on at  
20          the time. Some witnesses that were outside the bank  
21          said they saw someone running from the bank get into a  
22          white Chevrolet S-10 small truck and leave the area.  
23          They had that information. There was a surveillance  
24          video.

25          The white mail was dressed in jeans, camouflage

1 jacket, a hat and scarf over his face entering the  
2 bank. During this time they got some information I  
3 think may be they put picture of the surveillance  
4 video on the news. The next day or some time between  
5 the eight and the ninth they got the information that  
6 the person looked like Boyd Rowe.

7 There was \$1,934 taken. I forgot to include that  
8 fact. On the ninth, the day after the robbery,  
9 investigators went to Mr. Rowe's residence. He gave  
10 them consent to search the house. They did a search  
11 and weren't able to find anything. He was arrested.  
12 At that point in time they learned that he was with a  
13 Steve Wright. Earlier that day they spoke with Mr.  
14 Wright. Mr. Wright says that Mr. Rowe had approach  
15 him and asked him to borrow a truck from William  
16 Herzog (phonetics) and that Mr. Wright borrowed the  
17 truck from Mr. Herzog, gave it to Mr. Rowe. Mr. Rowe  
18 and Mr. Wright were together. At some point Mr.  
19 Wright says he was dropped off. Mr. Rowe went  
20 somewhere. Later on Mr. Rowe came and picked him up.  
21 He wasn't there during the bank robbery.

22 Mr. Herzog does own a small white Chevrolet S10  
23 pickup truck. He does say he did loan it to Mr.  
24 Wright. I think he said Mr. Rowe was with Mr. Wright  
25 at the time the truck was borrowed on the day of the

1 robbery. The same day, the 9th, that Mr. Rowe was  
2 arrested there was a phone call he made from the jail  
3 to an informant with the sheriff's department who  
4 after the phone call let the sheriff department know  
5 the contents of that phone call where Mr. Rowe told  
6 the the informant that the money was in his residence  
7 and gave her the exact location of the money.  
8 Sheriff's department with that information went and  
9 got a search warrant. Served the search warrant and  
10 ended up finding \$386 inside Mr. Rowe's residence. On  
11 the 12th of May Mr. Rowe contacted investigator and  
12 said he wanted to talk to them. He went and talked to  
13 them where he did admit to going in the bank and  
14 asking for money and saying don't give me any die  
15 packs or funny money and taking the money. He  
16 explained that he was high on pills at the time,  
17 smoked crack cocaine and that's what he used most of  
18 the money on.

19 I will give you his prior record at the appropriate  
20 time as well.

21 THE COURT: Go ahead.

22 MR. MAXWELL: 1990 Mr. Rowe went to federal prison  
23 for bank robbery. Served 106 months. 2001 he had  
24 another strong arm robbery. He received a 15-year  
25 sentence suspended to 12 years active and five years

1 probation. He had a purse snatching conviction in '01  
2 and since then he had some Magistrate level offenses  
3 other than those two incidents.

4 THE COURT: All right. Well, there is certainly a  
5 substantial factual basis for the plea. What would  
6 you like to tell me?

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

9 Your Honor, as I eluded to earlier, this is  
10 difficult for Boyd. He is frustrated today but I have  
11 done everything that I know to do to explain to him  
12 what our options were and why this is the best  
13 possible one, and I find myself having similar  
14 conversations. Certain things I've repeated during  
15 the course of representing my client and one thing  
16 that I've got to tell him is listen. You only have a  
17 couple of choices here and none of them are  
18 necessarily good. But there is one that is better  
19 than the other one. You may not get the choice you  
20 want, but this comes down to a question of taking the  
21 best choice that we have as an option.

22 I explained to Boyd that his choices currently were  
23 one, to opt for a trial. We discussed the fact in  
24 this case from day one, from the first moment I met  
25 him he never denied culpability and clearly never

1 denied it to law enforcement or at less ultimately  
2 admitted to law enforcement his involvement.

3 I've tried a number of cases. You can sort of see  
4 what you have and what you don't have and in this case  
5 certainly from the standpoint of his behavior on that  
6 day, at least it would have been testified to by the  
7 State, that there was a degree of planning in  
8 borrowing a vehicle. That there was at least the  
9 knowledge to go in and say don't give me any funny  
10 money. That there was an attempt to extricate himself  
11 from the scene and to basically flee the crime. So I  
12 think given all of those things and given what he was  
13 able to accomplish whether he was in his quote,  
14 unquote, right mind at the time, I do not believe the  
15 trial would have been the best possible option and  
16 tried to convey that notion to him all the while  
17 expressing my willingness to go to trial if that's  
18 what he actually wanted to do. But I don't believe  
19 Boyd ever wanted to try this case. In fact he is not  
20 looking for a jury trial. So then we get to the place  
21 where someone is looking for what may just not be  
22 possible under the circumstances. And I want to thank  
23 the solicitor's office in ultimately coming down to  
24 the plea offer that they made which is plead to the  
25 zero to 15 strong arm.

1 I think factually it is absolutely appropriate.  
2 Had this not been a financial institution this is a  
3 strong arm robbery. No threat was communicated in the  
4 theft. No weapon was brandished. He never made any  
5 sort of assault or even sort of assault gesture. By  
6 all accounts he walked in to the bank and said, give  
7 me the money and don't give me any funny money. Took  
8 the money and walked out.

9 I believe, obviously, an assault depends in great  
10 part on the perception of the person being encountered  
11 by the defendant. So I think again a strong arm  
12 robbery is appropriate charge given the facts, had  
13 this not been a financial institution they couldn't  
14 have charged him with anything other than that.

15 So then you deal with what is he going to get. Mr.  
16 Maxwell has done for us everything that he feels that  
17 is appropriate for him to do. Would I love to come in  
18 here with a cap of five, absolutely. Would Mr. Rowe  
19 have liked that, certainly. Can I necessarily find  
20 fault with the solicitor's office for not doing that,  
21 I don't believe so because they had a case that  
22 factually was strong for the State and they really had  
23 no obligation to negotiate with us and it has taken us  
24 a long time to get to this point. In fact this plea  
25 offer wasn't on the table until about last week or so

1 and I think that is a result of Mr. Maxwell and I  
2 going back and forth on this. My expressing to him  
3 some of my concern about Mr. Rowe. Some of his  
4 personnel hardships, which I will get in to in a  
5 minute.

6 So, here we are. Part of Boyd's frustration is  
7 today I had to give him that this is the time to fish  
8 or cut bait. We can either tell them we want a trial  
9 on this case or you are going to have to plead. I  
10 think he feels like I sprung that on him. That he  
11 hasn't had enough time to process that. To that  
12 extent he may have a legitimate gripe there. Perhaps  
13 he does. The only reason I say that is because again  
14 this offer was only made in the past week or so. I  
15 told Mr. Maxwell I'll bring him up here and I'd talk  
16 to him. I am certainly going to stress to him that I  
17 believe that the plea is in his best interest. We  
18 have been up here twice before with potential of a  
19 plea that didn't go. That he would certainly have  
20 family members it is not as if he's wandering the  
21 world alone. He does have six siblings. He is an  
22 integral part of the family. I have no doubt would  
23 have had family members here for you had this gone in  
24 that direction but on the one hand I wanted to do what  
25 I could to accommodate the State's patience in working

1 with us. I did not want to lose this offer and quite  
2 honestly I didn't know if Boyd would be in a position  
3 where we would be able to get this done today. So I  
4 didn't make any sort of herculean effort to gather in  
5 mitigating family witnesses, but I can tell the Court  
6 they have been in touch with me and I have absolutely  
7 no doubt that they would tell this Court the sort of  
8 things that the Court hears from loving family members  
9 that wants to tell you that Boyd is not a bad fellow.  
10 That he has been a big part of their family. That he  
11 has supported members of the family during the course  
12 of his life and that they would continue to support  
13 him whenever he would be released from prison.

14 THE COURT: I notice on the sentencing sheet this  
15 is marked non-violent?

16 MR. MAXWELL: It is not a violent offense under  
17 the statute. It is a crime of violence which pertains  
18 to a firearm possession statute which is most violent  
19 crimes and crimes of violence. I think strong arm is  
20 one of the crimes that is a crime of violence but not  
21 a violent crime.

22 THE COURT: So it wouldn't affect his parole  
23 eligibility? I wanted to make sure we got that  
24 covered in case he needed to explain that to him. All  
25 right.

1 MR. CHIARENZA: And I addressed that, Your Honor,  
2 and I told Mr. Rowe my understanding of this because  
3 of it's non-violent nature and that nobody can tell  
4 him when he may be paroled or be maxed out or be  
5 released, but my understanding generally speaking is  
6 he would be eligible after 25 percent of the court's  
7 sentence and max out around fifty percent of the  
8 court's sentence. But that was simply a guideline for  
9 him to go by.

10 In addition, Your Honor, just while we are on the  
11 subject of time, he has been incarcerated since he was  
12 arrested May 12th of last year. So that would give  
13 him one year and nine days in the Fairfield County  
14 Detention Center. I reviewed his warrant. As the  
15 Court heard from the State this incident occurred on  
16 May 9th. After a couple of days investigation it was  
17 May 12th when he was ultimately served with the  
18 warrant and that's the date that is indicated on the  
19 warrant. I certainly would believe he would be  
20 entitled to credit for that time with whatever  
21 sentence the Court were to give him.

22 Your Honor, the Court has heard his criminal  
23 history, and what I would point out in the time since  
24 the last offense that he got any time for up to 2014  
25 there were no convictions of any sort. They were

1 Magistrate level offenses in there. I believe that  
2 during that time Boyd was being a responsible  
3 individual. He was being productive. He will tell  
4 the Court what sort of work he was doing. He was  
5 doing construction. He was going up and down ladders.  
6 He was getting on roofs. He was doing heavy lifting.  
7 He was painting and did a lot of work for some  
8 respected folks here in the town of Winnsboro.

9 In about 2013 he was violently assaulted in  
10 Newberry County. His head was cracked wide open. He  
11 doesn't really know what the guy hit him with. All I  
12 know is that he was essential left for dead bleeding  
13 from the skull. He spent six weeks in intensive care.  
14 Ultimately an individual was charged with I believe  
15 assault and battery with intent to kill. For whatever  
16 reason that case was non-pros. He has never been  
17 contacted by victim's advocate on that case. He never  
18 had any contact with the Newberry County Solicitor's  
19 Office as to why they did with what they did with that  
20 case. My suspicion he was incarcerated. They weren't  
21 able to find him. They may have made a good faith  
22 effort to contact him. I don't know. Regardless of  
23 the fact, what that has left him with is more or less  
24 a soft skull, Your Honor. He has got a scar that is  
25 probably eight or ten inches long and suffered a very

1 severe skull fracture. He is on medication for that.

2 The Court has heard that he has got anxiety and  
3 migraines. He also is currently suffering from a  
4 hernia which he has been seeking regular medical  
5 treatment for as best they can deal with it at the  
6 detention center.

7 At the time of this incident, Your Honor, this was  
8 about a year or so after the assault, he was not  
9 working or really couldn't maintain any regular work  
10 because he was on drugs that as he told you made him  
11 like a zombie. Nobody wanted him working for them.  
12 He couldn't go up and down a ladder. He was a  
13 liability for himself and anybody he would be working  
14 for. That led to depression. That led to some issues  
15 with his home life. Then starts taking some xanax.  
16 He has denied any extensive use of controlled  
17 substance, but the Court has heard that is an  
18 allegation or part of what may have led up to this  
19 event.

20 Your Honor, at the very least he was on a  
21 combination of prescription medication and some other  
22 stuff he shouldn't have been taking and that was as a  
23 result of just really hitting rock bottom. Also at  
24 the time his mother had been diagnosed with Hepatitis  
25 C. She is terminal. She's in hospice care now.

1           Again, this is is part of his frustrations. He  
2           hasn't seen her since she has been incarcerated since  
3           May of last year. He has been waiting for a phone  
4           call from his sister that his mother has passed away.  
5           He can't even call his mom because from what he has  
6           told me he can't put monetary credit on his phone  
7           account because all -- any money he gets into his  
8           account goes towards his medical treatment. So, he  
9           knows that in all likelihood she would pass and he  
10          wouldn't get to say goodbye.

11          Part of his frustration with me is that there was  
12          nothing I could do to address that situation. I told  
13          him even on a hardship, some sort of one-day furlough  
14          for a funeral. We are not there yet. She could hang  
15          on for another month or two. So they can't let him  
16          out of jail to wait for a time when he can perhaps go  
17          to her funeral. We also had some disconnect on some  
18          other issues. I would like to think that we resolved  
19          those today, but again, I got thick skin. I am  
20          sympathetic with his frustration and his concern, but  
21          the bottom of my heart I think we are doing what is  
22          best for Boyd today, Your Honor, because again, this  
23          may be not a good choice but this is one that is  
24          better than the alternative, and I think the plea today  
25          certainly is better than the alternative; taking this

1 case to trial. We are just at the point where it had  
2 to get resolved otherwise this matter was going to be  
3 called for trial at the upcoming term of Court.

4 Finally, Your Honor, I would like Boyd to address  
5 the Court. I would just ask this Court to take into  
6 consideration he has got some serious medical needs.  
7 He is going to need probably medical care for the rest  
8 of his life with the condition that his skull is in.  
9 He is getting ready to go probably to the worse place  
10 possible for a guy who has got a soft head. Literally  
11 he has got a soft cranium and that's a great concern  
12 of his. He's worried about where he will be housed  
13 and what sort of people that he is going to encounter  
14 there. One blow to the head and that may be the end  
15 for him. I think that he still does have some  
16 psychiatric issues that are being attended to.  
17 Certainly with prescriptions he has got anxiety, he  
18 has got depression, but you know, so he has got the  
19 double whammy of physical issues and psychiatric  
20 issues as well. Does he necessarily deserve this  
21 Court's consideration for that? I would hope so, and  
22 I know the Court has to balance that out with his  
23 prior criminal history. He did go in to a financial  
24 institution. He did demand money and he did take it  
25 and carry it off, and the Court is well aware that was

1 not the first type of incident.

2 All I would ask, again, that we put that in  
3 perceptive. That a good many years transpired after  
4 he was, you know, originally convicted for that sort  
5 of thing and this tragedy occurred after his assault.  
6 His losing any real opportunity to keep gainful  
7 employment and his mother being diagnosed as  
8 terminally ill. And that's how he stands before you  
9 today.

10 THE COURT: All right. Well, Mr. Rowe, is there  
11 anything else you like to say?

12 MR. ROWE: Yes, sir. I wish I never took them  
13 xanax that day. I was under depression real bad  
14 because I help take care of her and I couldn't handle  
15 taking care of her. I couldn't see her laying there  
16 dying. So, I was underneath stress and depression. I  
17 also had a girlfriend where she was alcoholic. I had  
18 to put her in -- took her to the hospital in Columbia  
19 and they put her in alcohol center, Palmetto Springs  
20 near Richland Memorial. So, I was getting xanax for  
21 my depression and when I took them I had drank a  
22 couple of beers that morning with Steve Wright, and  
23 after that I don't remember nothing. And nobody wants  
24 to believe that though, but I was at my momma's house.  
25 I never dishonor my momma. I got to live with the

1 rest of my life my daughter, she just turned 16. I  
2 want to see her graduate from high school. I just ask  
3 the the Court to please have mercy on me. I would  
4 never have done what I did. I mean, I wasn't in my  
5 right mind. If I was in my right mind I would never  
6 have done that. I have put my sister out of the house  
7 for smoking crack cocaine before that. I even talked  
8 to Jimmy Barrels (phonetics) about it. He use to be  
9 the sheriff. I called him and put her out of the  
10 house and that's how things led to one thing or the  
11 other. But everybody thinks I was on drugs. If I  
12 never took those xanax I would never done what I done.  
13 I want you to have mercy on me, please sir. I don't  
14 even know your name.

15 THE COURT: Young.

16 THE DEFENDANT: Mr. Young. Please have mercy on  
17 me.

18 THE COURT: Well, you know, you have gotten a good  
19 break from the State and you have gotten as I learned  
20 about this case, excellent representation by your  
21 lawyer. I know you expressed at the beginning of this  
22 that you were frustrated with him, but you went from  
23 being charged with a crime that not only could you get  
24 thirty years for, it was no parole. And if you gotten  
25 thirty years which was entirely possible because you

1 got prior convictions for robberies, you would be  
2 looking at 27, 28 years in prison. Your lawyer got  
3 you a plea to a 15-year cap and you are parole  
4 eligible. So, you know, you should and I hope that  
5 you will in time think about what a good lawyer you  
6 have. So you got a good deal here because I have seen  
7 the State throw the book at people who have a lot less  
8 of a record than you got. And so, I sympathize with  
9 your health conditions and that, but, the fact of the  
10 matter is your prior record really does come back to  
11 haunt you. It is not that you just went that day and  
12 committed this offense. It is not the first time you  
13 done this either, and so that is really why I have to  
14 impose a 15-year sentence. So, that is the sentence  
15 of the Court, 15 years at the Department of  
16 Corrections. You get credit for the 374 days that you  
17 already have been in.

18 Good luck to you.

19 MR. CHIARENZA: Thank you, Your Honor.

20 MR. MAXWELL: Thank you, Your Honor.

21  
22 (END OF TRANSCRIPT)  
23  
24  
25

C E R T I F I C A T E

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I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Fairfield County, South Carolina, on the 21st day of May, 2015.

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

May 19, 2016

Aileen Butler

FORM 5

STATE OF SOUTH CAROLINA )

County of FARFIELD )

BOYD WILLIAM ROWE #273284 )  
Full name and prison number (if any) of Applicant )

v. )

State of South Carolina, )  
RESPONDENT. )

IN THE COURT OF COMMON PLEAS

2016-CP-20-082

APPLICATION FOR  
POST-CONVICTION RELIEF  
AND APPOINTMENT OF PCR  
COUNSEL

2016 MAR 7 PM 12:42  
FARFIELD COUNTY  
CLERK OF COURT  
BETHANN BECKHAM

INSTRUCTIONS B 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 RIDGELAND CORR. INST., POST OFFICE BOX 2039,  
RIDGELAND, SC 29936
2. Name and location of Court which imposed sentence COURT OF GENERAL  
SESSIONS
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) COMMON LAW ROBBERY, IND. 2014-GS-20-191

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) MAY 21, 2015
  - (b) FIFTEEN (15) YEARS (NON-VIOLENT)
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty INVOLUNTARILY AND UNINTELLIGENTLY
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
 

NO
- 8. If you answered Ayes@ to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered Ano@ to (7), state your reasons for not so appealing:
  - (a) PLEA COUNSEL DID NOT PRESERVE THE ISSUE FOR REVIEW.

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

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INVOLUNTARY AND UNINTELLIGENT PLEA
- (c) CONSTITUTIONAL DEPRIVATION

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

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

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

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

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

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

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

(c) the disposition thereof:

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

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

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

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

(d) the date of each such disposition:

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

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

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

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

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

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

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

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

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

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

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) PLEA COUNSEL DID NOT PRESERVE THE ISSUE BY OBJECTION
- (b) THIS ACTION IS FILED IN ACCORDANCE WITH 17-27-10
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. CHZARENZA LAW FIRM, DEREK S. CHZARENZA  
POST OFFICE BOX 340, LEXINGTON, SC 29071
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. PLEA PROCEEDING
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

VACATION OF THE CONVICTION AND SENTENCE.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
 )  
County of FAIRFIELD )

VERIFICATION

I, ROYD WILLIAM ROWE, 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.

Boyd Wm. Rowe

SWORN to and subscribed before me this 1<sup>st</sup> day of March, 2016.

Virginia Rolensen (L.S.)  
Notary Public

My Commission Expires: May 20, 2021

2016 MAR 7 PM 12 42  
FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

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

I, BOYD WILLIAM ROWE, 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.

Boyd Wm. Rowe  
Applicant

SWORN or affirmed to and subscribed before me this

1<sup>st</sup> day of March, 2016.

Virginia Rolinson  
Notary Public

My Commission Expires: May 20, 2021

2016 MAR 7 PM 12:42  
FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD  
BOYD WILLIAM ROWE,  
APPLICANT,

vs.

STATE OF SOUTH CAROLINA,  
RESPONDENT.

IN THE COURT OF COMMON PLEAS

APPENDAGE TO APPLICATION FOR  
POST-CONVICTION RELIEF

2016 MAR 7 PM 12:42  
FAIRFIELD COUNTY  
CLERK OF COURT  
ELITY J. BEECHAM

COMES NOW, THE APPLICANT, AND FOR HIS GROUNDS AND SUPPORTING  
FACTS FOR RELIEF FOR INDICTMENT 2014-GS-20-191, WILL SHOW  
AS FOLLOWS:

I. (a) INEFFECTIVE ASSISTANCE OF COUNSEL

THE APPLICANT WAS DENIED HIS SIXTH AND FOURTEENTH AMENDMENT  
RIGHTS TO AN EFFECTIVE ASSISTANCE OF COUNSEL INsofar AS HIS PLEA  
COUNSEL FAILED TO PROVIDE COMPETENT REPRESENTATION, AND THESE OMISSIONS  
WERE PREJUDICIAL TO HIS DEFENSE.

THE APPLICANT'S COUNSEL FAILED TO PROPERLY INVESTIGATE THE FACTS  
SURROUNDING THE CIRCUMSTANCES THAT LEAD TO HIS ARREST, OR TO  
DISCUSS THE PARAMETERS OF HIS DEFENSE. IT HAS BEEN CLEARLY  
ESTABLISHED THAT THE AMOUNT OF PRE-TRIAL RESEARCH, OR THE LACK  
THEREOF, CAN MOST DEFINITELY AFFECT THE OUTCOME OF A CRIMINAL  
DEFENDANT'S TRIAL. DAVIS V. ALABAMA, 100 S.C.T. 1827 (1980).

STANDARD OF REVIEW

EFFECTIVE ASSISTANCE OF COUNSEL, WHICH WILL SATISFY THE REQUIREMENTS OF THE SIXTH AMENDMENT, IS COUNSEL THAT WILL BE REASONABLY LIKELY TO RENDER REASONABLY EFFECTIVE ASSISTANCE GIVEN THE TOTALITY OF THE CIRCUMSTANCES. WASHINGTON V. STRICKLAND, 693 F.2d 1243, 1250 (C.A.5 1982), 466 U.S. 668. 104 S.C.T. 2052 (1984); LOCKHART V. FRETWELL, 113 S.C.T. 838 (1993); MAYS V. BALKCOM, 631 F.2d 48. 52 (C.A.5 1980).

IN CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES, A COURT MUST EXAMINE THE QUALITY OF COUNSEL'S ASSISTANCE FROM TIME OF INITIAL RETENTION OR APPOINTMENT, THROUGH THE TIME OF APPEAL. GOODWIN V. BALKCOM, 684 F.2d 794, 805 (1981), STATE V. WILLIAMS, 571 S.E.2d 703 (CT. APP. 2002).

II. (b) COERCION AND INDUCEMENT INTO PLEA OF GUILTY

THE APPLICANT CONTENDS THAT HIS PLEA CANNOT BE CONSIDERED VOLUNTARY, DUE TO HIM BEING DENIED EFFECTIVE ASSISTANCE OF COUNSEL, AND THAT THE PLEA WAS BROUGHT ABOUT BY IGNORANCE, AND THE LACK OF COMPETENCE ON THE PART OF HIS ATTORNEY, BY

ISSUING ERRONEOUS ADVICE AS TO THE PLEA ENTERED BY THE APPLICANT. HENSON V. STATE, 377 S.E.2d 338 (1989).

THE APPLICANT SUBMITS THE FOLLOWING CONCERNING HIS UNINTELLIGENT AND INVOLUNTARY PLEA:

(1) COUNSEL DID NOT ACTUALLY OR SUBSTANTZALLY ASSIST HIM IN DECIDING WHETHER TO PLEA OR NOT;

(2) COUNSEL DID NOT FAMILIARIZE HIMSELF WITH THE FACTS OF THE CASE;

(3) COUNSEL DID NOT IMPART TO THE APPLICANT AN UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS;

(4) COUNSEL ISSUED ERRONEOUS ADVICE TO THE APPLICANT AS TO THE LENGTH OF THE SENTENCE HE WOULD RECEIVE BY ENTERING HIS PLEA;

(5) COUNSEL ISSUED ADVICE TO THE APPLICANT TO THE EFFECT THAT NO DEFENSE WAS POSSIBLE TO HIS CHARGE;

(6) COUNSEL COERCED AND INDUCED THE APPLICANT INTO ENTERING HIS PLEA BY MAKING THREATS AS TO THE LENGTH OF SENTENCE HE WOULD RECEIVE BY NOT PLEADING GUILTY, WITHOUT ANY REGARD TO EXPLAINING THE TRIAL PROCESS.

THE APPLICANT CONTENDS THAT HAD IT NOT BEEN FOR HIS COUNSEL'S OFFERING OF ADVICE, WHICH WAS BASED SOLELY ON INFORMATION OBTAINED DIRECTLY FROM THE STATE, AND NOT AS THE FRUIT OF COUNSEL'S OWN INVESTIGATION, THE APPLICANT WOULD NOT HAVE ENTERED A PLEA OF GUILTY, BUT WOULD HAVE INSISTED ON GOING TO TRIAL.

MOREOVER, THE APPLICANT CONTENDS THAT HIS COUNSEL, FROM THE OUTSET, BEGAN TO SPEAK OF A GUILTY PLEA WHICH COUNSEL SAW AND PORTRAYED AS THE APPLICANT'S ONLY OPPORTUNITY. COUNSEL INTENTIONALLY PAINTED A BLEAK PICTURE TO THE APPLICANT WITH LITTLE OR NO HOPE CONCERNING THE LIKELIHOOD AND OUTCOME OF ANY PLANNED TRIAL. COUNSEL SHOULD HAVE ENLIGHTENED THE APPLICANT ABOUT THE SECRET ON-GOING DEAL MAKING WITH THE SOLICITOR. THE APPLICANT, FACED WITH THE TACTICAL PRESSURE OF THE SOLICITOR'S OFFICE AND HIS OWN COUNSEL, FINALLY CAVED IN THE DEMAND FOR HIS STEER-DRIVEN PLEA OF GUILTY.

#### STANDARD OF REVIEW

FOR A PLEA TO BE ENTERED KNOWINGLY AND VOLUNTARILY, A CRIMINAL DEFENDANT MUST POSSESS AN UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS IS THE FUNCTION OF THE ACCUSED'S

COUNSEL.

### CONCLUSION

THE APPLICANT MAINTAINS THAT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL MUST ORDINARILY SHOW ACTUAL PREJUDICE, HE MAY BE RELIEVED OF THAT BURDEN IF COUNSEL'S INEFFECTIVENESS IS SO PERVASIVE AS TO RENDER A PARTICULARIZED PREJUDICE INQUIRY UNNECESSARY. FURTHER, THE APPLICANT MAINTAINS THAT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL MAY BE VIOLATED BY EVEN AN ISOLATED ERROR OF COUNSEL IF THE ERROR IS SUFFICIENTLY EGREGIOUS AND PREJUDICIAL. MURRAY V. CARRIER, 477 U.S. 478 (1986).

### RELIEF SOUGHT

WHEREFORE, BASED ON THE FOREGOING, THE APPLICANT REQUESTS AN EVIDENTIARY HEARING AND THE GRANT OF HIS APPLICATION FOR POST-CONVICTION RELIEF AND VACATION OF THE CONVICTION AND SENTENCE.

DATED FEBRUARY 29, 2016

RESPECTFULLY SUBMITTED,  
Boyd Wm. Rowe  
BOYD WILLIAM ROWE

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

BOYD WILLIAM ROWE,

Plaintiff(s)

vs.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-20-20802

2016 FEB 7 PM 12:42  
FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

Submitted By: BOYD WILLIAM ROWE  
Address: RCL. P.O. BOX 2039  
RIDGELAND, SC 29936

SC Bar #:  
Telephone #:  
Fax #:  
Other:  
E-mail:

NA

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |   |  |   |  |
|---|--|---|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Fraud/Bad Faith (150)</li> <li><input type="checkbox"/> Failure to Deliver/Warranty (160)</li> <li><input type="checkbox"/> Employment Discrim (170)</li> <li><input type="checkbox"/> Employment (180)</li> <li><input type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20 -NI- -</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Assault/Battery (370)</li> <li><input type="checkbox"/> Sander/Libel (380)</li> <li><input type="checkbox"/> Other (399)</li> </ul>  | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>   | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul> | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul>   | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Pre-Suit/Discovery (670)</li> </ul>  |   |  |

Submitting Party Signature: Boyd Wm. Rowe

Date: FEBRUARY 21, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA )  
 COUNTY OF FAIRFIELD )  
 )  
 )  
 Boyd William Rowe, #273284, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTH JUDICIAL CIRCUIT

2016-CP-20-082

**RETURN**

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 7, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. Applicant was indicted by the May 2015 term of the Fairfield County Grand Jury for one (1) count of Strong armed Robbery and one (1) count of entering financial institution with intent to steal (2014-GS-20-191). Derrick Chiarenza, Esquire represented Applicant. On May 4, 2015, Applicant waived presentment to the Grand Jury and pled guilty as indicted. The Honorable Roger M. Young sentenced Applicant, with recommendation by the State, to incarceration for fifteen (15) years. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Fairfield County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. "Ineffective Assistance of Counsel"
  - a. "Counsel failed to provide competent representation, and these omissions were prejudicial to his defense."
  - b. "Counsel failed to properly investigate the facts surrounding the circumstances that lead to his arrest, or to discuss the parameters of his defense."
2. "Involuntary Guilty Plea"
  - a. "Counsel did not actually or substantially assist him in deciding whether to plea or not."
  - b. "Counsel did not familiarize himself with facts of the case."
  - c. "Counsel did not impart to the applicant an understanding of the law in relation to the facts."
  - d. "Counsel issued erroneous advice to the applicant as to the length of the sentence he would receive by entering his plea."
  - e. "Counsel coerced and induced the applicant into entering his plea by making threats as to the length of sentence he would receive by not pleading guilty, without any regard to explaining the trial process."
3. "Constitutional Deprivation"
  - a. "The Applicants was denied his sixth and fourteenth amendment rights to an effective assistance of counsel in so far as his plea counsel failed to provide competent representation."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

For purposes of this Return, Respondent interprets Applicant's first and third allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a

ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

## IV.

Applicant also alleges his plea was involuntarily given. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

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

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to

this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that counsel be appointed and an evidentiary hearing be held on Applicant's allegations.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

November 22, 2016.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FAIRFIELD )  
 )  
 BOYD WILLIAM ROWE, 273284, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

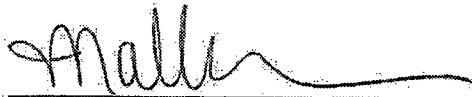
2016-CP-20-082

AFFIDAVIT OF SERVICE BY MAIL

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

**Beth Ramsey Faulkner, Esquire**  
**Faulkner Law Firm, LLC**  
**PO Drawer 1030**  
**York, SC 29745**

DATED this 22<sup>nd</sup> day of November, 2016.



Mallory Morris, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS

BOYD WILLIAM ROWE, )  
 )  
 APPLICANT, )  
 )  
 -VS- )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 RESPONDENT. )  
 \_\_\_\_\_ )

2016-CP-20-00082

TRANSCRIPT OF RECORD

JULY 17, 2017  
LANCASTER, SOUTH CAROLINA

BEFORE:

THE HONORABLE R. KNOX McMAHON

APPEARANCES:

ATTORNEY FOR APPLICANT:

BETH R. FAULKNER, ESQ.

ATTORNEY FOR RESPONDENT:

DeSHAWN MITCHELL  
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1           **THE COURT:** All right. Yes, sir.

2           **MR. MITCHELL:** May it please the Court, Your Honor?

3           This is Boyd William Rowe, 2016-CP-20-082. The Applicant is  
4           present and confined in the South Carolina Department of  
5           Corrections pursuant to orders of commitment from the  
6           Fairfield County Clerk of Court. Applicant was indicted by  
7           the May 2015 term of the Fairfield County Grand Jury for one  
8           count of strong arm robbery and one count of entering a  
9           financial institution with intent to steal.

10           Mr. Chiarenza represented the Applicant on May 4th,  
11           2015. Applicant waived presentment to the grand jury and  
12           pled guilty as indicted. The Honorable Roger M. Young  
13           sentenced Applicant with recommendation by the State to  
14           incarceration for fifteen years. Applicant did not appeal  
15           his conviction or sentence. He's present in the courtroom  
16           today represented by Ms. Faulkner.

17           **THE COURT:** Thank you. Mr. Attorney General, I'm not  
18           tracking. I just read the transcript and it appears he pled  
19           guilty to strong arm robbery only. Is that -- is that not  
20           correct?

21           **MR. MITCHELL:** That is correct, Your Honor.

22           **THE COURT:** All right. So he's only committed with one  
23           count of strong arm robbery and not one count of entering  
24           financial institution with intent to steal?

25           **MR. MITCHELL:** That's correct, Your Honor.



**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

6

1 A. At Manning Correctional Institution. I'm in MO1A  
2 custody.

3 Q. Okay. And you're currently serving time for what  
4 charge?

5 A. I was charged with common law robbery and strong arm  
6 robbery.

7 Q. Okay. And ---

8 A. Two counts.

9 Q. Pardon me?

10 A. Two count indictment.

11 Q. One count for strong arm robbery and one count for  
12 entering a financial institution with intent to steal, is  
13 that correct?

14 A. I was charged with entering a finance institution. And  
15 they dropped it down to common law robbery and strong arm  
16 robbery.

17 Q. Okay. So you're currently serving a sentence on strong  
18 arm robbery, correct?

19 A. Yes, ma'am.

20 Q. Okay. And when did -- you entered a plea, is that  
21 correct? A guilty plea?

22 A. Yes. In the beginning I had to talk to Sheriff Lewis.  
23 And I don't even remember how things worked out, but I was  
24 charged with it. I told him I was guilty because they -- I  
25 had the money. But I went through so much and -- to get

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

7

1 around to -- I didn't know where I was or what I was doing.

2 Q. Okay. When were you originally charged? Do you  
3 remember?

4 A. I was charged on May the 9th. That's when the -- I  
5 think the robbery occurred on the 8th.

6 Q. And that was of what year?

7 A. 2014.

8 Q. Okay. And you -- what is your current sentence that  
9 you're serving? How many years did you get?

10 A. I got fifteen years.

11 Q. Okay. And who represented you on these charges? Who  
12 started out representing you?

13 A. Mr. Fitzsimmons, Fitzgerald, Fitzsimmons.

14 Q. Okay.

15 A. I had a lawyer by Fitzsimmons already. And then I went  
16 to -- I was -- I put in for a preliminary hearing to find  
17 out what was -- what I was originally being charged with or  
18 what I had done. And I was told that -- I think -- who is  
19 that man back there in the back back there? That looks like  
20 him. What's his name?

21 Q. That's the bailiff. And you ---

22 A. Okay.

23 Q. You've got to answer my questions.

24 A. Okay. Fitzgerald. And he looks just like that man  
25 back there in the back.

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

8

- 1 Q. Okay.
- 2 A. As far as ---
- 3 Q. I don't ---
- 4 A. --- I can see.
- 5 Q. --- think it is that man, ---
- 6 A. Okay. Thank you.
- 7 Q. --- but ---
- 8 A. All right.
- 9 Q. And then at what point -- did you change attorneys at  
10 some point during your ---
- 11 A. When I went to my preliminary hearing he said that he  
12 was not going to be representing me, they had another lawyer  
13 that was going to come and represent me.
- 14 Q. Okay. So did you ever actually have a preliminary  
15 hearing or not?
- 16 A. I went to a preliminary hearing, but they -- they  
17 called it off.
- 18 Q. Okay. Do you remember what the reason for that was?
- 19 A. No. The lawyer that I had said that I had another  
20 lawyer that was going to represent me was going to come, and  
21 they postponed it.
- 22 Q. Okay. So who was the attorney that represented you  
23 after that?
- 24 A. At the preliminary hearing? I never did get to go to a  
25 preliminary hearing.

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

9

1 Q. No, the next attorney? You had a first attorney, and  
2 he was relieved. And who was representing you after that?

3 A. Mr. Chiarenza.

4 Q. Okay. This ---

5 A. Derek Chiarenza.

6 Q. --- person that's in the courtroom today?

7 A. Yes, ma'am.

8 Q. Okay. And how many times did you meet with Mr.  
9 Chiarenza?

10 A. Really about two -- two times. And one time I was  
11 trying to help out with -- there was supposed to been a  
12 murder -- there was a murder in Winnsboro. And I thought I  
13 had talked with one of the guys that was supposed to have  
14 done it, but it come out that it didn't work out that way.

15 Q. Okay. So you're saying that the first time you met  
16 with Mr. Chiarenza was about that charge or about helping  
17 out. ---

18 A. He talked to me in the courthouse. I went up to the  
19 courthouse for a few minutes and talked to him, yes, ma'am.

20 Q. Okay. So -- and you've dealt with him at other times,  
21 correct?

22 A. Yeah. He came to the jailhouse and talked with me  
23 about three or four months later. And after that I went up  
24 to the courthouse to try to help out with a murder. That  
25 guy that I'd known had got shot in the leg and bled to

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

10

1 death.

2 Q. Okay. Did you ever meet with Mr. Chiarenza and go over  
3 the discovery in your case? The evidence against you?

4 A. Well, he brought up and talked about what I was being  
5 charged with. But the evidence and stuff, he said they had  
6 already known what I had done.

7 Q. Okay. So he never went over the evidence with you? Is  
8 it your testimony that he did not go over the evidence  
9 against you? That the State had against you?

10 A. No, he didn't. He didn't know -- I don't even think he  
11 went in and investigated it.

12 Q. Okay. Now you ultimately entered a plea to the charge  
13 of strong arm robbery as you've testified to, correct?

14 A. Well, when I -- when I entered the plea, I was told to  
15 sign a -- what is it called? The sentencing sheet. I  
16 thought I was signing something that -- to not to go to the  
17 grand jury with it, to take a jury trial. And I was -- I  
18 didn't know. I didn't have my glasses or anything. And I  
19 was signing a waiver to the -- I found out I signed a waiver  
20 to the ...

21 Q. Presentment to the grand jury?

22 A. Yeah. I waived presentment to the grand jury. And I  
23 was told that I would be signing that I wouldn't be taking a  
24 jury trial.

25 Q. Okay.

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

11

1 A. I didn't know I was waiving my rights to the grand  
2 jury.

3 Q. Okay. And is it your testimony Mr. Chiarenza did not  
4 talk to you about that and explain that to you?

5 A. No, ma'am. We had talked about eight to ten years that  
6 I was going -- possibly facing at one time. And then I  
7 never did discuss anything to him about -- in the transcript  
8 it says that there was a fifteen cap made. And, I mean, he  
9 never did discuss that with me.

10 Q. Okay. So before you entered into the plea did you have  
11 any discussion with Mr. Chiarenza about the sentencing ---

12 A. We ---

13 Q. --- range?

14 A. We had talked about eight to ten years. And then he  
15 come back the day that I was supposed to go to court and  
16 said he never said that.

17 Q. Okay. So was there any agreement with the State that  
18 you're aware of at this time?

19 A. I had never agreed to anything with him.

20 Q. But pursuant to the transcript the agreement was that  
21 there was a fifteen year cap on the strong arm robbery, is  
22 that right?

23 A. I never discussed that or anything was discussed with  
24 me about even a cap of anything. He said in my -- when the  
25 indictment, I mean, in the transcript that he wished he

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

12

1 could have got me a five cap, which we never discussed.

2 Q. Okay.

3 A. Never did discuss any time with a cap on it like Mr.

4 Riley Maxwell discussed in the -- in my sentencing.

5 Q. Okay.

6 A. I didn't know anything about a fifteen year cap.

7 Q. Did you discuss with Mr. Chiarenza your charge in

8 entering a financial institution with intent to steal? Did

9 you discuss the sentencing ranges on that charge with him?

10 A. Yeah, he said it carried a thirty year sentence. But

11 we talked about how I was on -- I did two Xanaxes, which I

12 don't even remember anything that day.

13 Q. The day ---

14 A. And he said ---

15 Q. --- of the alleged incident?

16 A. --- it carried a thirty year sentence for that, but he

17 was trying to see what he could do. Eight to ten years we

18 had discussed one time. And then he turned around and I

19 called him a liar straight to his face and said you did

20 discuss that with me. Why you denying it now?

21 Q. Okay. If you had known that there was -- the agreement

22 was that there was a fifteen year cap, would you have

23 entered into the plea of guilty?

24 A. No, because there was another guy that went to court

25 that already the same charge I got -- there was two guys. I

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

13

1 just feel like I'm a horse of a different color here because  
2 one of them got the same charge that I had, got five years.  
3 He's already gone home.

4 The other guy had two armed robberies. They dropped it  
5 to strong arm robbery. He got seven years. He's probably  
6 home, too, now.

7 So I've been in, what, three -- thirty-nine months.  
8 And it's been hard on me, you know what I'm saying? I've  
9 been seeing riots. I done seen all -- and I know I'm in  
10 prison. I'm getting too old for this. And I'm sick and  
11 tired of being sick and tired.

12 I just -- I know that I could -- you told me a few  
13 minutes ago that I could face thirty years, but how can they  
14 turn around and give another man seven years and another man  
15 five years? I know ---

16 **THE COURT:** Mr. ---

17 A. --- I got a past -- I got a past record, ---

18 **THE COURT:** Mr. Rowe.

19 A. --- twenty-eight years.

20 **THE COURT:** Mr. Rowe, this ain't -- this ain't a  
21 dialogue.

22 A. Okay.

23 **THE COURT:** Ask your next question, please, Ms.

24 Gardner. You answer the questions, Mr. Rowe.

25 A. All right. All right.

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

14

1           **MS. FAULKNER:** Thank you, Your Honor.

2           **Q.** Mr. Rowe, do you understand that if the Court grants  
3 your Post Conviction Relief application that you could, in  
4 fact, face the original charge of entering a financial  
5 institution with intent to steal, carrying up to thirty  
6 years? Do you understand that?

7           **A.** Yes, ma'am. That's what we discussed a few minutes  
8 ago.

9           **Q.** And you understand that if you were to get that thirty  
10 years or whatever the sentence would be on that charge,  
11 you'd have to serve eighty-five percent of that?

12          **A.** Yes, ma'am. Twenty-two to twenty-eight years.

13          **Q.** Okay. What is your current max-out date right now? Do  
14 you know?

15          **A.** July '21.

16          **Q.** Okay. You said a minute ago that you were -- you had  
17 taken two Xanaxes. Are you talking about the day of the  
18 alleged incidents?

19          **A.** Yes, ma'am. My mom was fixing to pass away and  
20 everything. I was very depressed. I had just separated  
21 from my -- the woman that gave me my daughter. We had  
22 separated. I was living in Winnsboro. I was very depressed  
23 and everything. And a friend of mine gave me two Xanaxes.

24                 I was drinking a couple of beers that morning. I  
25 popped both of them. She didn't say nothing to me about how

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

15

1 much to take or anything. I was so depressed she just said  
2 take -- take one and it'll help you out. So I took both of  
3 them. And then from there I do not remember anything  
4 hardly.

5 Q. Okay.

6 A. And that's ---

7 Q. So ---

8 A. That's God's honest truth. That's why I'm trying to  
9 fight this today. I feel like, you know, I'm growing old in  
10 prison over something I don't even -- if I -- I know I  
11 committed a bank robbery back in '86 and '87 and everything,  
12 but under this circumstances, I did not even know what I was  
13 at or what I was doing.

14 I don't even know why I went into that bank. I know I  
15 owed some people money. I owed my mother money and stuff.  
16 Maybe, you know, maybe I did it on that purpose, to give my  
17 mama money. I don't know why. But my mama was fixing to  
18 pass away. She passed away right after I -- about a couple  
19 of weeks after I got into R&E.

20 Q. Okay. Did you discuss taking those Xanaxes with your  
21 attorney, Mr. Chiarenza?

22 A. Every time I talked to the -- Mr. Chiarenza. You know,  
23 we was supposed to go up and try to evaluate it, the  
24 situation. And he said he was going to get me a evaluation,  
25 but come to find out that he went ahead and worked with Mr.

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

16

1 Riley, the solicitor, and he said he didn't see no reason  
2 why I needed to go, that everything was like I did it on  
3 purpose.

4 Q. Okay. Do you have any mental health issues? Have you  
5 ever had any mental health issues?

6 A. I believe I do have. I just -- well, before I was  
7 taking Dilaudid and Gabapentin and stuff. We discussed  
8 this, too. I got hit in the head with a steel pipe in  
9 Newberry where I had made a draw. I had a bunch of money on  
10 me and stuff. And the guy that was working on my truck hit  
11 me in the back of the head with a steel pipe. And that put  
12 me in the hospital for a while. Six weeks one time and a  
13 couple of weeks the other time.

14 They had me doing Dilaudid. And then they -- my doctor  
15 put me on Gabapentin. Then I was taking Elavil, Tramadol.  
16 At the jail they was giving Elavil. Don't ask me why. But  
17 when I fell -- the going to court, I really was messed up in  
18 the head that morning I went in front of the judge from the  
19 Elavil because I just had started taking it. And I wished I  
20 had some of the officers here because they would tell that  
21 it was -- they could tell that I was very droggy and not  
22 knowing what I was doing at sometimes.

23 Q. So is it your testimony that you didn't actually know  
24 what you were doing the day of the plea?

25 A. I was taking Elavil. I just had taken that Elavil that

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

17

1 morning, fifty milligrams of Elavil, and I was droggy. I  
2 told -- I mentioned it. It's in -- I had a bad headache and  
3 I was very depressed and everything.

4 Q. Okay. How long had you been taking that medication  
5 prior to the day of your plea?

6 A. Couple of weeks. And I was just -- I still wasn't used  
7 to taking the Elavil. I never had taken the Elavil or  
8 anything like -- and in prison they sent me to -- I was a  
9 inmate in a MO1B custody, and they sent me to a level two  
10 camp because I was taking Elavil.

11 It was supposed to be a psychotic drug, they said. And  
12 I had to see psychiatrists and everything. But I had -- I  
13 wanted to stop taking it because I wanted to come out from  
14 behind the fence. It was driving me crazy. They kept me  
15 locked down. We always stayed locked down at all times.

16 I cannot -- I'm like claustrophobia when I get like  
17 that. And I got that way when I was at the County jail in  
18 Fairfield County. They kept me locked down by myself. I do  
19 not know why, but ...

20 Q. Is there anything ---

21 A. I wasn't ---

22 Q. --- anything ---

23 A. --- a murderer. I didn't murder anybody.

24 Q. Is there anything else you want to tell this Court or  
25 let this Court know before you conclude your testimony?

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

18

1 A. Well, I can be -- I want to be long-winded here about  
2 the way things went. I mean, I fired Mr. Chiarenza before  
3 we went into it. He'll verify that I did fire him. But  
4 then he said, well, get yourself another lawyer. I said, I  
5 plan to because I feel like I'm getting -- I'm getting  
6 railroaded here. I knew after he'd done talked to Mr. Lewis  
7 when we went up on the guy that got murdered, I tried to  
8 talk to the police and help out the situation and  
9 everything, he told Keith Lewis that he was buddies with Mr.  
10 Maxwell, they were friends.

11 Q. And who's Keith Lewis?

12 A. He was the sheriff of Winnsboro at the time, acting  
13 sheriff.

14 Q. Okay. And ---

15 A. Because I was -- and that right there shocked me to the  
16 floor right then when he said that. That hurt me real bad.  
17 That's when I started talking to Mr. Jackson at the  
18 jailhouse telling I wanted to get rid -- rid of Mr.  
19 Chiarenza, I feel like he's working with the solicitor.

20 And really I knew after I told him I didn't want him, I  
21 fired him. He said, well, get yourself another lawyer. I  
22 said, I am. I went -- and they locked me back into the jail  
23 cell at the courthouse.

24 And then Mr. Swearinger came and got me back out again  
25 and took me back there in front of Mr. Chiarenza and Mr.

**BOYD ROWE - DIRECT EXAMINATION BY MS. FAULKNER**

19

1 Riley Maxwell, the solicitor. And Mr. Chiarenza told me  
2 that if I didn't take that plea today that he was going to  
3 make sure that I got the thirty years that the solicitor  
4 wants to give me.

5 Q. So what decision did you make at that time?

6 A. What could I do? I went in and the judge asked me was  
7 I happy with my lawyer. I said, I'm not happy a bit with my  
8 lawyer and everything. That's not even on the transcript,  
9 from the court transcripts. I don't know what -- it seems  
10 like they all played it all together in the courtroom.

11 When I turned around and I looked -- nobody was in the  
12 courtroom, just me, by myself. My family had called Mr.  
13 Chiarenza. He never answered their telephone calls or  
14 anything. So I felt like -- he did say something real good  
15 and made it look good in the courtroom that my family would  
16 like to -- he mentioned that they tried to contact -- he  
17 didn't mention not talking to them.

18 But he said my family said that they would represent me  
19 and help me, I've been a good person through the life with  
20 the family, and they would help me when I got out of prison  
21 and stuff like that. He never talked to anybody in my  
22 family.

23 Q. All right. So did he ---

24 A. Nobody.

25 Q. Did he submit anything in mitigation at your

**BOYD ROWE - CROSS EXAMINATION BY MR. MITCHELL**

20

1 sentencing?

2 A. Did he submit anything?

3 Q. Anything ---

4 A. Without talking ---

5 Q. --- to try to get your -- the judge to give you a  
6 lighter sentence? Any affidavits from a family ---

7 A. No. He ---

8 Q. --- member?

9 A. --- just said something about if he could have come  
10 back in there with a five year cap, he would have been glad  
11 to do something like that. But I never did -- never heard  
12 that from Mr. Chiarenza as we talked.

13 Q. Okay. All right.

14 **MS. FAULKNER:** Well, I have no further questions for  
15 this witness, Your Honor.

16 **THE COURT:** Thank you, Ms. Gardner.

17 **MR. MITCHELL:** Thank you, Your Honor. May it please

18 ---

19 **THE COURT:** Mr. Attorney General, yes, sir.

20 **Cross Examination by Mr. Mitchell:**

21 Q. Mr. Rowe, how are you this morning?

22 A. Doing great.

23 Q. Good. I just have a few questions for you. I heard  
24 you talking about other inmates who were in there that day  
25 getting lesser sentences. Have you ever been convicted of a

**BOYD ROWE - CROSS EXAMINATION BY MR. MITCHELL**

1 bank robbery before?

2 A. Yes, sir, I have.

3 Q. Okay. And how many years did you serve on that?

4 A. Nine years.

5 Q. Okay.

6 A. In the fed, in the federal joint, MCI -- federal  
7 correctional institutes.

8 Q. Okay. Let me ask you this. Have you ever been  
9 diagnosed by a doctor with any mental illness ---

10 A. I seen psychiatrists while I was in, yes, sir.

11 Q. Have you ever been diagnosed with a mental illness?

12 A. They diagnosed me with something. When I was in the  
13 feds, they was giving me Prozac and stuff like that. But I  
14 think they -- when they locked me up, I got locked up a few  
15 times. And they made me -- I seen a psychiatrist.

16 Then, you know, I don't want to bring out stuff that  
17 happens to me in my life right here, but I've been through a  
18 lot, you know what I'm saying? So ...

19 Q. Did you bring any documentation with you today about  
20 any mental illness you've been diagnosed with at all?

21 A. That's in the federal. I can't get stuff in the --  
22 that's so many years ago. I got out in '97. So -- '98.  
23 So, you know, it' been so long.

24 But I've done good since, you know, I got out. I work  
25 for myself. I had a highly good reputation. I've helped

**BOYD ROWE - CROSS EXAMINATION BY MR. MITCHELL**

22

1 people. I found if I had -- I found seven thousand, eight  
2 hundred and sixty-five dollars (\$7,865.00) on Broad River  
3 Road at a BP Station, and I called the woman the next day  
4 and said, did anybody lose any money? And the woman was  
5 glad to hear that from me. You know, that's how good of a  
6 honest person that I have become.

7 Q. Okay.

8 A. And that's the God's honest truth. I'm not sitting  
9 here telling you that lie. I can work on it. And I wish I  
10 could had that woman here today to tell you that's what I  
11 did. You know what I'm saying?

12 Q. Okay.

13 A. I do not ---

14 Q. I'm sorry. I didn't want to cut you off. Turning our  
15 attention back to the actual guilty plea that day, do you  
16 recall when the judge asked you about the potential  
17 sentences that you were facing that day? And that it was  
18 zero to fifteen years? Do you recall that?

19 A. Yeah. He said I was looking at zero to fifteen years,  
20 but he didn't to -- I never did know what I was coming to  
21 right then and there, you know what I'm saying?

22 Q. But you remember him saying that the charge that you  
23 were ---

24 A. Zero to fifteen years, but I didn't know there was a  
25 fifteen year cap on the sentence at the end. I never --

**BOYD ROWE - CROSS EXAMINATION BY MR. MITCHELL**

1 when the solicitor -- that's the first thing I seen in there  
2 that -- well, why didn't my lawyer tell me about a fifteen  
3 year cap that he wanted?

4 Q. And the judge asked you, you're here to waive  
5 presentment to the grand jury, is that correct? And what  
6 was your answer?

7 A. I thought it was a jury trial. Listen, I can't -- I'm  
8 eighty-five percent deaf in my left ear, and I can't hardly  
9 hear out of my right ear. I was with -- trying to get  
10 hearing aids with -- before I even got any of this with Voc  
11 Rehab and everything.

12 And Charleston County, that's where I took a test for  
13 my EN&T, ear, nose and throat doctor in Charleston. But,  
14 really, I even brought it up and said I can't hardly hear  
15 the judge. And he said he would speak up.

16 Q. Okay.

17 A. And that's in my sentencing sheet, too.

18 Q. Do you remember the judge going over your  
19 constitutional rights with you? That you had a right to a  
20 trial? That you had a right to have your attorney call  
21 witnesses on your behalf? Do you remember all that?

22 A. Yes, but I was so scared that day, I didn't know --  
23 taking the Elavil and all that, I really didn't know what to  
24 do. I wished I'd known I was waiving my rights to -- I'm  
25 not -- I'm not a layman at law. I'm not very smart. I did

**BOYD ROWE - CROSS EXAMINATION BY MR. MITCHELL**

24

1 a lot of -- while I've been down, a lot of trying to learn  
2 what -- trying to come up -- I've got a long -- a lot of  
3 stuff in here, but it's just ---

4 Q. Do you recall the judge asking you if you were  
5 satisfied with your attorney?

6 A. Yeah. That's when I said I wasn't happy a bit with  
7 him. And I did shake my head. That's the only thing that's  
8 in my transcript today -- the court transcripts did not put  
9 that in -- in on my transcripts. Why -- I don't know why  
10 she didn't do it. Ms. Aileen Butler did not do that.

11 Q. Do you recall that you -- telling the judge that you  
12 felt that the lawyer should have gotten you a better  
13 sentence? That was your right with your lawyer?

14 A. Yeah, that's in -- that's in the transcripts. Yes,  
15 sir.

16 Q. Okay. All right.

17 **MR. MITCHELL:** Judge, that's all the questions I have.  
18 Thank you.

19 **THE COURT:** Redirect, Ms. Gardner?

20 **MS. FAULKNER:** No, Your Honor.

21 **THE COURT:** Thank you. Thank you very much, Mr. Rowe.  
22 You may step down.

23 **MR. ROWE:** Well, sir, there was a lot of things I  
24 wanted to say also, but ---

25 **THE COURT:** Well, go right ahead, Mr. Rowe, if there's

1 other things you want to say.

2 **MR. ROWE:** It was brought up in court, in my court  
3 hearing that I had taken nineteen hundred and something  
4 dollars. And really it was nine hundred dollars (\$900.00).  
5 I know that it doesn't matter if it was a dollar or whatever  
6 it was, but I feel like it was up -- boosted because -- to  
7 try to -- the money amount makes it a grand larceny instead  
8 of petty larceny.

9 **THE COURT:** All right.

10 **MR. ROWE:** But I wished I'd just -- could have had  
11 another lawyer 'cause I knew the whole time that after he  
12 said that he was buddies with the solicitor, that day --  
13 that really killed me right there.

14 And I was trying to -- I had talked to Lieutenant  
15 Jackson at the County jail, what would I do to get rid of  
16 Mr. Chiarenza and all that? How do I go about it? He said,  
17 all you got to do is fill out a paper. I filled out a  
18 paper, but I never heard nothing about it.

19 I was having problems with -- I had a bad hernia. I  
20 just had a operation a year or so ago. And I got sick from  
21 it real bad. And I asked to go to the hospital, but they  
22 threw me in the hole and everything and made me butt naked  
23 like I was in a turtle suit because I asked to go to the  
24 hospital.

25 And the doctor said, that what make you sick from I had

1 -- it was a bulge. I had to hold it in the whole time when  
2 I was there. So after that I don't know what happened to  
3 Mr. Jackson or anything. I don't know why they didn't get  
4 me another lawyer. But I did talk to -- send papers to a  
5 Ms. Davis and a Susan Lawson that was over the jailhouse.  
6 He said he would talk to them about that, too.

7 Now, if I -- when I went back in January I was supposed  
8 to come to this preliminary, I mean, this hearing like I am  
9 today. Mr. Jackson was no longer there. Four or five  
10 officers were no longer there that would -- I was wanting to  
11 talk to about things like that.

12 **THE COURT:** All right. Anything else?

13 **MR. ROWE:** No, sir.

14 **THE COURT:** You sure?

15 **MR. ROWE:** Well, if I had time enough to go through  
16 these papers, but it's kind of -- kind of hard with all this  
17 on me, you know what I'm saying? It's -- I just feel like I  
18 got done dirty, Your Honor. You know what I'm saying? I  
19 mean, ---

20 **THE COURT:** I hear what you're saying. Yes, sir.

21 **MR. ROWE:** How can -- like I said, how can another man  
22 that jumped over the counter and pushed a woman out of the  
23 way, grabbed money and got more money than I did and  
24 everything, get a five year sentence, non-violent, and a guy  
25 that played armed robberies in two places that I know of,

1 and people knew that he had the gun, they drop it down to  
2 strong arm robbery and only give -- he's already been in  
3 prison for CDVs, how can they give him just seven years?  
4 And he's probably already out, too.

5 Now, he was a good black man. I liked him. And I did  
6 a lot of drawings and stuff for him, but I had paperwork  
7 where he wrote me a letter saying how they went down and  
8 they dropped it from armed robbery to strong arm robbery and  
9 only gave him seven years, non-violent.

10 I mean, I know I had bank robberies in '87 and back in  
11 the day, but that's thirty years ago. I knew what I was  
12 doing then because I was heavily on drugs and everything.  
13 But I -- I was not on drugs.

14 The only thing I wished I'd never done is took them  
15 dang gum Xanaxes that day because I have talked to other  
16 people while I've been in prison that done Xanaxes just like  
17 me and did the crime that they wished they'd never -- after  
18 doing the Xanaxes.

19 So all I know is my mama was fixing to pass away and I  
20 would have never done anything crazy like this because I  
21 loved my mama. I wanted to say goodbye to her, be at her  
22 funeral and everything. After I got sentenced I was sent --  
23 she passed away right after that. And I was in R&E, and it  
24 killed me.

25 Another thing, while I'm in prison -- I got one

1 daughter -- I lost my first son from SIDS. And I got a  
2 daughter that I haven't seen in a couple of years, and it's  
3 killing me. And I can't even talk to her because I'm  
4 indigent. I don't have any money. You know what I'm  
5 saying? So -- and it's tearing me down inside.

6 I know I might be facing thirty years, but I feel like  
7 I don't deserve it. If I got to, I'll -- I will take the  
8 jury trial and let the people know that I would never done  
9 that if I'd knowed what I was -- if not for them Xanaxes, I  
10 wouldn't be sitting here talking to you right now because I  
11 was doing -- I was doing real good.

12 I was working for a woman in Winnsboro. I was working  
13 -- see, I worked for myself since I got out of the feds. I  
14 was working for a woman and she had over two hundred and  
15 something houses in Fairfield County. I was doing the work  
16 for her remodeling all her houses. And she was paying me  
17 damn good.

18 And I'm telling you, if it wasn't for doing them two  
19 Xanaxes, I wished somebody would do something about a Xanax  
20 because everybody that I talk to in prison, some of them  
21 done Xanaxes and stuff, they don't remember what they do.  
22 So there ought to be something done, you know.

23 I'm sorry I have to be here, but I'm -- I'm hurting  
24 inside. I want -- I want my freedom back. I want to -- I  
25 know I'm a good person, you know?

1           **THE COURT:** I'm sorry you have to be here, too, ---

2           **MR. ROWE:** I know it.

3           **THE COURT:** --- Mr. Rowe. And ---

4           **MR. ROWE:** I'm in -- I'm about to break down right now.

5           **THE COURT:** I know how important freedom is.

6           **MR. ROWE:** I'm not a curmudgeon.

7           **THE COURT:** People ---

8           **MR. ROWE:** I have empathy -- empathy for resilience. I  
9 can pull back quick. You know what I'm saying? You know,  
10 I'm so talented and, you know. I build houses. I do  
11 interior trim, cabinets. I can do stuff like right here  
12 we're sitting at -- looking at now. And I feel like my  
13 life's gone. If I don't -- if I can't get out and do  
14 something with my life, I'm going to be sixty years old when  
15 I get out. You know what I'm saying?

16           **THE COURT:** Don't talk to me about being sixty years  
17 old now, Mr. Rowe.

18           **MR. ROWE:** Yeah. Well, I'm just ---

19           **THE COURT:** It's gray in my rearview mirror.

20           **MR. ROWE:** I'm sorry, but I feel this is me, Your  
21 Honor. And I feel like, you know, working for myself and  
22 being in prison and stuff like that, my retirement check  
23 isn't looking too good. I done got things from Social  
24 Security going -- if I can't do something with my life  
25 before, you know, then I'm not going -- my Social Security's

1 not going to take care of me.

2 But, you know, I want to get back out and try to help  
3 my daughter. She just graduated from school a couple of  
4 weeks ago. And I want to be her daddy out there and help  
5 her. You know what I'm saying?

6 **THE COURT:** No matter where you're at you can be a  
7 daddy.

8 **MR. ROWE:** I know it.

9 **THE COURT:** You have daddies in Afghanistan and Iraq  
10 ---

11 **MR. ROWE:** She wants to go to college and stuff like  
12 that.

13 **THE COURT:** And ---

14 **MR. ROWE:** And always when I was out there, when I  
15 worked for myself, I made real good money. She got  
16 everything she ever asked her daddy for. And that's killing  
17 me.

18 I haven't seen her in two years almost. I don't talk  
19 to her 'cause I don't have money to put on the phone. I've  
20 contacted her just through letters. I want to be back out  
21 there before God -- Satan kills me, I want to go back to my  
22 daughter.

23 That's why if I take the thirty years, I want the  
24 thirty -- I want to fight this. If I get the thirty years,  
25 so be it because four years from now, I might not even make

**DEREK CHIARENZA - DIRECT EXAMINATION BY MR. MITCHELL**

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1 it out of prison.

2 I got this problem with my head. If I get hit in the  
3 head I could be mute or dead. I got a scar from right here  
4 all the way over to here where I got hit in the back of the  
5 head. I was -- that's where things went wrong, I got on  
6 Dilaudid. They put me on Dilaudid -- that's like heroin. I  
7 was bad on heroin from the bank scene in the 80s. But I  
8 wanted to be a good man to my daughter. If it wasn't for  
9 them Xanaxes, I lost it.

10 **THE COURT:** All right. Thank you. Thank you, Mr.  
11 Rowe.

12 **MR. ROWE:** Thank you, sir.

13 **THE COURT:** Yes, sir. All right. Ms. Gardner, you may  
14 call your next witness.

15 **MS. FAULKNER:** Your Honor, I have no further witnesses.

16 **THE COURT:** Thank you, Ms. Gardner. Yes, sir.

17 **MR. MITCHELL:** Thank you, Your Honor. At this time the  
18 State would call Mr. Derek Chiarenza.

19 **THE COURT:** All right. Yes, sir.

20 **Derek Chiarenza, being**  
21 duly sworn testified as follows;

22 **THE COURT:** All right. Yes, sir.

23 **Direct Examination by Mr. Mitchell:**

24 Q. Good morning. How are you, sir?

25 A. Good morning.

DEREK CHIARENZA - DIRECT EXAMINATION BY MR. MITCHELL

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1 Q. How long have you been practicing law?

2 A. Since 1993.

3 Q. How much of that time has been devoted to criminal law?

4 A. All of it. I've done some family law practice, but

5 I've been continually involved in criminal law since '93. I

6 was an assistant solicitor for about four and a half years.

7 And I've been in private practice doing criminal defense

8 since 1997.

9 Q. Is it fair to say you're pretty well versed in criminal  
10 law?

11 A. I'd like to think so.

12 Q. Could you tell me how you came to be attached to this  
13 case? Were you retained or were you ---

14 A. I was ---

15 Q. --- appointed?

16 A. --- court appointed.

17 Q. Court appointed?

18 A. Yes.

19 Q. And could you tell me a little bit about the facts  
20 surrounding this case?

21 A. Essentially Mr. Rowe was charged with entering a  
22 financial institution with intent to steal. There are no  
23 bank robbery -- statutorily there are no bank robbery  
24 charges really in South Carolina. There's armed robbery.  
25 There's entering a financial institution, I guess, which is

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1 -- comes as close to bank robbery.

2 The allegations were that he handed a note or told the  
3 teller -- my recollection's a little foggy. I think he just  
4 told the teller, give me the money, don't give me any dye  
5 pack, something along those lines.

6 He did not brandish a weapon. He did not threaten with  
7 a weapon. He made no overt actions that were threatening.  
8 Just essentially asked for the money.

9 It was during banking hours. He was given the money.  
10 And he made off with it. I think within a day or two he was  
11 developed as a suspect. Law enforcement -- I think some  
12 individuals at the bank actually recognized him, or knew of  
13 him or perhaps the vehicle was identified. He had borrowed  
14 another individual's pickup truck, I think, to go to the  
15 location.

16 So with that information, ultimately they approached  
17 Mr. Rowe at his home. I believe he immediately confessed to  
18 law enforcement his involvement. And I think it was some  
19 days later that he provided some information, I think,  
20 through a third party as to where the money could be found.  
21 And then the money was located.

22 So in terms of trying the case factually, it didn't  
23 seem that trial would be the best possible avenue given his  
24 confession and eyewitness accounts. He did, as he's  
25 testified here today, make a point of feeling that he didn't

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1 -- wasn't aware of what he was doing, he didn't intend to do  
2 it on that day.

3 And if my assessment of the law, voluntary intoxication  
4 is wrong, I -- and that assessment being that I told Mr.  
5 Rowe that that would not be a viable trial defense, that we  
6 would not want to go to trial facing thirty years, no  
7 parole, potentially, for what's essentially a bank robbery,  
8 and putting up a case which was more or less, yes, I did it,  
9 but I was high at the time, I was on drugs, I was on Xanax,  
10 I didn't know what I was doing. My advice to Mr. Rowe along  
11 those lines was that I don't believe we could even get a  
12 jury charge from the court that if the jury was satisfied  
13 that he was -- made himself voluntarily intoxicated or high  
14 that that would be an excuse for his behavior.

15 Now, if I'm wrong in that assessment of the law, I  
16 would submit that he'd be entitled to relief because I  
17 advised him that I would not go to trial. I would not  
18 advise him to go to trial with that as a defense. So in a  
19 nutshell, basically, not really wanting to subject him to a  
20 jury trial, which I thought was almost a certain conviction,  
21 I wanted to get him some sort of a plea deal.

22 Q. Sure. And let's talk about that a little bit. How  
23 many times did you -- do you recall meeting with Mr. Rowe?

24 A. He was brought up to the courthouse in Fairfield  
25 County, I would say, three or four times. And I know for

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1 certain I met him at the detention center once, it may have  
2 been twice. I think it was twice, but it may have only been  
3 once.

4 So every time we met, again, we discussed, you know,  
5 starting with -- the starting point being, you know, Boyd,  
6 you confessed to this. You're guilty of this. You know  
7 you're guilty of this. We would have a real hard time  
8 getting a not guilty at trial. So what are our other  
9 options?

10 For a long time the solicitor -- the assistant  
11 solicitor handling this case, Mr. Maxwell, really wasn't  
12 inclined to make us an offer. There hadn't been an offer  
13 initially.

14 And if I discussed eight to ten years with Mr. Rowe,  
15 that would have been something that I would have probably be  
16 indicating to him that that's what I was shooting for,  
17 that's what I was hopeful we might be able to get that thing  
18 to because I felt like that that would not be unreasonable  
19 under the circumstances.

20 Had I been prosecuting the case, you know, I think that  
21 I would have seen an eight year, non-violent, strong arm  
22 offer as something reasonable to resolve the case in light  
23 of all the other factors. Mr. Riley didn't see it that way.

24 In fact, it wasn't until this case -- I think what  
25 spurred this case really starting to move quickly was it hit

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1 its one year anniversary right around the time that Mr. Rowe  
2 entered his plea. The crime occurred May of 2000 -- I may  
3 be off by one year. I think the crime occurred in May of  
4 2015, and we pled in 2016. Or the crime occurred in 2014,  
5 and we pled in 2015. I think that's it. The crime occurred  
6 in 2014. And they were both May. So really one year apart.  
7 So negotiations were pretty much at a stall.

8 At one point I did -- Mr. Maxwell did indulge me in  
9 allowing me to set up a meeting with Mr. Rowe and law  
10 enforcement in regard to some information that Mr. Rowe had  
11 about a murder in Winnsboro. We spoke with them for at  
12 least an hour. They took some notes. Ultimately it -- Mr.  
13 Maxwell indicated to me that that wasn't anything that he  
14 was potentially moved by or that that wasn't really going to  
15 change the situation, the information that Mr. Rowe had  
16 provided.

17 When we approached that one year date in the term of  
18 court that was coming up Mr. Maxwell finally said to me that  
19 the best he would be willing to do would be to offer a  
20 straight-up plea to strong arm robbery. So reduced down  
21 from his original charge of entering a financial institution  
22 to steal, carrying thirty, no parole, to strong arm, which  
23 carries zero to fifteen.

24 I think perhaps in the transcript at one point Mr.  
25 Maxwell calls it a cap of fifteen. I think he probably just

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1 misspoke because the sentence range is zero to fifteen.  
2 They were asking for fifteen because they felt they had  
3 already given him a considerable downward exposure by  
4 reducing it. We were asking for just less.

5 And when I mentioned in the transcript that I would  
6 have loved to have had a cap of five, yeah, absolutely. I  
7 mean, I would have -- I would have felt better. I'm sure  
8 Mr. Rowe would have felt better.

9 In fact, he'd probably have been close to maxing out by  
10 now if we had a cap of five, but I don't control the offer  
11 that the solicitor's office makes. And you get to a certain  
12 point where they've got you at the fish or cut bait moment.  
13 And I think I may have actually used that term in the plea,  
14 which was to say they told me, look, he's either pleading  
15 today -- they wouldn't even extend the offer til the end of  
16 the term of court. And, you know, they were ready to move  
17 it. The case was over a year old or approaching a year old.

18 Now, they wouldn't -- I don't want to give the  
19 impression that they were ready to try it that week, but  
20 they were going to withdraw the offer. Negotiations would  
21 be over and the case would be docketed at a future term for  
22 the original charge. So we'd have been facing the thirty  
23 again.

24 So I think that that's -- and I do recall Mr. Rowe  
25 telling me he wanted another lawyer. So we had that

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1 conversation. We had it with Mr. Maxwell in the room, the  
2 solicitor. And Mr. Maxwell, again, I'm going off of memory,  
3 probably just paraphrasing, but I think he said something  
4 along the lines, that's fine, you can get another lawyer,  
5 but this plea offer -- if you don't plead today, this is off  
6 the table. So we were, you know, we were muscled a little  
7 bit into, you know, either take that offer or go to trial.

8 Q. Let me ask you this. You went over in great detail  
9 your representation of your client. Is it fair to say that  
10 you went over his constitutional rights with him?

11 A. We went -- we discussed how a trial would work and  
12 that, you know, he could call his witnesses. We discussed  
13 trial defenses. We discussed the fact that he wouldn't have  
14 to testify at trial. And, I guess, to a certain extent  
15 that's part of the plea colloquy as well in the transcript.

16 You know, I'll be quite candid. I know he wasn't  
17 happy, but, you know, if I had a dollar for every unhappy  
18 client, you know, I could have retired a long time ago.  
19 It's not easy to step to the bar and to take a plea where  
20 you know you're facing time.

21 And, you know, I hope that there's some point where Mr.  
22 Rowe will understand that I did everything I could to act in  
23 his best interest. And, you know, my options are somewhat  
24 limited. I tried to negotiate the best deal I could get for  
25 him. At the end of the day the solicitor's office holds the

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1 cards.

2 And our choices come down to door number one, which is  
3 exercise your right to a jury trial, which, I think, he  
4 clearly made the right decision in not choosing that because  
5 I am firmly convinced he'd have been convicted and sentenced  
6 to the better part of thirty years. So door number two is  
7 avail himself of the best possible plea offer you were able  
8 to get, to negotiate.

9 And that's, you know, maybe a better looking lawyer or  
10 a more -- or a more talented attorney or someone else could  
11 have gotten something better for Mr. Rowe. I know that I  
12 got the best offer for him that Mr. Maxwell was willing to  
13 give me.

14 Q. Let me ask you this. During the course of your  
15 conversations with him did you ever -- ever get the  
16 impression that he didn't understand what you guys were  
17 talking about or any issues relating to competency at all?

18 A. No. You know, now when you're the attorney and you're  
19 dealing with someone who isn't -- a lot of times it takes  
20 some explaining and, you know, because they don't deal with  
21 this every day. But beyond that, beyond the just -- the  
22 very basic routine, you know, having to explain things with  
23 a client who's unfamiliar with stuff, no, I didn't ever get  
24 the impression that Mr. Rowe was incapable of comprehending  
25 what was going on.

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1 Q. Did he ever tell you or any family members tell you  
2 that he had any mental health issues or mental illness?

3 A. I was aware of his injury.

4 Q. Um-hum (affirmative).

5 A. I was aware of his -- we discussed that at great  
6 length. In fact, I did a little bit of investigating into  
7 that and could never figure out why that case was never  
8 prosecuted in Newberry County. It was *nol-prossed*. That  
9 was really quite unfortunate because he received a pretty  
10 serious injury. But, again, it's not one that I ever saw  
11 any medical documentation, or records or that Mr. Rowe  
12 indicated to me prevented him from being in a position to  
13 knowingly and intelligently take his plea after we reviewed  
14 his case.

15 **MR. MITCHELL:** Judge, that's all the questions I have  
16 for Mr. Chiarenza.

17 **THE COURT:** Thank you. Thank you very much.

18 **MR. MITCHELL:** Thank you, Judge.

19 **THE COURT:** Ms. Gardner.

20 **MS. FAULKNER:** Thank you, Your Honor.

21 **Cross Examination by Ms. Faulkner:**

22 Q. Mr. Chiarenza, at what point did you realize that Mr.  
23 Rowe was unhappy with your services?

24 A. At the very least it would have been that morning, you  
25 know, the morning of the plea. But prior to that, I mean,

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1 we had some pretty good cordial conversations. He never  
2 indicated to me prior to the plea that he wanted another  
3 attorney.

4 And, you know, in fact, it wasn't -- it was -- the  
5 meeting we had just before that plea would have been the  
6 first time that we actually even had an offer on the table.  
7 So up until that point, you know, our discussions were more  
8 about trying to get to the point of an offer, seeing if law  
9 enforcement would talk to us about the information he had.

10 So really, I mean -- I mean, not to be, I don't know,  
11 flippant or anything, but he wouldn't have had any reason to  
12 be unhappy with me, you know, at the very least, up until I  
13 had an offer on the table that, I guess, he's ultimately --  
14 was unhappy with the zero to fifteen, straight-up plea to  
15 arm -- strong arm robbery. But until that point, I don't  
16 know, he may have been, but it wasn't indicated to me.

17 Q. Okay. So did you think it was appropriate or did you  
18 think you even had the opportunity to get off his case at  
19 that -- that day before the plea?

20 A. Well, Monday morning, you know, I certainly could have  
21 moved to have been relieved. And I think the court may very  
22 well have relieved me. And I'm betting I told him that when  
23 we all sat in there with Mr. Maxwell.

24 But the problem is, it was -- nobody was going to force  
25 him to go forward with me as his lawyer, but Mr. Maxwell has

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1 no obligation to keep the plea offer open. So it's my  
2 recollection that it was something along the lines of, fine,  
3 you want another lawyer? That's all well and good, ---

4 **MR. ROWE:** That's what I wanted.

5 A. --- but your case is -- and this isn't me speaking.  
6 I'm talking about what Mr. Maxwell would have said, is that,  
7 but your offer's off the table today. So, you know, another  
8 lawyer is going to have to either try your case or plead you  
9 straight-up to zero to thirty.

10 Again, this case was a year old. And I don't know  
11 exactly how the Sixth Circuit Solicitor's Office works, but  
12 if it works like many I'm familiar with, you're going to  
13 start getting some heat about moving a case that's a year  
14 old. So they ---

15 Q. All right..

16 A. --- were ready to move forward.

17 Q. Why did it take a year for the case to get to this? Do  
18 you know?

19 A. Oh, I'd be willing to bet fifty percent of their cases  
20 are -- probably take a year or more. I don't think that  
21 that's unusual. I think maybe the fact that, you know, that  
22 he got conflicted out delayed things. And honestly I was in  
23 no hurry to move it until they were willing to put something  
24 on the table that was more attractive than straight-up to  
25 thirty.

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1 Q. Right. Did you discuss with Mr. Rowe the fifteen year  
2 sentencing possibility?

3 A. That would have come under the umbrella of me telling  
4 him that they were reducing his charge, you know, they were  
5 -- that this is what the offer is at this point. They're  
6 going to plead us to what they were calling a lesser  
7 included count on the indictment, strong arm robbery, common  
8 law robbery as he's referred to it, and that it carries zero  
9 to fifteen.

10 I certainly didn't tell him, and I think the transcript  
11 is clear, that at the time we were going in front of the  
12 judge, that we had any kind of deal other than a straight-up  
13 plea, zero to fifteen, you know. And that was our  
14 sentencing range at that point. Parole eligible, non-  
15 violent, which are also significant differences.

16 Q. Do you believe that when he went into that plea that he  
17 understood that he could face fifteen years?

18 A. I had no reason to think he wouldn't have understood  
19 that. I think I made that quite plain.

20 Q. Okay.

21 A. And I know he keeps referencing a fifteen year cap, but  
22 I guess for all intents and purposes, it statutorily is a  
23 fifteen -- you can't get more than fifteen on a strong arm  
24 robbery. So you can get less. And that's what we were  
25 hoping for. But his exposure was anywhere between zero and

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1 fifteen years.

2 Q. Right. Did you offer anything in mitigation at the  
3 sentencing?

4 A. Other than what's in the transcript, no.

5 Q. Okay. And why did you not offer anything else in  
6 mitigation?

7 A. Well, again, this was pretty fast and fluid the way  
8 things were moving. I really was surprised that we had to  
9 do the plea that day. I really thought that, you know, I  
10 had met with Boyd, I think, on two other terms of court.  
11 Both times where Mr. Maxwell had wanted him to -- just to  
12 plead without an offer.

13 And so the nature of his case had been to grind things  
14 out, to go back to the solicitor, you know, a little back  
15 and forth. So I was hopeful that on Monday Boyd and I could  
16 talk and just -- I could finally give him the ultimate lay  
17 of the land and where we were that if he was ready that we  
18 could set it for later on the in the week. I think that  
19 that possibility went out the door when, you know, we had  
20 the meeting between the three of us in the jury room where  
21 Boyd indicated he wanted another lawyer, and Mr. Maxwell  
22 said, that's fine, but your offer's off the table today.

23 So, you know, at that point I didn't have mitigation  
24 witnesses prepared for a plea. I could have waited for  
25 mitigation witnesses to come and mitigate it on a zero to

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1 thirty. You know, I made the decision that given the facts  
2 of this case, given his history, you know, that it was more  
3 valuable to go in there with a zero to fifteen and no  
4 mitigation witnesses than to go in there and plead to thirty  
5 with all the mitigation witnesses in the world.

6 Q. Right. And did you discuss that with Mr. Rowe?

7 A. No. Not -- we didn't get specific about mitigation  
8 witnesses, you know, why they were or weren't there. I  
9 mean, it -- honestly I was -- I was just scrambling a little  
10 when they said that, you know, this is it, this is -- take  
11 it or leave it, the offer's gone today, we're not even  
12 holding it open til tomorrow.

13 And I don't know if the judge wanted to work a short  
14 week or they had other business to do that week or what the  
15 case was. I suspect it was really them just, you know, this  
16 is your final offer, take it or leave it, the case is a year  
17 old. You know, I think that that was what they were  
18 pushing.

19 Q. Okay.

20 **MS. FAULKNER:** I beg the Court's indulgence.

21 **THE COURT:** Yes, ma'am. Of course.

22 (Pause)

23 Q. Mr. Chiarenza, did you ever discuss with Mr. Rowe his  
24 right to appeal his guilty plea in this case?

25 A. He never indicated to me a desire to appeal his guilty

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1 plea. So just whatever the judge would have put on -- in  
2 the plea colloquy would have been the extent of that. But I  
3 did not. But, again, he never indicated to me a desire to  
4 appeal.

5 Q. Okay.

6 **MS. FAULKNER:** I have no further questions from this  
7 witness, Your Honor.

8 **THE COURT:** Redirect?

9 **MR. MITCHELL:** Just briefly, Judge.

10 **Redirect Examination by Mr. Mitchell:**

11 Q. Mr. Chiarenza, a quick question. In your estimation  
12 was there overwhelming evidence of the defendant's guilt in  
13 the case?

14 A. Yes.

15 Q. And in your estimation would there have been a valid or  
16 a factual basis for an appeal?

17 A. An appeal at trial or an appeal of the plea?

18 Q. From the guilty plea.

19 A. I have read the transcript. I don't see any errors of  
20 -- I don't sit on the Appellate Court, and I don't do appeal  
21 work, but I don't see any glaring errors of law in the  
22 transcript, no.

23 Q. Thank you, sir.

24 **MR. MITCHELL:** Thank you, Judge.

25 **THE COURT:** Recross?

1           **MS. FAULKNER:** Nothing further, Your Honor.

2           **THE COURT:** Thank you. Thank you, Mr. Chiarenza.

3           A. Thank you, Your Honor.

4           **THE COURT:** You may step down. All right. Mr.  
5 Attorney General, you may call your next witness.

6           **MR. MITCHELL:** There are no other witnesses, Your  
7 Honor.

8           **THE COURT:** Thank you. Ms. Gardner, any evidence or  
9 testimony in reply?

10           (Pause)

11           **MS. FAULKNER:** I beg the Court's indulgence for one  
12 moment.

13           **THE COURT:** Yes, ma'am.

14           (Pause)

15           **MS. FAULKNER:** I have nothing further, Your Honor,

16           **THE COURT:** Thank you. Thank you very much. I'll be  
17 glad to hear from you, Ms. Gardner.

18           **MS. FAULKNER:** Your Honor, I think the testimony is  
19 clear. This plea was actually put up that morning or it was  
20 offered that morning. It was very -- it was decided in  
21 haste.

22           From my client's perspective, Mr. Chiarenza did not  
23 discuss with him the possible sentencing range. My client  
24 has indicated that he went in to do the plea thinking that  
25 he was going to get eight to ten years.

1           He was on medication. Of course, that wasn't -- I  
2 understand that that doesn't really matter in -- at this  
3 juncture, but, Your Honor, Mr. Chiarenza didn't offer  
4 anything in mitigation. My client, he did indicate that he  
5 had the robberies from back in the 80s, but it'd been a long  
6 time. He was certainly -- my client was certainly unhappy  
7 with the services of Mr. Chiarenza, which the court has  
8 indicated Mr. Chiarenza actually acknowledged.

9           Your Honor, given the testimony, I think it is  
10 appropriate for the Court to grant my client's Post  
11 Conviction Relief action and allow him to go back and  
12 restart and face these charges again, Your Honor.

13           **THE COURT:** Thank you, Ms. Gardner. Mr. Attorney  
14 General.

15           **MR. MITCHELL:** Thank you so much, Judge. Just briefly.  
16 The standard of PCRs is a two-pronged test. One, first,  
17 whether the attorney is deficient in any type of way. And  
18 then second, whether -- if that attorney is deficient,  
19 whether that deficiency somehow prejudices the defendant.

20           In this particular case the defense counsel testified  
21 that there was overwhelming evidence of guilt in this  
22 particular case. And so he sought a plea route as opposed  
23 to a trial route.

24           As evidenced from the transcript, the judge went over  
25 the plea colloquy with the defendant indicating the number

1 of years that he was facing. The defendant indicated that  
2 he understood the judge and understood his constitutional  
3 rights and everything that was told from it. Your Honor,  
4 the State would submit that this plea should not be  
5 overturned, and we'd ask that you dismiss the Applicant's  
6 application.

7 **THE COURT:** Thank you. Thank you very much.

8 **MR. MITCHELL:** Thank you, Judge.

9 **THE COURT:** I've listened very closely to the testimony  
10 of Mr. Boyd, both direct, cross and allowed him and listened  
11 very closely to his statements to the Court thereafter. I  
12 also listened very closely to the testimony of Mr.  
13 Chiarenza.

14 I have reviewed the transcript of the record dated May  
15 2016 in front of the Honorable Roger Young. I do not see  
16 the word cap except one time in that record. And it is  
17 stated during the mitigation stage as presented by Mr.  
18 Chiarenza. I paraphrase, but would I have liked or would  
19 have loved to have a cap of five years. I did not see that  
20 terminology used by Solicitor Maxwell or by the court.

21 On page 3 of the transcript, after the court recognized  
22 the solicitor in the first paragraph, after it's indicated  
23 to the court that Mr. Rowe was pleading to strong arm  
24 robbery, which we know the sentencing sheet, it says  
25 robbery/common law robbery, strong arm robbery. That's one

1 charge. Strong arm also known as common law. Solicitor  
2 Maxwell states, it carries up to fifteen years, and the  
3 State is asking for a fifteen year sentence in this case.

4 As you go on through the -- through the colloquy on  
5 page 4 of the transcript, the court asks or makes this  
6 statement to the defendant, I am told that you want to waive  
7 presentment to the grand jury on the strong arm robbery  
8 charge and your right to a jury trial, is that correct? Mr.  
9 Rowe's response, yes, sir.

10 On the next page, 5, line 11, are you pleading guilty  
11 to this charge because you are guilty of it? On line 11 Mr.  
12 Rowe's response, yes, I am guilty.

13 There is some discussions thereafter concerning his  
14 injury or at least brain operation as the court recognized  
15 and some discussion about his mother and then into  
16 medications.

17 On page 8 as Mr. Rowe talked about Elavil on the stand,  
18 line 22, the court asked, this medication does not do that  
19 to you, does it? And that referred back to line 14 that he  
20 had taken medication at one point in time.

21 Then, quote, as the court says, kind of left you in a  
22 zombie-state. Then he asked about this medication. And the  
23 court -- the defendant at line 22 is, no, I have been taking  
24 Elavil. The doctor prescribed it for me.

25 And if you go to page 9, the bottom of page 8, still,

1 the court, so the medication you're taking right now, does  
2 it help you deal with things better or does it make it  
3 worse? Mr. Rowe's response is, it helps me.

4 Next question, so today you understand why you are here  
5 in court? Defendant's answer, yeah. The court, and you  
6 understand what you're doing in court? Yeah. I know I  
7 walked into the bank and took money over the counter.

8 So it's clear from the transcript that he waived the  
9 grand jury, waived his jury trial, admitted his guilt and  
10 that the court took pains to -- to evaluate his mental state  
11 at the time. And, of course, as you all know under 44-53-  
12 something, I apologize, I think it's 430, circuit court  
13 judges are required if an individual is before them, they  
14 have any question whatsoever about their mental state or  
15 their competency are to order an evaluation *sua sponte*  
16 regardless of whether one of the attorneys or the others  
17 request that.

18 As far as the facts of the case and the rendition by  
19 Solicitor Maxwell for the factual foundation for Judge  
20 Young, it appears borrowing the truck and such like that  
21 from Mr. Hertz (ph.) or Mr. Wright, I don't -- particular  
22 names, surveillance cameras, such as that, that there was  
23 some prior planning therein.

24 Further, the phone call, that the jail was monitoring,  
25 tell a female, I believe, where parts of the proceeds of the

1 robbery was. It appears Fairfield County Sheriff's  
2 Department got a search warrant and recovered some amount, a  
3 little over three hundred dollars (\$300.00).

4 Xanax, I take that into account. Also, voluntary  
5 intoxication on drugs or alcohol is not a defense to a  
6 specific intent crime under -- I don't have my computer, but  
7 I think the -- one of the older similar cases, because I  
8 only know older cases, is State versus Hatfield, H-a-t-f-i-  
9 e-l-d, where the drug of choice in that case was cocaine.

10 There's no indication of any cap. It's a total  
11 indication that -- zero to fifteen. One judge could have  
12 given an individual five years, one could have given him  
13 seven years, one could have given him fifteen years, one  
14 could have given probation, one could have given time  
15 served. We have absolute discretion in that regard.

16 I also take into account the fluidity of the practice  
17 of criminal law in plea court. There are times when they  
18 move very quickly. There are times, as is pointed out, and  
19 I've read, and I marked it down, and it was testified to --  
20 it should be on this page. Page 24, line 7 or 8, fish or  
21 cut bait. That's in the transcript. Offers were made.  
22 Offers can be withdrawn.

23 I do find with the timing involved that there was  
24 mitigation offered. Mr. Chiarenza noted to the court the  
25 timing, the fluidity of the case, that he does have family,

1 that he has a number of siblings. I forget the number. But  
2 his mother's condition, his frustration with not being able  
3 to put money on his phone account or whatever it is at the  
4 jail to contact his mother to find out his mother's  
5 condition, that mitigation witnesses would have been there,  
6 that they've been very supportive and have been in contact  
7 with Mr. Chiarenza.

8 I do not find that there is ineffective assistance of  
9 counsel. And it meets neither the prong one and certainly  
10 not prong two.

11 Again, you're dealing with a situation where Mr. Rowe,  
12 with what I perceive is overwhelming evidence of guilt, was  
13 facing a thirty year sentence, a thirty year sentence. He  
14 goes from facing a thirty year, no parole sentence to  
15 pleading to a fifteen year, non-violent, parolable offense.  
16 Perhaps that sounds somewhat paternalistic on my part, but I  
17 don't see the ineffectiveness.

18 And I read Judge Young's order, and, I mean, I read  
19 judge's sentencing colloquy, and he's -- takes that into  
20 account, his family situation, his prior serious injury in  
21 Newberry. As Mr. Chiarenza pointed out, it does not appear  
22 that Newberry took that very seriously or, I shouldn't say  
23 that, perhaps didn't follow through like others could have  
24 been followed, like there were alternates, the way it was  
25 followed through.

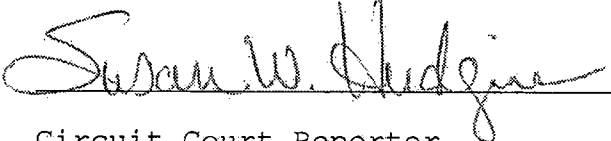


## Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Lancaster County, South Carolina, on the 17th day of July 2017.

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

May 12, 2018

  
\_\_\_\_\_  
Circuit Court Reporter

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF FAIRFIELD ) TENTH JUDICIAL CIRCUIT

2018 MAR -5 AM 10:50

Boyd William Rowe, #273284,

FAIRFIELD COUNTY  
CLERK OF COURT  
JUDY M. BONDS

2016-CP-20-082

FILED

Applicant,

v.

ORDER OF DISMISSAL

RECEIVED  
3-7-18

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed on March 7, 2016, by Boyd William Rowe (Applicant). Respondent made its Return on or about November 22, 2016. An evidentiary hearing into the matter was convened on July 17, 2017 at the Lancaster County Courthouse in Lancaster, South Carolina at which time the Applicant was present and represented by Beth Ramsey Faulkner, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Derek S. Chiarenza, Esquire also testified. This Court had before it a copy of the records of the Fairfield County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, and Applicant's records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Fairfield County Clerk of Court. Applicant was indicted by the May 2015 term of the Fairfield County Grand Jury for one (1) count of strong armed robbery and one (1) count of entering financial institution with intent to steal (2014-GS-20-191). Derek Chiarenza, Esquire represented Applicant. On May 4, 2015, Applicant waived presentment to the Grand Jury and pled guilty as indicted. The Honorable Roger M. Young sentenced Applicant, with recommendation by the State, to incarceration for fifteen (15) years. Applicant did not appeal his conviction or sentence.

### ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
  - a. "Counsel failed to provide competent representation, and these omissions were prejudicial to his defense."
  - b. "Counsel failed to properly investigate the facts surrounding the circumstances that lead to his arrest, or to discuss the parameters of his defense."
2. "Involuntary Guilty Plea"
  - a. "Counsel did not actually or substantially assist him in deciding whether to plea or not."
  - b. "Counsel did not familiarize himself with facts of the case."
  - c. "Counsel did not impart to the applicant an understanding of the law in relation to the facts."
  - d. "Counsel issued erroneous advice to the applicant as to the length of the sentence he would receive by entering his plea."
  - e. "Counsel coerced and induced the applicant into entering his plea by making threats as to the length of sentence he would receive by not pleading guilty, without any regard to explaining the trial process."
3. "Constitutional Deprivation"
  - a. "The Applicants was denied his sixth and fourteenth amendment rights to an effective assistance of counsel in so far as his plea counsel failed to provide competent representation."

### SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

### Applicant's Testimony

Applicant testified he only met with plea counsel two or maybe three times and most of those meetings were in reference to a murder case plea counsel thought Applicant had some information about. He testified plea counsel did not go over any discovery with him and he believed plea counsel did not investigate his case. Applicant also testified plea counsel did not discuss the plea with him and he never agreed to anything regarding the plea. He testified there were no discussions concerning any sentencing caps and had he known about the fifteen year sentencing cap he would have not entered the plea. Concerning the incident, Applicant testified he took Xanax the day of the robbery but did not remember anything that occurred after that. He testified he discussed this with his attorney as a possible defense every single time he spoke with him. He testified he suffered a head injury and was on medication called Elavil to treat the effects of the injury. He further testified he also received some psychiatric treatment and he did not know what he was doing the day of the incident. He testified plea counsel told him if he did not take the plea deal then he would get thirty years. He further testified plea counsel never answered any calls from his family member who wanted to be present at the hearing and plea counsel did not submit anything to get a lighter sentence.

On cross-examination, Applicant testified he had been convicted of a previous armed robbery. He testified he recalled the judge discussing a possible sentence but nothing about a cap. Applicant also testified he recalled being advised of his constitutional rights but was on Elavil and scared and did not know what he was doing. He testified he thought he was getting a jury trial and he was eighty-five percent deaf in one ear and could not really hear the judge.

### Plea Counsel's Testimony

Plea counsel testified he had been practicing law since 1993 and his practice has

primarily been in criminal defense. He testified he was appointed to Applicant's case by the court. He testified he did not believe that a trial was the best avenue as Applicant had given confessions to committing the crime. Plea counsel testified he did not think voluntary intoxication would be a viable defense and advised Applicant against that defense. He testified the solicitor in this case offered Applicant a straight up plea to strong-arm robbery and said that offer was the best he could do. He testified he did recall a conversation where Applicant stated he wanted another lawyer and the solicitor told plea counsel that would be okay with him but if Applicant did not take the plea that day, the offer would be off the table. He testified he discussed Applicant's rights that were contained in the plea colloquy with him. Plea counsel testified he believed he got the best plea offer he could for Applicant. He testified he believed Applicant was competent to stand trial. Plea counsel testified he knew of Applicant's head injury but there were no indicators that he was unable to understand the plea.

On cross-examination, plea counsel testified he learned Applicant was unhappy with his representation the morning of the guilty plea. He further testified he thought Applicant understood the plea and had no reason to believe he did not. Plea counsel testified given the facts of the case and Applicant's criminal history, the zero to fifteen year plea deal and no mitigation witnesses was the best mitigation strategy but he did not discuss this with Applicant. He testified he did not discuss appealing Applicant guilty plea with him because he felt it was clear Applicant did not want to.

On re-direct plea counsel testified there was overwhelming evidence of guilt in this case and there were no glaring errors at the guilty plea that warranted appealing it.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

#### Applicable Law

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

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

the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

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

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

applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." *Id.* (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." *Id.* at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

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

#### Ineffective Assistance of Counsel

Applicant alleges that plea counsel provided ineffective assistance of counsel. Plea counsel testified that he met with Applicant a couple of times and did not believe trial was the best avenue given the confessions Applicant had made. He further testified Applicant wanted to use a voluntary intoxication defense but he did not think that would be a viable defense as it is not a defense to a crime. Plea counsel ultimately testified he believed the plea deal he got for Applicant was the best he could get considering the overwhelming evidence against Applicant in

this case. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Further this Court finds Counsel was correct in relying to Applicant that voluntary intoxication is not a viable defense to his crime. Generally, voluntary intoxication or use of drugs does not constitute defense to crime; however, insanity caused by use of drugs or intoxication may be defense where insanity is permanent and destroys defendant's ability to know right from wrong. State v. Hartfield, 300 S.C. 469, 388 S.E. 2d 802 (1990). Therefore, this allegation is denied and dismissed.

#### Involuntary Guilty Plea

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. This Court finds Applicant has failed to carry his burden regarding this allegation. The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford, 519 F.2d at 350. Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

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

#### Overwhelming Evidence

The evidence of Applicant's guilt was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt). Plea counsel testified Applicant confessed to the crime. The State had video surveillance of the crime in which Applicant was captured on it in the bank. Additionally, witnesses were outside the scene of the crime and saw the get-away car Applicant was driving and the car was later connected to Applicant. This Court finds the evidence against Applicant was overwhelming. Therefore, this Court finds Applicant is unable to prove there was a reasonable probability any deficiency of Counsel would have changed the result of the proceeding. Accordingly, this Court denies and dismisses these allegations.

**CONCLUSION**


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

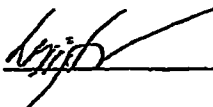
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they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

**IT IS THEREFORE ORDERED THAT:**

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

AND IT IS SO ORDERED this 14 day of February, 2018.

  
\_\_\_\_\_  
R. KNOX MCMAHON  
Presiding Judge  
Sixth Judicial Circuit

 \_\_\_\_\_, South Carolina

WITNESSES

Dove-FCSO

*Truesdale*

ARREST WARRANT NUMBER/DOA

2014A2010100173 (DOA-05-12-14)

ACTION OF GRAND JURY

TRUE BILL

*9-4-14*

*Mrs M. Lozes*

Foreperson of Grand Jury

Date: *9-4-14*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-20-191

The State of South Carolina  
County of Fairfield

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2014

THE STATE  
vs.

Boyd W. Rowe

Indictment for Entering Financial  
Institution with Intent to Steal

SC Code: § 16-11-380  
CDR Code: 0257  
Class: Felony A

2014 SEP 4 PM 2 01

FAIRFIELD COUNTY  
CLERK OF COURT  
BETTY JO BECKHAM

*Betty Jo Beckham*  
I, Betty Jo Beckham, Clerk of Court, do  
hereby certify this is a true copy of  
the original file in this office.  
3/24/14  
Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FAIRFIELD )

INDICTMENT

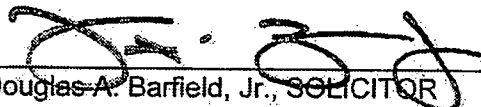
At a Court of General Sessions, convened on September 4, 2014, the Grand Jurors of Fairfield County present upon their oath:

**ENTERING FINANCIAL INSTITUTION WITH INTENT TO STEAL**

That Boyd W. Rowe did in Fairfield County on or about May 8, 2014, enter a building or a part thereof occupied as a bank, depository, or building and loan association, to wit: First Citizens Bank, with intent to steal money or securities for money, either by force, intimidation, or threats in violation of §16-11-380 of the Code of Laws of South Carolina, (1976), as amended.

I, Betty Jo Beckham, Clerk of Court,  
Fairfield County, South Carolina, do  
hereby certify this is a true copy of  
the original on file in this office.  
3/24/16  
Betty Jo Beckham

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

  
Douglas A. Barfield, Jr., SOLICITOR

**WITNESSES**

Dove-FCSO

DOCKET NO. 2014-GS-20-191  
Count # 2

**The State of South Carolina  
County of Fairfield**

**COURT OF GENERAL SESSIONS**

**MAY TERM 2015**

**ARREST WARRANT NUMBER/DOA**

2014A2010100173 (DOA 05-12-14)

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date:

**VERDICT**

Foreperson of Petit Jury  
Date:

**THE STATE  
vs.**

**Boyd W. Rowe**

**Indictment for  
Strong Armed Robbery**

SC Code: Common Law; § 16-11-0325  
CDR Code: 0137  
Class: Felony, D

*Betty Jo Beckham*  
Clerk of Court,  
Fairfield County, South Carolina, do  
hereby certify this is a true copy of  
the original on file in this office.

*Betty Jo Beckham*  
Clerk of Court

*[Handwritten signature]*

STATE OF SOUTH CAROLINA )

INDICTMENT

COUNTY OF FAIRFIELD )

At a Court of General Sessions, convened on July 14, 2015, the Grand Jurors of Fairfield County present upon their oath:

**STRONG ARMED ROBBERY**

That Boyd W. Rowe did in Fairfield County on or about May 8, 2014, by use of force, threats of force, or intimidation, take and carry away the personal property from the person or immediate presence of the victim, First Citizen Bank, with the intent to deprive the owner of possession of the property in violation of the common law of the State of South Carolina and §16-11-325 of the Code of Laws of South Carolina.

I, Betty Jo Beckham, Clerk of Court, Fairfield County, South Carolina, do hereby certify this is a true copy of the original on file in this office.

*Betty Jo Beckham*  
Clerk of Court  
3/24/16

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

*Randy E. Newman, Jr.*

Randy E. Newman, Jr., SOLICITOR