

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

DONOVAN DESHAWN WILLIFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001836

APPENDIX

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RECEIVED

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) COURT OF GENERAL SESSIONS

State of South Carolina,)
v.) Case No. 16-GS-04-1129 *et. al.*
Donovan Deshawn Williford,)
Defendant.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on March 13, 2017, before The Honorable J. Cordell Maddox, Jr. in the Court of General Sessions; attended by counsel as follows:

APPEARANCES:

Tilie Gilgore, Agent
PROBATION PARDON & PAROLE
Appearing for State of South Carolina

Jennifer Johnson, Esq.
ANDERSON COUNTY PUBLIC DEFENDER
Appearing for Defendant

Vivian H. Cross
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State v Donovan Deshawn Williford
Case No. 16-GS-04-1129 et al.
Hearing of March 13, 2017
Before The Honorable J. Cordell Maddox, Jr.

1 THE COURT: This is Donovan Williford?

2 PROBATION AGENT: Yes, sir.

3 THE COURT: Mr. Williford, Judge Verdin
4 sentenced you to a five-year YOA, I think.

5 PROBATION AGENT: Yes, sir.

6 THE COURT: With three years probation.
7 Then you were arrested for assault and
8 battery, is that correct?

9 DEFENDANT: Yes, sir.

10 THE COURT: Is that still pending?

11 MS. JOHNSON: It is, Your Honor. I've
12 actually met with Mr. Means about that case.
13 He has offered time served on that. He was
14 not available to be here this afternoon but
15 he's -- Mr. Williford was on the transport
16 list for Thursday. I think that will be
17 resolved Thursday by plea. I would like to
18 go ahead and address everything relative to
19 probation now, if that's possible because I
20 think she has notification problems with this
21 one.

22 THE COURT: Okay.

23 MS. JOHNSON: Ordinarily I -- I prefer
24 to do it all at one time but I think in this
25 particular circumstance ---

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1 THE COURT: All right. Well, tell me
2 what happened. I understand that charge
3 sounds much worse than -- what happened when
4 you got arrested for assault and battery with
5 mob?

6 DEFENDANT: It was me and another ---

7 COURT REPORTER: I can't understand
8 him.

9 THE COURT: You've got to speak up.

10 DEFENDANT: I'm sorry. It was me and a
11 couple of other people. The way that it was
12 written in my Motion -- I mean in the
13 incident report -- was they were saying that
14 it was just me. So how could it be a mob if
15 it was just me?

16 THE COURT: Who were you fighting with?

17 DEFENDANT: It was a guy -- you want
18 his name?

19 THE COURT: No. Why were you fighting?

20 DEFENDANT: Oh. Alcohol. I was drunk
21 and, phew, testosterone really. High
22 testosterone.

23 THE COURT: How much do you weigh?

24 DEFENDANT: Probably 150, 160.

25 THE COURT: Testosterone doesn't make

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4

1 you ---

2 DEFENDANT: Yes, sir.

3 THE COURT: Just tell me right now.

4 DEFENDANT: (No verbal response).

5 THE COURT: What do y'all want to do
6 with him?

7 PROBATION AGENT: Your Honor, we're
8 asking the Court to terminate probation and
9 invoke the YOA sentence. I do have the
10 incident report on assault by mob.

11 THE COURT: What does it say?

12 PROBATION AGENT: It was Mr. Williford
13 and another gentleman, they were over at
14 someone's house that's within their neighbor-
15 hood. They assaulted this individual, this
16 male. There appeared to be -- alcohol was
17 involved but the person that was assaulted,
18 from the documentation that I have, it states
19 here, and I quote, (reading): "The victim
20 was sitting in the living room with blood all
21 over his face, with large protruding blue and
22 black and purple bruises under both eyes and
23 a small laceration on the left side of his
24 forehead. I observed a medium size pool of
25 blood in the kitchen floor along with the

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1 smearing of blood around the pool of blood.
2 I then requested an Anderson City officer to
3 respond to the incident location, where
4 pictures were taken. The victim was escorted
5 to the Anderson Area Medical Center."

6 THE COURT: How long have you been in
7 jail on those charges?

8 DEFENDANT: Uh, ---

9 MS. JOHNSON: He's been -- I'm sorry
10 to interrupt you. He's been in jail a
11 hundred and thirty (130) days. He's been in
12 jail since November 3rd, Your Honor. He is
13 actually in jail on a probation bench
14 warrant.

15 I think that charge carries a maximum of
16 one year and he essentially has served the
17 entire sentence on the assault and battery by
18 mob, which is why we've received the offer
19 that we have in that case.

20 The only concern that I have at this
21 point is that obviously with the Youthful
22 Offender Act it's essentially like an On or
23 Off switch. You are either revoked and he
24 goes to the Youthful Offender camp and does
25 whatever he is required to do there, and that

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1 sentence doesn't start until he gets there,
2 or he's continued on probation.

3 THE COURT: Or he could get boot camp.

4 MS. JOHNSON: He could but, again, that
5 total would take about six months because
6 there is an evaluation period prior to being
7 placed in the shock incarceration program.
8 We've been told by the Department of
9 Corrections that six months is a reasonable
10 expectation on a shock incarceration by the
11 time they're evaluated and actually get into
12 the program.

13 There is one other little weird
14 complication here, if that matters. He had
15 a hold from the City of Anderson. I think
16 it was the 13th of January -- and I want to
17 say that he was before Judge McCauley on this
18 case. He ---

19 THE COURT: That guy?

20 MS. JOHNSON: That guy, yeah. He
21 halted the hearing so that we could see if we
22 could get this warrant served by the City, so
23 that we could try to take care of everything.

24 The City officer came down downstairs,
25 served him with the warrant, I got a copy of

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1 the warrant, I opened my file. But the
2 warrant still hasn't been transmitted.

3 THE COURT: So that's not this mob
4 thing?

5 MS. JOHNSON: Correct.

6 THE COURT: What is that?

7 MS. JOHNSON: It's a common law robbery
8 charge. So I had basically put that hearing
9 off for the time. But now with this other
10 charge being in la la land, I don't want to
11 continue putting off the probation hearing
12 because he is in jail on a bench warrant for
13 that. If the court does revoke the YOA, he's
14 not getting the time because, it's my
15 understanding, the Youthful Offender Act time
16 works pretty differently than they do on
17 traditional sentences.

18 THE COURT: Well, do you just want to
19 continue this? I mean, the robbery would be
20 something much more serious than the ---

21 MS. JOHNSON: Right, but until he gets
22 out of jail -- right now if you look at the
23 jail screen it still shows the hold from the
24 City even though the officer came and served
25 the warrant. I suspect it's because he was

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1 never bonded at the City. I don't know
2 because I have never worked on that side, but
3 I suspect that is what triggers that
4 information going to the Clerk's office. He
5 was served downstairs on that. So
6 technically -- but, again, I think just
7 continuing the hearing date doesn't do
8 anything for him because I don't think that's
9 going to be resolved until the City comes and
10 gets him and has a bond hearing. They are
11 not going to do that until he gets released
12 even though the warrant has been served.
13 It's the craziest thing.

14 THE COURT: Well, I'll call the City
15 attorney and tell him that they need to do
16 something. Because it's going to come right
17 back up here and that's a serious charge.

18 MS. JOHNSON: Yes, sir.

19 PROBATION AGENT: Your Honor, if I may
20 add one more thing. Mr. Williford is in the
21 detention center because he absconded
22 supervision for about seven or eight months.
23 That's the reason he is in on a bench
24 warrant, because he failed to appear for
25 General Sessions.

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1 MS. JOHNSON: Your Honor, he does admit
2 that he's in violation of the probation case.
3 That is not really the problem. It's just
4 because he's had other issues, and I've moved
5 several times to continue the probation case.
6 I've attempted to resolve these other issues
7 and now here we are, six months from his
8 arrest date and I still haven't addressed the
9 probation matter and he can't go anywhere
10 because of the bench warrant until the
11 probation case is decided.

12 THE COURT: Well, here is what I can
13 do: I can continue the hearing, I don't
14 continue the hearing, or I revoke the YOA and
15 order shock. It would be six months, max.
16 Probably more like four or five.

17 MS. JOHNSON: Would you mind giving us
18 a minute to talk about that?

19 THE COURT: Yeah, talk about it. I
20 mean, you understand what shock is? Boot
21 camp?

22 DEFENDANT: Yes, sir.

23 THE COURT: To be honest with you,
24 we're all told that because of the way the
25 funding the YOA -- it's not the Department of

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1 Corrections. When there is a funding
2 shortage, they just let people out of YOA.
3 So what most judges do is they order shock
4 incarceration, which is ninety days. It's
5 boot camp. But that would do away with this
6 probation and might help you, quite frankly,
7 depending on the strength of the case, the
8 case that is pending with the City.

9 So talk to her and then come back and
10 tell me.

11 (HEARING IN RECESS)

12 THE COURT: Now back on Mr. Williford,
13 did y'all get a chance to talk?

14 MS. JOHNSON: Yes, we did.

15 THE COURT: What does he want to do?

16 MS. JOHNSON: Your Honor, at this time
17 he's indicated that probation revocation with
18 a shock incarceration recommendation is the
19 way that he wants to go. I would simply ask
20 that the Order reflect that he be held until
21 Thursday or Friday, whatever day that we get
22 the Order, because he is on the transport
23 list Thursday on the other matter.

24 THE COURT: Okay. I'll revoke the YOA,
25 order shock incarceration. The only problem

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1 that you've got is that you've got to do what
2 they want you to do to get into the shock
3 program. It's basically just exercise and
4 all that stuff. Ninety days. Then after you
5 complete that, I will terminate your
6 probation. Okay?

7 DEFENDANT: (No verbal response).

8 THE COURT: Then we will hold him in
9 the County jail until Thursday, Friday.
10 Thank y'all.

11 (HEARING CONCLUDED)

12 PROBATION AGENT: Your Honor, may Mr.
13 Williford come back before you? We have a
14 question about some restitution.

15 THE COURT: Sure.

16 PROBATION AGENT: Your Honor, this case
17 has been before Judge Sprouse back in
18 December, the 8th, of 2015. Mr. Williford
19 does owe -- there is a victim that he owes
20 restitution to in the amount of \$2,954 and
21 Judge Sprouse ordered that, uh, -- at the
22 time, Mr. Williford told the Court that he
23 had been in a car accident and that he had a
24 pending litigation.

25 MS. JOHNSON: That is true but still

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1 pending, Your Honor.

2 THE COURT: Then what I will do is I
3 will terminate the probation on finishing the
4 YOA and paying the money back. I can't ---

5 MS. JOHNSON: Well, I think on this,
6 Your Honor, that when he is released from the
7 YOA sentence he will be released on YOA
8 parole and that is what will keep him under
9 supervision. Now those are being supervised
10 through the Department of Corrections. I
11 think all Youthful Offender Act ---

12 THE COURT: But the restitution would
13 come back through you, wouldn't it?

14 MS. JOHNSON: It would be through
15 Parole.

16 PROBATION AGENT: Parole would handle
17 his money.

18 THE COURT: Okay, we'll just have to
19 put in the Order that Parole would -- just
20 to be clear, because it sounds like it is
21 unclear, his ---

22 PROBATION AGENT: Yeah, it's
23 complicated.

24 THE COURT: --- restitution will be
25 handled by Parole.

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13

1 PROBATION AGENT: Okay, thank you, Your
2 Honor.

3 THE COURT: Anything else?

4 PROBATION AGENT: No, sir. Good luck.

5 (HEARING CONCLUDED)

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STATE OF SOUTH CAROLINA)
) **CERTIFICATE**
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action on March 13, 2017, before
The Honorable J. Cordell Maddox, Jr., as prepared
from the audio notes of Vivian H. Cross, assigned
court reporter;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Reuben Garrison

Deborah Garrison

FORM 5

STATE OF SOUTH CAROLINA

County of AndersonDONOVAN DeShawn WILLIAMS

Full name and prison number (if any) of Applicant

371832

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2017-CP-04-01802

APPLICATION FOR
POST-CONVICTION RELIEFCOMMON PLEAS AND
GENERAL SESSIONS

2017 AUG 29 AM 11:51

FILED CLERK'S OFFICE
ANDERSON SCINSTRUCTIONS - 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 Anderson County Detention Center
2. Name and location of Court which imposed sentence General Sessions / Anderson SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-04-00544 - First Degree Burglary
 - (b) 2016 GS 04 01129 Assault & Battery by a Mob 3rd Degree

(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 15, 2015 - GS (2015-GS-04-00544(b) MARCH 15, 2017 - GS (2016-GS-04-01129(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes(b) after a plea of not guilty N/A(c) after a plea of nolo contendere N/A

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

NO

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

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

i. N/Aii. N/Aiii. N/A

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

i. N/Aii. N/Aiii. N/A

(c) the date of each such result:

i. N/Aii. N/Aiii. N/A

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

i. N/Aii. N/Aiii. N/A

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

(a) NO KNOWLEDGE OF THE LEGAL PROCESSES.(b) MISGUIDANCE OF MY CAPABILITIES

QUESTION 5 (A) THERE WAS A 40A SENTENCE SUSPENDED TO 3 YRS PROBATION.

17

QUESTION 5 (B) THE TERMS WERE TIME SERVED NO TIME WAS IMPOSED, BUT ENDED UP WITH A 2022 MAX OUT DATE.

(c) N/A

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

(a) INSUFFICIENT OR INEFFECTIVE ASSISTANCE(b) INSUFFICIENCY OF PROCESS(c) UNJUST LAW ENFORCEMENT DISCRETION

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

(a) MY LAWYERS FAILURE TO INFORM ME OF SHOCK PROGRAM LIMITS.(b) I WAS NOT INFORMED ABOUT HOW PLEA BARGAINING WORKS(c) N/A

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. N/Aii. N/Aiii. N/Aiv. N/A

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

i. N/Aii. N/Aiii. N/Aiv. N/A

QUESTION 11(A) MY REPRESENTATION WAS HEAVILY YOUNG IN APRIL OF 2015, BUT JENNIFER L JOHNSON REPRESENTED ME ON MARCH 15, 2007 and that is when I WAS SENTENCED TO MY PRISON TIME. I WAS NOT INFORMED THAT THE SHOCK INCARCERATION PROGRAM DID NOT ALLOWED 2ND DEGREE BURGLARY OFFENSES INTO THE PROGRAM. I DIDNT FIND OUT UNTIL I GOT TO KIRKLAND THAT I DIDNT GET ACCEPTED.

QUESTION 11(B) I WAS NOT INFORMED OF THE FACT THAT MY CHARGE COULDN'T BE FURTHER REDUCED AT THE TIME OF MY PLEA.

(c) the disposition thereof:

- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA

(d) the date of each such disposition:

- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA

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

- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA

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, FIRST TIME PCR APPLICANT

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

(a) which grounds have been presented:

- i. NIA
- ii. NIA
- iii. NIA

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

- i. NIA
- ii. NIA
- iii. NIA

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) FIRST TIME FOR APPLICANT
 (b) NO KNOWLEDGE OF LEGAL PROCESSES
 (c) MISGUIDANCE OF MY CAPABILITIES

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? N/A
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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. Heeverly B.O. Young - NO LONGER A PUBLIC DEFENDER IN MY COUNTY.
 ii. JENNIFER L JOHNSON
301 CAMSON RD, ANDERSON SC 29625
 iii. N/A
N/A
 (b) the proceedings at which each such attorney represented you:
 i. FIRST DEGREE BURGLARY PLEA FROM 40A SENTENCE TO PROBATION.
 ii. PROBATION VIOLATION, 2ND DEGREE BURGLARY COURT DATE, ASSAULT & BATTERY BY A MOB 3RD DEGREE HEARING
 iii. N/A
N/A

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

Redress. MORE JUST PUNISHMENT. ALL OF THE TIME
I'VE SERVED PROBATION TIME TOO. AND JUST FOR
IT TO BE ON RECORD THAT MY CASE WASN'T HANDLED PROPERLY

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

NO

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, Donovan Deshawn Williford, 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.

Donovan Williford #371832

SWORN to and subscribed before me this 22nd
 day of AUGUST, 2017.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 10-7-2024

2017-CP-04-01802

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

I, DONOVAN DESHAWN WILLIFORD, 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.

Donovan Williford #371832
Applicant

SWORN or affirmed to and subscribed before me this

22nd day of August, 2017

[Signature]
Notary Public

My Commission Expires:

10-7-2024

FILED CLERKS OFFICE
ANDERSON SC
2017 AUG 29 AM 11:51
COMMON PLEAS AND
GENERAL SESSIONS

FILED CLERK'S OFFICE
ANDERSON SC

2017 AUG 29 AM 11:50

COMMON PLEAS AND
GENERAL SESSIONS

RECEIVED
CLERK'S OFFICE
ANDERSON SC
AUG 29 2017

Mr. Richard A. Shirley
Clerk of Court
P.O. Box 8002
Anderson, SC 29622

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

CLERK'S OFFICE

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Donovan Deshawn Williford, #371832

Case No.: 2017-CP-04-01802

Applicant,

v.

State of South Carolina,

Respondent.

RETURN, PARTIAL MOTION TO
DISMISS, AND MOTION FOR A
MORE DEFINITE STATEMENT

Respondent, making its Return to the application for post-conviction relief filed on August 29, 2017, would respectfully show this Court:

I.

Donovan Deshawn Williford (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. On April 15, 2015, Applicant appeared before the Honorable Letitia H. Verdin with his counsel Herverly B. O. Young, Esquire, waived presentment to the grand jury for first-degree burglary, and pled guilty to the lesser-included offense, second-degree burglary (non-violent). Pursuant to a recommendation by the State, Judge Verdin sentenced Applicant under the Youthful Offender Act for a term of imprisonment not to exceed five years, the balance of which was suspended to three years' probation. Subsequently, during its June 2016 term, the Anderson County Grand Jury indicted Applicant for assault and battery by mob, third degree (2016-GS-04-01129). Circuit Public Defender for the Tenth Judicial Circuit Jennifer L. Johnson represented Applicant on this charge. On March 13, 2017, Applicant appeared before the Honorable J. Cordell Maddox, Jr. for a probation revocation hearing. At that hearing, Judge Maddox terminated Applicant's

probation, invoked a YOA sentence for one to five years imprisonment, and recommended the shock incarceration program. On March 16, 2017, Applicant again appeared before Judge Maddox, and pled guilty as indicted to assault and battery by mob, third degree. Pursuant to a recommendation by the State, Judge Maddox sentenced Applicant to a term of imprisonment of 134 days, for which he was given credit for time served. Applicant did not appeal his plea, his sentence, or his probation revocation.

II.

With respect to the assault and battery by mob, third degree offense, on March 18, 2016, Applicant and a friend were at another friend's home, where they were drinking. Plea Tr. 6; Probation Tr. 4. Applicant and his friends began picking on a young woman, and an older gentleman ("the victim") intervened. Plea Tr. 6. An argument ensued, and Applicant and his friends beat the victim. Plea Tr. 6-7; Probation Tr. 4. As a result of the beating, the victim suffered large, protruding blue, black, and purple bruises under both eyes and a small laceration on the left side of his forehead. Probation Tr. 4.

III.

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

1. "Insufficient or ineffective assistance;"
 - a. "My lawyers failure to inform me of shock program limits;"
 - b. "I was not informed that the shock incarceration program did not allowed [sic] 2nd degree burglary offenses into the program;"
 - c. "I was not informed about how plea bargaining works;"
 - d. "I was not informed of the fact that my charge couldn't be further reduced at the time of my plea."
2. "Insufficiency of process;" and
3. "Unjust law enforcement discretion."

Attached to this Return and incorporated by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's probation revocation records, Applicant's records from the South Carolina Department of Corrections, the transcripts from Applicant's guilty plea and probation revocation hearing, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied

upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. 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.

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

V.

Respondent submits Applicant’s allegations of “insufficiency of process” and “unjust law enforcement discretion” should be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may

commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20.

Applicant has wholly failed to set forth any facts to support such a claim and, therefore, has wholly failed to allege any facts which would support a cognizable claim for post-conviction relief under any of the statutory grounds. For these reasons and pursuant to Rule 12(b)(6), SCRCP, Respondent moves for summary dismissal of these allegations failing to state a cognizable claim for which relief can be granted under the Uniform Post-Conviction Procedure Act.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are

based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel stemming from his probation revocation hearing.

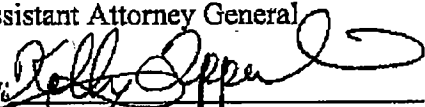
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 

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June 6, 2018

State of South Carolina
County of Anderson

Court of Common Pleas

Donovan Deshawn Williford)

Plaintiff,)

v.)

State of South Carolina)

Defendant.)

Transcript of Record
2017-CP-04-01802

August 30, 2018
Anderson, South Carolina

B E F O R E:

The Honorable R. Scott Sprouse, Judge.

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

Linda V. Whisenhunt, Esquire
Attorney for the Applicant

Kelly Oppenheimer, Esquire
Attorney for the State

Lisa Scott
Circuit Court Reporter

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- - -

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

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P R O C E E D I N G S

* * * * *

THE COURT: Ms. Oppenheimer, call the next case.

MS. OPPENHEIMER: May it please the Court, Your Honor? This is *Donovan Williford v. The State of South Carolina*.

MS. WHISENHUNT: If I may interrupt. Can I have my client come over?

THE COURT: Yes.

MS. OPPENHEIMER: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

MS. OPPENHEIMER: This is *Donovan Williford v. The State of South Carolina*, Docket No. 2017-CP-04-01802.

On April 15, 2015, Applicant appeared before the Honorable Letitia H. Verdin, waived presentment to the grand jury for one count of first degree burglary and plead guilty to the lesser included offense of second degree burglary, nonviolent. Hervey Young represented Applicant on this charge.

Pursuant to a recommendation by the State, Judge Verdin sentenced Applicant under the Youthful Offender Act to a term of imprisonment not to exceed

1 five years, suspended to three years probation.
2 Applicant did not appeal.

3 Thereafter, on April 7, 2016, an arrest warrant
4 was issued for Applicant for violating the terms of
5 his probation. Specifically, the warrant alleged
6 Applicant had failed to report to probation on
7 April 5, 2016, and that there was probable cause
8 that Applicant had committed the offense of third
9 degree assault and battery by a mob.

10 During its June 2016 term, the Anderson County
11 grand jury indicted Applicant for this offense, and
12 circuit public defender for the Tenth Judicial
13 Circuit, Jennifer L. Johnson, represented Applicant
14 on this charge. Assistant Solicitor Al Andrew Means
15 with the Tenth Circuit solicitor's office prosecuted
16 the case.

17 On March 13, 2017, Applicant appeared before
18 the Honorable J. Cordell Maddox, Jr., for a
19 probation revocation hearing. Judge Maddox revoked
20 Applicant's probation requiring him to serve a term
21 not to -- not to exceed five years under the YOA and
22 recommending the Shock Incarceration Program.

23 Subsequently, on March 16, 2017, Applicant
24 again appeared before Judge Maddox and pled guilty
25 as indicted to third degree assault and battery by

1 mob.

2 Pursuant to a recommendation by the State,
3 Applicant was sentenced to 134 days imprisonment,
4 which amounted to a time-served sentence. Applicant
5 did not appeal his probation revocation or his 2017
6 plea.

7 On August 29, 2017, Applicant filed an
8 application for post-conviction relief, alleging
9 ineffective assistance of counsel, insufficiency of
10 process, and unjust law enforcement discretion.

11 On June 6, 2018, respondent made its return,
12 partial motion to dismiss, and motion for a more
13 definite statement, requesting an evidentiary
14 hearing be held on the allegations of ineffective
15 assistance of counsel stemming from his probation
16 revocation hearing and his 2017 plea and requesting
17 the allegations regarding insufficiency of process,
18 unjust law enforcement be summarily dismissed for
19 failing to state a causable claim.

20 Applicant is present today and is represented
21 by Linda Whisenhunt.

22 MS. WHISENHUNT: May it please the Court, Your
23 Honor?

24 THE COURT: Yes, ma'am.

25 MS. WHISENHUNT: My client wishes to go forward

1 with his post-conviction relief. The principle
2 issue here is what happened at his probation
3 revocation and his sentence that he received for
4 shock incarceration.

5 As my client will testify, when he ultimately
6 got to the YOA facility or when he was in Kirkland
7 authority, he was told that he was not eligible for
8 shock because the underlying charge that he had been
9 revoked on was a burglary second, nonviolent, and he
10 would have to serve the three years. And so he
11 would like to go forward with the PCR and explain
12 how he believes that counsel is ineffective in ---

13 THE COURT: Ms. Whisenhunt, I'm looking at the
14 file. It looks like Judge Verdin issued the
15 original sentence. And it does look like that I
16 presided over an original probation revocation
17 hearing, but he was continued on probation. So the
18 PCR regards an order from Judge Maddox; is that
19 correct?

20 MS. WHISENHUNT: Yes, Your Honor.

21 THE COURT: So he's not -- he's not alleging
22 any P -- any PCR issues from the hearing over which
23 I presided?

24 MS. WHISENHUNT: No, your honor.

25 THE COURT: Okay. Because I would not be able

1. to hear this.

2. MS. WHISENHUNT: Yes. And I've discussed that
3. with -- with counsel -- opposing counsel and we both
4. understand that there -- there was a point in time
5. that you were peripherally involved, but that's not
6. where the issue comes up.

7. THE COURT: Oh, okay. All right. All right..
8. Well, call your -- call your first witness.

9. MS. WHISENHUNT: All right. Would you like him
10. to take the stand?

11. THE COURT: Yes, ma'am. Have him come around
12. to the witness stand.

13. THE APPLICANT: (Complying.)

14. THE CLERK: Do you solemnly swear or affirm the
15. testimony you're about to give to be the truth, the
16. whole truth, and nothing but the truth?

17. THE APPLICANT: Yes, ma'am.

18. THE CLERK: If you would, please come around
19. and take a seat at the witness stand.

20. THE APPLICANT: (Complying.)

21. DONOVAN WILLIFORD,
22. having been produced and first duly sworn as a
23. witness on behalf of the Applicant, then testified
24. as follows:

25. DIRECT EXAMINATION

1 BY MS. WHISENHUNT:

2 Q. Please state your name.

3 A. Donovan Williford.

4 Q. And, Mr. Williford, do you understand why
5 you're in court today?

6 A. Yes, ma'am.

7 Q. Do you understand that you're in court on your
8 post-conviction relief?

9 A. Yes, ma'am.

10 Q. And that is an action that you brought in court
11 as the plaintiff in this action. Do you understand
12 that?

13 A. Yes, ma'am.

14 Q. And do understand that you're asking the Court
15 to set aside the sentence that you're currently
16 serving and ask for basically a restart, being able
17 to have another probation revocation hearing and be
18 resentenced?

19 A. Yes, ma'am.

20 Q. Okay. So you understand that you're not going
21 to be released if you were successful on this PCR
22 claim?

23 A. No, ma'am.

24 Q. That you would only get to basically get a
25 restart?

1 A. Yes, ma'am.

2 Q. Okay. And we've discussed that, correct?

3 A. Yes, ma'am.

4 Q. All right. And you're currently serving what
5 time?

6 A. A three-year sentence.

7 Q. You're currently serving a YOA sentence; is
8 that correct?

9 A. Yes, ma'am.

10 Q. Okay. And it's your understanding that when is
11 your max out date?

12 A. 2020.

13 Q. 2020?

14 A. Yes, ma'am.

15 Q. When -- when you were at your probation
16 revocation, did you understand your sentence was
17 going to be different than that?

18 A. Yes, ma'am.

19 Q. What did you understand your sentence to be?

20 A. To be a 90-day shock sentence.

21 Q. Okay. And is that what the judge ordered you
22 to have?

23 A. He recommended it. Yes, ma'am.

24 Q. Okay. Did you discuss the -- the judge's
25 recommendation or that sentence at all with your

1 counsel?

2 A. No.

3 Q. And who was your counsel at the time?

4 A. Jennifer L. Johnson.

5 Q. Did you have the opportunity to meet with her
6 prior to the hearing?

7 A. Exactly when the sentence was being passed down
8 is when I talked to her about the 90-day shock
9 sentence.

10 Q. Okay. So did you have the opportunity to meet
11 with her prior to the probation revocation hearing?

12 A. Yes. I met with her prior to it, but not --
13 not relating to anything to do with the shock
14 sentence.

15 Q. Okay. Did she talk to you about what might be
16 the outcome of the probation revocation, what you
17 were facing?

18 A. Told me I could be going to a -- she told me I
19 could be doing like my three years. She told me I
20 could be doing the three years.

21 Q. Okay. And when you heard that, in fact, you
22 would be getting the -- the shock, what did you
23 think when you went down that you were going to get
24 instead of the three years?

25 A. 90-day shock, a little bit of fitness, you know

1 what I'm saying, but that's not -- I figured I was
2 going to get 90-day shock.

3 Q. Okay. Did you have the opportunity to ask
4 Ms. Johnson any questions about that?

5 A. I did, but I did not get any answers.

6 Q. Okay. And did she ever bring to the Court's
7 attention that that was not a sentence that could --
8 that could be given on your underlying charge?

9 A. No.

10 MS. WHISENHUNT: I have no further questions.

11 THE COURT: All right. Ms. Oppenheimer.

12 MS. OPPENHEIMER: May it please the Court, Your
13 Honor?

14 CROSS-EXAMINATION

15 BY MS. OPPENHEIMER:

16 Q. Now, you said that you did meet with
17 Ms. Johnson prior to your probation revocation,
18 correct?

19 A. Yes, ma'am.

20 Q. And you were aware that you could be doing the
21 three years, correct?

22 A. Yes, ma'am.

23 Q. So you knew that regardless of what happened at
24 the hearing that the three years was always a
25 possibility, correct?

1 A. Because that's how much time I was sentenced to
2 on probation.

3 Q. Okay. And do you recall telling the Court that
4 you understood the Shock Incarceration Program?

5 A. I understood the program. I just didn't
6 understand what -- I knew that the shock
7 incarceration was a 90-day sentence.

8 Q. And do you recall Judge Maddox taking a recess
9 so that you could discuss the Shock Incarceration
10 Program with Ms. Johnson?

11 A. For like -- no.

12 Q. Would looking at the transcript refresh your
13 memory?

14 A. Probably.

15 MS. OPPENHEIMER: Your Honor, may I approach?

16 THE COURT: Yes, ma'am.

17 BY MS. OPPENHEIMER:

18 Q. If you'll look at page 10, starting at the top
19 of the page, through lines 12 approximately.

20 A. (Complying.)

21 Q. Does that refresh your recollect --
22 recollection of what happened that day?

23 A. Yes. Because we did conversate about the
24 90-day shock incarceration, but not about -- at that
25 point, not about the possibility of doing three

1 years. It was focused on the shock.

2 Q. But prior to that recess, you did understand
3 that the three years was always a possibility?

4 A. Because I was -- that's what I was sentenced to
5 on probation.

6 Q. But then after that recess, you came back and
7 you had Ms. Johnson tell the Court that you would
8 like the Court to recommend a sentence of shock
9 incarceration, correct?

10 A. Yes, ma'am.

11 Q. And the judge never guaranteed that you would
12 get shock, correct?

13 A. No, ma'am.

14 Q. It was just a recommendation, correct?

15 A. Yes, ma'am.

16 MS. OPPENHEIMER: Beg the Court's indulgence.

17 No further questions, Your Honor.

18 THE COURT: Any redirect?

19 MS. WHISENHUNT: Yes. One redirect question,
20 Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. WHISENHUNT:

23 Q. The portion of the transcript that you -- you
24 just read from, during that conversation with your
25 attorney, did she ever say, "The judge is going to

1 recommend this, but he can't. It would be a
2 sentence that you couldn't serve." Did she ever say
3 that?

4 A. No, ma'am.

5 MS. WHISENHUNT: Okay. No further questions.

6 THE COURT: Thank you, Mr. Williford. You can
7 step down.

8 THE APPLICANT: (Complying.)

9 MS. WHISENHUNT: And, Your Honor, I would also
10 call Jennifer Johnson to the stand.

11 THE COURT: Ms. Johnson, come around to the
12 witness stand, please.

13 THE WITNESS: (Complying.)

14 THE CLERK: You do solemnly swear or affirm the
15 testimony you're about to give will be the truth,
16 the whole truth, and nothing but the truth?

17 THE WITNESS: I do.

18 THE CLERK: Please come around and take a seat
19 at the witness stand.

20 THE WITNESS: (Complying.)

21 JENNIFER JOHNSON,
22 having been produced and first duly sworn as a
23 witness on behalf of the Applicant, then testified
24 as follows:

25 DIRECT EXAMINATION

1 BY MS. WHISENHUNT:

2 Q. Please state your name.

3 A. Jennifer Johnson.

4 Q. And, Ms. Johnson, did you have the opportunity
5 to represent Donovan Williford on a probation
6 revocation March 13, 2017?

7 A. I did.

8 Q. And prior to that probation revocation, did you
9 have the opportunity to meet with him?

10 A. A number of times. Yes.

11 Q. During those times that you met with him, did
12 you explain to him what the possible outcomes were
13 and what he possibly could be facing with his
14 probation revocation?

15 A. I did.

16 Q. And what did -- in particular did you tell him,
17 about the amount of time that he could serve?

18 A. Well, on a Youthful Offender Act sentence, it's
19 an indeterminant sentence, and, frankly, he could've
20 served up to six years on a YOA. It's just how they
21 function.

22 Q. And did you explain to him what that -- what
23 indeterminant meant?

24 A. Yes.

25 Q. Okay. And at his probation revocation, did you

1 raise the issue of shock or did the judge raise that
2 issue?

3 A. To my recollection, Judge Maddox raised that
4 issue.

5 Q. And did you have the opportunity to explain
6 that -- what that was to your client at a break in
7 the probation revocation hearing?

8 A. I did.

9 Q. At any time did you tell Mr. Donovan that even
10 though the judge was recommending it, he wouldn't be
11 able to get that?

12 A. I didn't. I mean, frankly, it wouldn't be the
13 first time that we've gotten an illegal sentence,
14 but SCDC has always told us in that case that they
15 follow the judge's order. So there would be no
16 benefit for me correcting the Court on that point.

17 Although, I will freely admit, I did not
18 realize that the underlying offense, being a
19 burglary second, it was -- there was a period of
20 time when they changed the law regarding burglary
21 second with violence to allow them into the Youthful
22 Offender Act program.

23 But all burglary second degree, whether violent
24 or nonviolent, had this three-year mandatory minimum
25 sentence, which obviously Mr. Williford's original

1 plea was during that time when -- when the fact that
2 it was a nonviolent. I think the law has since
3 changed that it wouldn't -- it would not fall under
4 that provision, but at that time of this original
5 underlying sentence, he fell into the three-year
6 mandatory sentencing.

7 Q. So at the time you met him, you didn't know
8 that he fell in that window?

9 A. No.

10 Q. And you were hopeful that SCDC would actually
11 follow the judge's order?

12 A. Correct.

13 MS. WHISENHUNT: I have no further questions.

14 THE COURT: Ms. Oppenheimer.

15 CROSS-EXAMINATION

16 BY MS. OPPENHEIMER:

17 Q. Do you recall what the underlying probation
18 violation was?

19 A. From review of the transcript, it looks like he
20 had absconded supervision.

21 Q. And did you discuss his violation with him?

22 A. Yes.

23 Q. Did he ever deny violating probation?

24 A. No.

25 Q. Did you ever make him any guarantees that he

1 would be accepted into the shock program?

2 A. No.

3 Q. Did you make him fully aware that he could
4 serve between three to six years on the YOA?

5 A. Yes.

6 Q. And did you ever have any indication that he
7 didn't understand what you were telling him?

8 A. No.

9 Q. And when y'all broke during the hearing to
10 discuss shock, how did you explain that to him?

11 A. I mean, I basically just told him what the
12 Shock Incarceration Program was, that it's a
13 recommendation from the Court that he enter into a
14 boot camp-type program.

15 As you can see from the trial transcript, I had
16 indicated to the Court that based on, you know,
17 other client's experiences and what I've heard, you
18 know, we get updates from SCDC at the conference
19 every year that it would take about 90 days before
20 getting into the program. So it was going to be
21 more like a six-month operational sentence if he was
22 accepted into shock.

23 But, again, you know, whether or not he gets
24 shock is not a decision that is up to me or the
25 Court. That's in the purview of the Department of

1 Corrections.

2 Q. And did you explain that to him?

3 A. Yes.

4 Q. So at no point in time did you promise him that
5 he would be accepted into the shock program?

6 A. No.

7 Q. And just to clarify, Judge Maddox made a
8 recommendation for shock. He did not outright order
9 it, correct?

10 A. Yes.

11 MS. OPPENHEIMER: Beg the Court's indulgence.
12 No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MS. WHISENHUNT: No redirect, Your Honor.

15 THE COURT: Any objection to Ms. Johnson being
16 excused?

17 MS. WHISENHUNT: No objection, Your Honor.

18 MS. OPPENHEIMER: None from the State, Your
19 Honor.

20 THE COURT: Ms. Johnson, you are excused.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 MS. WHISENHUNT: And, Your Honor, we do not
24 have any additional witnesses for Mr. Donovan.

25 THE COURT: Any witnesses from the State?

1 MS. OPPENHEIMER: No witnesses from the State,
2 Your Honor.

3 THE COURT: Would counsel like to make any
4 argument in the record?

5 MS. WHISENHUNT: Yes, Your Honor. May it
6 please the Court?

7 THE COURT: Yes, ma'am.

8 MS. WHISENHUNT: Ms. Johnson stated on direct
9 examination that at the time she counseled him at
10 the break in the probation revocation hearing, she
11 did not know that he fell in that window of time
12 where he would not be eligible for shock. It's our
13 contention that if she had known that, she could've
14 brought it to the Court's attention and the Court
15 may have been able to fashion a sentence that was
16 more in line with what the Court wanted to happen.

17 My client went down to the YO -- YOA program
18 expecting -- no, he may not have been guaranteed,
19 but expecting that he would be screened for shock
20 and considered for a 90-day sentence.

21 And instead, he's being held there now for a
22 much longer period of time. And I don't believe
23 that was the judge's intention, certainly not my
24 client's expectation, and nothing that the attorney
25 predicted. If she had known that and brought that

1 to the Court's attention, I believe that the Court
2 would've ordered something different. And,
3 accordingly, we request that the PCR be granted.

4 THE COURT: Thank you, Ms. Whisenhunt.
5 Ms. Oppenheimer.

6 MS. OPPENHEIMER: May it please the Court, Your
7 Honor?

8 Ms. Johnson testified that she explained at
9 length the Shock Incarceration Program to
10 Mr. Williford. She explained that it was not her
11 decision to make and it wasn't even Judge Maddox's
12 decision to make, that it was SCDC's determination
13 if he would be accepted into the Shock Incarceration
14 Program.

15 She also testified that she made him no
16 guarantees, that it was just a possibility, and she
17 made him very aware that he could be serving the
18 three to six years of the YOA sentence; so
19 therefore, we'd say that Ms. Johnson was not
20 deficient in any regard.

21 Furthermore, there's no prejudice since there's
22 no indication that the result of the proceeding
23 would have been any different. The only thing that
24 Judge Maddox could do was revoke the probation. I
25 believe it was a very clear violation of his

1 probation. He absconded for several months. He
2 pled guilty to a third degree assault and battery by
3 a mob two days, three days later.

4 Your Honor, the only thing that Judge Maddox
5 could've done was revoke the probation and require
6 him to serve the YOA sentence. And it still would
7 not have been his decision to sentence Mr. Williford
8 to shock as it's very clear in the case law that
9 it's SCDC's determination for whether or not an
10 inmate qualifies for shock. So, therefore, we'd --
11 we'd ask that you deny his application.

12 THE COURT: Thank you. Counsel, I -- I -- I
13 want to just take a little while to read the
14 transcript. So I'll take this under advisement, and
15 I'll have my law clerk send you an e-mail.

16 MS. WHISENHUNT: Thank you, Your Honor.

17 MS. OPPENHEIMER: Thank you, Your Honor.

18 (The proceedings concluded at 10:21 a.m.)

19 * * * * *

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

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

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Donovan Deshawn Williford, #371832,

Applicant,

v.

State of South Carolina,

Respondent.

13 OCT 1 PM 12:55:03
ANDERSON, SC CLC, CP/85

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

RECEIVED

OCT 16 2018

Case No. 2017-CP-04-01802 S.C. SUPREME COURT

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed August 29, 2017, by Donovan Deshawn Williford (Applicant). The State (Respondent) made its Return, Partial Motion to Dismiss, and Motion for a More Definite Statement on June 6, 2018, requesting an evidentiary hearing be held on the allegations of ineffective assistance of counsel stemming from his probation revocation hearing. An evidentiary hearing into the matter was convened on August 30, 2018, at the Anderson County Courthouse before the Honorable R. Scott Sprouse. Applicant was present at the hearing and was represented by Linda V. Whisenhunt, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

PROCEDURAL HISTORY

On April 15, 2015, Applicant appeared before the Honorable Letitia H. Verdin with counsel, Herverly Young, Esquire. Before Judge Verdin, Applicant waived presentment to the grand jury for one count of first-degree burglary and pled guilty to the lesser-included offense of second-degree burglary, non-violent (2015-GS-04-00544). Pursuant to a recommendation by the State, Judge Verdin sentenced Applicant under the Youthful Offender Act to a term of

255

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OCT 01 2018

Richard W. Butler
CLERK OF COURT

imprisonment not to exceed five years, suspended to three years' probation. Applicant did not appeal his plea or sentence.

Thereafter, on April 7, 2016, an arrest warrant was issued for Applicant for violating the terms of his probation. Specifically, the warrant alleged Applicant had failed to report to probation on April 5, 2016, and there was probable cause to believe Applicant had committed the offense of third-degree assault and battery by mob. Subsequently, during its June 2016 term, the Anderson County Grand Jury indicted Applicant for this offense (2016-GS-04-01129). Tenth Circuit Public Defender, Jennifer L. Johnson, represented Applicant on this charge. Assistant Solicitor Al Andrew Means, of the Tenth Circuit Solicitor's Office, prosecuted the case.

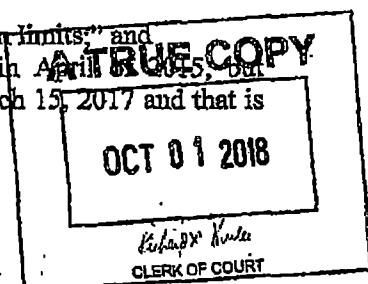
On March 13, 2017, Applicant appeared before the Honorable J. Cordell Maddox, Jr. for a probation revocation hearing with counsel, Johnson. At the hearing, Judge Maddox revoked Applicant's probation, requiring him to serve a term not to exceed five years under the Youthful Offender Act. Judge Maddox also recommended Applicant for the shock incarceration program. Applicant did not appeal his probation revocation.

Subsequently, on March 16, 2017, Applicant again appeared before Judge Maddox. He pled guilty as indicted to third-degree assault and battery by a mob. Pursuant to a recommendation by the State, Judge Maddox sentenced Applicant to a term of imprisonment of 134 days, which amounted to a time served sentence. Applicant did not appeal his plea or sentence.

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

1. "Insufficient or Ineffective Assistance;"
 - a. "My lawyer's failure to inform me of shock program limits;" and
 - i. "My representation was Hervery Young in April 2015, but Jennifer L. Johnson represented me on March 13, 2017 and that is

RS



when I was sentenced to my prison time. I was not informed that the shock incarceration program did not allowed [sic] 2nd degree burglary offenses into the program. I didn't find out until I got to Kirkland that I didn't get accepted."

b. "I was not informed about how plea bargaining works."

i. "I was not informed of the fact that my charge couldn't be further reduced at the time of my plea."

2. "Insufficiency of Process;" and

3. "Unjust Law Enforcement Discretion."

At the evidentiary hearing, Applicant proceeded forward on an allegation counsel was ineffective for failing to inform him he was ineligible for the shock incarceration program.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of Circuit Public Defender Johnson (Counsel). This Court also had before it a copy of Applicant's 2017 plea transcript, a copy of Applicant's probation revocation hearing transcript, the records of the Anderson County Clerk of Court, Applicant's probation records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he is currently serving a three year sentence under the Youthful Offender Act, and his maxout date is in 2020. He also testified Counsel represented him at his probation revocation hearing. He further testified he met Counsel prior to his hearing, at which point she informed him he could serve three years in full. He also testified he was aware he could get a three year sentence, and he was aware that sentence was a possibility. He elaborated, however, he thought he would be sentenced to a ninety-day shock incarceration program. He further elaborated the court at his probation revocation hearing recommended he get the shock program.

Applicant also testified he asked Counsel about the shock program, but he never got any answers from her. He testified Counsel never told the probation revocation court he was not

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OCT 01 2018

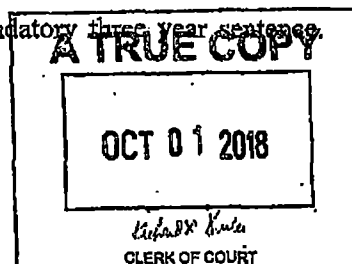
Kirkland

eligible for the shock program based on his prior conviction. He further testified he informed the court at his hearing he understood the shock program. Applicant initially testified he was unaware whether or not a recess was taken during his hearing to discuss the shock program with Counsel. However, after having his memory refreshed, Applicant testified a recess was taken during his hearing, and he and Counsel did discuss the shock program. Applicant further testified he understands he could have received the shock program. He elaborated he wanted the court to recommend the shock program and understood the court merely made a recommendation for the shock program. He further elaborated he understood despite the recommendation, he could still receive three years.

Following Applicant's testimony, Counsel testified. Counsel testified she represented Applicant during his probation revocation. She further testified she met with Applicant a number of times prior to his probation revocation hearing. She elaborated during these meetings, she explained probation revocation, as well as the amount of time Applicant faced. She further elaborated Applicant absconded supervision, and she and Applicant discussed the violation. She testified Applicant never denied the violation. Counsel also testified she explained to Applicant under the Youthful Offender Act he could serve between three and six years imprisonment because these sentences are indeterminate. She further testified Applicant never indicated he did not understand something.

Counsel also testified during the probation revocation hearing, the court recommended the shock program on its own, and she did not broach the subject. She testified she did not tell neither the court nor Applicant that Applicant was ineligible for the shock program. She explained she did not realize the underlying offense of second-degree burglary would make Applicant ineligible for the shock program and eligible for a mandatory three year sentence.

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Counsel also testified she was hopeful the Department of Corrections would follow the recommendation for the shock program. She explained she never guaranteed Applicant would be accepted into the shock program, and neither did the court. She further explained she told Applicant the shock program is similar to boot camp. Counsel testified she informed Applicant it would take at least ninety days to get into the shock program, so, in reality, it was a six month program. She further testified she told Applicant eligibility in the shock program was based on the Department of Corrections' determination.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

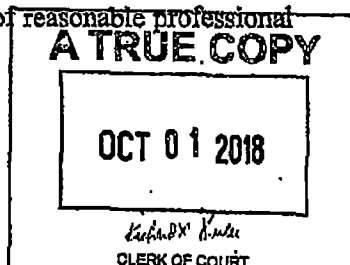
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

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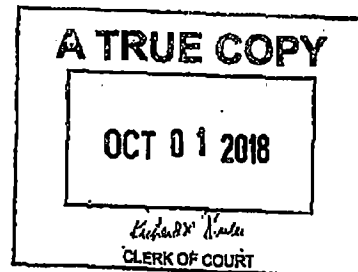
judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

"[A]ll persons charged with probation violations have a right to counsel and must be informed of this right pursuant to court rules and case law." *Turner v. State*, 384 S.C. 451, 454, 682 S.E.2d 792, 793 (2009) (citing *Barlet v. State*, 288 S.C. 481, 483, 343 S.E.2d 620, 621 (1986); Rule 602(a), SCACR). Although a probationer does not have a Sixth Amendment right to counsel, the same traditional *Strickland* standard applies, requiring an applicant asserting his probation revocation counsel was ineffective to establish both that counsel's performance was deficient and that he was prejudiced by this deficiency. *Id.* at 455, 682 S.E.2d at 794 ("We now hold that because a probationer has a right to counsel, albeit not a Sixth Amendment right, the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel should, by analogy, apply in PCR proceedings involving claims against probation counsel.").

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry her burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

RSS



Counsel's alleged failure to secure Applicant's acceptance into the shock incarceration program

Applicant alleges Counsel was ineffective for failing to secure Applicant's acceptance into the shock incarceration program. Specifically, Applicant contends Counsel never informed him he would be ineligible for the shock program. As an initial matter, this Court finds Counsel's testimony with respect to this issue very credible, whereas Applicant's testimony is not credible.

This Court finds Applicant has failed to establish Counsel was deficient. Counsel testified she explained the shock program to Applicant. She further testified she never made any guarantees to Applicant he would be accepted into the program. Indeed, Counsel informed Applicant acceptance into the program was up to the Department of Corrections. Additionally, Counsel made Applicant fully aware he could serve between three and six years imprisonment. Moreover, Applicant knowingly and voluntarily entered a guilty plea to second-degree burglary, knowing he could serve a sentence of up to three years. Based on the foregoing, this Court finds Applicant has wholly failed to establish any deficiency on the part of Counsel.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. "A court may order that an 'eligible inmate' be sentenced to the 'Shock Incarceration Program.' If an 'eligible inmate' is sentenced to the 'Shock Incarceration Program' he must be transferred to the custody of the department for evaluation." S.C. Code Ann. § 24-13-1330(A). Inmates who are eligible must: (1) be under the age of thirty at the time of admission; (2) be eligible for parole in two years or less; (3) have not been convicted of a violent crime or "no parole offense;" (4) have not been previously incarcerated in a state correctional facility or have participated previously in the shock incarceration program; and (5)

be physically able to participate in the program. S.C. Code Ann. § 24-13-1310(1). The Department of Corrections further regulates selection criteria into the shock incarceration program. S. C. Code Ann. § 24-13-1320(A). Applicant pled guilty to second-degree burglary in 2015, which is defined as a violent crime. See S.C. Code Ann. § 16-1-60. Therefore, by definition, Applicant was ineligible for the shock incarceration program. Furthermore, Applicant wholly failed to testify had he known he could serve up to six years imprisonment, he would not have pled guilty. Based on the foregoing, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

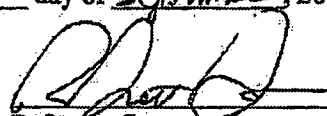
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel 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 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if an applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 24 day of September, 2018.



R. SCOTT SPROUSE
Presiding Judge
Tenth Judicial Circuit

Waltham, South Carolina

WITNESSES

Anderson Co. Sheriff's Office
Kreig Marzolf

ARREST WARRANT NUMBER

2014A0410101473

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS-04- 00544

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

TERM

THE STATE

VS.

DONOVAN DESHAWN WILLIFORD

INDICTMENT FOR

BURGLARY, FIRST DEGREE

SC Code: § 16-11-0311
CDR Code: 0079

COMMITMENT

4.15.15/RT

A TRUE COPY

AUG 29 2017

Richard A. Kelly
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

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

BURGLARY, FIRST DEGREE

The defendant, Donovan Deshawn Williford, did on or about September 24, 2014, in Anderson County, South Carolina, willfully and unlawfully enter the dwelling of Johnnican Junior Pressley located at [REDACTED] without consent and with the intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: is armed with a deadly weapon or explosive; and/or causes physical injury to a person who is not a participant in the crime; and/or uses or threatens the use of a dangerous instrument; and/or displays what is or appears to be a knife, pistol, rifle, shotgun, machine gun, or other firearm; and/or the burglary is committed by a person with a prior record of two or more convictions for

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



RAME L. CAMPBELL
SR. CAREER PROSECUTOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

65

COUNTY OF ANDERSON

STATE VS.

DONOVAN DESHAWN WILLIFORD

AKA:

Race: Black Sex: M Age: 19

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Anderson, SC 29625

DL# [REDACTED] SID# SC02139328

INDICTMENT/CASE#: 2015-GS-04-00544

A/W: 2014A0410101473

Date of Offense: 09/24/2014

S.C. Code §: 16-11-0312

CDR Code #: 0079

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was TO: Burglary, Second Degree (Non-Violent)

In violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

☐ CONVICTED OF or☒ PLEADS
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1* or Lewd Act)
The charge is: ☐ As indicted, ☒ Lesser Included Offense,☒ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

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

ATTEST:

Rame L. Campbell, Sr. Career Prosecutor SC Bar # 13981

Defendant

Henry B. O. 7/17 7013
Attorney for Defendant P.D. Def. SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 60 days/months/years or ☒ under the Youthful Offender Act not to exceed 5 years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 60 60 3
60 years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 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 PTUPTotal: \$ plus 20% fee: \$ of rest
days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPSAttend 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 FundOther: ☒ Appointed PD or appointed other counsel.

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: Judge Bar ID: Sentence Date:

Judge Code: #21102

4-15-15

Recipient: See attached order

*Fine:

§14-1-206 (Assessments 107.5%)	\$100	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$2	\$	
§56-1-286 (DUI Breath Test)	\$5	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	500.00
§14-1-212 (Law Enforce. Funding)	\$5	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$50	\$	
§50-21-114 (BUI Breath Test Fee)	\$0	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)	\$	\$	18.90
TOTAL		\$	1048.90

Clerk of Court/County Clerk:

Court Reporter: V. CROSS

SCCA/217 (03/2011)

ARREST WARRANT

2014A0410101473

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

THE STATE

2014-47885

against

Donovan Deshawn Williford

Address:

Anderson, SC 29625-4140

Phone:

Sex: M Race: B Height: 5 11 Weight: 145

DL State: SC DL #:

DOB: Agency ORI #: SC0040000

Prosecuting Agency: Anderson County Sheriff

Prosecuting Officer: K. Marzolf - 583

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Donovan Williford on 12-8-14

Signature of Constable or Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
100 South Main Street
Po Box 8002
Anderson, SC 29622

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2009
SCCA619

Personally appeared before me the affiant K. Marzolf

who

being duly sworn deposes and says that defendant Donovan Deshawn Williford

did within this county and state on or about 9/24/2014

violate the criminal laws of the

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

in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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

That on September 24, 2014, in the county of Anderson, one Donovan Deshawn Williford did enter a dwelling located at [REDACTED] [REDACTED] without consent and with intent to commit a crime of larceny therein. Donovan Deshawn Williford entered the dwelling and armed himself with a deadly weapon. The defendant's prints were found on the window where the screen cover was cut and the back door was opened by force.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

Affiant's Address 301 Camson Road

Anderson, SC 29625-

Affiant's Telephone

ARREST WARRANT

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

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

on or about 9/24/2014

defendant Donovan Deshawn Williford

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

☒ County/ ☐ Municipality of Anderson

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 12/5/2014

Signature of Judge

William Daniel Sharp

Judge Code: 7013

Judge's Address 2404 N. Main St.

Anderson, SC 29621-

Judge's Telephone (864)260-4156

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

A TRUE COPY

AUG 29 2017

Signature of Clerk of Court
ANDERSON CLERK OF COURT

WITNESSES

Anderson Police Dept.
Jennifer L. Cavanaugh

ARREST WARRANT NUMBER

2016A0420700280

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUN 21 2016

[Signature]
Foreperson

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2016-GS-04- 01129

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

JUN 21 2016, TERM

THE STATE

VS.

DONOVAN DESHAWN WILLIFORD

COMMITMENT

INDICTMENT FOR

**ASSAULT & BATTERY BY A MOB,
THIRD DEGREE**

SC Code: § 16-03-0210(D)
CDR Code: 3433

A TRUE COPY

AUG 29 2017

Richard M. Kiley
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

INDICTMENT

JUN 21 2016

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

ASSAULT & BATTERY BY A MOB, THIRD DEGREE

That Donovan Deshawn Williford did in Anderson County, on or about on or about March 18, 2016, willfully and unlawfully maliciously participate as part of a mob that inflicted an act of violence resulting in bodily injury upon Billy Joe Seawright. This is in violation of 16-3-210(D) of the South Carolina Code of Laws (1976) as amended.

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


STEPHANIE B. LOOPER
ASSISTANT SOLICITOR

COUNTY OF ANDERSON
STATE VS.

DONOVAN DESHAWN WILLIFORD

AKA: _____
Race: Black Sex: M Age: 21
DOB: 03/18/2016 SS#: 16-03-0210(D)
Address: _____
City, State, Zip: Anderson, SC 29625
DL# 160000000 SID# SC02139328

INDICTMENT/CASE#: 2016GS0401129
A/W: 2016A0420700280
Date of Offense: 03/18/2016
S.C. Code §: 16-03-0210(D)
CDR Code #: 3433

SENTENCE SHEET



*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery By A Mob, Third Degree
In violation of § 16-03-0210(D) of the S.C. Code of Laws, bearing CDR Code # 3433

☐ CONVICTED OF or ☒ PLEADS

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

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

Al Andrew Means, Sr. Assistant Solicitor SC Bar # 16582 Defendant
Attorney for Defendant SC Bar # 14224

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center,
for a determinate term of 134 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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. 134 days
☐ The Defendant is to be placed on 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered FTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐

☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling ☐
\$14-1-206 (Assessments 10% .5%) \$100 Random Drug/Alcohol Testing ☐
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 Fine may be pd. in equal consecutive weekly/monthly
\$14-1-211 (A)(2)(DUI Surcharge) \$100 pmts. of \$ _____ Beginning _____
\$56-5-2995 (DUI Assessment) \$25 Paid to Public Defender Fund
\$56-1-286 (DUI Breath Test) \$25
Proviso 61.6 (Public Def/Prob) \$25
\$14-1-212 (Law Enforce. Funding) \$25
\$14-1-213 (Drug Court Surcharge) \$25
\$50-21-114 (BUI Breath Test Fee) \$25
\$56-5-2942(J) (Vehicle Assessment) \$40/ea
3% to County (if paid in installments) \$

Other: _____
Appointed PD or appointed other counsel,
Proviso 61.6 requires \$300 be paid to Clerk
during probation and shall be collected before any
other fees.

TOTAL

Clerk of Court/Deputy Clerk: Richard A. Hunter
Court Reporter: V. Cross
SCCA/217 (07/2016)
Presiding Judge: R. Hunter
Judge Bar ID: 213
Sentence Date: 3/16/17

ARREST WARRANT

2016A0420700280

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Anderson

THE STATE

16-14973

against

Donovan Deshawn Williford

Address:

Anderson, SC 29625-4140

Phone:

SSN: [REDACTED]

Sex: M

Race: B

Height:

6

Weight:

154

DL State:

SC

DL #:

[REDACTED]

DOB:

[REDACTED]

Agency ORI #:

SC0040100

Prosecuting Agency:

Anderson Police Department

Prosecuting Officer:

Jennifer Cavanaugh - 1250

Offense:

Assault / Assault & Battery by Mob, 3rd degree

(Bodily injury results)

Offense Code:

3433

Code/Ordinance Sec:

16-03-0210(D)

This warrant is

CERTIFIED FOR SERVICE

in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Anderson Municipal Court
401 South Main Street
Anderson, SC 296242300

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Anderson

Personally appeared before me the affiant

Jennifer Cavanaugh

being duly sworn deposes and says that defendant

Donovan Deshawn Williford

did within this county and state on or about

3/18/2016

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Anderson

in the following particulars:

violate the criminal laws of the

DESCRIPTION OF OFFENSE: Assault / Assault & Battery by Mob, 3rd degree (Bodily injury results)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on March 18, 2016 in the city and county of Anderson, SC, Donovan Deshawn Williford (Defendant) did knowingly
participate in a mob that inflicted injury to the person of Billy Joe Seawright (Victim). Defendant did assault Victim along with
another defendant in this case. Officer/Affiant, responding to a service call, found injured Victim at [REDACTED]. EMS attended to
Victim and transported to AnMed Emergency Department. Defendant was identified through investigated sources. The incident
occurred [REDACTED] in the city of Anderson, SC. (16-14973).

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Anderson

Affiant's Address

401 South Main St

Anderson, SC 29624-

Affiant's Telephone

(864)309-5757

ARREST WARRANT

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

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

on or about 3/18/2016

defendant Donovan Deshawn Williford

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

☐ County/☒ Municipality of

Anderson

) as set forth below:

DESCRIPTION OF OFFENSE: Assault / Assault & Battery by Mob, 3rd degree (Bodily injury results)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him
or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution,
or as soon thereafter as is practicable
Sworn to and subscribed before me
on 3/18/2016

Signature of Issuing Judge

Geoffrey Benedict Eaton

Judge Code:

8139

(L.S.)

Judge's Address

401 South Main Street

Anderson, SC 29624-

Judge's Telephone

(864)231-2271

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

A TRUE COPY

AUG 29 2017

ANDERSON CLERK OF COURT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA518

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