

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
Thomas A. Russo, Circuit Court Judge

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S.C. SUPREME COURT

DONALD R. DOLLARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000194

APPENDIX

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF FLORENCE) No. 2014 GS 21 691

3

4 STATE OF SOUTH CAROLINA)
)
 5)
)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
)
 8 NATHANIEL NESMITH and)
 DONALD RAY DOLLARD)
 9)
 Defendants)

10

Florence, South Carolina

11

October 21, 2014

12

13 B E F O R E :

14 HONORABLE B. C. CULBERTSON, Judge

15

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

17 For the State: ED CLEMENTS, Esq.
 Solicitor
 18
 19 For Def. Nesmith: WILL GROVE, Esq.
 20 For Def. Dollard: STEVEN DeBERRY, Esq.
 21 Reporter Present;; DAPHNE HELMS

22

23 HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 24 46 Regency Oaks Drive
 Summerville, S. C. 29485

25

1 (The within matter came before the Court for hear-
2 ing on October 21, 2014)

3 SOLICITOR: If it please the Court, Your Honor?

4 THE COURT: Yes, sir. What have you got?

5 SOLICITOR: Your Honor, this is Indictment 2014-GS-
6 21-691. This is a multiple count Indictment, Your
7 Honor, with Codefendants.

8 Mr. Nathaniel Nesmith has been charged, Your Honor,
9 on a Indictment along with Mr. Dollard, Ray Dollard, and
10 Mr. Gregory Canty.

11 A multi count Indictment. Count one, murder, and
12 count two, armed robbery; count three, conspiracy; count
13 four, kidnapping; count five, possession of a weapon
14 during the commission of a violent crime.

15 It is my understanding that Mr. Nesmith has agreed
16 to count two, armed robbery, and a lesser included of-
17 fense of count one, voluntary manslaughter.

18 Your Honor, present here in the Courtroom are In-
19 vestigator Chad Collins and Investigator Thomas McFadden
20 of the Florence County Sheriff's Office, the investiga-
21 tors in this case.

22 Your Honor, this is an event that occurred on the
23 third of December of 2013. Mr. David L. Jenkins was
24 shot and killed .

25 His widow, Ms. Blondella Jenkins, is here, Your

1 Honor. Also his sister, Ms. Victoria Harper, is here
2 in the green coat. They are seated with our Victim Ad-
3 vocate, Ms. Vicki Singletary.

4 Your Honor, let me tell you -- before I get into the
5 facts, let me tell you a little bit about Mr. Nesmith.
6 I believe he is fifty-two years old. Is that correct,
7 Mr. Groves?

8 He's standing here with his attorney, Mr. Will
9 Groves, and his parents.

10 Your Honor heard the bond hearing on February 6,
11 2014. It was denied, and I believe he's been in jail
12 since he was arrested on the 18th of December, 2013.

13 He has been housed in Williamsburg County where my
14 understanding is he has pending bank robbery charges. We
15 asked the Solicitor's Office there if they wished to try
16 to move that case today. We were going to try to move
17 it all together, but they were not ready to do that.

18 I wanted to accommodate Mr. Grove and his other at-
19 torney but they were not prepared to do that, so we are
20 not proceeding on that today.

21 In regards to Mr. Nesmith's criminal history, he
22 has quite a criminal history from the State of New York,
23 Your Honor, where he has illegal use of a firearm; dis-
24 playing a weapon; robbery second degree; a robbery second
25 degree with physical injury and displaying a firearm; a

1 robbery third degree; a robbery first degree; a crim-
2 inal possession of a controlled substance, third, of nar-
3 cotic drugs with intent to sell; criminal possession of
4 controlled substance, fifth degree; intent to take trans-
5 portation without paying; forcible touching; forcibly
6 touching another person's intimate parts which is a
7 misdemeanor crime in New York; acting in a manner to en-
8 danger a child less than seventeen; criminal possession
9 of a controlled substance, seventh degree; endangering
10 the welfare of a child; criminal possession of marijuana,
11 fifth degree, in a public place; criminal possession of
12 a controlled substance, seventh degree.

13 Those are all, I believe, from the State of New
14 York.

15 Other than the pending charges in South Carolina,
16 there is no other criminal record.

17 Your Honor, at the appropriate time when you are ready
18 I will proceed with the facts of the case by Investiga-
19 tor Collins and McFadden.

20 THE COURT: All right. Attorney-wise, give the
21 Court Reporter your names and who you represent. Mr.
22 Clements on behalf of the State.

23 MR. GROVES: Will Groves. I'm Assistant Public
24 Defender with Florence County, representing Mr. Nesmith.

25 THE COURT: Any other attorneys to participate in

1 the hearing?

2 SOLICITOR: No, Your Honor.

3 THE COURT: Mr. Groves, you represent Nathaniel
4 Nesmith?

5 MR. GROVES: I do, Your Honor.

6 THE COURT: He's pleading to voluntary manslaughter
7 and armed robbery?

8 MR. GROVES: Yes, sir.

9 THE COURT: Have you spoken with your client as to
10 the charges against him, his rights as a Defendant, and
11 the consequences of being convicted of these crimes?

12 MR. GROVES: I have.

13 THE COURT: In your opinion, does your client under-
14 stand the charges against him, his rights as a Defendant,
15 and the consequences of being convicted of these crimes?

16 MR. GROVES: I believe he does.

17 THE COURT: Does he wish to plead guilty or not
18 guilty?

19 MR. GROVES: Guilty.

20 THE COURT: Do you agree with his decision to plead
21 guilty to these charges?

22 MR. GROVES: I do, Your Honor.

23 THE COURT: Based upon the information you have, if
24 this case was to go to trial, do you feel the State
25 could prove your client guilty beyond a reasonable doubt?

1 MR. GROVES: Yes, Your Honor.

2 THE COURT: Has your client received a competency
3 evaluation?

4 MR. GROVES: No, sir.

5 THE COURT: Do you feel he needs a competency eval-
6 uation?

7 MR. GROVES: No, Your Honor. He is very competent.

8 THE COURT: All right. Please place Mr. Nesmith
9 under oath.

10 (Defendant Nesmith sworn by the Clerk)

11 THE COURT: Thank you, sir. Your name is Nathaniel
12 Nesmith?

13 DEFENDANT: Yes, sir.

14 MR. NESMITH: You have been charged and indicted
15 on a number of charges. Two of these charges are mur-
16 der and armed robbery.

17 This indictment covers all lesser included offenses,
18 of which voluntary manslaughter is a lesser included of-
19 fense of murder.

20 According to your attorney, you wish to plead guilty
21 to the lesser charge of murder as well as the indicted
22 charge of armed robbery. Is that correct?

23 DEFENDANT: Yes, sir.

24 THE COURT: Before I can accept your guilty plea,
25 I have to go over some questions with you, and the purpose

1 of my questions is to be sure that you understand the
2 charges against you; that you understand your rights as
3 a Defendant; that you understand the consequences of
4 pleading guilty. I must be sure that you are pleading
5 guilty voluntarily.

6 Have you in the past seventy-two hours taken any
7 medication, consumed any alcohol or drugs, or been under
8 any influence that would affect your ability to know
9 why you're here?

10 DEFENDANT: No, sir.

11 THE COURT: You understand why you are here today?

12 DEFENDANT: Yes, sir.

13 THE COURT: Is there anything about this hearing
14 that you want to ask your lawyer or ask me before we
15 proceed?

16 DEFENDANT: No, sir.

17 THE COURT: All right. Even though you have been
18 indicted by the Grand Jury, under the Constitution of
19 the United States you are presumed innocent of these
20 crimes.

21 You have a right to have your guilt or innocence
22 determined by a jury trial of your peers. The State
23 bears the burden of proving your guilt beyond a reason-
24 about doubt. You do not have to prove your innocence,
25 and you cannot be compelled to testify against yourself.

1 You also have a right to confront and cross-exam-
2 ine anybody who testifies against you. If you choose,
3 you could present a defense to the charges, but when
4 you plead guilty you give up all of those rights. Do
5 you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you want to give up those rights
8 and plead guilty to these charges?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right. You understand that on the
11 charge of voluntary manslaughter I could send you to
12 prison for thirty years, and on the charge of armed rob-
13 bery I could send you to prison for thirty years?

14 DEFENDANT: Yes, sir.

15 THE COURT: Those are the maximum sentences allowed
16 by law, and if I ordered these sentences to be run conse-
17 cutively I could sentence you to prison for sixty years.
18 Do you understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you also understand that armed rob-
21 bery carries a mandatory minimum sentence, which means
22 there is a minimum sentence that must be imposed for
23 that crime which is ten years in prison. You understand
24 that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Do you also understand that for both
2 of these crimes, whatever sentence I impose, you will
3 not be eligible for parole? You'll have to serve the
4 sentence I impose. Do you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you also understand that both of
7 these are classified as violent crimes, and what that
8 means is that if you are ever convicted of another vio-
9 lent crime, for that subsequent violent crime conviction
10 you will not be eligible for probation and you would
11 not be eligible for parole?

12 The State could use this conviction against you if
13 you should be convicted of two violent crimes. Do you
14 understand that?

15 DEFENDANT: Yes, sir.

16 THE COURT: Do you also understand that both of
17 these crimes are classified as most serious crimes, and
18 what that means is that if you are ever convicted again
19 of a most serious crime or if you were convicted again
20 of a serious crime, the sentence for those subsequent
21 convictions could be enhanced to life in prison without
22 possibility or eligibility for parole, if the State were
23 to use this guilty plea against you to show two convic-
24 tions for most serious crimes on your record. Do you
25 understand that?

1 DEFENDANT: Yes, sir.

2 THE COURT: Knowing your rights as a Defendant and
3 knowing the maximum sentence you could receive, knowing
4 both these crimes are classified as violent crimes and
5 most serious crimes, and the consequences of any subse-
6 quent convictions for a violent or most serious or a
7 serious crime, do you wish to plead guilty or not guilty
8 to voluntary manslaughter?

9 DEFENDANT: Guilty.

10 THE COURT: Do you wish to plead guilty or not
11 guilty to armed robbery?

12 DEFENDANT: Guilty.

13 THE COURT: Anybody promised you anything or threat-
14 ened you in any way to get you to plead guilty?

15 DEFENDANT: No, sir.

16 THE COURT: Are you pleading guilty voluntarily?

17 DEFENDANT: Yes, sir.

18 THE COURT: Are you satisfied with the services of
19 your lawyer?

20 DEFENDANT: Yes, sir.

21 THE COURT: Are you pleading guilty to these crimes
22 because you committed these crimes?

23 DEFENDANT: Yes, sir.

24 THE COURT: Please listen carefully while the So-
25 licitor gives me the facts or what they are saying

1 happened in this case. Okay?

2 DEFENDANT: Yes, sir.

3 SOLICITOR: Thank you, Your Honor. May it please
4 the Court?

5 Your Honor, Mr. Nesmith was with two Codefendants,
6 Mr. Donald Ray Dollard and Mr. Gregory Canty. They got
7 in, I think, Mr. Dollard's vehicle, if I'm not mistaken,
8 and came to Florence to a store that is run by a man by
9 the name of Brian McElveen.

10 Also present there was an associate of his, Mr.
11 Clay McKnight. Neither of them wish to be here today,
12 Your Honor, which -- I believe a part of the reason for
13 that may be because that store Mr. McElveen runs is a
14 place known for gambling, and that is probably why this
15 store was targeted to be robbed.

16 Your Honor, Mr. Canty did not go into the store but
17 remained in the vehicle, but I think he gave Mr. Dollard
18 and Mr. Nesmith the name of Brian McElveen, which gained
19 them access to get into the store.

20 There was a surveillance video camera there at the
21 store, and Mr. Nesmith and Mr. Dollard went to the store
22 and knocked on the door and was told, according to what
23 Mr. Nesmith tells us -- everything he told we have not
24 been able to corroborate. He was not the first one to
25 talked. Mr. Dollard talked immediately with the law

1 enforcement. Mr. Nesmith, I believe, was truthful with
2 me. He told me that they were told, go away; we are
3 closed; and they said, right, and called out his name.
4 Then he opened the door and let them in.

5 They went in and Mr. Clay McKnight was there and
6 Mr. McElveen was there, and Mr. David Jenkins was there,
7 and Mr. Jenkins was getting ready to go.

8 They told him you've got to stay or go, and he says
9 okay and walks out the door, and they begin to rob Mr.
10 McKnight and Mr. McElveen.

11 On the way to the store they had stopped at another
12 store which was like a Dollar General, and they got some
13 twist ties or zip ties, and like a toy badge and toy
14 handcuffs, and they handcuffed them. Mr. Dollard or Mr.
15 Nesmith one had a badge. Mr. Dollard had the zip ties
16 and he was going to tie the people up with zip ties.

17 Then there was a knock at the door and he told Mr.
18 Nesmith to answer the door. Mr. Nesmith answered the
19 door and Mr. Jenkins was there with a gun, which was a
20 high point, and he tried to fire and the gun misfired,
21 and he didn't even have a magazine in it. He had the mag-
22 azine in his pocket, we found later.

23 But you could tell on the video that he tried to
24 fire and kind of fooled with it, and Mr. Dollard -- Mr.
25 Nesmith returned fire. He thought he was shot, he says.

1 You know, when the gun clicked he just fired. Mr.
2 Jenkins ran around the corner of the building, and he got
3 shot. Mr. Nesmith did hit him, and he went around the
4 corner of the building where he expired.

5 Mr. Nesmith said they planned on robbing the store.
6 They were told they had a lot of money there. I think
7 they knew it might have been a gambling joint.

8 He did express remorse to me and said he didn't
9 intend on hurting anybody. Mr. Jenkins came -- I assume
10 Mr. Jenkins went to his truck and he probably thought
11 something was up and there was a robbery and he was try-
12 ing to stop it.

13 Mr. Nesmith did express remorse to me. I would
14 defer at this time -- I believe there may be some other
15 details I left out. I will defer to the Investigators,
16 but I do need to tell you one other thing. According
17 to Mr. Nesmith, the reason this took place and they were
18 together and they were robbing -- they had charges pend-
19 ing in Williamsburg County for a bank robbery -- is that
20 Mr. Dollard had a young, twenty-five year old girlfriend
21 that was strung out on cocaine and kept trying to get
22 cocaine and money from Mr. Dollard, and he was afraid
23 he was going to lose her and intended on leaving his
24 wife for this young girlfriend who happens to be the
25 niece of a narcotics agent for the Williamsburg Sheriff's

1 Office, and he told me this. I called there and found
2 out who he was. I called him and asked him if he had a
3 twenty-five year old niece that had a relationship with
4 Dollard and was strung out on drugs, and he said he did;
5 that he believed that to be true about his niece.

6 So I corroborated that what he told me was true
7 with regards to that. He told me Mr. Dollard was the
8 driving force behind this, trying to get money, and he
9 was going along with him.

10 Mr. Canty was going to go along with it but when
11 they got there he said he wasn't going to go in; he was
12 not getting out of the vehicle.

13 They got Fifteen Hundred Dollars from Mr. Clay
14 McKnight. There was more money there they didn't know
15 about and didn't take that Mr. McElveen had hidden. Mr.
16 McElveen had given Fifteen Hundred Dollars to Mr.
17 McKnight and that's when Mr. McKnight came in the store,
18 so they were able to find and see quickly that and that
19 is how they got that Fifteen Hundred Dollars.

20 Mr. Nesmith said he got Five Hundred and Mr. Dollard
21 told law enforcement he got Five Hundred Dollars, but
22 Mr. Dollard said he gave Mr. Canty Five Hundred Dollars.
23 Mr. Nesmith verified that.

24 So that is what happened. After the shooting they
25 got the money and took off and went back toward Florence,

1 Florence County and the Williamsburg County area, and
2 Johnsonville-Hemingway area, where they were from.

3 If I left anything out, I would ask the investiga-
4 tors to add to the facts or correct me if I've misstated
5 something.

6 THE COURT: Anybody else who wants to say anything,
7 give the Court Reporter your full name.

8 MR. COLLINS: Yes, sir, Chad Collins.

9 THE COURT: Anything additional?

10 MR. CALDWELL: No, sir. The facts of the case are
11 very clear.

12 THE COURT: Mr. McFadden, anything?

13 MR. McFADDEN: The only thing is we thought it was
14 younger guys who were committing these crimes. You don't
15 picture old men riding around with an idea of going to
16 rob somebody. (Portion inaudible)

17 THE COURT: All right, thank you.

18 SOLICITOR: Your Honor, the State has no concern
19 about sentencing, other than I told Mr. Groves that I
20 would not be in opposition to a concurent sentence on
21 both charges.

22 I would ask that you listen to the victim's family
23 when they have an opportunity to speak. I don't know
24 if they are going to address the Court regarding how it
25 has affected them.

1 THE COURT: All right, thank you. Mr. Nesmith, is
2 that what happened in this case?

3 DEFENDANT: Yes, sir.

4 THE COURT: Now, do you understand that if you went
5 to trial you could challenge whether or not you were leg-
6 ally questioned by law enforcement, and if it was de-
7 termined you were questioned illegally or if any of your
8 constitutional rights against self-incrimination were
9 violated, any confession or statement you gave that in-
10 criminated you could not be used as evidence against you?
11 Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: And you understand that by pleading
14 guilty here today you not only are waiving your right to
15 challenge whether or not you were legally questioned,
16 you are giving up any and all defense you have to these
17 charges? You understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Is that what you want to do?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. Mr. Groves, anything in mit-
22 igation?

23 MR. GROVES: Yes, Your Honor. When Mr. Clements read
24 his record, you heard talk of a lot of charges on there.
25 All of them, with the exception of this arrest, come

1 from the State of New York, I believe. It is difficult
2 to tell whether it is an arrest or whether it is a con-
3 viction, but I can tell you from looking at it that in
4 the last ten years they all appear to be misdemeanors,
5 for whatever that is worth.

6 A lot of times you hear charges that come from an-
7 other state that sound bad, and it is hard to know just
8 exactly what it is that the charge is or the allega-
9 tions of them.

10 We're not here on any of that today but I did want
11 to bring that to the Court's attention.

12 I have represented Mr. Nesmith for not quite a
13 year now, and in talking with him and meeting with him
14 and going over this case he has been nothing short of
15 remorseful.

16 In meeting with the Solicitor a couple of weeks
17 ago, it was classified as extreme remorse and regret,
18 and he did -- he gave a full statement to the Solicitor's
19 Office. He was very detailed and very specific about
20 his role and what, when and where.

21 Obviously, the Solicitor has done homework and has
22 checked up on those things, and all of them have turned
23 out to be accurate.

24 Mr. Nesmith did that, I think, largely out of remorse
25 and regret, and he has expressed to me on numerous of

1 these occasions his remorse, and I'm sure he will ex-
2 press it to Your Honor.

3 There was never any intention of hurting anybody.
4 That's an easy thing to say after the fact but I am cer-
5 tain there is a lot of credibility behind that.

6 He has been concerned since day one about it, and
7 obviously his own well-being is something for a person
8 to be concerned about with charges this serious, but
9 more so the well-being of his parents who are standing
10 behind him. They are residents of the Williamsburg Com-
11 munity.

12 He is concerned, Your Honor, for the length of time
13 he will be required to serve and that they are in their
14 waning years; that he may be missing an opportunity to
15 be there for them toward the end of their lives. They
16 are both here with him for support as they have contin-
17 ued to support him throughout this whole process.

18 I don't think either one of them are in great health
19 but they did make the effort to be here today for their
20 son. That speaks volumes, I think, about his family
21 support, the family support that Mr. Nesmith has.

22 This was a fairly unusual case factually. I've
23 gone over all this stuff with him. We were actually
24 looking through some of his files two or three weeks ago
25 when we met with the Solicitor, and we were looking at

1 crime scene photos, and he stopped me at one point when
2 he -- I think he was a little over-whelmed with re-liv-
3 ing the incident. To say he is not proud of it would be
4 an under-statement of the century.

5 He asked me to stop showing him photos at that
6 point because it became too much for him to deal with,
7 and I think again that shows that this was not by any
8 stretch of the imagination the desired outcome in this
9 case.

10 I do think that the resolution that is presented in
11 front of Your Honor is potentially a likely outcome of
12 a trial, based on the facts that have been presented and
13 based on defenses we might have raised.

14 At the end of the trial, it may have resulted in the
15 dismissal of a couple of the charges in the indictment,
16 but these two principal charges might have been a jury
17 outcome. Obviously at that point we would have lost the
18 ability to accept responsibility for our actions and,
19 given that we were presented with this option, we felt
20 we should take the opportunity. He is contrite as he has
21 always been with me and will express that remorse to the
22 Court and to the family of Mr. Jenkins.

23 I could go on for hours talking about Mr. Nesmith.
24 He has been very active in this case with me and he has
25 written me on numerous occasions, one to explore every

1 available option to him, as he certainly should -- I am
2 glad that he did as we find ourselves here in front of
3 Your Honor with this resolution.

4 There is a minimum and a maximum, and he's hoping
5 Your Honor will consider something closer to the manda-
6 tory minimum, even given the serious nature of the
7 charges and the terrible things that went on. He is not
8 a young man, and he will be required to serve almost if
9 not all of the sentence you hand down.

10 I've gone over with him the fact that the charges
11 are most serious and the fact that both of the charges
12 are violent with all that entails.

13 I have discussed with him the fact that Your Honor
14 cannot give him anything less than a ten year sentence
15 and no sentence that could be suspended below that. No
16 opportunity for parole and that is not something that is
17 in Your Honor's discretion.

18 I have explained to him the community supervision
19 program that will be required of him once he satisfies
20 any sentence which Your Honor gives him. I'd ask that
21 you give him an opportunity to speak and that you hear
22 from his parents at the appropriate time as well.

23 I know this is not a happy day for the Nesmith Fam-
24 ily and certainly it's not a happy day for Mr. Nesmith,
25 but aside from that we would ask for all the mercy you

1 can allow in these circumstances.

2 THE COURT: I'll hear from Mr. Nesmith and/or any-
3 body that wants to speak on his behalf.

4 DEFENDANT: I'm very sorry about what happened. It
5 is just something that happened that I regret. I ask
6 for forgiveness, and I can tell you also that I really
7 am sorry that you lost somebody in your family. That
8 was not my intention, never was my intention, and I ask
9 for forgiveness. Thank you.

10 THE COURT: Anyone else? Come to the microphone and
11 give the Court Reporter your full name.

12 MS. NESMITH: My name is Margaret Nesmith. I just
13 want to say to the Jenkins that I am sorry for their
14 loss. I feel like it could have been my son. I just
15 pray for us all and take one day at a time. I'm just
16 sorry for what he did.

17 THE COURT: Anything else?

18 MR. GROVES: Nothing further.

19 THE COURT: Any other victims want to say anything?
20 Come forward to the microphone and give the Court Re-
21 porter your name.

22 MS. JENKINS: My name is Rhondella Jenkins. (State-
23 ment to the Court inaudible)

24 THE COURT: Anything from the State?

25 SOLICITOR: No, sir.

1 (Other persons speaking to the Court in behalf of
2 the victims)

3 SOLICITOR: Your Honor, the Jenkins Family has gone
4 through a lot at the loss of their son in a violent crime,
5 and the loss of a husband. They have shown an amazing
6 amount of grace. Ms. Jenkins is an incredible lady,
7 and please take into consideration what was said.

8 The tragedy of this is Mr. Jenkins was trying to
9 stop something and put himself back in danger, trying to
10 stop something bad from going down. If he had not done
11 that, shots wouldn't have been fired and no one would
12 have been injured although it might have been a robbery,
13 because of the type location that it was but it might
14 not even have come to the knowledge of law enforcement.

15 This is just a terrible thing that happened, and
16 we can never bring Mr. Jenkins back.

17 THE COURT: All right, thank you, sir.

18 All right, Mr. Nesmith, I will accept your guilty
19 plea. I find it is made knowingly, voluntarily, fully advised
20 of your rights as a Defendant with knowledge of the na-
21 ture of the charges against you and the consequences of
22 your guilty plea.

23 I also find that there is a factual basis for these
24 charges against you. For each charge the sentence of the
25 Court is that you be confined to the State Department of

1 Corrections for thirty years. You will be given credit
2 for any time served this far. The sentences will run
3 concurrently.

4 SOLICITOR: Thank you, Your Honor.

5 (Brief break in the process after which the mat-
6 ter was continued.)

7 THE COURT: All right.

8 SOLICITOR: The State would call Indictment 2014
9 GS 21 691 back before the Court, the State of South
10 Carolina versus Mr. Donald Ray Dollard, who is the Co-
11 defendant of Nathaniel Nesmith. You took his plea earl-
12 ier.

13 This is an Indictment to which Mr. Dollard is plead-
14 ing guilty to count two, armed robbery, and accessory
15 before the fact of a felony, voluntary manslaughter, which
16 he is going to waive presentment on. That would be con-
17 nected to the murder charge, which is count one.

18 Mr. Nesmith pled to voluntary manslaughter, and
19 Mr. Dollard is pleading to accessory before the fact of
20 voluntary manslaughter.

21 He is here with his attorney, Mr. Steven DeBerry.

22 THE COURT: All right.

23 (Brief pause)

24 THE COURT: All right. Any attorneys who are in-
25 volved here, please give the Court Reporter your name.

1 SOLICITOR: Ed Clements for the State of South
2 Carolina.

3 MR. DeBERRY: Steven DeBerry for the Defendant.

4 THE COURT: Anyone else participating?

5 SOLICITOR: No, Your Honor.

6 For the record, we had Investigator Chad Collins
7 and Investigator Thomas McFadden of the Florence County
8 Sheriff's Office, who were the investigators in the case,
9 here with us, and also, Your Honor, we have had family
10 members of the deceased, Mr. Jenkins.

11 Ms. Rhondella Jenkins, his wife, is present in the
12 Courtroom and Ms. Victoria Harper, his sister.

13 THE COURT: All right. Thank you.

14 Mr. DeBerry, you represent Donald Dollard on the
15 charge of accessory before the fact of a felony, that
16 felony being . .

17 SOLICITOR: Voluntary manslaughter, Your Honor.

18 THE COURT: That felony being voluntary manslaughter,
19 as well as armed robbery?

20 MR. DeBERRY: Yes, Your Honor.

21 THE COURT: Have you discussed with your client the
22 charges against him, his rights as a Defendant, and the
23 consequences of being convicted of these crimes?

24 MR. DeBERRY: I have, Your Honor.

25 THE COURT: In your opinion, does your client

1 understand the charges against him, his rights as a Defen-
2 dant and the consequences of being convicted of these
3 crimes?

4 MR. DeBERRY: He does.

5 THE COURT: Does he wish to plead guilty or not
6 guilty?

7 MR. DeBERRY: Guilty.

8 THE COURT: Do you agree with his decision to plead
9 guilty to these charges?

10 MR. DeBERRY: I do, Your Honor.

11 THE COURT: Based upon the information you have,
12 if this case proceeded to trial do you feel the State
13 would prove your client guilty beyond a reasonable doubt?

14 MR. DeBERRY: Yes, sir, Your Honor.

15 THE COURT: Has your client received a competency
16 evaluation?

17 MR. DeBERRY: No, Your Honor.

18 THE COURT: Do you feel he needs a competency eval-
19 uation?

20 MR. DeBERRY: No, I do not.

21 THE COURT: All right. Let's place Mr. Dollard
22 under oath.

23 (Defendant Donald Ray Dollard sworn by the Clerk)

24 THE COURT: Sir, your name is Donald Ray Dollard?

25 DEFENDANT: Yes, sir.

1 THE COURT: Mr. Dollard, you have been charged with
2 accessory before the fact of a felony, that felony being
3 voluntary manslaughter, and you also have been charged
4 with armed robbery.

5 According to your attorney, you wish to plead guilty
6 to these charges, and you have been indicted for armed
7 robbery.

8 According to your attorney, you wish to plead guilty
9 to both of those charges. Is that correct?

10 DEFENDANT: Yes, sir.

11 THE COURT: All right. Before I can accept your
12 guilty plea, I have to go over some questions with you
13 to be sure you understand the charges against you; that
14 you understand your rights as a Defendant; that you un-
15 derstand the consequences of pleading guilty; and I must
16 be sure you are pleading guilty voluntarily.

17 During the past seventy-two hours, have you taken
18 any medication, consumed any alcohol or drugs, or been
19 under any influence of any kind that would affect your
20 ability to know why you are here?

21 DEFENDANT: You said in the last 72 hours?

22 THE COURT: Right.

23 DEFENDANT: I had medication this morning.

24 THE COURT: Okay, does that medication -- what is
25 the medication?

1 DEFENDANT: It's Seroquin.

2 THE COURT: Seroquin?

3 DEFENDANT: Yes, sir.

4 THE COURT: What do you take that for?

5 DEFENDANT: Depression and anxiety.

6 THE COURT: Okay. Does it affect your ability to
7 know what is going on here?

8 DEFENDANT: No, sir.

9 THE COURT: Do you understand why you're here?

10 DEFENDANT: Yes, sir.

11 THE COURT: Have you been able to communicate ef-
12 fectively with your attorney today?

13 DEFENDANT: Yes, sir.

14 THE COURT: Okay, do you understand my questions
15 thus far?

16 DEFENDANT: Yes, sir.

17 THE COURT: Okay. If you don't understand what's
18 going on, or if you feel any effects of that medication,
19 let me know immediately. Okay?

20 DEFENDANT: Okay.

21 THE COURT: All right. Other than that, do you un-
22 derstand why you're here today?

23 DEFENDANT: Yes, sir.

24 THE COURT: Is there anything about this proceeding
25 that you want to ask your lawyer or ask me before we

1 proceed?

2 DEFENDANT: No, sir.

3 THE COURT: All right. Now, one of your rights as
4 a Defendant is that you cannot be prosecuted for any crime
5 unless and until you are indicted by a Grand Jury. What
6 that means is that when you are charged with a crime the
7 State has an obligation to present your case to a Grand
8 Jury for review.

9 The Grand Jury looks over your case and determines
10 if there is any evidence to determine you committed the
11 crime. If the Grand Jury finds there is evidence you com-
12 mitted the crime, the Grand Jury will indict you, and
13 the State can go forward and prosecute you on that charge.

14 On the other hand, if the Grand Jury finds there
15 is no evidence against you, or that the evidence against
16 you is insufficient to support the charge, then the
17 Grand Jury would not indict you and the State could not
18 prosecute you.

19 At this point in time you have not been indicted for
20 accessory before the fact of a felony. Therefore, at
21 this point in time the State cannot proecute you on this
22 charge and I cannot accept a guilty plea from you unless
23 you waive presentment to the Grand Jury.

24 Waiving presentment to the Grand Jury means that
25 you are relieving the State of its obligation to have the

1 Grand Jury review your case and indict you before they
2 prosecute you. Do you understand that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to waive presentment to the
5 Grand Jury so that you can plead guilty to accessory be-
6 fore the fact?

7 DEFENDANT: Yes, sir.

8 THE COURT: Now, even though you waived presentment
9 to the Grand Jury on that charge, and even though you
10 have been indicted on the armed robbery charge, under the
11 Constitution of the United States you are presumed inno-
12 cent of both of the charges, and you have a right to
13 have your guilt or innocence determined by a jury trial
14 of your peers.

15 The State bears the burden of proving your guilt
16 beyond a reasonable doubt. You do not have to prove
17 your innocence and you cannot be compelled to testify
18 against yourself.

19 You also have the right to confront and cross-exam-
20 ine any of the witnesses who testify against you. If you
21 choose, you can present a defense to the charges.

22 When you plead guilty you give up all of those
23 rights. Do you understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: Do you want to give up those rights and

1 plead guilty to these charges?

2 DEFENDANT: Plead guilty.

3 THE COURT: Do you understand that for accessory
4 before the fact of a felony, where the underlying charge
5 is voluntary manslaughter, I can send you to prison for
6 thirty years on that charge?

7 On the armed robbery, I could send you to prison
8 for thirty years.

9 So if I impose a maximum sentence under the law and
10 I order the sentences to run consecutively, I could sen-
11 tence you to sixty years. Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that the absolute min-
14 imum sentence that can be imposed for armed robbery is
15 ten years? Ten years is the minimum amount of time you
16 would receive?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that regardless of
19 what sentence I impose, you will not be eligible for pa-
20 role, and whatever I impose is the sentence that you
21 will serve for that charge? Do you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that both of these
24 crimes are classified as violent crimes, and what that
25 means is that if you are ever convicted of another violent

1 crime that with that subsequent violent crime conviction
2 you would not be eligible for probation and you would not
3 be eligible for parole. Do you understand that?

4 DEFENDANT: Yes, sir.

5 THE COURT: Do you also understand that both of
6 these crimes are classified as most serious crimes, and
7 what that means is that if you are ever convicted of ano-
8 ther crime that is classified as a most serious crime,
9 or if you are ever convicted of another crime that is
10 classified as a serious crime, that the sentence for the
11 third conviction can be enhanced to life in prison with-
12 out the possibility of parole, and the State could use
13 the guilty plea against you to show two most serious
14 crime convictions on your record. Do you understand
15 that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Knowing your rights as a Defendant,
18 knowing the maximum sentences you can receive, knowing
19 the mandatory minimum sentence that must be imposed, and
20 knowing that both of these crimes are classified as vio-
21 lent and most serious crimes and the consequences of
22 those classifications, do you wish to plead guilty or not
23 guilty to accessory before the fact of a felony?

24 DEFENDANT: Guilty.

25 THE COURT: Do you wish to plead guilty or not

1 guilty to armed robbery?

2 DEFENDANT: Guilty.

3 THE COURT: Has anybody promised you anything or
4 threatened you in any way to get you to plead guilty?

5 DEFENDANT: No, sir.

6 THE COURT: Are you pleading guilty voluntarily?

7 DEFENDANT: Yes, sir.

8 THE COURT: Are you satisfied with your lawyer?

9 DEFENDANT: Yes, sir.

10 THE COURT: Are you pleading guilty to these crimes
11 because you are guilty of these crimes?

12 DEFENDANT: I'm pleading guilty and I accept respon-
13 sibility for what I've done.

14 THE COURT: Okay, and as I've told you your consti-
15 tutional right mandates that you cannot be compelled to
16 testify against yourself.

17 DEFENDANT: Right.

18 THE COURT: That you can force the State to prove
19 your guilt beyond a reasonable doubt, and that you are
20 entitled to have your guilt or innocence determined by
21 a jury trial of your peers.

22 However, when you plead guilty you waive those
23 rights, and it does require you to give up your right
24 to a jury trial, to relieve the State of its obligation
25 of proving your guilt, and it requires you to stand in

1 front of me and admit guilt to the crime, thus incrim-
2 inating yourself by your own testimony. Do you under-
3 stand that?

4 DEFENDANT: Yes.

5 THE COURT: In other words, you cannot plead guilty
6 in front of me and say you didn't do it. If you want a
7 trial, you can get a trial. If you want to plead guilty,
8 however, it does require that you admit to committing
9 the crime. Do you understand that?

10 DEFENDANT: Yes, sir.

11 THE COURT: And so for these charges, do you want
12 a jury trial, or do you want to plead guilty?

13 DEFENDANT: I will plead guilty.

14 THE COURT: All right. Do you admit that you com-
15 mitted these crimes?

16 DEFENDANT: Yes, somewhat. Your Honor, I didn't
17 have any weapon. I was just -- I was just there.

18 THE COURT: All right. Let's do this. I want to
19 have the Solicitor tell me what the allegations are as
20 against you and what they say you did in this case. Okay?

21 All right, sir.,

22 SOLICITOR: Thank you, Your Honor.

23 Your Honor, I will give you his record after I
24 give the facts. Okay?

25 Your Honor, Mr. Dollard is fifty-eight years old and

1 on the third of December, 2013, he was with Mr. Nathaniel
2 Nesmith and Mr. Gregory T. Canty, and he went to a loca-
3 tion in Florence County that, Your Honor, is a store run
4 by a Clyde McElveen, and at the store -- the store was
5 also known in the community to be a place where people
6 can go and get involved in gambling and those type activ-
7 ities, and it was also known as a place that probably
8 had sums of cash there.

9 Mr. Dollard and Mr. Canty and Mr. Nesmith arrived
10 there in a vehicle that was driven there -- I think Mr.
11 Dollard was the driver, if I'm not mistaken. Mr. Canty
12 stayed in the vehicle.

13 Mr. Nesmith and Mr. Dollard went to the door. The
14 surveillance camera revealed a few comes and goes there,
15 and they were seen on video which was observed by Mr.
16 McFadden and Mr. Collins in their investigation.

17 I also believe that Mr. Dollard's wife looked at
18 the video and identified him. Is that correct? At a
19 still photo that was obtained from that video, and also
20 told them where some of the clothing was that was seen
21 in that video. The clothing was turned over to the in-
22 vestigators.

23 Mr. Dollard and Mr. Nesmith knocked on the door
24 and were told they were closed; go away; and then they
25 called out for Brian McElveen. When they called out that

1 name they opened the door and went on in. Mr. Dollard
2 had zip ties and was using zip ties to secure the move-
3 ments of Mr. McElveen and I believe Mr. McKnight, and Mr.
4 Jenkins was there when they walked in and they told him,
5 are you going to stay or leave, and he said, I'll leave,
6 and one of them had a toy badge with a piece of black
7 tape on it, and they were indicating they were police
8 officers. That's what a part of the investigation re-
9 vealed.

10 So Mr. Jenkins said, I'm leaving. He leaves and he
11 shuts the door, and Mr. Nesmith has a gun, and Mr. Dollard
12 has zip ties, and then there is a knock back on the door,
13 and they open the door -- Mr. Nesmith opened the door
14 and there was Mr. Jenkins with a high point weapon that
15 he tried to fire.

16 The gun misfired, and Mr. Nesmith started shooting.
17 Mr. Jenkins ran away from the door and around the corner
18 of the building where he fell and that's where he ulti-
19 mately passed away.

20 Mr. Dollard and Mr. Nesmith got Fifteen Hundred Dol-
21 lars from Mr. McKnight, and they took off back to the
22 car and headed back out of Florence, back toward the lower
23 part of Florence County.

24 Mr. Canty, who remained in the car, never went up
25 to the building, but he received Five Hundred Dollars.

1 MR. NESMITH received Five Hundred Dollars and Mr.
2 Dollard kept Five Hundred Dollars. I think he was the
3 one who actually seized the money and divided it up.

4 They did this jointly, with the hand of one being
5 the hand of all, on the armed robbery. I don't believe
6 Mr. Nesmith -- I believe he brandished the weapon, and
7 he is the one who fired the shot.

8 Mr. Dollard never brandished a weapon, so I cannot
9 say if absolutely he had a weapon or not, but he never
10 brandished one.

11 I will defer at this time to Investigator McFadden and
12 Investigator Collins if I've left anything out or if I've
13 mis-stated anything they can correct me. If I left any
14 holes, they can add that information in.

15 MR. COLLINS: Investigator Chad Collins.

16 THE COURT: All right, Mr. Collins.

17 MR. COLLINS: Again, Mr. Clements has clearly given
18 the facts of the case. I would add in that once the
19 suspects were developed in this case we did make arrests.

20 Mr. Dollard was the first person we spoke with, and
21 he was cooperative in discussing his actions that night.

22 In my discussions with him, he did not indicate he
23 had a weapon. He indicated that Mr. Nesmith was the
24 only one who had a weapon.

25 He did admit to his actions that night as far as

1 the plan previous to going into it and how it happened.

2 We would just ask for some kind of sentence that
3 would be appropriate.

4 THE COURT: All right, sir. Do you have anything
5 to add?

6 MR. McFADDEN: Like I said earlier, I think he is fifty-
7 eight years old, and he and Mr. Nesmith were riding around
8 plotting to rob someone. It seems almost senseless. At
9 some point in time, I would think they would think bet-
10 ter of it.

11 He did ride around with us at some point in time
12 to point out certain locations, so he did cooperate with
13 us. He wasn't the one who pulled the trigger, but at
14 some point in time they begin leading up to this.

15 THE COURT: All right.

16 SOLICITOR: Your Honor, it was -- once he was ar-
17 rested on the 18th of December, just fifteen days after
18 the event occurred, law enforcement told me he was very
19 cooperative at that point, once he was caught.

20 Your Honor, once he responds to the facts and at
21 the appropriate time I will give you his criminal history
22 which is quite extensive.

23 THE COURT: All right. All right, Mr. Dollard, do
24 you understand what they're saying you did in this case?

25 DEFENDANT: Yes, sir.

1 THE COURT: Is that what happened in this case?

2 DEFENDANT: Exactly.

3 THE COURT: Now, you understand if you went to
4 trial, first of all, you could challenge any pre-trial
5 identification of you as the perpetrator in this crime
6 or your participation? If it was shown that the identi-
7 fication of you was unduly suggestive, then that identi-
8 fication could not be used as evidence against you. Do
9 you understand that?

10 DEFENDANT: Yes, sir.

11 THE COURT: Do you also understand that if you were
12 questioned illegally or in violation of your constitu-
13 tional rights against self-incrimination that any state-
14 ment or confession you gave could not be used as evidence
15 against you?

16 DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that by pleading
18 guilty here today you are not only waiving your right
19 to challenge any pre-trial identification or any confes-
20 sion made by you, but you are giving up any and all de-
21 fenses you have to this charge? Do you understand?

22 DEFENDANT: Yes, sir.

23 THE COURT: Is that what you want to do?

24 DEFENDANT: Yes, sir.

25 THE COURT: All right. Mr. DeBerry, anything in

1 mitigation?

2 MR. DeBERRY: Thank you, Your Honor.

3 Mr. Dollard is fifty-eight years old. This plea
4 was originally scheduled for later this afternoon, and I
5 know his wife wanted to be here but in the interest of
6 time this is the way this has unfolded. She was unable
7 to get here.

8 I don't see her here as yet, but we did talk to her,
9 and I just ask you to take that into consideration for
10 whatever it might be worth.

11 He's 58 years old from the Hemingway area. He
12 has been back and forth from Hemingway to New York over
13 his adult life. He was born and raised in Hemingway, he
14 and his wife.

15 He and his wife have eight kids together and there
16 are twelve grandchildren, and all but three live there
17 in Hemingway.

18 He tells me he has a close family there, Your
19 Honor.

20 He has been in the construction business and has
21 done some landscaping and he's done some for the Lowcoun-
22 try Forest Products for some time.

23 As the Solicitor and the Investigators say, Mr.
24 Dollard has been cooperative with law enforcement all
25 throughout this situation. He tells me that he regrets

1 the situation and that there is no real excuse for his
2 actions.

3 If there is any way he could change it, he would,
4 and I feel he is sincere in saying that, Your Honor. He
5 said that from the first day I met him.

6 I know -- Investigator Collins and I worked together
7 and I know and I believe they would tell you that the
8 third suspect in custody faced with these charges would
9 not be in custody if it were not for the information Mr.
10 Dollard set forth.

11 You know, this case was on the trial list for this
12 term of Court, and Mr. Dollard doesn't want any trial.
13 He has been cooperative and come forward with his inform-
14 ation. He has told them what he's done from the very
15 beginning.

16 That wasn't true for the other CoDefendants, Your
17 Honor, and we -- he was prepared to testify here this
18 week, and if the third CoDefendant doesn't plead he would
19 be prepared to testify against him at the appropriate
20 time.

21 So I just ask the Court to take all of that into
22 consideration. I believe -- I don't want to speak for
23 the Solicitor, but I believe that the Solicitor and
24 probably the Sheriff's Office as well think that he de-
25 serves some credit for his cooperation and a variance

1 from Mr. Nesmith's sentence.

2 We ask that the Court consider that, Your Honor.
3 We are very appreciative for him being allowed to plead
4 to what Mr. Dollard is able to plead to here today, and,
5 like he said, he is taking responsibility for his ac-
6 tions.

7 We ask that the Court take all of these things in
8 consideration.

9 THE COURT: All right. Mr. Dollard, anything you
10 want to say?

11 DEFENDANT: Yes, sir, Your Honor. I just want to
12 say that, you know, whatever happened I am sorry, and
13 I ask God to forgive me for whatever happened. I ask
14 the families, both of them, to forgive me and ask him
15 for strength for them and me.

16 THE COURT: Anything further from the State?

17 SOLICITOR: Your Honor, the last thing is I wish to
18 put Mr. Dollard's record in.

19 THE COURT: All right.

20 SOLICITOR: Do you wish to speak, Ms. Jenkins? (Brief
21 pause) No, Your Honor, not at this time.

22 THE COURT: All right. Prior record.

23 SOLICITOR: Yes, sir, Your Honor. As I stated, Mr.
24 Dollard is fifty-eight years old. He's got an exten-
25 sive criminal history in the State of New York.

1 He appeared in front of you on the sixth of February
2 of 2014 when he was up for a bond hearing at that time,
3 but he decided he would waive his bond hearing and re-
4 serve his right for bond later, which he never exercised,
5 because he was cooperating with law enforcement.

6 He continued to cooperate, and the rest of these
7 indictments are going to be nolle prossed because of his
8 entering his plea and it being accepted today.

9 Your Honor, his criminal history -- he has a re-
10 cord for convicted felon in possession of a firearm. He's
11 got robbery where he used a firearm under the Hobbs Act,
12 a robbery of a truck. He pled guilty, Your Honor, and
13 was sentenced to eight years in federal prison, five
14 years probation, under the Hobbs Act. That was on the
15 use of a firearms charge.

16 He has also another carrying a firearm in connec-
17 tion with a crime of violence and conspiracy to obstruct
18 commerce by robbery; robbery of a person in custody of
19 mail. He's got robbery of a post office; burglary third
20 degree; illegal entry with intent; possession of a danger-
21 ous weapon, fourth degree.

22 He's got criminal possession of a controlled sub-
23 stance, fourth degree; criminal possession of a weapon,
24 third degree; sale -- criminal sale of controlled sub-
25 stance, third degree; criminal sale of a controlled

1 substance, tenth degree; criminal possession of a con-
2 trolled substance, third degree; also criminal sale of
3 controlled substance, third degree.

4 He's got another guilty plea to criminal sale of
5 controlled substance, third degree, of narcotic drugs;
6 criminal possession of narcotic substance, fourth degree;
7 criminal possession of a loaded firearm, third degree;
8 possession of gambling records, second; bookmaking.

9 Also has another criminal possession of controlled
10 substance, third degree, or narcotic drugs; criminal
11 possession of controlled substance, seventh degree; a
12 criminal sale of controlled substance, fifth degree; pos-
13 session of marijuana, fifth degree; criminal possession
14 of controlled substance, third degree, narcotic drug;
15 criminal sale of controlled substance, fifth degree;
16 and that's it, Your Honor. It appears all of those are
17 from the State of New York. My understanding also is he
18 has a pending bank robbery case in Williamsburg County
19 at about the same time as this event, and we requested the
20 Williamsburg County Solicitor's Office if they wanted to
21 get their paperwork together and come and take care of
22 all of this at one time, which Mr. Dollard through his
23 attorney said he would like to do that if possible, but
24 it wasn't possible for some reason. They didn't have
25 their ducks in a row. I'm not sure warrants had even been

1 served on Mr. Dollard and that those are pending.

2 We tried to accommodate them but they couldn't do
3 that today so that did not happen.

4 That's his extensive history, Your Honor. What sep-
5 arates Mr. Dollard from Mr. Nesmith is that Mr. Dollard
6 did not shoot a weapon; he did not shoot at anybody.
7 Also that he cooperated very early on, pretty much from
8 the git-go. Mr. Nesmith didn't cooperate until much
9 later when I talked to his lawyer.

10 I know initially he got a lawyer and didn't speak
11 to law enforcement, and nobody asked him until just a
12 couple of weeks ago and he told his defense attorney he
13 would cooperate as well.

14 The difference is the timing. Apparently, Mr.
15 Nesmith was the shooter and Mr. Dollard was not. That
16 is the only distinction in my mind, and I would like law
17 enforcement to have an opportunity to speak to that if
18 they wish to, as to any distinction between Mr. Nesmith
19 and Mr. Dollard.

20 MR. COLLINS: I would concur with that.

21 SOLICITOR: Thank you.

22 (Brief pause)

23 THE COURT: All right, Mr. Dollard. I accept your
24 guilty plea. I find that it is made knowingly, volun-
25 tarily and you have been fully advised of your rights as

1 a Defendant, of the charges against you, and of the
2 consequences of your guilty plea.

3 I also find that there is a factual basis to support
4 these charges.

5 For each charge, the sentence of the Court is that
6 you be confined to the State Department of Corrections
7 for twenty-five years, and the sentences will run concur-
8 rently. You will be given credit for time served thus
9 far.

10 SOLICITOR: Thank you, Your Honor.

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

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CERTIFICATE

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I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared to the best of my ability from the records of Daphne Helms, having been heard in the Court of General Sessions for Florence County on October 21, 2014.

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

August 12, 2015

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FORM 5

STATE OF SOUTH CAROLINA

County of

FLORENCE

~~DONALD R. DOLLARD~~

Full name and prison number (if any) of Applicant

DONALD R. DOLLARD
v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

20 15 CP 21 1992

APPLICATION FOR

POST-CONVICTION RELIEF

2015 JUL -6 PM 3:08
CONNIE REEL-SILVERMAN
CCCP & GS
FLORENCE COUNTY, S.C.

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee County Correctional Institution
2. Name and location of Court which imposed sentence County City of Florence, South Carolina
3. Name(s) of co-defendant(s) (if any) Nathanial Nesmith
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 14-G-5-21-00691, ARM. ROBBERY
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 10-22-14
- (b) 2.5 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- 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 "no" to (7), state your reasons for not so appealing:
- (a) TRIAL / Plea COUNSEL failed to inform
- (b) Applicant of Right to Appeal

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Plea Counsel
- (b) Plea Counsel promise I would receive 10
- (c) years for plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Plea Counsel failed to mount A defense
- (b) Based on the premise of Accomplice
- (c) Liability, NOR did Counsel discuss with Applicant
his right to appeal
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (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) Ineffective Assistance of Trial / Plea
 (b) Counsel
 (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? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

(a) the name and address of each attorney who represented you:
 i. H. Steven DeBerry, IV, Esquire
129 S. Court Street, Florence, S.C. 29501
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Plea
 ii. _____
 iii. _____

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

A hearing on the facts of the Allegations:
Conviction Reversed + Remanded for Retrial
There was no other evidence upon which conviction
And sentence could be based

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

NO

STATE OF SOUTH CAROLINA

County of

Bishopville

VERIFICATION

I, Donald R. Dollard #361803, 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.

X Donald Dollard

SWORN to and subscribed before me this 2ND
 day of JULY, 2015.

Paul J. Duggins (L.S.)
 Notary Public

My Commission Expires: 11-05-19

2015 JUL -6 PM 3:08
 CONNIE REEL-SHEARIN
 CCLP & GS
 FLORENCE COUNTY, SC

FILED

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

I, Donald R. Dallard #361803, 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.

Donald R. Dallard
Applicant

SWORN or affirmed to and subscribed before me this

2ND day of July, 2015.

Quint E. Rogers
Notary Public

My Commission Expires: 11-05-2019

FILED
2015 JUL -6 PM 3:08
CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELTH JUDICIAL CIRCUIT

Donald R. Dollard, #361803,

2015-CP-21-1992

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on July 6, 2015, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the June 2014 term of the Florence County Grand Jury for Murder, Armed Robbery, Conspiracy, and Kidnapping (2013-GS-21-00691). H. Steven DeBerry, IV, Esquire represented him. On October 21, 2014, the Applicant pled guilty to Armed Robbery and Accessory Before the Fact of a Felony. Applicant was sentenced by Honorable Benjamin H. Culbertson to twenty-five years each for Armed Robbery and Accessory Before the Fact of a Felony, with the sentences to be served concurrently. Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective Assistance of Counsel

- a. "Plea counsel promise (sic) I would receive 10 years for plea."
- b. "Plea counsel failed to mount a defense based on the premise of accomplice liability, nor did counsel discuss with Applicant his right to appeal."

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, SCRCRCP.

III.

Respondent contends that Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 813 (quoting Strickland v. Washington, 466 U.S. 668 (1984)).

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 v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. at 668). Second, counsel's deficient performance must have prejudiced

Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 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 (1985).

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

IV.

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

V.

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

(Signatures on the following page.)

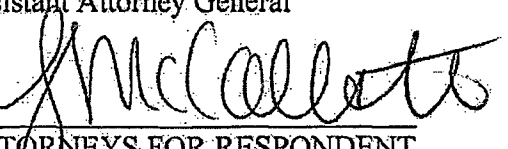
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

_____, 2016

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

DONALD R. DOLLARD, 361803,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

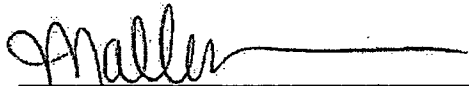
2015-CP-21-1992

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:

Mr. Jonathan D. Waller, Esquire
 Giese Law Firm
 1315 Blanding Street
 Columbia, SC 29201

DATED this 4th day of November, 2016.



Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

COURT OF COMMON PLEAS
2015-CP-21-1992

Donald Ray Dollard)

vs.)

TRANSCRIPT OF RECORD

State of South Carolina)
DEFENDANT)

August 29, 2017
Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

LINDSEY A. MCCALLISTER, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Donald Dollard

Mr. Waller	6		33	
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Ms. McCallister		22		
-----------------	--	----	--	--

Steven Deberry

Mr. Waller	38		55	
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Ms. McCallister		44		
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Certificate of Reporter 63

1 THE COURT: All right. State ready to proceed?

2 MS. MCCALLISTER: Yes, Your Honor. This is
3 Donald R. Dollard vs. The State of South Carolina
4 2015-CP-21-1992. Mr. Dollard is currently incarcerated on
5 orders of commitment from the Florence County Clerk of
6 Court. He was indicted in June of 2014 for murder, armed
7 robbery, conspiracy and kidnapping. He was represented on
8 those charges by Steven Deberry. On August 24th 2014, he
9 pled guilty to armed robbery and accessory before the fact
10 of a felony and was sentenced by Judge Culbertson to 25
11 years each with the sentences to be served concurrently.
12 He did not appeal those convictions or sentences. He
13 filed this application for post-conviction relief on
14 July 6th 2015. He is present in the courtroom today and
15 he is represented by Jonathan Waller.

16 THE COURT: All right. Before we proceed,
17 Mr. Waller, did you -- have you discuss with Mr. Dollard
18 the remedies that this court provide him if the Court were
19 to agree with his assertions in his case?

20 MR. WALLER: I have, Your Honor. He understands
21 that if we are successful and the Court is able to grant
22 him the relief he's requested, he would go back to facing
23 the original charges which in this case would -- there was
24 a murder charge is what he would be facing. So he
25 understands that he is, you know, facing potentially the

1 30 years to life again should he be successful today. He
2 understands that. Your Honor, he was 58 years old at the
3 time of the plea. I think that that has played into his
4 decision here both going forward and to the plea at the
5 time.

6 THE COURT: Sure.

7 MR. WALLER: Your Honor, one thing there has
8 been a minor amended made to the application which the
9 Attorney General office is aware of for a claim that
10 Mr. Dollard asked Mr. Deberry to file an appeal for him
11 from his guilty plea and that that was not filed, so Mr.
12 Dollard is asking for -- to be granted belated appeal
13 based on that.

14 THE COURT: Okay.

15 MR. WALLER: It's not in Your Honor's copy
16 though.

17 THE COURT: I think it is. Was there an amended
18 application filed?

19 MR. WALLER: Not one that was filed with the
20 clerk of court, Your Honor.

21 THE COURT: As I was getting ready, I was
22 looking through and the one I have which was filed on July
23 the 6th of 2015 it does state that...

24 MR. WALLER: Your Honor, yes, sir, I believe it
25 was in the other section.

1 THE COURT: B, applicant -- had failed to inform
2 the applicant of his right was under the section nine
3 where it says you answered no to section seven, state your
4 reasons for not appealing and then was his reason for not
5 appealing.

6 MR. WALLER: Sure. Just for the record and so
7 everything's clear, I did amend later with Ms. McCallister
8 to let her know that that would be an allegation of
9 ineffective assistance of counsel not just of explanation
10 as to why he didn't file an appeal so just one of the
11 grounds we will be proceeding on today.

12 THE COURT: All right. Mr. Dollard, is that
13 correct, sir, as far as you understand that the only
14 relief this court could give you if I were to agree with
15 your application is to put you back in the position you
16 were in prior to your plea. In other words, any charges
17 that were dismissed or any charges that were reduced all
18 of those come back and that you would be facing --
19 basically you start back at square one. You understand
20 that?

21 MR. DOLLARD: Yes, sir.

22 THE COURT: All right. And understanding that,
23 you still wish to proceed with your application?

24 MR. DOLLARD: Yes, sir.

25 THE COURT: All right, sir. We'll certainly

1 honor that.

2 Mr. Waller, would recognize you on behalf of
3 Mr. Dollard.

4 MR. WALLER: Thank you, Your Honor. I would
5 call Donald Dollard.

6 THE COURT: Mr. Dollard, I'm going to get you to
7 come around, sir, and to the extent if you place your left
8 hand on the Bible and raise your right hand to the extent
9 you can and be placed under oath, sir.

10 THE CLERK: Place your hand on the Bible right
11 here, sir, raise your right hand as much as you can. Do
12 you swear to tell the truth, the whole truth, and nothing
13 but the truth so help you God?

14 THE DEFENDANT: Yes, ma'am.

15 THE CLERK: Thank you. Have a seat and watch
16 your step. State your name for the record.

17 WHEREUPON,

18 Donald R. Dollard,
19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WALLER:

22 Q Mr. Dollard, can you state your name for the court
23 reporter?

24 A My name is Donald Ray Dollard.

25 Q All right. Mr. Dollard, how old are you today?

1 A Sixty-one.

2 Q Okay. And back when you were originally charged with
3 these offenses, how old were you?

4 A Fifty-eight.

5 Q Okay. What were you originally charged with?

6 A Arm robbery. Arm robbery.

7 Q Just arm robbery?

8 A Yeah, as far as I know.

9 Q Okay. When the case was presented to the grand jury
10 or when you pled guilty, what were the charges that were
11 pending at the time?

12 A I don't really know.

13 Q All right. Do you remember the murder charge?

14 A No, the only murder charge that I remember was on my
15 indictment.

16 Q Okay. That's what I'm asking you about.

17 A Yeah, yeah, yeah.

18 Q How about a conspiracy charge?

19 A Yeah.

20 Q And a kidnapping charge as well?

21 A Yes, sir.

22 Q How did Mr. Deberry come to be your attorney?

23 A He came to see me in Effingham once.

24 Q Okay. So you didn't hire him or anything?

25 A No, sir.

1 Q He got appointed to represent you?

2 A Yes, sir.

3 Q Did you fill out any paperwork for the public
4 defender's office?

5 A No, sir.

6 Q Okay. He just showed up?

7 A Yeah.

8 Q Did he tell you he was your attorney?

9 A Yes, sir.

10 Q Okay. What did you all talk about in that first
11 meeting?

12 A As far as meeting wasn't too long and I really don't
13 remember we talk about -- I really don't remember.

14 Q Okay. Well, what was your understanding of the
15 charges you were facing when you left that meeting?

16 A He never discuss any charges anything. He never
17 really went through any charges with me.

18 Q Okay. Did you all ever discuss -- you ended up
19 pleading guilty to an accessory before the fact of a
20 felony charge?

21 A Yes, sir.

22 Q Did you all every discuss what an accessory charge
23 is?

24 A To my knowledge, I don't understand accessory or
25 after the fact and before the fact, but he did told me

1 that.

2 Q Okay. What did he tell you about it?

3 A He told me I was -- he said that I was being the most
4 time that I could probably get was ten years for before
5 the fact and after the fact. He said both charges carry
6 five years. I don't know anything about the law, so I
7 don't understand after the fact and before the fact.

8 Q Okay. Well, how did that conversation start? You
9 were charged with four different offenses?

10 A Well, I was -- I asked him what was I facing.

11 Q Okay.

12 A And that's how that started.

13 Q Okay. At what point when you were charged with four
14 different charges and none of them were an accessory
15 charge, how did that come up in the conversation?

16 A I don't know.

17 Q Okay. What did he tell you about the accessory
18 charges?

19 A I never was -- he never told me anything about I was
20 charge with kidnapping, murder and arm robbery.

21 Q Okay. He just told you you were looking at accessory
22 before the fact?

23 A Yeah.

24 Q And accessory after the fact?

25 A Yeah.

1 Q For a total of ten years?

2 A Yeah.

3 Q Okay. Were they split up in any way or was it ten
4 years each or do you know?

5 A Well, no, he said five years. He said they carry
6 five years a piece after the fact and before the fact.

7 Q He told you each one carry five years?

8 A Yeah.

9 Q After you all had that conversation, did you
10 cooperate with law enforcement after that?

11 A Yeah.

12 Q Okay. Did you do that to try to help yourself?

13 A Well, yeah, I did.

14 Q Did you do that based on your conversation you had
15 with him?

16 A Yeah.

17 Q Okay. So is it fair to say you were relying on what
18 he was telling you before you cooperated?

19 A I don't understand the question.

20 Q Were you relying on what he's telling you before
21 making your decision to cooperate with law enforcement?

22 A Was I lying on that or ---

23 Q Relying on it?

24 A No.

25 Q Okay. So why did you cooperate with law enforcement

- 1 after having that conversation with him?
- 2 A Well, because of what they was telling me.
- 3 Q What who was telling you?
- 4 A The law enforcement.
- 5 Q Okay. What were they telling you?
- 6 A They was telling me that they could help me in
- 7 certain ways.
- 8 Q Okay. Was your attorney aware of that?
- 9 A Well, no, not at the time.
- 10 Q Okay. Did you tell him about that?
- 11 A Yes, I did.
- 12 Q Okay. What did he say?
- 13 A Well, he told that could help me.
- 14 Q Okay. And this was after you all talked about the
- 15 accessory charges?
- 16 A Right.
- 17 Q Okay. When you -- what made you ultimately decide to
- 18 plead guilty?
- 19 A Well, a judge that I was suppose to been going in
- 20 front of that was number one and number two for what he
- 21 told me about the ten years.
- 22 Q Okay. Well, let me ask you this, when you were just
- 23 testifying that you thought you were facing accessory
- 24 before the fact and accessory after the fact?
- 25 A Yeah.

1 Q You pled to accessory before the fact, but you also
2 plead guilty of armed robbery. How did you -- what
3 happened in your conversations with Mr. Deberry for you to
4 reach that decision to plead guilty to armed robbery?

5 A I don't understand say that again.

6 Q What made you plead guilty to armed robbery if you
7 thought you were only facing an accessory charge?

8 A I don't understand.

9 Q Okay. You were originally charged with four
10 offenses; is that correct?

11 A Right.

12 Q After your conversations with Mr. Deberry, you
13 testified just a second ago that you believed you were
14 facing accessory before the fact and accessory after the
15 fact?

16 A Right.

17 Q Okay. When you pled guilty, you pled guilty to a
18 different charge. You pled guilty armed robbery not
19 accessory after the fact?

20 A Okay. I understand what you saying.

21 Q What change that for you to understand that you were
22 facing ---

23 A I never had any knowledge that I was charged with
24 armed robbery, kidnapping and murder.

25 Q Okay.

1 A I had no knowledge of that.

2 Q How many times did you and Mr. Deberry meet?

3 A Once maybe twice.

4 Q Okay. Where did you all meet?

5 A In Effingham.

6 Q Okay. When you all met the one to two times, how
7 long did they take each time?

8 A Well, in between eight months he probably seen me
9 maybe once and second time he same to see me he was like
10 basically just passing through.

11 Q Okay. Did you all just say hello or did you all have
12 a chance to talk about things?

13 A No, something happened over there in the visitation
14 room that it was something happened like a smell was in
15 there and he left and he told me he was coming back and he
16 never showed back up.

17 Q Okay. So you had one?

18 A One totally conversation.

19 Q One full meeting with him and one very brief meeting?

20 A Pretty much, yeah.

21 Q When you went to court to plead guilty, did you know
22 you were going to court?

23 A No, sir.

24 Q Okay. How did you find out you were going to court?

25 A The officer woke me up one morning and told me I had

1 court. This was after seven months after I went to bond a
2 hearing and after probably seven months later the officer
3 woke me up and told me I had a court date. No one
4 informed me that I had a court date.

5 Q Okay. How long were you in the detention center?

6 A Probably approximately about nine or ten months.

7 Q Okay. And you said you met with Mr. Deberry one time
8 for a full meeting you had a bond hearing?

9 A Right.

10 Q Okay. And then the next thing, you know, you're
11 getting woken up to go to court?

12 A Yes, sir.

13 Q Did you -- had you agreed to plead guilty at that
14 point?

15 A Yeah, after I went back and had a talk with
16 Mr. Deberry.

17 Q But that was you had already got to the courthouse?

18 A After I got to the courthouse, yes.

19 Q So when you left for court that morning, they woke
20 you up at Effingham?

21 A I had no clue what was going on.

22 Q Okay. And you hadn't agreed at that point to plea?

23 A No.

24 Q Okay. Had you all discussed you pleading guilty?

25 A Yes.

1 Q But you hadn't -- you weren't going to do it until
2 you came to court?

3 A Until I came court, yeah.

4 Q Okay. Did you all have -- you testified that you all
5 talked here at the courthouse before you pled guilty?

6 A Right.

7 Q What did you all talk about?

8 A Well, we talked about questions that the judge is
9 gone be asking me and different stuff like that, like, you
10 know, and he was showing me some papers that I had to sign
11 which I didn't understand what was it, you know, or he was
12 reading me. I didn't understand any of that stuff, you
13 know, what he was just telling me about some questions
14 that the judge is gone be asking me and whatever he ask me
15 just say, yes, sir, or no, sir.

16 Q Okay. Let me ask you this, Mr. Dollard, you never
17 had a weapon during this incident; is that right?

18 A No, sir.

19 Q The State never said you had a weapon?

20 A No, sir.

21 Q Okay. Did you and Mr. Deberry ever discuss the fact
22 that you didn't have a weapon?

23 A I don't remember. I really don't recall.

24 Q Did you all discuss how you could be charged if you
25 didn't have a weapon with the murder or the armed robbery

1 or things that would have involved a weapon?

2 A No.

3 Q Okay. Did you -- what understanding did you -- how
4 did you think you got charged then?

5 A How did I get charge?

6 Q Yes, sir.

7 A When I got arrested, you know, that's how I know I
8 got charged with what.

9 Q What did you understand about how the State was able
10 to charge you with those crimes?

11 A When I got my warrants papers.

12 Q Okay. Did you all ever discuss the theory of an
13 accomplice liability or the hand of one is the hand of
14 all?

15 A No, my lawyer told me that after I got sentence and
16 asked him why did I get so much time and he told me that
17 hands of one hands of all.

18 Q Okay. So Mr. Deberry told you that after you were
19 already ---

20 A After I got sentenced.

21 Q You all didn't talk about it before hand?

22 A No.

23 Q Okay. Did you ask him how you were able to be
24 charged?

25 A No.

1 Q Okay. There was surveillance video in your case; is
2 that right?

3 A Right, yeah.

4 Q And correct me if I'm wrong, but again you were never
5 seen with a weapon on that video?

6 A Right.

7 Q Okay. Did you have a chance to view the video?

8 A I looked at it.

9 Q Okay.

10 A I just looked at the papers with my bodies on the
11 papers.

12 Q When did you look at the video?

13 A When Mr. Deberry came to visit me that one time at
14 Effingham.

15 Q Okay. Did you ask him how you had been charged with
16 murder when you aren't on the video with a weapon or harm
17 any individual that ultimately died?

18 A No, I never asked him that.

19 Q Okay. Mr. Dollard, after you pled guilty, did you
20 and Mr. Deberry have any more conversations after you pled
21 guilty and were sentenced?

22 A Only the conversation we had when I asked him why did
23 I get 25 years, you know, that's the only conversation we
24 had and he told me hands of one hands of all.

25 Q Did you ask him to do anything at that point?

1 A No, but later on I wrote him a note and ask him to --
2 that I would like to suppress everything the State has
3 against me and also they put my ten days appeal in, that
4 was in the note that I sent him.

5 Q Okay. When did you send that note, how long after
6 you pled?

7 A Probably about maybe a couple weeks.

8 Q A couple weeks. Okay. Did you and Mr. Deberry ever
9 discuss appealing the decision?

10 A No.

11 Q Okay. Did you all talk about it before you pled
12 guilty?

13 A No.

14 Q Okay. So you didn't know that you could appeal or
15 the timeline or anything like?

16 A I didn't know anything until after I got sentenced.

17 Q Okay. Mr. Dollard, I believe I asked you all the
18 questions that I have for you. Is there anything else you
19 think I've left out or the Court needs to be aware of
20 about anything you think Mr. Deberry didn't do or should
21 have done or anything you think he did wrong?

22 A Well, I do think that when I was in the detention
23 center in Effingham I don't remember they said that I was
24 on a suicide for eight months and I know that didn't ever
25 come up in the court. And I don't remember none of this

1 is happening, but I do remember they had me locked in.
2 They had locked in a little pin for around that time. I
3 remember that.

4 Q Okay. Have you ever been treated for any mental
5 health issues before?

6 A Yeah.

7 Q Okay. What did you been treated for?

8 A Depression.

9 Q Okay. Was Mr. Deberry aware ---

10 MS. MCCALLISTER: Objection, Your Honor. This
11 is not anything -- the allegations in the application.

12 THE COURT: Where you going with the questioning
13 here?

14 MR. WALLER: Your Honor, I was just responding
15 to his testimony that he was on suicide watch the entire
16 time or for the eight months while he was in.

17 THE COURT: What relevance is that got to do
18 with his application?

19 MR. WALLER: Your Honor, at this time I'm not
20 sure what relevance it does have.

21 THE COURT: I know he raised it as far as
22 anything else he wishes to add but...

23 MR. WALLER: My next question was going to be
24 was Mr. Deberry aware of it, had he talked to him about
25 it, was he evaluated and that was going to be it.

1 THE COURT: But that was post-plea.

2 MR. WALLER: That was pre-plea. My
3 understanding was he was on suicide watch pre-plea.

4 THE COURT: Prior?

5 MR. WALLER: Yes, sir.

6 THE COURT: Okay. I'll let you proceed.

7 MR. WALLER: Thank you, Your Honor.

8 BY MR. WALLER:

9 Q You testified that you been treated for depression?

10 A Yeah.

11 Q Okay. And that you were on suicide watch for about
12 eight months?

13 A Yeah.

14 Q Okay. Was Mr. Deberry aware of that?

15 A Yes, he knew about it.

16 MS. MCCALLISTER: Objection. Your Honor, I
17 don't know that he can testify as to what Mr. Deberry was
18 aware of.

19 THE COURT: Sustained. If he knows, if he told
20 him or whatever.

21 BY MR. WALLER:

22 Q Did you tell Mr. Deberry you were on suicide watch?

23 A Well, yes, he knew about it.

24 THE COURT: Okay. That's not responsive to your
25 question. Answer his question. Did you tell Mr. Deberry

1 that you were on suicide watch?

2 MR. DOLLARD: Yes.

3 THE COURT: You told him yourself?

4 MR. DOLLARD: Yes.

5 BY MR. WALLER:

6 Q Okay. Did you all have a conversation about your
7 depression or your suicide watch?

8 A Yeah, I had a conversation with him about it.

9 Q Okay. Were you ever evaluated to see if you were
10 competent to stand trial?

11 A No.

12 Q Did you ever ask Mr. Deberry to follow up on any of
13 your mental health treatment or an evaluation?

14 MS. MCCALLISTER: I have the same objection. I
15 think this is outside the scope of the application. And
16 there's no allegation in his application of competence
17 issues -- competency issues.

18 THE COURT: Well, the allegation of ineffective
19 assistance is fairly broad. I'm going to give you some
20 leeway on it. Overruled.

21 BY MR. WALLER:

22 Q Did you ever ask Mr. Deberry to follow up on either
23 your mental health treatment and as far as investigating
24 or to have you evaluated?

25 A No, I didn't.

1 MR. WALLER: Mr. Dollard, I don't have any
2 further questions for you. Please answer anything that
3 Mr. McCallister may have for you.

4 CROSS-EXAMINATION

5 BY MS. MCCALLISTER:

6 Q Good morning, Mr. Dollard.

7 A Good morning.

8 Q Do you remember the day of your plea?

9 A No, I don't.

10 Q I mean, you don't remember -- I'm not asking you the
11 date, I'm sorry. Do you remember coming to court for your
12 plea?

13 A Yes.

14 Q And do you remember coming into the courtroom and
15 talking to the judge and going through the judge's
16 questions?

17 A Yes, after I talked to Mr. Deberry.

18 Q Okay. So you were brought from Effingham that day;
19 is that correct?

20 A Right.

21 Q Okay. And you came to the courthouse?

22 A Right.

23 Q To this courthouse, right?

24 A Yes.

25 Q Okay. And Mr. Deberry was there, correct?

1 A Right.

2 Q And you talked to him before you came into the
3 courtroom in front of a judge; is that correct?

4 A Right.

5 Q Okay. What did you talk about in that conversation?

6 A When I talk to Mr. Deberry?

7 Q Yes.

8 A We talked about what the judge was going to be asking
9 me and the questions that he wanted me to answer, the
10 judge. And he showed me some papers that I had to sign
11 which I didn't know -- understand at the time what I'm
12 signing.

13 Q Okay. Did you tell him that you didn't understand
14 those papers?

15 A Pretty much.

16 Q Okay. And what happened when you told him you didn't
17 understand?

18 A Well, he was trying to explain to me at the time he
19 just, you know, to my knowledge all -- I'm just assuming
20 that they just wanted to get this over with.

21 Q I don't want you to assume. Just tell me what
22 happened when you told him that you didn't understand.
23 Did he explain further to you?

24 A He explain further.

25 Q Okay. And did you -- and after he explain further,

1 you still didn't understand?

2 A No.

3 Q Did you tell him you still didn't understand?

4 A I don't recall if I told him yes or no.

5 Q And then after you had this conversation with

6 Mr. Deberry you went into the courtroom, correct?

7 A Correct.

8 Q And Mr. Deberry was in the courtroom with you?

9 A Correct.

10 Q Okay. And at that point the judge was taking a plea

11 and asking you some questions; is that correct?

12 A That's correct.

13 Q Okay. And you answered the judge's questions,

14 correct?

15 A Right.

16 Q Okay. Do you recall when the judge went over what

17 the minimum and maximum sentences that you could receive

18 for these charge were?

19 A That's correct.

20 Q Okay. Do you remember what the judge told you those

21 minimum and maximum sentences were?

22 A No.

23 Q Okay. So you don't recall if the judge told you that

24 he could send you to prison for up to 30 years on the

25 armed robbery charge?

1 A No.

2 Q And you don't remember discussing anything about the
3 maximum sentences that you were facing?

4 A Not at this time I don't remember.

5 Q Okay. If I showed you the transcript, do you think
6 that might help refresh your memory?

7 A Pretty much it probably would.

8 MS. MCCALLISTER: May I approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. MCCALLISTER:

11 Q Have you had a chance to read that, Mr. Dollard?

12 A Yes, ma'am.

13 Q Okay. Does that refresh your memory as to what the
14 judge told you?

15 A Yes, it has.

16 Q Okay. So you would agree with me then that the judge
17 told you that he could sentence you up to 30 years on the
18 armed robbery, correct?

19 A Yes.

20 Q And he told you that he could sentence you on the
21 accessory charge for 30 years as well, so you be facing 60
22 years, correct?

23 A No, I don't remember him saying that.

24 Q Once you read the transcript, does that not refresh
25 your memory as to ---

1 THE COURT: Refer him to the page number and the
2 line number.

3 A I don't remember that.

4 Q If you would look at page 30 lines five through 11?

5 A Five through 11?

6 Q Yes.

7 THE COURT: Just read over those five through
8 11.

9 A Okay.

10 Q Does that refresh your memory at all?

11 A No.

12 Q So you still don't remember, but you agree with me
13 that the transcript reflects the judge told you that?

14 A I mean, I don't remember. I can't agree with you if
15 I don't remember.

16 Q Okay. I'm not asking you if you remember. Do you
17 agree me that that's what the transcript says?

18 A I don't remember the judge saying that to me.

19 THE COURT: Listen to her question, okay.

20 A Come on.

21 Q Do you agree with me that that is what the transcript
22 says?

23 A Oh, yes, yes.

24 Q Okay. And if you would look also on that same page
25 30, at lines 13 through 17. I'll give you a second to read

1 that. Does that you refresh your memory as what the judge
2 told you regarding the minimum sentence you could receive?

3 A No.

4 Q Okay. Do you agree with me however that the
5 transcript reflects that the judge did tell you the
6 minimum was ten years?

7 A Yes.

8 Q And your testimony if I'm understanding you correctly
9 is that your attorney told you you wouldn't receive any
10 more than ten, is that a fair summary of your testimony?

11 A Yes.

12 Q Okay. But the judge told you that you could receive
13 more than ten years, correct?

14 A Correct.

15 Q Okay. And you told judge that you understood that,
16 correct?

17 A You want me to answer my question or you want me to
18 answer yours because I was following ---

19 Q I want you to answer mine please.

20 A I was following my lawyer instruction.

21 Q Okay. But the judge asked you if you understood the
22 minimum and maximum sentences, correct?

23 A Correct.

24 Q Okay. And those pages that we just looked at?

25 A Yes, correct.

1 Q And you told the judge you understood, correct?

2 A Correct.

3 Q So you were aware at that point in time that the
4 maximum sentence you were looking at was 30 years,
5 correct?

6 A I wasn't aware of that because I never hear anything
7 about 30 years, all I heard was 25 from the judge.

8 Q Okay. And after the judge had this conversation with
9 you, you still told the judge you wished to plead guilty,
10 correct?

11 A Yes.

12 Q Okay. And you told the judge that no one -- do you
13 recall telling the judge that no one had made you any kind
14 of promises to get you to plead guilty you recall that?

15 A I recall that.

16 Q Okay. You've raised the issue here about a defense
17 of accomplice liability or whether your attorney explained
18 accomplice liability do you remember that?

19 A Are we still talking about the application here?

20 Q Yes, your application.

21 A Yes.

22 Q Okay. Do you recall the judge explaining your
23 constitutional rights to you?

24 A Yes, I do.

25 Q Okay. Do you recall the judge explaining that if you

1 pled guilty you had given up the right to any kind of
2 defense?

3 A Yes.

4 Q Okay. Do you recall the judge telling you that in
5 order to plead guilty you would be required to incriminate
6 yourself and admit your guilt?

7 A Right.

8 Q And did you admit your guilt to these charges?

9 A I don't recall.

10 Q You don't recall. Okay. If I could point you to
11 page 32 of the transcript?

12 A Thirty-two?

13 Q Yes, 32, lines ten through 13?

14 A Say that again?

15 Q Lines ten through 13 page 32.

16 A Okay.

17 Q Okay. Does that refresh your memory as to what you
18 said?

19 A Yes.

20 Q Okay. Do you remember now admitting your guilt?

21 A Yes, I do.

22 Q Okay. You've also raise the issue about an appeal.
23 And I think you said correct me if I am wrong. I think
24 you said that the first time you ever asked your attorney
25 to appeal you sent -- you did that via letter that you

1 sent?

2 A I did that through a note.

3 Q Through a note?

4 A I send him a note, yeah.

5 Q You send him a note?

6 A Yes.

7 Q Okay. And do you recall when that was?

8 A I know I think it was the year 2015. No, on 2013.

9 Q Okay. But can you be any more specific about that --
10 you said I think you said earlier it was a couple weeks
11 after your plea?

12 A Yes.

13 Q Does that sound right to you?

14 A Yes, yes.

15 Q And was that the first time that you had talked to
16 your attorney after the plea?

17 A After the plea.

18 Q Okay. So he didn't come and visit you or anything
19 like that after the plea you just send him a note?

20 A He came and visit me after I send him the note, yes.

21 Q Okay. So you sent the note first and then he came?

22 A Then he came and visit me, yes.

23 Q And when he came to visit you what did you discuss?

24 A We discussed my ten days appeal and this actually all
25 we discuss is my ten days appeal. And he was telling me

1 that, you know, listening to you, you know, the jailhouse
2 lawyers that they can't get themselves out of jail. They
3 can't help me and that's what we discussed. We didn't
4 discuss anything referring to me, you know, other than my
5 ten day appeal. And he told me that it was -- he was
6 sorry that he didn't do it because he was out of town.

7 Q Okay. And is that the only conversation that you
8 recall having with Mr. Deberry about a plea?

9 A We didn't have any more conversation after that.

10 Q That was the last time?

11 A That was the last time.

12 MS. MCCALLISTER: Beg the Court's indulgence for
13 just one moment, Your Honor.

14 THE COURT: Yes, ma'am.

15 BY MS. MCCALLISTER:

16 Q Okay. Is it your testimony that when you met with
17 Mr. Deberry he never told you what charges you were
18 facing?

19 A No.

20 Q Okay. He never told you you were facing a murder
21 charge?

22 A No.

23 Q Okay. He never told you you were facing armed
24 robbery?

25 A Yeah, he did told me I was facing armed robbery.

1 Q Okay. Did he tell you you were facing kidnapping
2 charges?

3 A No, he didn't tell me this.

4 Q Okay. And he didn't tell you about conspiracy?

5 A I don't recall him telling me I'm charged with
6 conspiracy.

7 Q Okay. So your testimony is he only told you that you
8 were charged with armed robbery?

9 A Well, not so much armed robbery. I know that he told
10 me that I was charged with accessory after the fact and
11 before the fact.

12 Q Okay. He told you you were charged with accessory
13 before and after?

14 A Yes.

15 Q And armed robbery?

16 A Yes.

17 Q Okay. And I think you said that you guys -- you and
18 Mr. Deberry had discussed whether or not you want to plead
19 guilty?

20 A We never discuss that.

21 Q You didn't discuss it until you came to the
22 courthouse?

23 A To the courthouse, yes.

24 Q Okay. So your testimony is you had no idea why you
25 were coming up here that day?

1 A No, ma'am.

2 Q And that was the first time that Mr. Deberry
3 discussed a plea with you?

4 A Yes.

5 Q Okay.

6 MS. MCCALLISTER: I think that's all the
7 questions I have, Your Honor.

8 THE COURT: Anything on redirect?

9 MR. WALLER: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. WALLER:

12 Q Mr. Dollard, was your wife at your plea?

13 A She was on the way and somehow another she didn't
14 make it on time because seem like they didn't want to
15 wait.

16 Q Okay. So she wasn't there?

17 A She wasn't present at the time that I was getting
18 sentenced. She did show up.

19 Q Okay. She showed up after you already been
20 sentenced?

21 A Yes.

22 Q Okay. When you woke up that morning or were woken up
23 to plead guilty, did you know that you were going to see
24 your wife at the courthouse that day?

25 A Yes.

1 Q Okay. Did you have a copy of your discovery with you
2 at the jail?

3 A Only paperwork I ever got is after I got sentenced.

4 Q Okay. So you didn't have a copy of any warrants or
5 any indictments or anything like that?

6 A I had a copy of a warrant, no indictment.

7 Q Okay. What warrants did you have a copy of?

8 A Arrest warrant.

9 Q For what charge?

10 A Murder, kidnapping and armed robbery.

11 Q Okay. You testified a minute ago that Mr. Deberry
12 was out of town for the appeal?

13 A That's what he told me when he came to visit me at
14 Kirkland that's where I think I was at.

15 Q In Kirkland?

16 A Kershaw or Kirkland one of those jails.

17 Q Okay. When you went to the department of corrections

18 ---

19 A RNE, I went to RNE.

20 Q Okay. So when they sent you to Columbia, he came to
21 visit you up there?

22 A Yes.

23 Q Okay. And that was after you'd already pled guilty?

24 A That was after I pled guilty.

25 Q Okay. Why did he come visit you do you know?

1 A I have no clue why he came and visit me, but I assume
2 that he came to visit me because of that note that I sent
3 to him.

4 Q Okay. So you sent him a note asking for an appeal
5 and he gets in his car and drives to Columbia to meet with
6 you.

7 A To meet with me, yes.

8 Q And it's your understanding he was out of town when
9 the ten days would have expired?

10 A That's what he told me.

11 Q Okay. Ms. McCallister asked you several questions
12 about the judge going over certain things with you and the
13 rights that you waived by pleading guilty, okay. One of
14 the things she asked you that the judge went over was you
15 waive the right to any defenses that you may have had.

16 Were you aware of any potential defenses you may have had?

17 A No.

18 Q Did you and Mr. Deberry ever discuss any potential
19 defenses you may have had?

20 A No.

21 Q Did you ask him do I have a defense to this?

22 A I don't have any knowledge of the law to ask him any
23 of that, so I can't ask him because I don't have no
24 knowledge of the law of what's going on.

25 Q Okay. But he didn't bring it up?

1 A He didn't bring it up, no.

2 Q Okay. Ms. McCallister asked you about the judge
3 going over the minimum amount of time you would have to
4 receive for that armed robbery charge and she asked you if
5 it was ten years and you understood that it was ten years?

6 A Well, I understood it was ten years because that's
7 what I heard came from my lawyer the most I could get was
8 ten years. So I'm thinking that the judge's going on the
9 same thing.

10 Q Well, that was my next question. Is that ten years
11 that the judge told you is that line up with what your
12 lawyer is telling you?

13 A Yes, to me, yes.

14 Q When you were presented the paperwork to sign before
15 your plea, did you have an opportunity to read everything
16 that you signed?

17 A No.

18 Q Did you understand everything that you were signing?

19 A Well, no, I didn't.

20 Q Okay. One of the things that you signed or initialed
21 would have been waiving your right to the accessory charge
22 presented to the grand jury?

23 MS. MCCALLISTER: Your Honor, I'm going to
24 object to the form of the question. He's going to ask a
25 question instead of stating. He's kind...

1 THE COURT: I'm not understanding the question
2 or its relevance to the application.

3 MR. WALLER: Your Honor, it was in response to a
4 question on cross. I can move on.

5 THE COURT: Well, I mean, you can reask the
6 question. I didn't ---

7 BY MR. WALLER:

8 Q You testified on cross-examination that you signed
9 some documents and you didn't understand what you were
10 signing?

11 A Right.

12 Q Okay. Did you have an opportunity to read all of
13 those documents yourself?

14 A No.

15 Q Did you understand everything that you were signing?

16 A No.

17 Q Did you understand that you were waiving your right
18 to the accessory before the fact to a felony charge being
19 presented to the grand jury?

20 A Yes.

21 Q You did understand that?

22 A I understand that part because, yeah.

23 Q Okay.

24 MR. WALLER: I have nothing further. Thank you.

25 THE COURT: Anything further?

1 MS. MCCALLISTER: No, Your Honor.

2 THE COURT: Thank you, Mr. Dollard. You may
3 step down, sir.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 MR. WALLER: Steven Deberry.

7 THE COURT: All right. Mr. Deberry, if you
8 please come around to be sworn, sir.

9 THE CLERK: Do you swear or affirm that the
10 testimony you give will be the truth, the whole truth, and
11 nothing but the truth so help you God?

12 THE WITNESS: I do.

13 MR. WALLER: Thank you, Your Honor. May it
14 please the Court.

15 THE COURT: Yes, sir.

16 WHEREUPON,

17 Steven Deberry,
18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WALLER:

21 Q Good morning, Mr. Deberry, how are you today?

22 A Good, thank you.

23 Q Mr. Deberry, how did you come to represent
24 Mr. Dollard?

25 A I was appointed by the court representative.

1 Q Okay. Him being indigent; is that correct?

2 A Yes, sir. It was through the 608 contract agreement.

3 Q Okay. When you were first appointed to represent
4 him, did he have all of the charges or it was just an
5 armed robbery charge?

6 A He was charged with murder, armed robbery,
7 kidnapping. I think there was a possession of a weapon
8 charge during a violent crime and the conspiracy, but I
9 think the order only has four warrant numbers. So I'm not
10 sure whether it was a possession of a weapon during a
11 violent crime or a conspiracy, but it was definitely
12 murder, armed robbery, kidnapping.

13 Q Okay. When you got appointed to represent
14 Mr. Dollard, how long after that did you go meet with him?

15 A Well, I met with him the first time on January the
16 24th of '14. Shortly after that on February the 7th, we
17 were -- appeared in court and he waived his right to a
18 bond hearing.

19 Q Did you have discovery at that time?

20 A I may have. I probably did. I'm not positive.

21 Q Okay. What -- what went into waiving his right to a
22 bond hearing?

23 A From what I remember, I think that there was -- I
24 mean, he didn't deny his involvement in the crime. There
25 was an opportunity for him to cooperate with law

1 enforcement which he did. And we went over, you know, the
2 pros and cons of him actually gaining some time served in
3 the county detention center and I mean that was his
4 decision. I may have told him that there wasn't likely
5 that he was going to get bond or receive a bond, but I'm
6 not -- you know, those are things that I remember we
7 talked about.

8 Q Okay. Back to that January meeting, do you have any
9 notes about what you all discussed?

10 A I do.

11 Q Can you tell the Court what you all discussed?

12 A Well, we went over his charges. I got his
13 information about his wife that I stayed in contact with
14 him throughout my representation of him. We talked about
15 he had a prior robbery charge conviction from the State of
16 New York. He hadn't been in any trouble at all since
17 1992, that's what I had from our first meeting.

18 Q Okay. At that point did you have any discovery?

19 A If you give me a minute I can see.

20 Q Sure.

21 (WHEREUPON, a pause in the proceedings.)

22 A And it's likely that I did. A lot of times what
23 happens when I get appointed is that the public defender's
24 office will hand me their discovery that they may have
25 already had in the case. I'm trying to see if I got where

1 I also received it directly from the Solicitor's office
2 looks like March 7th 2014.

3 Q Okay. So you wouldn't haven't gotten it directly
4 from the Solicitor's office until after that meeting and
5 the bond hearing?

6 A That's correct. But I knew what the facts of the
7 case were. I knew what the situation was.

8 Q Did you and Mr. Dollard discuss any potential
9 defenses that he might have?

10 A Absolutely.

11 Q Okay. Do you recall what you all discussed?

12 A And actually I've got where I received discovery on
13 February the 6th, so the day before the bond hearing.

14 Q Okay.

15 A Mr. Dollard and I had several conversations. I made
16 notes every time I went to see him, so I can tell you that
17 I met with him on January 24th, February the 7th, April
18 the 1st it looks like, June the 2nd, July 29th. And then
19 I would assume when we came to Court.

20 Q Okay. Mr. Dollard testified that he believed he was
21 charged with or potentially received an accessory before
22 the fact and accessory after the fact charges, is that
23 something you all discussed?

24 A Well, he pled to accessory before the fact of
25 voluntary manslaughter. I mean, there wasn't any question

1 in my mind whether he understood what he was pleading to.
2 He pled to that and an armed robbery charge. And it was
3 clear and, I mean, he told the judge he understood. He
4 told me he understood that, you know, that he was going to
5 get at least ten years from a mandatory minimum and it was
6 up to 30. What I had talk to him about was that the
7 Solicitor and we hadn't spoken to Judge Culbertson that
8 day because Mr. Dollard's co-defendant pled earlier that
9 day and Solicitor Clements just offered to ask the judge
10 or to make the judge aware that he didn't think
11 Mr. Dollard should get the same sentence as his
12 co-defendant. So his co-defendant had already pled and
13 received 30 years. I was -- what I could tell Mr. Dollard
14 was is that the judge we had had a conference with the
15 judge and the Solicitor recommended that he get less than
16 the 30 years, but that the rest of it was up to the judge.

17 Q And Mr. Dollard's wife was not present at the plea?

18 A I do not remember her being present at the plea.

19 Q Okay. Did you have a chance to inform her that he
20 was going to be pleading guilty?

21 A I think she knew he was. I spoke to her many many
22 times on the telephone before and after he pled.

23 MR. WALLER: Beg the Court's indulgence please.

24 THE COURT: Yes, sir.

25 (WHEREUPON, a pause in the proceedings.)

1 BY MR. WALLER:

2 Q Mr. Deberry, did Mr. Dollard understand all of your
3 conversations when you met?

4 A I believe he did. He always asked appropriate
5 questions and was concerned about appropriate subjects
6 and things. And we talked about how he could help
7 himself. He tried to provide useful information and I
8 work closely with law enforcement trying to help that --
9 you know, help him. So I knew he was on suicide watch the
10 first couple of times that I saw him. He was in max
11 security in the jail here and we talked -- I mean, we
12 didn't talk in depth about that, but I didn't ever have
13 any concerns that he wasn't understanding the criminal
14 process or what was going on as far as that was concerned.
15 And I remember that at some point I would say half way
16 through my visits with him he was off of that watch.

17 Q Okay. Did you all have a good working relationship?

18 A We do.

19 Q Okay. Did he ask you to do any investigation or to
20 talk any witnesses that you remember?

21 A Well, there was some information that he was trying
22 to -- I mean, that we provided to law enforcement that was
23 trying to find the third individual that was involved in
24 this crime.

25 Q Okay. Did you discuss with them the theory of

1 accomplice liability?

2 A I did.

3 Q Okay. Did he seem to understand that?

4 A I think so.

5 MR. WALLER: No further questions. Thank you.

6 THE COURT: Cross.

7 MS. MCCALLISTER: Thank you.

8 CROSS-EXAMINATION

9 BY MS. MCCALLISTER:

10 Q Mr. Deberry, at the time of this plea how long had
11 you been practicing law?

12 A What year was this plea, was it '14?

13 Q Was in October of 2014.

14 A Since 2006, eight years.

15 Q Okay. And how much of your practice is criminal
16 would you say or just in general over those eight years
17 how much was criminal?

18 A Probably 85 percent.

19 Q Okay. So this was not your first time in general
20 sessions court?

21 A No, ma'am.

22 Q Was it your first time on an armed robbery case like
23 this a major felony case?

24 A No, ma'am.

25 Q And you said I believe that you were appointed in

1 this case, correct?

2 A That's correct.

3 Q Okay. And you met with Mr. Dollard multiple times
4 either in the courthouse or in Effingham, correct?

5 A I did.

6 Q Okay. And you talked to him about the indictments
7 and the charges that he was facing, correct?

8 A Yes, ma'am.

9 Q Okay. And you -- did you review the possible
10 sentences for each of these charges?

11 A I did.

12 Q Okay. What did you tell him about that?

13 A About his charges?

14 Q And the possible sentences he was facing?

15 A I told him that the murder carries 30 to life, armed
16 robbery is ten to 30, you know. I mean, there are serious
17 crimes.

18 Q Did you ever make him a promise that he would only
19 receive ten years?

20 A Absolutely not. I mean, what I would have told him
21 before the plea is that he was pleading to accessory
22 before the fact of -- to voluntary manslaughter which that
23 crime carries, if I'm not mistaken 20 to 30 and the armed
24 robbery is mandatory minimum of ten to 30. And so he
25 could not have gotten less than ten that day.

1 Q Okay. You explained that to him?

2 A I did.

3 Q And you felt that he understood that discussion with
4 you?

5 A I do.

6 Q Okay. Did you discuss his constitutional rights with
7 him?

8 A I did.

9 Q Okay. Did you discuss his right to take this to
10 trial?

11 A Absolutely.

12 Q Okay. And did he ever tell you that he wanted to
13 take this to trial?

14 A He never -- no.

15 Q Okay. Did you discuss what the State was going to
16 have to prove against him to prove these charges?

17 A I do.

18 Q Okay. Can you give a little bit of the summary of
19 what was the main evidence against him?

20 A Well, there was evidence that that there was a
21 conspiracy to rob a gambling house that was here in
22 Florence. And they had conversation that there was
23 suppose to be some money there I believe that day or that
24 morning and that's what they went there to do. And
25 unfortunately, you know, it turned into an armed robbery

1 and a murder. Mr. Dollard was never accused of being the
2 man that pulled the trigger, but, you know, with the
3 accomplice liability and his part in the crime, I just had
4 to advise him that, you know, it doesn't look good for
5 him. And also his cooperation and letting law enforcement
6 know his role, I just -- you know, I mean it wasn't a good
7 idea for him to go to trial still my opinion for that.

8 Q Okay. There was some testimony, I think, Mr. Dollard
9 said something about a video. Do you recall a video?

10 A I recall the video.

11 Q Was there a video of what happened?

12 A There was a video that's not -- doesn't show a lot.
13 You know, I remember there being a door. I didn't watch
14 it again before I came here, but it's been a while. It
15 doesn't show from the very beginning to the very end
16 exactly what happened.

17 Q Okay. But you did watch that video with Mr. Dollard
18 or show him the video?

19 A I couldn't testify to that. I mean, we spoke about
20 what's on the video and we talked about that. I'm not
21 sure if he saw the video or not.

22 Q Okay. But he was aware of the video?

23 A I think so. He wasn't on the video.

24 Q Okay. And you watched the video?

25 A Yes.

1 Q To know what the contents of the video were?

2 A Uh-huh.

3 Q Okay. In any of these discussions about what the
4 evidence was, the charges, the possible punishments, did
5 Mr. Dollard ever indicate to you that he did not
6 understand something?

7 A I felt certain that he understood what he was doing.

8 Q Okay. You've heard the testimony about him signing
9 some papers before he went into the plea. Do you recall
10 him signing some papers?

11 A He would have to sign the sentencing sheet.

12 Q Okay. And that would be before you went in?

13 A Yes, ma'am.

14 Q And did you explain to him what that document was?

15 A Yeah, I mean, you know, before any of my clients
16 plead guilty, and there's several, you know, we go over
17 their rights and what the sentencing sheet is, what it
18 means that he's doing, the possible punishments, you know,
19 everything basically that the judge would go through
20 during the plea.

21 Q Okay. And did you do that with Mr. Dollard?

22 A I did.

23 Q And did he indicate to you at any time during that
24 conversation that he did not understand what he was doing
25 there that day?

1 A No, he understood.

2 Q Did he indicate that he didn't understand something
3 that you were explaining to him?

4 A No, ma'am.

5 Q Okay. And did you have any reason independently to
6 think that he didn't understand?

7 A I did not.

8 Q Okay. I think you said that you were aware that he
9 was on suicide watch, correct?

10 A I was, but he wasn't on the entire time that I
11 represented him.

12 Q Okay. So at the time of the plea was he on it?

13 A No, I don't think he was.

14 Q Okay. And so I think you told me earlier, I don't
15 want to put words in your mouth, but he never asked you
16 for a trial in this case?

17 A No, I don't think so.

18 Q So this was something you were engaged in plea
19 negotiations with the Solicitor, correct?

20 A Yes, we were trying -- you know, we worked from very
21 earlier on to try -- to get him, you know, the best
22 possible outcome we could through cooperation with law
23 enforcement and the Solicitor's office.

24 Q Okay. And ultimately I think your testimony was
25 earlier that this solicitor offered just to make the judge

1 aware that he thought Mr. Dollard should get something
2 less than the co-defendant?

3 A That's correct.

4 Q Okay. And were those -- that was on the armed
5 robbery and the accessory charge, correct?

6 A Correct.

7 Q So the State ultimately agreed to dismiss the other
8 charges or reduce the other charges?

9 A Dismiss the murder charge and kidnapping, conspiracy,
10 that's what I have.

11 Q Okay. And reduce -- well, I guess, then you went
12 forward on the armed robbery and they also added the
13 accessory charge, correct?

14 A Well, they reduce the murder charge and let him plead
15 to accessory before the fact of manslaughter -- voluntary
16 manslaughter and so that's why he had to waive presentment
17 to grand jury.

18 Q Okay. So that was part of your negotiations?

19 A It was.

20 Q Okay. You explained that to Mr. Dollard?

21 A I did.

22 Q The changes and the charges and what that meant?

23 A Correct.

24 Q Okay. Did you have a conversation with him about
25 pleading guilty before he actually came to court to plead

1 guilty, do you recall?

2 A Yes, but, you know, it wasn't -- if I -- I mean, from
3 my recollection I hadn't spoken to him just a day or two
4 before he suppose to come and plea. It was based on when
5 his co-defendant pled and so that was scheduled separate
6 and apart from us. So they had to...

7 Q So were you waiting on the -- were you waiting on the
8 co-defendant to plead first?

9 A Well, it was probably a situation where he was either
10 going to plea or go to trial. And so when he pled, then
11 they wanted to have Mr. Dollard plea at the same day if he
12 wanted to.

13 Q Okay. So when did you know that he was going to
14 plea? How long before him did you know? Did you know a
15 couple days ahead of time?

16 A I may have known they were going to bring his
17 co-defendant to court, but, you know, you never know. I
18 know he pled in the afternoon. I think the co-defendant
19 pled that morning.

20 Q Okay. And in your meetings with him at Effingham
21 before the plea, you discussed the fact that at some point
22 he would be pleading is that fair to say?

23 A Well, it's always his decision, but I think that's
24 the way we handled the case from the very beginning.

25 Q Okay. So, I guess, what I'm trying to get at from

1 your perspective, did Mr. Dollard understand that he could
2 chose to plead or he could chose to go to trial?

3 A Yes, he understood that.

4 Q And his decision was that he wanted to plead guilty?

5 A That's correct.

6 Q Okay. And you talked about this decision on multiple
7 occasions?

8 A That's correct.

9 Q What is your practice in terms of talking to
10 defendants about an appeal from a guilty plea, if you have
11 a general practice?

12 A I'm not going to say -- I mean, I don't know that
13 I've ever had another client that's asked for an appeal
14 from a guilty plea.

15 Q Okay. When did you first learn that Mr. Dollard
16 wanted an appeal from his guilty plea?

17 A Well, it was and I know that you said earlier I have
18 that he pled guilty on October 21st, but I think you said
19 earlier that he may have pled in September.

20 Q If I did, I misspoke. I also have October.

21 THE COURT: It is the 21st.

22 A So I remember having a conversation with Mr. Dollard
23 and his wife. I believe that we had this conversation in
24 this courthouse before he was transferred back to
25 Effingham and before he was transferred to SCDC. But the

1 conversation I had about him with him about it we talked
2 about the appeal, what the possibilities were and what
3 would happen if he was granted and an appeal. And he told
4 me that he understood and he did not want to appeal. A
5 few days after that I believe I got a call from his wife.
6 She asked the same questions. I told her we had the same
7 conversation and she said, yeah, it's a good idea that he
8 not appeal. I didn't try talking him out of appealing. I
9 just explain to him the situation. And then sometime
10 later which was after the ten days, I received a letter
11 from him that asked for me to file the appeal. It was
12 after -- outside the appellate window. I made an
13 appointment to go to Columbia to see him to talk to him
14 about that. And we had basically the same conversation
15 over again when I left Kirkland that day. He asked me not
16 -- you know, that he -- it was clear to me that he did not
17 want to file an appeal.

18 Q Did you ever tell him that you didn't file it because
19 you were out of town and you missed the deadline?

20 A No.

21 Q So your recollection is that you had at least three
22 conversations about an appeal and at the end of each
23 conversation the decision was not to pursue the appeal?

24 A That's my recollection.

25 Q Okay.

1 A I was going to say I have a letter that he wrote me
2 where he did ask me to file an appeal, but I don't think
3 it from what I understand, it's marked where it didn't
4 leave Kirkland until November the 21st, which was 30 days
5 after.

6 Q Okay. So the first time he sent you anything that
7 said affirmatively I want to appeal was at least 30 days
8 after his plea according to the postmark?

9 A Right.

10 Q Okay. And you did have one conversation with him
11 personally within the appeal window?

12 A If I remember correctly, I remember talking to him
13 I'm thinking it was right after his plea.

14 Q Okay. And you -- and your understanding as a result
15 of that conversation was that he did not wish to appeal?

16 A That's right.

17 Q And when you went -- how soon after you got the
18 letter did you go up to Effingham, do you recall or
19 wherever he was at the time?

20 A No, I don't recall. I have a letter where I made an
21 appointment.

22 Q Was it approximately within a month?

23 A It was right -- it's like a couple days after that.

24 Q Okay. So just a couple days?

25 A Uh-huh.

1 Q And when you left meeting with him, you felt like he
2 had decided he did not want to pursue an appeal?

3 A That's correct.

4 Q Did you ever hear from him again after that?

5 A No, ma'am.

6 Q Okay.

7 MS. MCCALLISTER: I think that's all the
8 questions I have.

9 MR. WALLER: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. WALLER:

12 Q Mr. Deberry, you testified that you recall that the
13 -- you think you recalled from the conversation you had
14 with him was right after he pled before he got
15 transported?

16 A I think so.

17 Q You think so, but you're not?

18 A I'm not positive.

19 Q Okay. But you got a letter from him 30 days after he
20 pled guilty asking to you file an appeal?

21 A Uh-huh.

22 Q You didn't send him a letter you jumped in your car
23 and drove to the far side of Columbia to meet with him?

24 A I think I met with other people that day, but, I
25 mean, you know, I wanted to talk to him about his appeal

1 if he wanted to talk to me about an appeal, but that's
2 what I did.

3 Q Okay. But did you send him a letter or anything in
4 writing explaining why he couldn't have an appeal at this
5 point?

6 A No.

7 Q Okay. So you don't have anything in your file where
8 you would have written him saying you requested it outside
9 the ten days?

10 A No.

11 MR. WALLER: Nothing further.

12 THE COURT: Anything further?

13 MS. MCCALLISTER: No, Your Honor.

14 THE COURT: Thank you, sir. You may step down.

15 MR. WALLER: Nothing further from the applicant,
16 Your Honor.

17 THE COURT: Anything from the State?

18 MS. MCCALLISTER: No, Your Honor.

19 THE COURT: All right. I'll be happy to hear
20 from you, Mr. Waller. Well, let me let Mr. Deberry get
21 down and then I'll hear from you, Mr. Waller.

22 (WHEREUPON, the witness leaves the witness
23 stand.)

24 THE COURT: Yes, sir.

25 MR. WALLER: Just briefly, Your Honor.

1 Mr. Dollard testified that he believed he was going to
2 receive ten years, believed he was going to plead guilty
3 to some accessory charges. I understand that the
4 transcript reflects otherwise as to the -- what charges he
5 was pleading guilty to. Your Honor, as he testified, he's
6 58 years old at the time of the plea. He testified he
7 understood that he was going to receive the ten years
8 which would be the minimum, Your Honor. So I think that
9 does check out.

10 Your Honor, the testimony I believe is not in
11 question is that he had at some point ask for an appeal.
12 There is -- seems to be a difference of testimony as to
13 the timing of that and as well as whether prior to the
14 plea whether he was informed of his right to appeal. And,
15 Your Honor, I don't -- I could be missing. I don't see
16 where Judge Culbertson informed him of his right in the
17 transcript, so I think there is some questions as to
18 whether Mr. Dollard even understand his ability to file an
19 appeal.

20 Your Honor, upon asking for an appeal some 30
21 days later, Mr. Deberry jumped in his car and drove to the
22 far side of Columbia to meet with him. I would say that's
23 evidence that he recognize something was lost in
24 translation and something was wrong. He needed to address
25 immediately. Your Honor, Mr. Dollard testified that he

1 did not understand what was going on when he pled. That
2 he was just told to go along to kind of get along and
3 would ask that you consider everything we filed in the
4 transcript.

5 MS. MCCALLISTER: Thank you, your Honor. The
6 State would rest on Mr. Dollard's statements in the
7 transcript. He was asked by the judge multiple times a
8 very thorough colloquy. If he understood what he was
9 pleading to, what the maximum sentences were. If he was
10 -- he understood that he was required to admit his guilt
11 and he did admit his guilt. He agreed with the Solicitor
12 when the Solicitor recited the facts to support the plea.

13 You know, Your Honor, there is nothing that he
14 has testified to here today that the State believes allows
15 him to overcome those statements under oath to the plea
16 judge. Mr. Deberry has testified and has in his notes,
17 you know, the dates that he met with Mr. Dollard. They
18 met on several occasions. He's testified that they went
19 over all of those same issues as to what the charges were,
20 any possible defenses, his sentences. And that
21 Mr. Deberry based on those multiple conversations with him
22 had no reason to believe that Mr. Dollard did not
23 understand anything that was -- that he was going over
24 that he participated in discussions with him asked
25 appropriate questions.

1 Your Honor, as to the appeal, Mr. Deberry has
2 testified to the best of his recollection. There was at
3 least one conversation within the appeal window and Mr.
4 Dollard decided he did not want to pursue it. I think for
5 valid reasons based on, you know, once it was explain to
6 him what could happen if he was successful in that appeal.
7 The fact that Mr. Deberry got in the car and went up to
8 see him once he received that letter. I don't think it's
9 evidence of anything except for that Mr. Deberry is
10 conscientious and his client was asking him about an
11 appeal, about his constitutional right and he went up
12 there to talk to him about it. And Mr. Deberry has
13 testified as a result of that conversation. He decided
14 not to pursue it and then Mr. Dollard never contacted him
15 again. So the State would point to that as evidence that
16 that issue was resolved at that time. That's all I have,
17 Your Honor. Thank you.

18 THE COURT: All right. Well, in looking at the
19 record, listening to the testimony and understanding that
20 the burden is on the applicant and it's a preponderance of
21 the evidence burden. And Mr. Dollard was very candid. He
22 admitted that on his first conversation with Mr. Deberry
23 he doesn't remember very much about what they talked
24 about, but he did indicate that he believed he only talked
25 with him on two occasions. Mr. Deberry's notes show that

1 he met with him at least on four or five occasions before
2 coming to court. And with regards to what Mr. Dollard
3 believed, he was going to be getting -- giving him the
4 benefit of the doubt even if believed going in that he was
5 going to get a ten year sentence. The Court questioned
6 him -- well, first he was placed under oath and the Court
7 then question him at length with regards to the possible
8 sentence that could be imposed and the Court even took it
9 a step further not just to tell him what the maximums were
10 on those two charges, but that if he were to run them
11 concurrently, he could give him 60 years. Mr. Dollard
12 indicated he understood that. At no point did he say,
13 well, Judge, my understanding is I'm getting ten years.

14 He then further the -- Judge Culbertson then
15 asked him are you satisfied with your attorney. He
16 explained he was satisfied. He asked him has anybody
17 promised you anything to get you to plead guilty. He
18 never mentioned a promise of ten years or anything of that
19 nature. He said, no, sir, no one's promised me anything.
20 And so even if he went into that plea with the belief he
21 would get ten years, that certainly was made clear to him
22 prior to him entering his plea that wasn't -- at least
23 that wasn't being presented in that fashion. And if at
24 any time during that situation he could have mentioned it
25 or withdrawn his plea and there was never any attempt to

1 do so.

2 The Solicitor then went into a very lengthy
3 colloquy about the facts surrounding the case. The judge
4 asked him do you understand what they're saying you did in
5 this case. He says, yes, sir. He said is that what
6 happened in this case. He says exactly. Then he asked
7 him again do you understand that you are pleading guilty
8 here today and that you are not only waiving your right to
9 challenge any pretrial identification, but you are also
10 giving up your rights to any and all defenses that you
11 have to this charge. He indicated he understood that. So
12 I'm not -- I don't think the evidence supports that he
13 didn't -- that in any way Mr. Deberry was ineffective
14 leading into the plea. That as far as didn't mount a
15 defense as to accomplice liability. It was made clear to
16 him that by entering your plea that you waive all defenses
17 and he understood that according to his testimony. So I'm
18 not of the belief that there was any showing of proof that
19 Mr. Deberry was in any way ineffective leading up to. And
20 then subsequent to the plea, there is testimony that
21 Mr. Deberry -- his recollection was that he spoke with
22 Mr. Dollard and his wife with regards to the appellate
23 process and that that was an avenue he chose not to
24 pursue.

25 And then prior receiving the note from

1 Mr. Dollard, Mr. Deberry recalls a conversation with
2 Mr. Dollard's wife going back over those same issues. And
3 that there was a -- there was no desire to file an appeal.
4 Then he gets the letter some 30 days later or mail some 30
5 days later and he makes an appointment and goes and speaks
6 to Mr. Dollard with regards to that, which I would concur
7 with the Solicitor to me is more of an indication of
8 somebody who's an conscientious attorney rather than
9 someone who's trying to overcome an issue. And I think
10 it's significant that after that conversation with Mr.
11 Deberry at the prison, then there was no other
12 communications or conversations or any attempts to have an
13 appeal filed. I just don't think the burden of proof has
14 been carried here to warrant either a new trial on the
15 charges or a belated appeal. And I'm going to
16 respectfully deny the application and the remedies sought
17 under that.

18 MS. MCCALLISTER: Thank you, Your Honor.

19 MR. WALLER: Thank you, Your Honor.

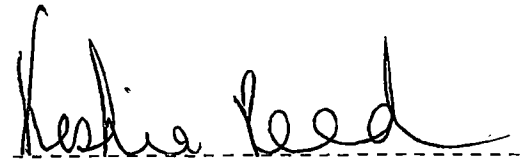
20 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 63, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 29th day of August, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 4th day of August 2018.

A handwritten signature in cursive script, reading "Keshia Reed", written over a horizontal dashed line.

Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Donald R. Dollard, #361803,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-21-1992

ORDER OF DISMISSAL

2018 JAN 29 AM 11:02
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Donald R. Dollard (Applicant) on July 6, 2015. Respondent made its Return on November 4, 2016. An evidentiary hearing into the matter was convened on August 29, 2017, at the Florence County Courthouse before the Honorable Thomas A. Russo. Jonathan Waller, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. H. Steven Deberry, IV (Counsel) also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the June 2014 term of the Florence County Grand Jury for murder, armed robbery, conspiracy, and kidnapping (2013-GS-21-00691). H. Steven DeBerry, IV, Esquire, represented him. On October 21, 2014, Applicant pleaded guilty to armed robbery and accessory before the fact of a felony. Applicant was sentenced by Honorable Benjamin H. Culbertson to twenty-five years

CERTIFIED: A TRUE COPY

Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

imprisonment for each offense, with the sentences to be served concurrently. Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Plea counsel promise (sic) I would receive 10 years for plea."
 - b. "Plea counsel failed to mount a defense based on the premise of accomplice liability, nor did counsel discuss with Applicant his right to appeal."

At the evidentiary hearing, counsel for Applicant informed the Court he was also proceeding on an allegation of ineffective assistance of counsel for failure to file a notice of appeal.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

In a PCR 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." Id. 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 counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington, 466 U.S. 668, 689 (1984). 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, 466 U.S. 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 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).

Further, 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)).

"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)). Additionally, "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)).

Applicant testified he was 58 years old when he was arrested, and he was originally charged solely with armed robbery. Applicant testified Counsel was appointed to represent him on the charges, and their first meeting occurred when Counsel visited Applicant. Applicant testified he and Counsel only discussed a plea to an accessory charge, and Counsel told him he would receive ten years. However, Applicant testified he and Counsel never discussed the other four charges. Applicant testified he cooperated with law enforcement and tried to ^{help} himself based on advice from Counsel. ~~the~~

Applicant testified he decided to plead guilty because his attorney told him he would receive a ten-year sentence on the accessory charge. Applicant further testified he had no knowledge he was charged with conspiracy, kidnapping, and murder, and he and Counsel only met twice prior to the plea. Applicant testified Counsel only told him about the armed robbery charge and the accessory charge. Applicant testified he was not aware he was going to court for a plea until he was woken up by an officer at the jail that morning, and he had not agreed to

plead guilty until after he arrived at the courthouse. Applicant also testified Counsel discussed the questions the judge would ask during the plea colloquy and showed Applicant some papers to sign, which Applicant did, though Applicant testified he didn't understand them. Applicant further testified he has been treated for mental health issues in the past and had been on suicide watch in the jail. Applicant testified he told his attorney about this, but Counsel never had him evaluated. However, on cross-examination, after reviewing the transcript, Applicant agreed the judge explained the minimum and maximum sentences he could receive, and Applicant stated he understood.

Applicant testified he did not have a weapon during the incident, but he and Counsel never discussed how Applicant could be charged with these crimes without having a weapon. Applicant testified he and Counsel watched a video from the incident location, which showed Applicant did not carry the gun. However, Applicant testified Counsel only explained the "hand of one, hand of all" concept after Applicant had already been sentenced, and Applicant asked Counsel why he had received a twenty-five year sentence. Applicant averred he never asked Counsel to explain accomplice liability or how he could be charged with murder if he did not carry the weapon. Applicant testified he was not aware of any defenses he may have had, and he and Counsel did not discuss any. On cross-examination, Applicant testified he understood he waived his right to present a defense by entering the guilty plea.

Counsel testified he met with Applicant for the first time on January 24, 2014, and then appeared with Applicant at Applicant's bond hearing on February 7, 2014, at which time Applicant waived bond. Counsel testified Applicant did so because Applicant did not deny his involvement in the crimes, they had discussed the pros and cons of accruing some time-served credit, and Applicant had an opportunity to cooperate with law enforcement, which he did.

Counsel testified he and Applicant discussed the charges at the January meeting, Applicant gave Counsel contact information for Applicant's wife, and they discussed Applicant's prior record. Counsel further testified he received discovery from the solicitor the day before the bond hearing in February.

Counsel testified he had been practicing approximately eight years at the time of his representation of Applicant, with about 85% of his practice in criminal court. Counsel testified he and Applicant met and discussed the case, including possible defenses, on January 24, February 7, April 1, June 2, and July 29, and then again on the day of the plea. Counsel testified Applicant never asked for a trial, and Counsel engaged in plea negotiations with the State very early on due to Applicant's cooperation with law enforcement. Counsel also testified there was no question Applicant knew he was pleading guilty to accessory before the fact, not after the fact, and Applicant knew the armed robbery charge carried a sentence of at least ten years. Counsel testified the State agreed to dismiss the murder, kidnapping, and conspiracy charges.

Counsel further testified these were serious charges, and he never promised Applicant a sentence of ten years. Counsel testified Applicant's codefendant had pleaded guilty sometime earlier and was sentenced to thirty years, and the solicitor offered to make the judge aware of the State's belief that Applicant did not deserve the same sentence. Counsel testified he relayed this conversation to Applicant, but told him the decision would be up to the judge. Further, Counsel testified he and Applicant discussed the plea prior to Applicant's arrival at the courthouse, and Counsel explained the date of Applicant's plea would be dependent on when the codefendant pleaded guilty. Counsel additionally testified he and Applicant discussed accomplice liability, and Applicant understood the concept. Finally, Counsel testified he went over the sentencing

sheet with Applicant, possible defenses, and also explained the rights Applicant would be giving up.

Counsel also testified he believed Applicant understood all of their conversations as he asked appropriate questions, talked about ways he could help himself, and provided useful information to law enforcement to try to find the third person involved. Counsel testified he was aware Applicant was on suicide watch one time, but he had no concerns about Applicant's ability to understand the criminal process. Counsel further testified Applicant was taken off suicide watch about half way through the course of the representation. Counsel testified he and Applicant had a good working relationship.

Regarding Applicant's claim his guilty plea was induced by ineffective assistance of counsel, namely Counsel's promise of a ten-year sentence and failure to pursue a defense based on accomplice liability, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case and Applicant's decision to plead guilty was made freely and voluntarily. Counsel reviewed the video from the incident with Applicant and met with him on multiple occasions to discuss possible defenses, Applicant's constitutional rights, and the State's burden of proof, including the concept of accomplice liability. This Court finds credible Counsel's assertion Applicant understood the charges he was pleading guilty to, the possible range of sentences, and the concept of accomplice liability. Additionally, even if Applicant believed he had been promised a ten-year sentence, the plea court questioned Applicant at length regarding the possible sentence, and Applicant indicated he understood.

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant told the plea judge he was satisfied with Counsel's representation and had no complaints. Tr. p. 32. Importantly, the plea court specifically asked if anyone had made any promises to Applicant, and Applicant said no and never mentioned the ten-year issue. Tr. p. 32. Additionally, this Court finds even if Applicant believed he would receive a ten-year sentence prior to the plea, that belief was corrected by the thorough colloquy conducted by the plea court. Roddy, 339 S.C. at 34, 528 S.E.2d at 421 (holding a defendant's knowing and voluntary waiver of statutory or constitutional rights "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both."); see also Tr. pp. 30-32. Accordingly, this Court finds Applicant understood the terms of the plea and entered into it freely and voluntarily.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea, and any misconception Applicant had about the sentence he would receive was corrected during the hearing by the plea court. In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements."). This Court concludes Applicant has not met his

burden of proving Counsel failed to render reasonably effective assistance such that his guilty plea was rendered involuntary. The allegation is hereby denied and dismissed.

Ineffective Assistance of Counsel – Failure to File Timely Notice of Appeal

The Supreme Court of the United States has specifically “reject[ed] a bright-line rule that counsel must always consult with the defendant regarding an appeal.” Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). When a conviction arises out of a guilty plea, Counsel has “a constitutionally imposed duty to consult with defendant about an appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” Id. The Supreme Court has further noted that “a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” Id. Further, the Supreme Court of South Carolina has expressly stated that “[a]bsent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Extraordinary circumstances arise when a defendant inquires about an appeal, and counsel has a duty to advise him in that instance. See Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

Applicant testified Counsel never discussed an appeal until after Applicant’s sentence was pronounced. Applicant testified he wrote a note to Counsel several weeks after the plea asking Counsel to file a motion to suppress and a notice of appeal. Applicant testified Counsel visited him in Columbia after Applicant wrote the note. Applicant testified Counsel told him he did not file the appeal because Counsel was out of town.

Counsel testified he had never had a client ask to appeal from a guilty plea before. Counsel testified he remembered having a conversation with Applicant and Applicant's wife in the courthouse after the plea wherein they discussed the possibility of an appeal, but Applicant told Counsel he did not want to appeal. Counsel testified Applicant's wife called him a few days later, and they had a similar conversation. Counsel further testified he received Applicant's letter approximately thirty days after the plea, well after the ten-day window for filing an appeal had lapsed, and he did go visit Applicant to discuss it. Counsel testified when he left the visit, Applicant asked him not to file any appeal, and he never heard anything else from Applicant after that. Further, Counsel denied telling Applicant the appeal was not filed because Counsel was out of town.

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 Counsel's testimony on this issue to be credible, while also finding Applicant's testimony is not credible. The Court finds Counsel and Applicant discussed the appellate process on multiple occasions, and Applicant did not wish to appeal. Further, the Court finds Applicant never instructed Counsel to file an appeal until at least thirty days after the plea, when the time period to do so had already expired. Further, the Court finds Counsel made the appropriate effort to address the issue by visiting Applicant in jail to discuss the issue, at which time Applicant told Counsel not to file anything, after which Applicant never contacted Counsel again. This allegation is therefore denied and dismissed.

CONCLUSION

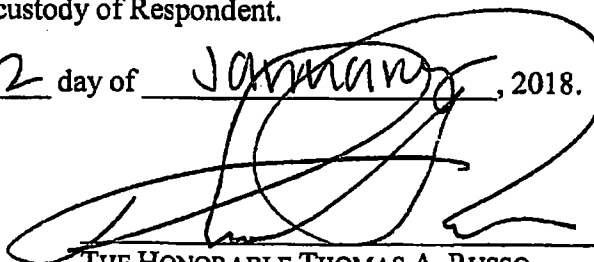
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 22 day of January, 2018.

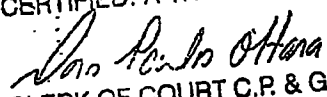


THE HONORABLE THOMAS A. RUSSO
Presiding Judge
Twelfth Judicial Circuit

Florence

, South Carolina.

FILED
2018 JAN 29 AM 11:02
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES

Chad Collins

Florence County Sheriff

E. L. Clements, III

ARREST WARRANT NUMBER

2014GS2100691A	2013A2110201652
2014GS2100691B	2013A2110201644
2014GS2100691C	2013A2110201645
2013A2110201649	2013A2110201647
2013A2110201650	2013A2110201648
2013A2110201651	2013A2110201653

ACTION OF GRAND JURY

TRUE BILL

Wendy Sindus
Foreperson of Grand Jury
Date: *6/5/2014*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-21-00691

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE

TERM

2014

THE STATE

vs.

GREGORY TYWONE CANTY

DONALD RAY DOLLARD

NATHANIEL NESMITH

Indictment for

**MURDER,
ARMED ROBBERY,
CONSPIRACY,
KIDNAPPING, AND
POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME**

FILED

2014 JUN -5 AM 11:08

**CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC**

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

MURDER, ARMED ROBBERY, CONSPIRACY,
KIDNAPPING, AND POSSESSION OF WEAPON
DURING COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on JUNE 05, 2014 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116 16-03-0010; 0020, 16-01-0060

That GREGORY TYWONE CANTY, DONALD RAY DOLLARD, and NATHANIEL NESMITH did in Florence County on or about December 03, 2013, that while committing an Armed Robbery, feloniously, wilfully and with malice aforethought kill one David L. Jenkins, by means of shooting him with a handgun, and that the said David L. Jenkins did die as a proximate result thereof, in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT TWO- ARMED ROBBERY

CDR: 0139 16-11-0330(A), 16-01-0060

That GREGORY TYWONE CANTY, DONALD RAY DOLLARD, and NATHANIEL NESMITH did in Florence County on or about December 03, 2013, while armed with a deadly weapon, or while alleging, either by actions or words, that they were armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, did feloniously rob Clayton McKnight, by means of force or intimidation, goods or monies of the said Clayton McKnight, in violation of Sections 16-11-0330(A) and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT THREE - CONSPIRACY

CDR: 0049 16-17-0410

That GREGORY TYWONE CANTY, DONALD RAY DOLLARD, and NATHANIEL NESMITH did on or about December 03, 2013, unlawfully, willfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves, and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Murder, Armed Robbery and/or Kidnapping; in violation of Section 16-17-0410, S.C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, ARMED ROBBERY, KIDNAPPING, CONSPIRACY, AND POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME, WITH THE AFORESAID NAME(S) OF GREGORY TYWONE CANTY, DONALD RAY DOLLARD, AND NATHANIEL NESMITH SHOWN THEREON:

COUNT FOUR- KIDNAPPING

CDR: 0095 16-03-0910, 16-01-0060

That DONALD RAY DOLLARD and NATHANIEL NESMITH did in Florence County on or about December 03, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Clayton McKnight, by any means whatsoever, without authority of law and by use of force, by holding him against his will at gunpoint and restraining him with plastic zip-ties; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

**COUNT FIVE- POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME**

CDR: 0549 16-23-0490

That NATHANIEL NESMITH did in Florence County on or about December 03, 2013, was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun, during the commission of a violent crime, to wit: Murder, Armed Robbery and/or Kidnapping; in violation of Section 16-23-0490, S.C Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATEFlorence
VS.

Nathaniel Nesmith

AKA:

Race: Black Sex: M Age: 52

DOB: 62 SS#: [REDACTED]

Address:

City, State, Zip: Hemingway, SC 29554-5264

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Manslaughter / Voluntary manslaughter 30 yrs.

in violation of § 16-03-0050

of the S.C. Code of Laws, bearing CDR Code # 0217

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

ATTEST

Clemens, III, E. L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 105.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014-GS-21-00691

A/W#: 2013A2110201645

Date of Offense: 12/3/2013

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code:

Sentence Date:

Margaret T. [Signature]
 2178
 Oct. 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF Florence
 STATE VS.
Donald Roy Dollard

AKA:

Race: Black Sex: M Age: 58DOB: 56 SS#: [REDACTED]

Address:

City, State, Zip: Hemingway, SC 29554DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State [REDACTED]
 ATTORNEY: [Signature] 15295 [Signature] NSA [REDACTED] 75373
Clements, III, E. L. SC Bar# Defendant Attorney for Defendant SC Bar#
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years ☐ under the Youthful Offender Act not to exceed X yearsand/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or paymentof \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/en	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ <u>105.00</u>

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

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014-GS-21-00691A/W#: 2013A2110201651Date of Offense: 12/3/2013S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSPresiding Judge [Signature]Judge Code: 2148Sentence Date: Oct. 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

Donald Roy Dollard

AKA:

Race: Black

Sex: M

Age: 58

DOB: 56

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Hemingway, SC 29554

DL#: [REDACTED]

SID#: [REDACTED]

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

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

☐ CONVICTED OF or ☒ PLEADS

TO: Accessory / Accessory before the fact to a Felony, general provision (violent if violent Felony)

in violation of § 16-01-0040; 16-01-0050 of the S.C. Code of Laws, bearing CDR Code # 0002

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

ATTORNEY

Clements, III, E. L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for Xmonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/21/2014☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$30	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/co	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ <u>105.00</u>

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011): _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014-GS-21-00691

A/W#: 2014GS2100691D

Date of Offense: 12/3/2013

S.C. Code § : 16-01-0040; 16-01-0050

CDR Code #: 0002

SENTENCE SHEET

Presiding Judge

Judge Code: 2148Sentence Date: Oct. 21, 2014