

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

WILLIE T. BYRD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001296

APPENDIX

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South Carolina Commission on Indigent
Defense
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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2012-GS-21-1129
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Willie Terrel Byrd	)	)
DEFENDANT	)	March 4, 2013
		Florence, SC

B E F O R E:

THE HONORABLE D. CRAIG BROWN, JUDGE.

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

JOHN JEPERTINGER, DEPUTY SOLICITOR
Attorney for the State

JOHNNY ETHERIDGE, ESQ.
SCOTT SUGGS, ESQ.
Attorneys for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

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1 THE COURT: All right. Listen up, I'm going to
2 go over everybody's Constitutional Rights with them, so
3 listen very carefully. When you plead guilty, you give up
4 certain important Constitutional Rights. First of all,
5 you have a right to a jury trial. At a jury trial, I
6 would instruct the jury that you are presumed innocent,
7 that you are presumed not guilty. The State would bear
8 the burden of proving you guilty beyond a reasonable
9 doubt. You would have the right to question any witnesses
10 against you as well as the right to present witnesses for
11 your defense. You would have the right to remain silent.
12 If you went to trial and did not testify, I would instruct
13 the jury that they could not hold that fact against you.
14 You would have the right to present any defense you might
15 have for the charge or charges against you. If you made
16 any incriminating statements, you have a right to
17 challenge the admissibility of those statements. Is
18 anybody in here not understanding those rights?

19 (WHEREUPON, no one responded.)

20 THE COURT: When you plead guilty, you give up
21 those rights. Does anybody in here not understand it when
22 they plead guilty they give up those rights?

23 (WHEREUPON, no one responded.)

24 THE COURT: In addition, some of you may come
25 before this court waiving presentment of your charge to

1 the grand jury, understand that you have a right to have
2 your charge or charges presented to the grand jury.
3 However, you may waive that right. Is anybody in here not
4 understanding that they have a right to have their charge
5 or charges presented to the grand jury? Is anybody in
6 here not understanding that they can waive that right?

7 (WHEREUPON, no one responded.)

8 (WHEREUPON, a pause in the proceedings.)

9 MR. JEPERTINGER: Please the Court, Your Honor,
10 standing in front of you is Willie Byrd on
11 2012-GS-21-1129. He's pleading to the crime of armed
12 robbery, Your Honor. Your Honor, there was a co-defendant
13 in the case his cousin by the name of Rashawn Byrd who
14 pled guilty on January 15th, 2013, received 13 years to a
15 strong armed robbery. The distinction is distinguishing
16 factors between the two cases is the gentleman that was
17 armed with the weapon, Your Honor. The other co-defendant
18 was in a vehicle when the crime occurred. In terms of
19 victim notification, Your Honor, we been in contact with
20 the victim Ms. Germis. She does not want to appear in
21 court, but we will inform her what happened. She's been
22 very interested in the case. She would have, of course,
23 come if we had to go to trial.

24 THE COURT: This is a negotiated plea?

25 MR. SUGGS: Yes, sir.

1 THE COURT: How many years?

2 MR. JEPERTINGER: Eleven.

3 THE COURT: Mr. Suggs, you represent Willie T.
4 Byrd?

5 MR. SUGGS: Yes, Your Honor, myself and
6 Mr. Etheridge.

7 THE COURT: You explain to him the charges
8 contained in the indictment, the possible punishment and
9 his Constitutional Rights?

10 MR. SUGGS: Yes, sir, Your Honor.

11 THE COURT: Your opinion does he understand the
12 charges against him, the possible punishment and his
13 Constitutional Rights?

14 MR. SUGGS: He does, Your Honor.

15 THE COURT: He's indicated to you a desire to
16 plead guilty or not guilty?

17 MR. SUGGS: Guilty, Your Honor.

18 THE COURT: You agree with that decision?

19 MR. SUGGS: Yes, I do.

20 THE COURT: From your investigation of the facts
21 and circumstances of this case, do you believe the State
22 could produce sufficient evidence to convince a jury of
23 his guilt beyond a reasonable doubt and if he were to
24 stand trial, his conviction would be probable?

25 MR. SUGGS: Yes, sir.

1 THE COURT: Has he been ordered to submit to a
2 psychological or mental evaluation?

3 MR. SUGGS: No, sir, he has not.

4 THE COURT: Any question in your mind about his
5 competency?

6 MR. SUGGS: No, sir.

7 THE COURT: Has he been sworn?

8 THE CLERK: No, sir.

9 Please raise your right hand. Do you swear to
10 tell the truth, the whole truth, and nothing but the truth
11 so help you God?

12 THE DEFENDANT: I do.

13 THE COURT: Sir, you are Willie T. Byrd?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Certain questions I must ask you to
16 ensure that you're entering into your plea freely,
17 voluntarily, knowingly and intelligently, that you have a
18 full understanding of the offense you are pleading guilty
19 to and the consequences of your plea. If at any point in
20 time you need to speak to your attorney, you let me know
21 and I'll be happy to let you talk to him all right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you ever been treated for
24 alcohol abuse, drug abuse or mental illness?

25 THE DEFENDANT: Mental illness, sir.

1 THE COURT: When was that, sir?

2 THE DEFENDANT: I was going to mental health
3 since I was young.

4 THE COURT: Does that in any way affect your
5 ability to know and understand what you're doing here
6 today? You know what you're doing here today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Within the last 24 hours, have you
9 taken any medication, drugs or alcohol?

10 THE DEFENDANT: Medication.

11 THE COURT: What kind of meds?

12 THE DEFENDANT: (Inaudible.)

13 THE COURT: Doctor prescribed medication?

14 THE DEFENDANT: Mental health doctor.

15 THE COURT: Does that affect your ability to
16 know and understand what you doing here?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you know what you're doing here
19 today?

20 THE DEFENDANT: Standing before you.

21 THE COURT: To do what?

22 THE DEFENDANT: Sir?

23 THE COURT: To do what?

24 THE DEFENDANT: Plead.

25 THE COURT: Okay. Are you aware of any

1 physical, emotional or nervous problem that would keep you
2 from understanding what you doing here today?

3 THE DEFENDANT: No, sir, just a little shaky.

4 THE COURT: Sir?

5 THE DEFENDANT: Just a little shaky.

6 THE COURT: Okay. The State indicates that
7 you're pleading guilty to an armed robbery; is that
8 correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You understand that carries a
11 penalty of -- minimum of ten years up to 30 years, you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The State says that they've
15 negotiated a sentence with your lawyer and that negotiated
16 sentence or the negotiated terms are that I sentence you
17 to 11 years; is that your understanding?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, you understand that this is
20 considered to be a violent offense and a most serious
21 offense?

22 THE DEFENDANT: That's what they said.

23 THE COURT: You understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand that you can count on

1 doing day for day of this 11 years, you understand that?

2 You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. And you understand that
5 if you're convicted of another most serious offense that
6 you could receive up to life in prison? Do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you explain that to him, Mr.
10 Suggs?

11 MR. SUGGS: Yes, Your Honor. And as a matter of
12 fact, I had negotiated -- Mr. Etheridge and I negotiated a
13 12 year sentence, but Mr. Byrd on his own was able to get
14 Mr. Jepertinger to reduce it to 11, which is between the
15 minimum mandatory ten and what we had, so I think
16 Mr. Jepertinger likes Mr. Byrd a little bit better than he
17 likes me, but he got the 11, Judge. I had the 12. I've
18 explained that. I've explained that it is a violent
19 offense just as you have. It is a non-parolable offense.
20 He has to do at least 85 percent. There's no guarantee he
21 want do the whole thing. Also advised him that he's
22 subject to a two-year period of community supervision
23 after he's released, which is just like parole for all
24 intense and purposes, but this is a non-parolable offense.
25 He understands that, Judge.

1 THE COURT: All right. Understanding all that,
2 Mr. Byrd, do you want to proceed here and plead guilty
3 today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, were you in here when I went
6 through everybody's Constitutional Rights with them?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Your lawyer said he went over those
9 rights with you as well; is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand those rights?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that when you
14 plead guilty, you give up those rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Understanding your rights and
17 understanding that when you plead guilty, how do you plead
18 here today guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: You are represented by Mr. Suggs.
21 You satisfied with his representation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you talk with him as often and
24 for as long as you felt necessary for him to represent
25 you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You need any more time to talk to
5 him?

6 THE DEFENDANT: No, sir.

7 THE COURT: You understood your talks with him?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Satisfied with his representation?
10 Sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You got any complaints at all?

13 Today is your day to make them if you got any complaints?

14 THE DEFENDANT: Will give me time speak?

15 THE COURT: To him or me?

16 THE DEFENDANT: To you.

17 THE COURT: I'm going to give you an opportunity
18 talk in a minute. Sir?

19 THE DEFENDANT: Go ahead, carry on.

20 THE COURT: Has anybody promised you anything or
21 held out any hope of reward to get you to plead guilty?

22 THE DEFENDANT: No, sir.

23 THE COURT: Has anybody used any threats, force,
24 pressure or intimidation to get you to plead?

25 THE DEFENDANT: No, sir.

1 THE COURT: Anybody mistreated you in any way
2 whether it be law enforcement or Solicitor's office?

3 THE DEFENDANT: Yeah.

4 THE COURT: Is that affected your decision as to
5 whether or not you're pleading guilty here today? I mean,
6 you don't have to plead guilty. I bet Mr. Jepertinger
7 possibly be ready to try your case Monday.

8 THE DEFENDANT: He ready anyway.

9 THE COURT: Sir?

10 THE DEFENDANT: It was like law enforcement they
11 got, you know what I'm saying, way I actually came up here
12 and they have my phone. But he's not trying to release
13 none, my phone where because I have talk to Major Raines
14 myself. So law enforcement they keeping the phone, I did
15 call up here and talk to him. So that how I'm not sure
16 about them because they hiding the phone and ain't trying
17 to give the phone up to my lawyer.

18 THE COURT: Mr. Suggs, Mr. Jepertinger.

19 MR. JEPERTINGER: Judge, I don't see any
20 relevance about his personal phone.

21 THE COURT: How does that in any way impact your
22 decision as to whether or not you're pleading guilty
23 today?

24 THE DEFENDANT: I'm pleading guilty, but you ask
25 me ---

1 THE COURT: Well, are you pleading guilty
2 because you are guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Has anybody threatened you to
5 plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Anybody forcing you to plead guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Let me ask you about
10 Mr. Suggs, today's your day to make any complaints if you
11 got any complaints. You have any complaints about his
12 representation?

13 THE DEFENDANT: No, sir.

14 THE COURT: Okay.

15 MR. SUGGS: I'm sorry, Judge. I think he's
16 unhappy because the co-defendant received a strong arm and
17 he didn't. I think that's why -- that's the root I think
18 of it his dissatisfaction.

19 THE COURT: I will allow you to address that in
20 a minute. Let me get through this questioning of him
21 right now.

22 MR. SUGGS: Yes, sir.

23 THE COURT: Have you understood my questions
24 here today, Mr. Byrd?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you pleading guilty of your own
2 free will?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you pleading guilty because you
5 are guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Mr. Jepertinger.

8 MR. JEPERTINGER: Very quickly, Your Honor, back
9 on April 2nd, 2012, Claudia Germis was over at her house
10 on at [REDACTED] Wax Wayne Drive getting ready for work in the
11 morning. She went to her car. This gentleman hold up
12 with his cousin, Rashawn Byrd, in a vehicle. He got out
13 of the car, went up to the car, busted out the car window
14 with a handgun, Your Honor, reached into the car, Your
15 Honor, and stole her tote bag, in the tote bag were credit
16 cards, Your Honor. Those credit cards were used, Your
17 Honor, at various stores around the area.

18 They took photo samples there of the people
19 using the credit cards. It came back to this individual.
20 There was an anonymous tip saying that this gentleman
21 lived over at Sedgfield apartments. They went over to
22 Sedgfield apartments show them the little blurb from the
23 stores that they took off the video cameras. The security
24 officer recognized it as Willie Terrel Byrd.

25 Your Honor, and they went to the apartment and

1 they recovered a handgun, Your Honor, that we think was
2 used in the armed robbery, Your Honor. This is -- I also
3 show you photos of the injuries sustained by Ms.
4 Germis and her vehicle with the window broken out.

5 MR. SUGGS: I've seen those, Judge.

6 THE COURT: Anything else?

7 MR. JEPERTINGER: Judge, that will be it.

8 THE COURT: Hold on just a second. All right.
9 Mr. Byrd, you heard the facts stated by the Solicitor in
10 this case. You agree with those facts? Sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are you in fact guilty of armed
13 robbery?

14 THE DEFENDANT: Say it again, sir?

15 THE COURT: Are you in fact guilty of armed
16 robbery?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And how do you plead guilty or not
19 guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: All right. I find that there is a
22 substantial factual basis for this plea. I also find the
23 defendant's decision to plead guilty has been entered into
24 freely, voluntarily, knowingly and intelligently. That
25 he's had the advice and counsel of an attorney with whom

1 he's indicated he's completely satisfied. I will accept
2 his plea and be happy to hear from you, Mr. Suggs.

3 MR. SUGGS: Thank you, Your Honor. May it
4 please the Court, sorry, Judge, that I was starting on the
5 recitation before you had finished questioning.

6 THE COURT: That's all right.

7 MR. SUGGS: But again, I think that's the root
8 of the problem, Judge. I wasn't part parcel of any plea
9 negotiation or discussions with counsel or the other
10 co-defendant, so I found out a little later about what he
11 got, Judge. I think to me, Judge, it doesn't make a whole
12 lot of difference whether, you know, who gets what. I
13 mean, if they both were guilty of the same thing, but the
14 one got a strong arm and one got armed robbery. It's a
15 matter of semantics. The hand of one is the hand of all.
16 It's just as this gentleman may have had some grievance to
17 get a strong arm robbery. On the other hand, the other
18 gentleman probably should have gotten an armed robbery.
19 It doesn't matter who had the gun. What matters is
20 whether there was a conspiracy involved and whether there
21 was the fact they were charged with that doesn't matter.
22 It's still the hand of one is the hand of all. It's what
23 went on after later after the lady was robbed in terms of
24 what happened to her belongings things that were used with
25 cards and things like that.

1 Judge, again, I didn't get the 11, he did on his
2 own. And I mean I thought 12 was the best that I could
3 do. I thought that was a pretty good deal, but certainly
4 11 is much better than 12.

5 He does know about the non-parolable aspect of
6 this offense. We went over that several times. The fact
7 that it is a strike. The fact that it's most serious and
8 the fact it's a violent offense. I think the law still is
9 judge that if you have -- even if you have two violent
10 offenses, then the second violent offense no matter
11 whether it's parolable or not becomes non-parolable. So
12 if he came back later let's say and had a burglary second
13 under subsection B, which is technically violent even
14 though that would be parolable under the law, it would not
15 be if he's had a prior violent, which this is. So he
16 knows about that too. He has served sometime in jail.
17 He's been in Effingham -- I think we calculated 334 days
18 as of today's date. And he's not spent his time in
19 Effingham being idle, Judge. He's actually done some
20 things that are right positive. I have shown these to
21 Mr. Etheridge excuse me -- Mr. Jepertinger. Mr. Etheridge
22 has seen them also, but they're actually, Judge,
23 certificates of achievement that he has earned while he's
24 been incarcerated and seems to be several. So, Judge,
25 Mr. Byrd has made the most of the time that he's been

1 there. We would ask the Court to consider to accept
2 considering to accept the negotiated sentence.

3 THE COURT: Thank you, Mr. Suggs.

4 Mr. Byrd, anything you wish to tell me?

5 THE DEFENDANT: Yes, sir, I stand before you
6 today right and when the crime took place, I can admit I
7 was the driver. I pull up. My got cousin out. He had a
8 firearm. The firearm that you see on the photo, they said
9 been involved actually it didn't, but they say be involved
10 because they get it at my house.

11 Now, when I realize that I see myself on paper,
12 okay, I got up and call Major Raines. My old lady say,
13 well, baby what you doing. I'm talking on the phone. So
14 when I talk to Major Raines he ask me did I have a way up
15 there to see him before five o'clock. First, I said no,
16 sir. Then I turn around and I said, yeah. Then he said
17 can you come up here and talk to me. I got up, dress,
18 took a shower. My old lady she got dress. We came to the
19 complex, second floor talk to Major Raines in his office.

20 Now, the whole time in his office we talking, so
21 my investigator come Mr. Lee Davis talk to me and my
22 phone. Now, my whole phone log you can see why Carl
23 Raines, whole phone log. Davis took the phone. Davis
24 took the phone don't know what he did with it. He say use
25 it for evidence, but Davis never did get the phone to my

1 lawyer, ask my lawyer would he get the phone prove to show
2 that I did come up here. Back here June the 14th last
3 year, they say I ran from them at my apartment, but they
4 never did come to my apartment to get me. Bryan Hart they
5 never did see me at my apartment. They seen me at the
6 complex. They lock me up at the complex. So how can I
7 get charged for armed robbery and I was not around no
8 firearm. They charge me for armed robbery, but what they
9 do charge me with the police gun that I was around. I
10 never been around no firearm. So they charge me with what
11 for the police gun. They lock me up for it. I was up
12 talking to the Major in his office, never did ran, never
13 did. '06 I ain't ran. Free willie came up here and talk
14 on my own. No hand force or nothing. Then my momma she
15 sick. She need me out there on her own care being. My
16 momma 64 years old, her only care being. Now, I'm
17 standing here facing 11 years. I'm her baby.

18 THE COURT: Anything else from the State?

19 MR. JEPERTINGER: No, sir, I just ask that you
20 accept the negotiation.

21 THE COURT: Mr. Suggs, anything further?

22 MR. SUGGS: No, sir.

23 THE COURT: All right. On indictment

24 2012-GS-21-1129, defendant's committed to the state
25 department of corrections for a period of 11 years. Given

1 credit for 334 days that he's done. Good luck to you,
2 Mr. Byrd.

3 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
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 21, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Florence County, South Carolina, on the 4th day of March,
2013.

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 24th
day of January 2014.


Keshia Reed, Court Reporter

FORM 3

STATE OF SOUTH CAROLINA

County of FlorenceMr. Willie Terrel Bird #319760

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

v.

State of South Carolina

2013 OCT 21 PM 12:10
 NOT RECORDED
 IN THE COURT OF COMMON PLEAS
 CCCP & GS
 FLORENCE COUNTY, SC

2013-CP-21-2760

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS BE READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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.

- Place of detention Lieber Corrections Institution
~~256 Redbank Road, Florence, SC 29509~~ P.O. Box 205 Ridgelyville S.C. 29472
- Name and location of Court which imposed sentence Florence, S.C. General Sessions
City County Complex, 180 N. 1st Street, MSC-E Florence, SC 29501
- Name(s) of co-defendant(s) (if any) Redbank Bird
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012-GS-21-0129 Robber/Armed Robbery § 16-11-330 (A)

2013 OCT 21 PM 12:10
 CONNIE REEL-SHEPARD
 CCCP & GS
 FLORENCE COUNTY

FILED

CERTIFIED: A TRUE COPY
 true & real
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 4, 2013 - 11 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- No
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Trial Counsel did not file a Appeal

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel

(b) unknowing, unintelligent and involuntary guilty plea

(c) _____

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

(a) See Attached Memorandum of Law in Support of PCR

(b) See Attached Memorandum of Law in Support of PCR

(c) _____

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

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

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

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

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

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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) Grounds just became Ripe for Collateral Review
 (b) Grounds just became Ripe for Collateral Review
 (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? 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? No

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

(a) the name and address of each attorney who represented you:

- i. John B. Etheridge; Kevin B. Etheridge Esq.
2184 West Evans Street, Florence, S.C. 29502
 ii. B. Scott Suggs, Esq.
- 180 N. Irby st. Florence, S.C. 29501
 iii. _____

(b) the proceedings at which each such attorney represented you:

- i. John B. Etheridge; Kevin B. Etheridge Esq - Arraignment, Plea
 ii. B. Scott Suggs, Esq. - Plea and Sentencing
 iii. _____

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

Conviction and Sentence vacated and remanded for New Trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Mr. Willie Terrel Bird # 319760, 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.

Willie Terrel Bird # 319760

SWORN to and subscribed before me this 4th
day of September, 2013

Quadrin Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
2013 OCT 21 PM 4:14
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

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

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

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

William Gerald Byrd 319760
Applicant

SWORN or affirmed to and subscribed before me this
18 day of October, 2013

[Signature]
Notary Public

My Commission Expires: June 2017

FILED
2013 OCT 21 PM 4:14
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

29
IN THE COURT OF COMMON PLEAS

FILED

Docket No: 2012-GS-21-01129

Willie Terrel Byrd # 319760

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2013 OCT 21
RECORDED
CANCELLED

Applicant
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC
MEMORANDUM OF LAW IN SUPPORT
CONVICTION RELIEF APPLICATION
PURSUANT TO S.C. CODE ANN § 17-27-20
THROUGH § 17-27-160

- vs -

State of South Carolina,

Respondent

FILED
2013 OCT 21 PM 4:14
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

COMES NOW, Willie Terrel Byrd, above captioned Applicant, pro se respectfully seeking relief in this Honorable Court pursuant to S.C. Code Ann. § 17-27-20 through § 17-27-160, claiming that his Sixth Amendment right to the effective assistance of trial Counsel was violated, including but not limited to his fourteenth Amendment right to a fair trial that is protected under the State and Federal Constitution.

Applicant believes through the issues presented, statement of facts and Citations of authorities relied on he will show unto this Court his entitlement to the relief sought herein.

FACTS OF THE CASE :

On April 2, 2012 at approximately 6. a.m. Monday the victim Claudia Girmes was getting into her vehicle in her drive way on Waxwing Drive in Timberland Subdivision, off Third Loop Road. A vehicle she describes as a Gold or Gray older model Chev impala pulled into her drive way behind her vehicle. A Black male got out and then approached her and asked her for directions to Palmetto street. She gave the Black male directions and then he started to walk away and she got into her car and locked the doors as she felt that something was a little suspicious about him approaching her for directions. Moments later he returned and attempted to open the door but he couldn't because it was locked. He then took out a handgun and started hitting her driverside window. The man eventually shattered the window and grabbed a small bag that was sitting in the lap of the victim. The man then got back in the car and the two men drove off. The bag had her credit cards, Cell phone and drivers license in it. The victim told investigators that there

was a second person in the vehicle when she was approached the first time, but he never exited the vehicle. The male who approached her vehicle was a taller male with clean cut face and a low hair.

Immediately following the robbery, the victims Bank of America card had been used at several locations: The Redbox video rental, Wal-mart, Kangaroo express and the Markette. Investigators was able to obtain video footage from Wal-mart on South Irby st. of the two suspects that had used the victims credit card. Crime Scene Investigators then made a flyer and the images were also distributed to the media for assistance in identifying the suspects. After the images were shown to the media an anonymous tip came in stating that the suspects lived at Sedgefield Apartments. Once the flyer was shown to ofc. Hart who is a Courtesy officer for Sedgefield Apartments, he was able to identify one of the suspects as Terrell Byrd who lives at Apartment Number 4 with his girlfriend Tasha Peoples. Officers then compared the S.C. Driver license photo of Byrd to the images from Wal-mart and they matched.

Investigator Drayton and Davis then spoke with the girlfriend of Willie Terrell Byrd. After speaking with her and another of Byrd's friend, Investigators showed them the video stills. The girlfriend and Byrd's friend immediately stated that that was Terrel. Investigators then asked Tasha who the person was with Byrd in the video and she said it was his cousin Rashawn. She then agreed to let Investigators and Crime Scene go to her residence along with her and collect any items in her house associated with the incident. Investigator Jordan and Bannister along with Crime Scene accompanied her to the Residence. Tasha Peoples signed a voluntary consent form prior to going in the residence. Located in the residence was the red and black Blazer's jersey worn in the video stills and a red hat. Also located was a 22. revolver handgun and five .32 Caliber rounds.

Based upon the identification of Terrell Byrd by ofc. Hart and the Positive Identification of Rashawn Byrd by Tasha Peoples, a warrant for their arrest was obtained, both was interviewed by investigators and gave a taped statement. On September 6, 2012 The Florence County Grand Jury handed down True bill Armed Robbery Indictments on both Willie T. Byrd and Rashawn Byrd. On March 4, 2013 Willie Terrel Byrd entered a plea of guilty with a negotiated Sentence of 11 years. No Appeal was filed on His behalf. This Application for Post-Conviction Relief now Follows..

RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

In a long line of Cases including, but not limited to, Powell v. Alabama 287 U.S. 45 (1932) Johnson v. Zerbst, 304 U.S. 458 (1938) and Gideon v. Wainwright, 372 U.S. 335 (1963) the United States Supreme Court has recognized that the Sixth Amendment right to Counsel exists, and is necessary, in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the Due process and several provisions of the Sixth Amendment including the Counsel Clause, which reads as follows:

"In all Criminal prosecutions, the accused shall enjoy the right to a speedy and Public trial by an impartial Jury of the State and district wherein the crime Shall have been committed which district shall have been previously ascertain by law, and to be informed of the nature and Cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of Counsel for his defense"

As the Supreme Court stated in Strickland v. Washington 466 U.S. 668 (1984) a fair trial is one in which evidence subjected to adversarial testing is presented to an impartial tribunal for resolution of issues define in advance of the proceeding. The right to Counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to Counsel's skill and knowledge is necessary to accord defendants the "ample opportunity" to meet the case of the Prosecution" to which they are entitled. In the present case, as the forth coming argument will show trial Counsel failed to investigate available evidence and relevant Circumstances, or interview prospective witnesses. Applicant contends that trial Counsel had almost a year to prepare this case, but failed to do so. Mindful of the vital nature of Counsel's assistance, the U.S. Supreme Court has held that with certain exceptions, a person accused of a Federal or State crime has the right to have Counsel appointed if retained counsel cannot be obtained. The fact that a person who happens to be a lawyer, is present at Court alongside the accused, however is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to assistance of Counsel "because it envisions counsel playing a role that is critical to the ability of the adversarial system to produce just results." Strickland. Supra.

An accused is entitled to the assistance of an attorney whether retained or appointed, who plays the role that is critical to the ability of the adversarial System to produce just results. For that reason, the Court has recognized that the right to Counsel is the right to the effective assistance of Counsel.

A fair assessment of attorney performance dictates that every effort be made, to eliminate the distorting effects of hindsight, to reconstruct the circumstances of Counsel's challenged conduct, and to evaluate the conduct from Counsel's perspective at the time. Due to the difficulties inherent in evaluating any case, Courts must indulge in a strong presumption that, under the circumstances the challenged action "might be considered" Sound trial Strategy." Since there are countless ways to provide effective assistance in any given case, even the best Criminal defense Attorney's would not defend a particular client in the same way. See Goodpaster, The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases" 58 N.Y.U.L. Rev. 299, 343 (1983) Therefore, a Court deciding an actual ineffectiveness claim must judge the reasonableness of Counsel's challenged Conduct on the facts of each particular case. In making a claim of ineffectiveness assistance of Counsel, a Applicant must identify Counsel's acts or omissions that are alleged to not have been the result of reasonable professional judgement. The Court must then determine whether in light of all the Circumstances, the identifiable acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the Court should keep in mind that Counsel's function, in accordance with prevailing professional norms, is to make the adversarial testing process work in the particular case. In order to meet the test for prejudice, the defendant must show that there is a reasonable probability that but for Counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a Probability sufficient to undermine confidence in the outcome. The governing legal standard plays a critical role in assessing the degree of prejudice that the defendant suffers as a result of Counsel's errors. When a defendant challenges a conviction, the question is whether there is a reasonable Probability that absent errors the fact finders would have had a reasonable doubt with regard to guilt:.....

ARGUMENTS:

- I. TRIAL COUNSEL WAS INEFFECTIVE WHEN HE KNEW EVIDENCE SUPPORTED AN "ACCESSORY BEFORE AND AFTER THE FACT OF A FELONY" CHARGE BUT STILL ADVISED APPLICANT TO PLEAD GUILTY TO A MORE SEVERE CHARGE.

As previously mentioned in the facts of this case, there was two people inside the Gold or Grey old model chevy impala. Only one got out of the Impala to ask for instructions to palmetto Street, once he was given the instruction he left and went back to his car, he then returned a second time to rob

the victim. The whole time the other individual in the car did not get out to assist³³ him, did not participate in the robbery at all, but simply was present. There was no evidence during the investigation to indicate that this robbery was planned before hand or that both of these individuals were working in concert to carry out a common plan or design. The only evidence available that tends to establish applicants culpability is that Applicant was the driver of the Chevy impala. Applicant drove Rashawn to the victims location seeking directions and Applicant drove Rashawn afterwards to various stores to make purchases. If Applicant was not driving the vehicle at any time, then he would have been entitled to a "Mere presence defense" but nevertheless Applicants role in this crime was minimum to none and under the facts of this Case, Applicant could have easily convinced the Jury to Convict on a lesser included offense of "Accessory before and After the fact to a felony" see. S.C. Code Ann. § 16-1-40. There is no mandatory minimum sentence for this offense and in light of the numerous character witnesses, and Applicants mental health condition, the Court may have been persuaded to issue Probation or even a Suspended Sentence arrangement. A close look at the picture of the video stills shows Rashawn with a low cut, clean shaved Face and the stolen credit card in his hand. Trial Counsel should have informed Applicant that he could have been convicted of a lesser included offense at trial, had Counsel done so Applicant would not have plead guilty but insisted on going to trial. see e.g. Taylor v. Starnes 650 F.2d 38 (4th Cir. 1981) ("Failure to request a lesser included offense jury instruction, where the evidence supported such instruction, constitutes ineffective assistance of Counsel.")

II. TRIAL COUNSEL WHO WAS RETAINED RENDERED INEFFECTIVE ASSISTANCE, WHEN HE FORCED APPLICANT TO PROCEED WITH A COUNSEL NOT OF HIS OWN CHOICE.

As the record and files in this case will show the Applicant on April 6, 2012 was approved for an Attorney from the Public Defenders office. The record reflects that Vick Meetze of the Twelfth Circuit Public Defenders office was appointed to represent the Applicant. However as the record will further show Applicant obviously was not pleased with his attorney from the Public Defenders office and on July, 11, 2012 decided to retain the Gardner Law Firm to represent him on these charges. There are numerous letters written by the Applicant and letters to the Applicant to Kevin and John Etheridge, verifying that

an Attorney-Client relationship did exist between Applicant and these Attorneys. As a matter of fact the on February 20, 2013 John Etheridge Jr. of the Gardner Law Firm sent a letter to Applicant, his Mother and girlfriend notifying them all that Applicant was on the Trial list scheduled to begin March, 4, 2013.

However when March 4, 2013 arrived, Applicants retained attorney was not there to represent his client, instead B. Scott Suggs was there a man whom John and Etheridge told Applicant was a Private Investigator for the Etheridge Legal team. However after the Conviction and sentence Applicant learnt that B. Scott Suggs was not a Private Investigator but a Twelve Circuit Public Defender.

B. Scott Suggs was not Applicants Attorney of choice, Applicants attorney of choice was the Gardener Law Firm in which he retained to represent him. B. Scott Suggs was not Applicants attorney, moreover Applicant was prejudice by not having proceeded to trial with his Attorney of choice. Mr. B. Scott Suggs did not request a competency hearing which was essential to determine whether Applicant was competent to stand trial in light of his long Mental health history with Bipolar-Schizophrenic disorders. B. Scott Suggs did not even bring this mental health issue to the Courts attention, furthermore this Counsel allowed Applicant to plead guilty to Serious felony while he was High on Psychotropic medications, not to mention numerous of character witnesses wrote statements for the Applicant none which was presented to the Court.

Retained Trial Counsel was ineffective for forcing Applicant to proceed with a Attorney not of his choice and as shown above this deficient performance Prejudiced applicant. It is well establish that an accused has a right to Secure Counsel of his own choice. Crooker v. California 357 U.S. 433, 78 S.Ct. 1287 (1958). In Reynolds v. Cochran 365 U.S. 525, 81 S.Ct. 723 (1961) the United States Supreme Court held that to prevent a defendant from having the assistance in a proceeding by Counsel he had retained, deprives the defendant of due process in a constitutional sense". In this Case that is exactly what happened, Applicant was prevented from having the assistance by retained Counsel which prejudiced him in multiple ways. Applicant is entitled to a new trial.

III. TRIAL COUNSEL INEFFECTIVE FOR FAILING TO REQUEST A COMPETENCY HEARING.

As the record will show Applicant has been on Mental Health medication since he was Seven (7) years old. Applicant had an extensive mental health history and Trial Counsel was not ignorant of this fact. The record and files show that on August 13, 2012 Applicant Signed a "Medical Authorization" form authorizing Pee Dee Mental Health Department to disclose to his trial Counsel Medical and Mental Health reports. On August 23, 2012 Applicant notified trial Counsel that he suffered from Bipolar disorder and Schizophrenic disorder and that at one time in the past he was found incompetent to stand trial. In a letter dated October 7, 2012 addressed to his trial Attorney Kevin Etheridge applicant stated that he was badly in need of his medication and that he needed to get evaluated for Competency. Applicant despite his attempts to get evaluated was never evaluated and Trial Counsel allowed him to plead guilty without a Mental Health evaluation. At the time the plea was entered Applicant was so Stressed out over his mothers illness, he took 15 tablets of Methadone medication which shows his mental instability. Trial Counsel was ineffective for not requesting a competency hearing prior to advising his client to plead guilty. See Williamson v. Ward, 110 F.3d 1509 (10th Cir. 1997) ("Trial Counsel's failure to investigate defendant's mental illness and to seek competency hearing constituted ineffective assistance of Counsel.") Hull v. Freeman, 932 F.2d 159 (3rd Cir. 1991) ("Trial Counsel's failure to contest the defendant's competence, at defendant's request constituted performance below the objective standard of reasonableness. Further Counsel's failure to challenge the defendant's incompetence amounted to abdication of Counsel's duty to hold the government to its burden to prove the defendant competent. The defendant's competence was in serious question.") Bouchillon v. Collins, 907 F.2d 589 (5th Cir. 1990) ("Defense Counsel's failure to investigate petitioner's competency to stand trial when Counsel was aware that petitioner had been in a mental institution and, Petitioner had no other defense available to him, rendered his plea involuntary and, constituted ineffective assistance of Counsel.")

IV. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE AND PURSUE A INSANITY DEFENSE.

See Argument # 3 for Supporting facts and legal authorities....

V. GUILTY PLEA NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARY ENTERED.

See Sworn Affidavit of Willie Terrel Byrd attached...

CONCLUSION:

Based on the aforementioned grounds, facts and legal authorities, Applicant asserts that his Six Amendment right to the effective assistance of trial Counsel was violated including but not limited to his fourteenth Amendment right to a fair trial. Applicant is entitled to a new trial.

Respectfully Submitted,

Willie Terrel Byrd #319760

Willie Terrel Byrd # 319760

~~McCormick Correctional Inst.~~

~~386 Redemption Way~~

~~McCormick, S.C. 29899~~

Lieber Correctional Inst.

Po. Box. 205

Ridgeville S.C. 29472

FILED
2013 SEP 24 PM 12:10
CLERK REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED
2013 OCT 21 PM 4:14
CLERK REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Clerk Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

FILED

C.A. No: 2012-GS-21-01129

2012-00-3221

Willie Terrel Byrd # 319760

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NOT RECORDED

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

SWORN AFFIDAVIT OF:

v.

WILLIE TERREL BYRD

State of South Carolina

Respondent

CERTIFIED: A TRUE COPY

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

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

2013 OCT 21 PM 4:14

FILED

COMES NOW, Willie Terrel Byrd, after first being Sworn to tell the truth and nothing but the Truth, do hereby declare the following facts are True:

- 1) On March 4, 2013 I did appear in a Courtroom beside Mr. B. Scott Suggs on this date I did not know that I was entering a plea negotiation to the charge of Armed Robbery. I knew I appeared in Court, but I was so high off the Psychotropic medication that I had taken before appearing. I can't remember exactly what happened.
- 2) My retained Attorney Kevin and John R. Etheridge of the Gardner Law Firm did not appear with me in Court that day. Mr. B. Scott Suggs did, this is the man my retained Attorney had been telling me was my private Investigator.
- 3) On March 4, 2013 prior to entering the Courtroom I took 15 tablets of a psychotropic medication called "Methadone". I took this many Pills because I was stressed over my mothers health condition and being denied bond repeatedly. The effects of taking so many pills had me in a hallucination state and like I said I don't even recall entering a plea negotiation on the above date. IF I did It was not knowingly, Voluntary or intelligently entered.

SWORN to before me
this 4th day of September 2013

Judith Bryant
Notary Public for South Carolina

My Commission Expires: May 26, 2016

Willie Terrel Byrd
Willie Terrel Byrd

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

Willie T. Byrd, #319760,

) Case No. 2013-CP-21-2766
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

)

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 21, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In September 2012, the Florence County Grand Jury indicted Applicant for armed robbery (2012-GS-21-1129). John R. Etheridge, Jr., Esquire, and B. Scott Suggs, Esquire, represented Applicant. On March 4, 2013, Applicant entered a negotiated plea of guilty as indicted. The Honorable D. Craig Brown sentenced Applicant to eleven (11) years imprisonment. Applicant did not appeal his guilty plea or sentence.

II.

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

1. "Ineffective Assistance of Counsel"
2. "unknowing, unintelligent and involuntary guilty plea"

In an attachment to the application captioned "MEMORANDUM OF LAW IN SUPPORT OF POST CONVICTION RELIEF APPLICATION PURSUANT TO S.C. CODE ANN. § 17-27-20 THROUGH § 17-27-160," Applicant sets forth the following grounds for relief:

1. "Trial counsel was ineffective when he knew evidence supported an 'accessory before and after the fact of a felony' charge but still advised Applicant to plead guilty to a more severe charge."
2. "Trial counsel who was retained rendered ineffective assistance, when he forced Applicant to proceed with a counsel not of his own choice."
3. "Trial counsel ineffective for failing to request a competency hearing."
4. "Trial counsel was ineffective for failing to investigate and pursue a insanity defense."
5. "Guilty plea not knowingly, intelligently and voluntarily entered."

Applicant further alleges he was intoxicated on methadone the day of his plea in an attached "SWORN AFFIDAVIT OF: WILLIE TERRELLBYRD."

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return 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, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v.

Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application 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 plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel 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 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 plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show 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, 59 (1985).

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

IV.

Respondent further submits Applicant's allegation his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

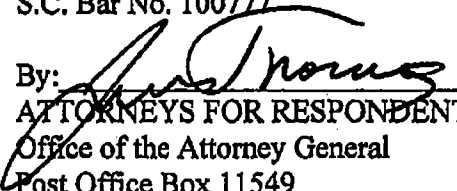
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

4/22, 2014

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2013-CP-21-2766

WILLIE T. BYRD, #319760

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan Waller, Esquire
1720 Main St., Suite 104
Columbia, SC 29201

DATED this 22nd day of April, 2014.


Norma Bigbee, Legal Assistant

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-CP-21-02766
	)	
Willie T. Byrd,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

November 15, 2017
 Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

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COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 NOVEMBER 15, 2017

2 (WHEREUPON, the proceedings began at 10:15 a.m.)

3 MS. MCCALLISTER: Your Honor?

4 THE COURT: Yes?

5 MS. MCCALLISTER: This is the one where Mr. Etheridge is
6 the witness; so we need to do the court call.

7 THE COURT: Okay. And we'll ask Ms. Dawn if she'll do
8 that right now.

9 MS. MCCALLISTER: May I approach, Your Honor, with your
10 packet?

11 THE COURT: Yes.

12 (WHEREUPON, there was a pause in the proceedings, after
13 which the proceedings resumed as follows.)

14 THE CLERK: Mr. Etheridge?

15 MR. ETHERIDGE: Yes, ma'am.

16 THE CLERK: Okay. We now have you connected in the
17 courtroom.

18 MR. ETHERIDGE: Okay.

19 THE CLERK: With regard to Willie Byrd versus South
20 Carolina State.

21 MR. ETHERIDGE: Yes, ma'am.

22 THE CLERK: Thank you.

23 THE COURT: All right. Yes, ma'am. You're recognized.

24 MS. MCCALLISTER: Thank you, Your Honor. Your Honor,
25 this is Willie Terrel Byrd.

1 MR. WALLER: Yeah. I'm sorry.

2 (WHEREUPON, the applicant moved from the gallery to the
3 table with his attorney.)

4 MS. MCCALLISTER: Your Honor, Willie Terrel Byrd versus
5 the State of South Carolina, 2013-CP-21-2766. Your Honor,
6 Mr. Byrd was indicted in September of 2012 for armed robbery.
7 He was represented on those charges by Scott Suggs and Johnny
8 Etheridge.

9 He pleaded guilty on March 4th, 2013, before Judge Craig
10 Brown. He pleaded guilty to a negotiated sentence of eleven
11 years for armed robbery.

12 Your Honor, he has filed this application for post-
13 conviction relief, and he is represented by Jonathan Waller.
14 And Mr. Byrd is present in the courtroom here today, and I
15 will let Mr. Waller speak at this time.

16 THE COURT: Mr. Waller?

17 MR. WALLER: Thank you, Your Honor. Just to put on the
18 record, Your Honor, he was evaluated as a part of this case.
19 He was found competent to stand trial.

20 THE COURT: All right. Do you have that report?

21 MR. WALLER: Your Honor, I'm not sure that I have a hard
22 copy of it. I do, Your Honor. May I approach?

23 THE COURT: Yes.

24 All right. I hold in my hand a document that is
25 entitled "Competency to Stand Trial Evaluation" for Mr.

1 Willie Terrel Byrd. The document indicates that he is
2 competent to stand trial.

3 Is there any objection to this report being made a part
4 of the record?

5 MR. WALLER: No objection, Your Honor..

6 MS. MCCALLISTER: No objection, Your Honor.

7 THE COURT: All right. It will indeed be made a part of
8 the record, and I will note that the report says that he has
9 the capacity to understand the proceedings against him and to
10 assist in his own defense.

11 The report also indicates that he was evaluated in 2006.
12 This report says he presents in a similar fashion. He was
13 competent then and he's competent in 2016, which would seem
14 to indicate that he was competent at the time of the entering
15 of the plea.

16 And I'll make that a part of the record.

17 (WHEREUPON, the competency report was marked and entered
18 as Court's Exhibit Number 1.)

19 THE COURT: Is there anything, Mr. Waller, that you'd
20 like to make a part of the record with regard to his
21 competency other than this report?

22 MR. WALLER: Nothing at this time, Your Honor. There's
23 probably going to be some testimony.

24 THE COURT: All right.

25 MR. WALLER: About medications and things like that, but

1 no other documentation at this time.

2 THE COURT: Very good. All right.

3 Well, I do indeed find that he was competent to stand
4 trial presently and at the time of the plea, and we'll be
5 glad to hear any other testimony with regard to that.

6 MR. WALLER: Thank you, Your Honor. The applicant would
7 call Willie Byrd.

8 THE COURT: Mr. Byrd, if you could, please come forward.
9 I'm going to ask you, if you could, to take your time and you
10 can bring your paperwork with you, if you would like. It's
11 not necessary, but if you want it, you can have it.
12 Otherwise, you can come and place your left hand on the Bible
13 and raise your right as the clerk administers the oath.

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

17 THE APPLICANT: Yes, ma'am.

18 THE CLERK: Thank you. You can have a seat.

19 THE COURT: Mr. Byrd, watch your step. I'm going to ask
20 you to have a seat here in this witness chair. I'm going to
21 ask that you pull up to the microphone real closely and speak
22 loudly, clearly, and slowly in order that we can hear
23 everything that you have to say, and let's start with your
24 full name, Mr. Byrd.

25 THE APPLICANT: Willie Terrel Byrd.

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 THE COURT: Very good, Mr. Byrd. Pay very close
2 attention to Mr. Waller.

3 WILLIE T. BYRD, being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WALLER:

7 Q: Good morning, Mr. Byrd. How are you today?

8 A: Doing all right.

9 Q: Mr. Byrd, I want to start -- do you -- as Judge Nettles
10 indicated and as your report indicated, you've got some
11 mental health history; is that correct?

12 A: Yes, sir.

13 Q: Okay. What medications are you taking?

14 A: Right now?

15 Q: Yes, sir, right now.

16 A: Tegretol, Tryptamine, and Thorazine.

17 Q: Okay. Do those medications help you -- help you
18 understand what's going on?

19 A: Yes, sir.

20 Q: And do you --

21 A: They do.

22 Q: -- understand today what we're here for?

23 A: PCR.

24 Q: Do those medications help you day to day understand
25 what's going on around you?

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 A: Without my medication, I wouldn't be -- I wouldn't be
2 the same.

3 Q: Okay. Do you -- I want to take you back. Do you recall
4 when you were arrested?

5 A: When I was arrested?

6 Q: Yes, sir.

7 A: Somewhat.

8 Q: Okay.

9 A: I wasn't on my meds.

10 Q: Okay. After you were arrested, you hired an attorney;
11 is that right?

12 A: Yes, sir.

13 Q: Who did you hire?

14 A: I didn't hire him. My mom and them who hired an
15 attorney for me. I was locked up.

16 Q: Okay. So you had an attorney. Do you remember who that
17 was?

18 A: Mr. Etheridge was supposed to be.

19 Q: Okay. Do you remember which Mr. Etheridge?

20 A: Kevin.

21 Q: Okay. You met with Kevin?

22 A: I met with Kevin.

23 Q: Okay. So you met with Kevin first of all; is that
24 right?

25 A: Yeah.

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 Q: Okay. Did you -- did you meet with Kevin's father at
2 all?

3 A: I met with him. It was March when I came down here for
4 the first time, and it was nothing but just like two seconds.

5 Q: Okay.

6 A: That was it.

7 Q: Were you on some medication at that time when you got --
8 after you got arrested when you were talking to the
9 Etheridges?

10 A: Yes, I was on medication.

11 Q: Okay. Did that medication at that time help you
12 understand?

13 A: Did it help me understand?

14 Q: Did that medication help you understand your
15 conversations you had with Mr. Johnny Etheridge and Mr. Kevin
16 Etheridge?

17 A: It wasn't no -- it wasn't no conversation. I ain't
18 really ain't talked to them.

19 Q: Okay. How many times do you think you met with Kevin
20 Etheridge?

21 A: I met with Kevin once.

22 Q: Okay. How many times did you meet with Johnny
23 Etheridge?

24 A: I seen Johnny for nothing but like two seconds in the
25 courtroom -- in the back of the courtroom. That was it.

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 Q: Okay. When you met with Kevin, what did y'all talk
2 about? Do you remember?

3 A: We just talked about -- I can't remember, but I know we
4 was talking about something about going home.

5 Q: Okay. Did you all discuss the charge of armed robbery
6 and the potential penalties it carried?

7 A: No.

8 Q: Okay.. Did you all discuss any of the evidence the State
9 might have against you?

10 A: No. He said he ain't got none of that paperwork. He
11 said that he was trying to get my -- I told him I was in
12 mental health. He was trying to get my records. That was
13 all we was talking about, and then he left out the county
14 jail.

15 Q: Okay. So at the time you met with Kevin Etheridge, he
16 didn't have any discovery in your case; is that right?

17 A: No.

18 Q: Okay. When you met with Mr. Johnny Etheridge, did you
19 see any discovery in your case?

20 A: No.

21 Q: Okay. Have you ever seen any discovery in the case?

22 A: I seen discovery when I requested it.

23 Q: Okay. When was that?

24 A: I can't recall.

25 Q: Was that before or after you pled guilty?

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 A: Before.

2 Q: Before?

3 A: Before.

4 Q: Okay. So you did have a copy of some discovery; is that
5 right?

6 A: Somewhat, yes.

7 Q: Okay. Did you have an opportunity to talk to any of
8 your lawyers about that discovery?

9 A: No, sir.

10 Q: Okay. There was some surveillance video footage or
11 pictures or something. That's how you were identified. Is
12 that your understanding?

13 A: Yes, it is.

14 Q: Okay. Did you have a chance to go over any of that with
15 your attorneys?

16 A: No, sir.

17 Q: Okay. Did you have a chance to talk about any of your
18 constitutional rights with your attorneys?

19 A: No, sir.

20 Q: Okay. Scott Suggs represented you at your guilty plea;
21 is that right?

22 A: Yes, sir.

23 Q: Okay. How many times had you met with Scott Suggs
24 before you pled guilty that day?

25 A: Once. That was the first time.

WILLIE T. BYRD - DIRECT BY MR. WALLER

- 1 Q: The -- that same day was the first time?
- 2 A: Yes, sir. That was the first time.
- 3 Q: Okay. How did you know that he was your lawyer?
- 4 A: He told me that he -- he told me that -- I asked for
- 5 Kevin, and he said that Kevin -- I represent you. Kevin --
- 6 Kevin and Johnny out there, but I'm representing you. And I
- 7 say what you mean? They my lawyer. He said I'm your lawyer.
- 8 That's how I found out he was my lawyer.
- 9 Q: Okay.
- 10 A: Because I seen Kevin and Johnny, but neither one of them
- 11 came back there representing me though.
- 12 Q: So Kevin and Johnny were here?
- 13 A: Yes, sir.
- 14 Q: The same day you pled guilty?
- 15 A: Yes, sir.
- 16 Q: Okay. Did you have a chance to go over any of the
- 17 discovery or evidence against you with Mr. Suggs?
- 18 A: The only thing Mr. Suggs mainly worrying about is taking
- 19 me in front of the judge and pleading that same day or going
- 20 to trial that next week.
- 21 Q: Okay. You testified that Mr. Suggs said he was your
- 22 lawyer?
- 23 A: Yes, sir.
- 24 Q: Did you think Mr. Suggs was your lawyer?
- 25 A: No, sir. I know he wasn't my lawyer because I know my

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 mom and them -- my mama and Tasha had paid for them to be my
2 lawyer.

3 Q: For Mr. Johnny Etheridge and Mr. Kevin Etheridge?

4 A: Yes, sir.

5 Q: Okay. So you --

6 A: They didn't pay Scott Suggs.

7 Q: You didn't know who Scott Suggs was?

8 A: No, sir.

9 Q: Okay.

10 A: I seen Scott Suggs on the end of the scene the last
11 moment.

12 Q: Okay. With any of the three lawyers that you ever
13 talked to, even if it was just briefly, did you ever have a
14 chance to go over the evidence the State had against you?

15 A: I tried, but neither one of them wanted to hear it.

16 Q: Okay. Were there -- there were some statements taken
17 from a co-defendant and a victim in the case. Did you ever
18 have a chance to go over any of those statements?

19 A: I ain't never get that.

20 Q: Okay. Did you give a statement in this case?

21 A: No, sir.

22 Q: Okay. Did you and your lawyers have a chance to talk
23 about the rights that you would give up when you plead
24 guilty?

25 A: No, sir.

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 Q: Okay. Mr. Byrd, why did you make the decision to plead
2 guilty?

3 A: Why did they say to plead guilty?

4 Q: Yes, sir.

5 A: It was forced upon me. They say -- Scott Suggs say I
6 take this time for him to be in front of the judge or I go to
7 trial. It was forced. It was forced upon me, even though
8 they still ain't get my mental health record, and they -- and
9 I feel like, honestly, they took advantage of me because I'm
10 on mental health and I didn't know what was going on.

11 Q: Okay. Did y'all ever talk about going to trial?

12 A: No, sir. He say I just -- as far as me take the time.

13 Q: Okay. Did you ever talk to Johnny Etheridge or Kevin
14 Etheridge about going to trial?

15 A: No, sir.

16 Q: Okay. Well, when you say it was forced upon you to
17 plead, what do you mean by that?

18 A: They said either that I take -- take the time now, go in
19 front of the judge now, or I go to trial and they can give me
20 30 years.

21 Q: Okay. Did you know -- did they explain to you the
22 procedures that would take place if you went to trial?

23 A: No, sir.

24 Q: Did y'all talk about the -- the elements the State would
25 have to satisfy in order for you to be found guilty at trial?

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 A: No, sir.

2 Q: Did you understand that you had a right to go to trial?

3 A: I tried to go to trial.

4 Q: Okay. When you say you tried to go to trial, what do

5 you mean you tried to go to trial?

6 A: I tried to plead my whole facts through because they

7 wouldn't get a copy -- they wouldn't get my mental health

8 record.

9 Q: Okay. So you wanted to go to trial?

10 A: To prove that I am in mental health. They wouldn't get

11 my record.

12 Q: Okay.

13 A: They tried to give me a long time where I can talk to

14 them, which I got to prove my facts, but they wouldn't do it.

15 Q: Okay. So you said you wanted to go to trial. What

16 changed then? What caused you to enter -- enter a guilty

17 plea?

18 A: They forced me to eleven -- negotiated eleven years or

19 life or 30.

20 Q: Or 30?

21 A: Yeah.

22 Q: Mr. Byrd, you have alleged in your application that you

23 thought that the charge was incorrect, that you had -- you

24 might have been guilty of an accessory charge, but not

25 necessarily an armed robbery charge?

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 A: Right.

2 Q: Did you and your attorneys have a chance to talk about
3 any of those things?

4 A: No, sir.

5 Q: Okay. Did you ask them?

6 A: I asked them, yes, sir. He said they did not have the
7 paperwork for me to talk about it. They wouldn't give me no
8 -- they wouldn't try to give me no pictures or nothing, no --
9 no statement or nothing.

10 Q: Okay. But you said you did get a copy at some point; is
11 that right?

12 A: I got a copy of my motion, but none of that was not in
13 my motion.

14 Q: Okay. Once you got a copy of your motion, did you have
15 a chance to talk to your lawyers about it?

16 A: No, sir.

17 Q: Okay.

18 A: I seen each one of them one time. That was it.

19 Q: Okay. When you actually got to court to plead guilty
20 that day or got to court that day before you entered a plea,
21 had you taken your medication then?

22 A: Yes, sir.

23 Q: Okay. Did that medication at that time help you
24 understand or hurt your ability to understand?

25 A: Say it one more time?

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 Q: Did that -- did the medication you were taking at that
2 point -- did that help you understand what was going on?
3 A: No.
4 Q: Okay. How did it not help you understand?
5 A: Did you say it helped me?
6 Q: Did it help you?
7 A: Help me understand?
8 Q: Yes, sir.
9 A: No. It didn't help me understand at the moment.
10 Q: Okay. So the day you pled guilty, you were taking your
11 medication. You understood better because of that medication
12 that day?
13 A: No, sir.
14 Q: Okay. Back when you pled guilty -- okay? -- were you or
15 were you not taking medication?
16 A: I wasn't on my meds then.
17 Q: You weren't on your medication?
18 A: No.
19 Q: Okay. So did the medication you were supposed to be
20 taking -- did it help you understand?
21 A: It would help me understand a whole lot better, but I
22 wasn't on it at the time.
23 Q: Okay.
24 A: That's why I tried to get them to get my mental health
25 record.

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 Q: Okay. So you were not on your medication?

2 A: Right.

3 Q: Okay.

4 A: I had ran out.

5 Q: Mr. Byrd, did you think you had any other defenses to
6 the charge?

7 A: Any what?

8 Q: Did you think you had any defenses to the charge of
9 armed robbery?

10 A: What you mean?

11 Q: Did you think there was a way that the jury wouldn't be
12 able to find you guilty if you went to trial?

13 A: I don't know.

14 Q: Did you ever have a chance to talk to your lawyers about
15 a potential defense?

16 A: No, sir.

17 Q: Okay. Did anybody say anything to you?

18 A: No, sir.

19 Q: Okay.

20 A: My first time hearing about that.

21 Q: Okay. Mr. Byrd, I've asked you all the questions that I
22 have for you. Is there anything you think I've left out or
23 that the judge needs to be aware of about your lawyers'
24 representation of you?

25 A: Say that one more time?

WILLIE T. BYRD - DIRECT BY MR. WALLER

1 Q: Is there anything that I left out about -- that you
2 think the Court needs to be aware of about your lawyers'
3 representation of you? Anything you think they did wrong or
4 didn't do?

5 A: They did a lot for me.

6 Q: Okay. What do you think they did wrong?

7 A: By not representing me in the courtroom after I paid
8 them the money.

9 Q: Okay. Did you understand the plea? Did you understand
10 what you were doing?

11 A: Without my medication, no.

12 Q: Okay. You keep talking about having your mental health
13 -- trying to get your mental health records?

14 A: Right.

15 Q: You had before -- before you were arrested, you had been
16 evaluated prior to that? Is that right?

17 A: Huh?

18 Q: Back in 2006, you had been previously evaluated for
19 competency; is that right?

20 A: I don't know.

21 Q: You don't know? Okay.

22 MR. WALLER: No further questions. Please answer any
23 questions that Ms. McCallister has for you.

24 THE COURT: Ms. McCallister, you're recognized.

25 MS. MCCALLISTER: Thank you, Your Honor.

WILLIE T. BYRD - CROSS BY MS. MCCALLISTERCROSS-EXAMINATION

1 BY MS. MCCALLISTER:

2 Q: Mr. Byrd, you just testified to Mr. Waller that you were
3 not taking your medication on the day of the guilty plea;
4 correct?
5

6 A: Correct.

7 Q: Okay. Do you recall -- do you recall the guilty plea
8 that day? Do you recall being in the courtroom and talking
9 to the judge?

10 A: I recall being in the courtroom, but I do not recall
11 what all I was saying to the judge.

12 Q: Okay. Do you recall the judge asking you whether you
13 were taking any medication?

14 A: No, ma'am.

15 Q: Okay. If I showed you a transcript of the guilty plea,
16 do you think that would help you remember?

17 A: Let me see it.

18 Q: Okay.

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

20 THE COURT: Yes.

21 MS. MCCALLISTER: At the very top of page 7.

22 THE COURT: All right. You can publish what it says,
23 and we're going to -- is there any objection to making the
24 plea transcript a part of the record?

25 MR. WALLER: None, Your Honor.

WILLIE T. BYRD - CROSS BY MS. MCCALLISTER

1 THE COURT: All right. You can go ahead and publish it.

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

3 THE COURT: Yes.

4 (WHEREUPON, the plea transcript was marked and admitted
5 as Court's Exhibit Number 2.)

6 MS. MCCALLISTER: You can finish reading, Mr. Byrd.

7 Thank you, Your Honor. Your Honor, I'm referring to
8 page 7 of the transcript.

9 Your Honor, the Court asked Mr. Byrd about his -- his
10 mental health, if he had any mental health issues. Mr. Byrd
11 answers he's been going to mental health since he was young.

12 The Court asked him if that in any way affects his
13 ability to know and understand what he was doing. Do you
14 know what you're doing here today? And he said, yes, sir.

15 The Court asked about taking any medication, drugs or
16 alcohol within the last 24 hours. He says he's taking
17 doctor-prescribed medication.

18 And the Court asked whether that affects his ability to
19 know and understand what he's doing here today, and he
20 answers, no, sir.

21 THE COURT: Very good. All right.

22 BY MS. MCCALLISTER:

23 Q: I believe, Mr. Byrd, you've also testified to Mr. Waller
24 that neither -- neither Mr. Etheridge -- neither Kevin nor
25 Johnny Etheridge nor Mr. Suggs talked to you about what it

WILLIE T. BYRD - CROSS BY MS. MCCALLISTER

1 means to take a plea when you give up certain rights; is that
2 -- is that correct?

3 A: Yes, ma'am.

4 Q: They didn't talk to you about that?

5 A: No, ma'am.

6 Q: Okay. Do you recall whether the judge talked to you
7 about that?

8 A: The judge -- he said -- he said, like, if I give my
9 rights up, that mean that he can give me whatever he want to
10 give me and then they still got me what they -- they
11 requested on the paper.

12 Q: Okay. I'm sorry. I'm sorry if I'm not quite following
13 your answer. Do you recall talking to the judge about the
14 fact that you have certain constitutional rights?

15 A: Yes, ma'am.

16 Q: And do you recall talking to the judge that -- about
17 giving up those rights in order to -- to plead guilty?

18 A: Yes, ma'am.

19 Q: Okay. And you -- do you recall telling the judge that
20 that's what you wanted to do? You wanted to give up those
21 rights?

22 A: Yes, because they forced me.

23 Q: Okay. Did you at any time tell the judge that you were
24 being forced?

25 A: Do you want to say that again?

WILLIE T. BYRD - CROSS BY MS. MCCALLISTER

1 A: Did you ever tell the judge during your guilty plea that
2 you were being forced into taking the plea?

3 A: No, ma'am. He told me to just take the plea.

4 Q: Do you recall that the judge specifically asked you if
5 anyone was forcing you to take the plea?

6 A: I can't recall.

7 Q: Okay. And I think you said that the -- that the reason
8 -- you said that you wanted to go to trial, you didn't want
9 to take the guilty plea; is that correct?

10 A: Yes, ma'am.

11 Q: And you wanted to go to trial for what reason?

12 A: So that I can get them to get my mental health record
13 because they were denying getting my -- they were refusing to
14 get my mental health record.

15 Q: Okay. So you weren't -- you didn't want a trial in
16 order to contest these charges; you wanted a trial in order
17 to get your mental health records?

18 A: Say that again?

19 Q: You didn't want to go to trial in order to contest these
20 charges and your -- your guilt or innocence; you wanted a
21 trial in order to obtain your mental health records?

22 A: Yes, ma'am.

23 Q: Okay.

24 MS. MCCALLISTER: I beg the Court's indulgence, Your
25 Honor.

WILLIE T. BYRD - REDIRECT BY MR. WALLER

1 Thank you, Your Honor.

2 THE COURT: Any redirect?

3 MR. WALLER: Just very briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. WALLER:

6 Q: Mr. Byrd, did you -- did you think that your mental
7 health records might have assisted your lawyers in your
8 defense?

9 A: Yes, sir.

10 Q: Did you think you might have a defense to the charges
11 based on not being on your medication at the time?

12 A: Yes, sir.

13 Q: Okay. Did your lawyers ever move to have you evaluated
14 for criminal responsibility, that you know of?

15 A: No, sir.

16 Q: Okay.

17 MR. WALLER: Nothing further, Your Honor.

18 THE COURT: All right. You may step down. Thank you,
19 sir, Mr. Byrd.

20 All right. Mr. Waller, you may call your next witness.

21 MR. WALLER: Nothing further from the applicant, Your
22 Honor.

23 THE COURT: All right. Ms. McCallister, you're
24 recognized.

25 MS. MCCALLISTER: Thank you, Your Honor.

JOHNNY ETHERIDGE JR. - DIRECT BY MS. MCCALLISTER

1 THE COURT: You might want to call Mr. -- if he's going
2 to testify, you might want to call him first since he's on
3 the -- on the court call.

4 MS. MCCALLISTER: Thank you, Your Honor. I would call
5 Mr. Johnny Etheridge.

6 THE COURT: Mr. Etheridge, I'm going to ask you, if you
7 could, to raise your right hand as the clerk administers the
8 oath.

9 THE WITNESS: Yes, sir..

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

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Thank you.

15 THE COURT: Mr. Etheridge, what's your -- put your full
16 name on the record, please, sir.

17 THE WITNESS: John -- excuse me. John R. Etheridge Jr.

18 THE COURT: Very good. Mr. Etheridge, you -- have you
19 been able to hear the testimony pretty well?

20 THE WITNESS: Pretty well. Yes, sir.

21 THE COURT: Good. Very good. Ms. McCallister, you're
22 recognized.

23 MS. MCCALLISTER: Thank you, Your Honor.

24 JOHNNY ETHERIDGE JR., being first
25 duly sworn, testified as follows:

JOHNNY ETHERIDGE JR. - DIRECT BY MS. MCCALLISTER

DIRECT EXAMINATION

1
2 BY MS. MCCALLISTER:

3 Q: Mr. Etheridge, can you hear me?

4 A: Yes, ma'am.

5 Q: Okay. Mr. Etheridge, at some point in -- in 2012 or
6 2013, did -- did you become involved in the representation of
7 Mr. Byrd?

8 A: I did.

9 Q: Okay. And do you have a file from his case?

10 A: I do.

11 Q: And do you have that file with you?

12 A: I do.

13 Q: Okay. Can you explain to the Court briefly how you came
14 to be -- came to represent Mr. Byrd?

15 A: Right. I know Mr. Byrd as Terrel, a really nice guy,
16 and I believe his mother -- I want to say her name is Eloise
17 -- hired us to represent him. And also, there were some
18 church groups that Mr. Byrd was affiliated with that I had
19 had some contact with, either as representing them or being
20 somewhat of a support of those church groups, who also asked
21 me to become involved with Terrel -- with Mr. Byrd.

22 Q: Okay.

23 A: And we did.

24 Q: And is the rep -- I think you said -- asked us to
25 represent him. Can you explain who "us" is?

JOHNNY ETHERIDGE JR. - DIRECT BY MS. MCCALLISTER

1 A: Say that again? I'm sorry.

2 Q: I think you said in your last answer that his mother
3 asked us -- you said us to represent him. Can you explain
4 who "us" is? Are there other members of a firm that you work
5 with?

6 A: It would have been my son, Kevin, and then we got Mr.
7 Suggs involved also.

8 Q: Okay. And can you explain how Mr. Suggs came to be
9 involved?

10 A: I talked to Scott about the file, and I was intrigued a
11 little bit by the fact there were so many religious groups
12 that kept contacting me about Mr. Byrd. I wanted to make
13 sure that I didn't overlook anything, and I shared the fee
14 completely with Mr. Suggs. We -- we handled the case
15 together, as we've done numerous times.

16 Q: Okay. So you -- you essentially brought Mr. Suggs in to
17 review the file and to help you handle the representation?

18 A: That's correct.

19 Q: Okay. And was Mr. Byrd aware that Mr. Suggs had been
20 brought on board?

21 A: Yes, ma'am.

22 Q: And can you -- how do you know that Mr. Byrd was aware
23 of that?

24 A: I note in my file there were a couple early on where we
25 would -- either Scott -- either Mr. Suggs would see Mr. Byrd

JOHNNY ETHERIDGE JR. - DIRECT BY MS. MCCALLISTER

1 or we would see Ms. Eloise, his mother, and the whole family,
2 including him, was aware that Scott -- Mr. Suggs was
3 involved.

4 Q: Okay. Do you -- does your file reflect how many times
5 you met with Mr. Byrd?

6 A: No, ma'am, it doesn't in and of itself.

7 Q: Okay.

8 A: My recollection is -- and this is just a recollection --
9 three or four here in the office and a couple of times in
10 courtrooms when he would be brought over.

11 Q: Okay. And that was you -- you personally or does that
12 -- does that number, you know, maybe five -- six -- seven
13 times include the times that Mr. Suggs and Mr. Kevin
14 Etheridge met with him?

15 A: Yes, ma'am. That includes all of us. Yes, ma'am.

16 Q: All of you? Okay. And you did not -- you did not
17 handle the actual guilty plea hearing for Mr. Byrd; is that
18 correct?

19 A: That is correct. Other than I was hopeful to get a
20 negotiated sentence. I think it's simple and I talked to
21 some solicitor, in view of the seriousness of the charge
22 perhaps we could get a negotiated plea rather than leave it
23 --leave it open. And my recollection was it became -- it
24 became a negotiated plea.

25 Q: Okay. And did you -- did you ever talk to Mr. Byrd

JOHNNY ETHERIDGE JR. - DIRECT BY MS. MCCALLISTER

1 about the fact that it might not be you personally who
2 represented him at the hearing?

3 A: I don't recall specifically saying that to Mr. Byrd.

4 No, I don't.

5 Q: Okay.

6 Q: Other than at the -- at the courthouse.

7 Q: I'm sorry? You said other than at the courthouse?

8 A: Yes, ma'am.

9 Q: So --

10 A: Courtroom.

11 Q: Are you talking about the day of the plea?

12 A: Yes, ma'am.

13 Q: So you spoke to Mr. Byrd the day of the plea?

14 A: Yes, ma'am.

15 Q: Okay. And --

16 A: And I recall speaking more to the solicitor than to Mr.
17 Byrd, but I talked to both of them.

18 Q: Okay. Okay. Did you ever have any reason to think that
19 Mr. Byrd needed to be evaluated for -- in terms of his
20 competency or his mental health capacity?

21 A: No, ma'am. After he got sentenced, he communicated with
22 us and we got some medical records afterwards that he wanted
23 us to get forwarded to him.

24 Q: Okay. Did you -- did he appear to understand his
25 conversations with you?

JOHNNY ETHERIDGE JR. - DIRECT BY MS. MCCALLISTER

1 A: Yes, ma'am.

2 Q: Did he -- did he ever tell you that he didn't understand
3 what was going on?

4 A: No, ma'am.

5 Q: Okay.

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

8 THE COURT: All right. Mr. Waller?

9 CROSS-EXAMINATION

10 BY MR. WALLER:

11 Q: Good morning, Mr. Etheridge. This is Jonathan Waller.
12 Can you hear me?

13 A: Good morning. Good morning, Mr. Waller. How are you
14 getting along?

15 Q: I'm doing well. How are you?

16 A: I'm getting better. Thanks for asking.

17 Q: Yes, sir. Mr. Etheridge, you said you have a copy of
18 your entire file over there?

19 A: I do. Yes, sir.

20 Q: Do you have a memorandum dated August 14th, 2012,
21 delivering a medical authorization request or release form to
22 Scott Suggs in that file?

23 A: Can you give me a second to kind of glance through it?

24 Q: Yes, sir.

25 A: Mr. Waller, what was the date you were saying?

JOHNNY ETHERIDGE JR. - CROSS BY MR. WALLER

1 Q: The memorandum was dated August 14th, 2012.

2 A: I don't see a memorandum, but I see a medical

3 authorization --

4 Q: Okay. And that was --

5 A: -- dated August -- August 13th.

6 Q: Okay.

7 A: 2012.

8 Q: Okay. Do you recall if y'all ever obtained any records?

9 A: Yes, sir.

10 Q: Okay.

11 A: We did.

12 Q: Did you -- did you obtain the records before Mr. Byrd

13 pled guilty?

14 A: Could you give me a second just to --

15 Q: Yes, sir.

16 A: -- double check that?

17 Q: Yes, sir.

18 A: Let's see here. What was the date of the -- of the

19 plea, Mr. Waller?

20 A: The date of the plea, Mr. Etheridge, was --

21 MS. MCCALLISTER: March 4th.

22 THE COURT: March 4th.

23 Q: -- March 4th, 2013.

24 A: No. I don't -- I think these records were after --

25 after that. In fact, I show where I paid Pee Dee Mental

JOHNNY ETHERIDGE JR. - CROSS BY MR. WALLER

1 Health June of 2015.

2 Q: All right. And that was going to be my next question.

3 A: Yes, sir.

4 Q: Do you have a letter --

5 A: Sir?

6 Q: Do you have a letter from January 21st of 2015 ordering
7 mental health records from Pee Dee Mental Health?

8 A: I've got the invoice where we paid. There's a letter?
9 But you're saying there's a letter from me?

10 Q: Yes, sir. Ordering those records back in January of
11 2015.

12 A: I'm not putting my hand on it, but I'm sure if I got the
13 records, there's probably a letter from me asking to send the
14 records.

15 Q: And you said you got an invoice from them?

16 A: Yes, sir.

17 Q: Okay. Mr. Etheridge, why did you order the records in
18 20 -- 2015?

19 A: Mr. Byrd contacted me and asked me to please get the
20 records for him, which we did.

21 Q: Okay. Did -- did you send him a bill for it or did the
22 Gardner Law Firm pay for -- for those records?

23 A: No. We paid.

24 Q: Okay.

25 A: We paid for them.

JOHNNY ETHERIDGE JR. - CROSS BY MR. WALLER

1 Q: Do you have any indication in your file whether you had
2 any mental health records prior to his pleading guilty?

3 A: I do not think there were any prior to his pleading.

4 Q: Okay. Do you have anything in your -- in your file or
5 in your notes that would indicate that any records or any
6 history of mental health had been investigated by your firm?

7 A: Prior to the plea?

8 Q: Yes, sir.

9 A: No, sir.

10 Q: Okay.

11 A: No, sir.

12 Q: Do you have anything in your notes that indicates what
13 you and Mr. Byrd would have talked about during the meetings
14 that you had with him?

15 A: I don't recall specifically. I do recall concern about
16 trying to get a negotiated plea, rather than a -- than an
17 open-ended plea.

18 Q: Okay. Do you have anything in your notes about
19 reviewing the discovery with Mr. Byrd?

20 A: Not -- there's nothing in my notes, but that would be a
21 normal procedure here. But I don't see any specific note
22 about that. No, I do not.

23 Q: Okay.

24 MR. WALLER: I beg the Court's indulgence.

25 THE COURT: Yes.

JOHNNY ETHERIDGE JR. - REDIRECT BY MS. MCCALLISTER

1 THE WITNESS: (Coughs.) Excuse me.

2 MR. WALLER: No further questions, Your Honor. Thank
3 you, Mr. Etheridge.

4 THE COURT: Any redirect?

5 MS. MCCALLISTER: Just briefly, Your Honor.

6 THE COURT: Yes.

7 REDIRECT EXAMINATION

8 BY MS. MCCALLISTER:

9 Q: You said that you have -- you did not have a note in
10 your file saying that you reviewed discovery with Mr. Byrd.
11 Is that -- is that unusual?

12 A: No, ma'am. Not that I -- not the fact that I didn't
13 have a written note saying I reviewed the discovery.

14 Q: Okay.

15 A: No, ma'am. That's not unusual.

16 Q: Do you have any reason to believe you did not review the
17 discovery?

18 A: No, ma'am.

19 MS. MCCALLISTER: Thank you.

20 THE COURT: All right. Anything further?

21 MR. WALLER: Nothing further, Your Honor.

22 THE COURT: All right. All right. I'll be glad to hear
23 from you, Mr. Waller.

24 MS. MCCALLISTER: Your Honor, I'm sorry. I would call
25 Scott Suggs.

B. SCOTT SUGGS - DIRECT BY MS. MCCALLISTER

1 THE COURT: Okay. Very good.

2 Mr. Suggs, please come forward and I'm going to ask you,
3 if you could, to place your left hand on the Bible and raise
4 your right hand as the clerk administers the oath.

5 THE WITNESS: Yes, sir.

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

9 THE WITNESS: I swear.

10 THE CLERK: Thank you. Have a seat and state your name
11 for the record.

12 THE COURT: Pull up real close to that microphone and
13 speak loudly, clearly, and slowly, and let's start with your
14 full name, Mr. Suggs.

15 THE WITNESS: Yes, Your Honor. My full name is Barry
16 Scott Suggs.

17 THE COURT: Very good.

18 B. SCOTT SUGGS, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MCCALLISTER:

22 Q: Mr. Suggs, do you recall representing Mr. Byrd on this
23 armed robbery charge?

24 A: I do.

25 Q: Do you have a file or some sort of notes with you today?

B. SCOTT SUGGS - DIRECT BY MS. MCCALLISTER

1 A: Yes, ma'am.

2 Q: Okay. Have you reviewed that in preparation for today?

3 A: Yes, ma'am.

4 Q: Okay. Can you tell me how many times did you meet with
5 Mr. Suggs during the course of your representation?

6 A: Mr. Byrd?

7 Q: I'm sorry. Yes. Mr. Byrd.

8 A: My file reflects two times, but it's possible I could --
9 I could have met with him more than that. But I just see two
10 times that I wrote down.

11 Q: Okay. Did you write down a date of those meetings?

12 A: Yes, ma'am. One was the date of the plea, which was
13 March the 4th, 2013, and I met with him on September the 21st,
14 2012.

15 Q: Okay. Do your notes reflect what you talked about at
16 either of those meetings?

17 A: Yes, ma'am. We -- we went over his -- we went over his
18 case and just discussed that.

19 Q: Okay. When you say you went over his case, you
20 discussed -- did you discuss discovery with him? Did you go
21 through discovery?

22 A: We discussed -- yes, ma'am. We discussed the facts and
23 circumstances surrounding his case. We discussed his prior
24 criminal record. We discussed his mental health issues. We
25 discussed the penalties. Well, what he was charged or

B. SCOTT SUGGS - DIRECT BY MS. MCCALLISTER

1 indicted with and what the penalties were for -- for those --
2 for that offense. And we talked about my association with
3 Mr. Etheridge and why I was speaking with him on that day.

4 Q: Okay. You said you talked about his mental health
5 issues. So you were -- you were aware that he has a mental
6 health history; is that correct?

7 A: Yes. I knew he had a mental health history, yes.

8 Q: Okay. And in the course of your discussions with him,
9 did you have any reason to believe that mental health history
10 prevented him from understanding what was -- what was going
11 on?

12 A: In terms of his current charge?

13 Q: Right.

14 A: No, I did not.

15 Q: Was he able to assist you in making decisions about how
16 to handle the charge?

17 A: Absolutely.

18 Q: Okay. Did he ever indicate to you that he did not
19 understand the charge or what was happening to him?

20 A: No, he did not.

21 Q: Okay. And you said that you -- you talked to him about
22 your association with Mr. Etheridge and why you were speaking
23 with him; is that correct?

24 A: That is correct.

25 Q: Did he ever tell you he didn't want you, he wants one of

B. SCOTT SUGGS - DIRECT BY MS. MCCALLISTER

1 the other attorneys?

2 A: No, he did not.

3 Q: Okay.

4 A: He did request another bond hearing --

5 Q: Okay.

6 A: -- at that time, and I was to understand that -- Mr.

7 Etheridge had sent me a memo on the date that Mr. Waller

8 referred to. I believe it was August -- I think it was

9 August the 14th, and sent me a signed medical release, but my

10 conversations with Mr. Byrd were that he wanted the records

11 in order to help him get another bond hearing.

12 Q: Okay. On the date of the plea, did you have any reason

13 to believe that -- that Mr. Byrd was not pleading guilty of

14 his own free will?

15 A: No, I did not.

16 Q: You said you talked to him on that day?

17 A: Yes, I did.

18 Q: And you felt he understood what he was doing and the

19 choices that he had at that point in time?

20 A: Yes. As a matter of fact, I think he did a better job

21 at negotiating his case than I did. As I recall, Mr.

22 Jepertinger, who was the prosecuting attorney, had talked to

23 me all along about a negotiated sentence and, of course,

24 that's what I was holding -- well, that's what we were

25 holding out for because Mr. Byrd already had a prior arrest

B. SCOTT SUGGS - DIRECT BY MS. MCCALLISTER

1 for armed robbery in 2000 -- 2006 and, at that time, I think
2 he pled to common law robbery.

3 So it was -- it was -- it concerned me to -- to plead a
4 man guilty to armed robbery without having some sort of idea
5 of the sentence, and Mr. Jepertinger and I negotiated to the
6 point where it was down to twelve years and I wasn't able to
7 get anything better than that, but Mr. Byrd was.

8 And I don't specifically recall the conversation that --
9 that led up to that, but I'm quite certain that the three of
10 us were in the same -- in the same room, probably in one of
11 these anterooms, and Mr. Jepertinger said, well, I'll offer
12 him eleven. So it landed on eleven, but that was Mr. Byrd's
13 accomplishment, not mine.

14 Q: Okay. And so you had no reason then to believe he
15 didn't understand what he was doing when he pleaded guilty to
16 an eleven-year sentence?

17 A: No. In my mind, if he -- if he was -- if he were
18 effective enough to negotiate a better sentence for himself
19 than I was able to, then that -- if I had any doubts, then
20 that eliminated that right away.

21 MS. MCCALLISTER: Thank you. That's all the questions I
22 have for you.

23 THE COURT: Mr. Waller?

24 MR. WALLER: Just briefly, Your Honor.

25 CROSS-EXAMINATION

B. SCOTT SUGGS - CROSS BY MR WALLER

1 BY MR. WALLER:

2 Q: Mr. Suggs, did you -- did you ever discuss any
3 medication that Mr. Byrd was taking with him?

4 A: I probably did, but I don't have anything written down.
5 But that's typically one of the questions I ask everyone, if
6 they're taking any medications on a regular basis.

7 Q: Okay. Did you -- do you recall if you discussed whether
8 he was taking his medication at the time of the incident?

9 A: Whether he was compliant with his medication?

10 Q: Yes, sir.

11 A: I don't remember if I did or not.

12 Q: Okay. I believe you referenced a memorandum that I
13 asked Mr. Etheridge about dated August 14th, 2012. Do you
14 have a copy of that in your file?

15 A: Yes, I do.

16 Q: Did you ever obtain any medical records? Did you ever
17 use that -- that authorization?

18 A: Did I request any records?

19 Q: Yes, sir.

20 A: No, I did not.

21 Q: Did you ever request an evaluation for Mr. Byrd, either
22 for competency or for ability to conform for criminal
23 responsibility?

24 A: No, sir, I did not.

25 Q: Did you -- in your meetings with Mr. Byrd -- I know you

B. SCOTT SUGGS - CROSS BY MR WALLER

1 said your notes indicate that you have two or at least two.

2 Did you discuss the substantive facts of this case?

3 A: I would suspect I did. Yes, sir.

4 Q: Okay. I'm just trying to understand if he did have
5 several lawyers, you know, working together, who played which
6 role. Did you -- was your role more than just representing
7 him at the plea?

8 A: Yes, sir. If the case were to have gone to trial, I
9 would have been the one representing Mr. Byrd at trial. Yes,
10 sir.

11 Q: Okay.

12 A: But in terms of, you know, possibility of leaving any
13 gaps in educating a client on their case, I always air on the
14 side of redundancy. So I don't really concern myself with
15 what some other lawyer might have told the client. I simply
16 start from the beginning and go forward. Even if they've
17 heard it two or three times, I'm going to satisfy myself that
18 they know what they're facing and, you know, what -- what
19 facts the State has in its favor.

20 Q: Okay.

21 MR. WALLER: Nothing further. Thank you, Mr. Suggs.

22 MS. MCCALLISTER: Nothing further from the State, Your
23 Honor.

24 THE COURT: Mr. Suggs, after having reviewed the file
25 and aware of the negotiated sentence and the medical records,

B. SCOTT SUGGS - DIRECT BY THE COURT

1 if you had to do it over again, would you have done it the
2 same way?

3 THE WITNESS: Yes, sir.

4 THE COURT: Was there anything in the medical records
5 that would've provided a defense with regard to insanity or
6 competency that you are aware of?

7 THE WITNESS: Well, again, Your Honor, I didn't order
8 any medical records.

9 THE COURT: I'm talking about what you -- I'm talking
10 about after you had seen the competency, heard the testimony
11 with regard to the competency in 2006, 2016, and the medical
12 records that were received after the plea. Do you think that
13 that would have -- after reviewing all of that and being made
14 aware of all of that, do you think it would've provided any
15 defense with regard to competency, insanity or anything of
16 that nature?

17 THE WITNESS: No, sir.

18 THE COURT: All right. Very good. You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 MR. WALLER: Your Honor, can I ask a follow-up question
21 based on -- on your questions?

22 THE COURT: Yes.

23 RE CROSS EXAMINATION

24 BY MR. WALLER:

25 Q: Mr. Suggs, have you ever seen any of the medical records

B. SCOTT SUGGS - RECROSS BY MR. WALLER

1 that were obtained after the plea?

2 A: No, sir.

3 Q: Did you ever see the evaluation that was conducted in

4 2016?

5 A: I'm not sure.

6 Q: Okay. It would have been associated with the post-

7 conviction relief case.

8 A: I don't -- I'm not sure about that.

9 Q: Did you ever receive a copy of the 2006 evaluation?

10 A: It's not in my file; so I don't know that I did.

11 Q: Okay.

12 MR. WALLER: Nothing further. Thank you, Your Honor.

13 THE COURT: All right. You may step down.

14 THE WITNESS: May I add something, Your Honor?

15 THE COURT: Well, let's see if the lawyers object.

16 THE WITNESS: Well, I was going to say that --

17 THE COURT: Well, let's see what they --

18 THE WITNESS: Yes, sir.

19 THE COURT: Do y'all object?

20 MR. WALLER: Your Honor, I would object, I think.

21 THE COURT: I think generally you have to be asked a

22 question. So that will conclude your testimony.

23 THE WITNESS: Yes, sir.

24 THE COURT: You can have your seat.

25 THE WITNESS: It was just related to visiting Mr. --

1 THE COURT: Okay. Well, you can have --

2 THE WITNESS: -- Byrd in jail.

3 THE COURT: You can have a seat.

4 THE WITNESS: Yes, sir, Judge.

5 THE COURT: All right. Very good. All right. Any
6 further witnesses?

7 MS. MCCALLISTER: No, Your Honor, not from the State.

8 THE COURT: All right. I'll be glad to hear from you,
9 Mr. Waller.

10 MR. WALLER: Just briefly, Your Honor.

11 Your Honor, I think the testimony was that Mr. Byrd
12 believed that he had some defense based on his mental health
13 history or his ability to conform his conduct to the laws of
14 this state.

15 Clearly from the testimony of Mr. Etheridge --

16 THE COURT: Now, was there a comp -- was there an
17 insanity test performed or just a competency?

18 MR. WALLER: Just a competency, and it wasn't involved
19 with this case, Your Honor.

20 THE COURT: Okay.

21 MR. WALLER: It was in 2006, at least six years prior to
22 his arrest, from the testimony.

23 THE COURT: But they were released -- we've heard of the
24 2006 and 2016 reports, and they were competency exclusively;
25 is that correct?

1 MR. WALLER: That's correct, Your Honor.

2 THE COURT: All right.

3 MR. WALLER: At least based on the testimony of Mr.
4 Etheridge and Mr. Suggs, I believe that the attorneys felt
5 that his mental health and obtaining those records was
6 something that was important. Mr. Etheridge and the Gardner
7 Law Firm relayed a medical authorization release to Mr. Suggs
8 back in 2012. Mr. Suggs testified that he did not obtain
9 those records. Subsequently, in 2015, Mr. Etheridge paid for
10 the records out of his own pocket.

11 So I think that those at least give some credence to the
12 fact that those records could have been valuable and could
13 have led to a defense for Mr. Byrd had he proceeded to trial,
14 which he testified he wanted to because of the mental health
15 issues.

16 So, Your Honor, I would just ask that you consider the
17 applicant's application, as well as those arguments.

18 THE COURT: Very good. Yes, ma'am?

19 MS. MCCALLISTER: Thank you.

20 Your Honor, I think the plea colloquy in this case was
21 pretty thorough in regards to Mr. Byrd and his mental health
22 issues. The judge specifically inquired about that. He
23 specifically inquired of Mr. Byrd whether he had any mental
24 illness that would prevent him from understanding and going
25 forward. He asked about his medication. He said he was

1 taking it.

2 Your Honor, Mr. Byrd never raised an issue with the
3 Court that he didn't understand at the time of the plea or at
4 the time of this -- of the armed robbery.

5 Your Honor, he also similarly never raised issues in his
6 complaint that Mr. Suggs was not who he was expecting to be
7 there that day. The Court questioned him about that as well.
8 He said he was satisfied. He never raised those issues to
9 the Court, Your Honor.

10 And I think, you know, his -- his statements to the
11 Court under oath are dispositive in this instance. I don't
12 think he's presented any evidence today that there was any
13 reason for anybody to believe that there was a competency
14 issue at the time. Both Mr. Etheridge and Mr. Suggs have
15 testified that he appeared to understand, he appeared to be
16 able to help them in preparing his case, and they had no
17 reason to believe he needed an evaluation.

18 Your Honor, I think he said himself that the only reason
19 he wanted to go to trial is because he wanted to get his
20 records, and Mr. Suggs explained that he wanted the records
21 because he wanted another bond hearing.

22 So I don't -- I don't think there's any indication in
23 the testimony or the evidence presented here today that
24 there's any reason to believe he was not competent and not
25 aware and able to conform his actions at the time such that

1 he would've had a defense. That was not supported.

2 RULING

3 THE COURT: All right. Ms. McCallister, I'm going to
4 ask that you prepare an order denying the application for
5 post-conviction relief.

6 I want you to make particular note in the order that
7 there is a 2006 evaluation for competency, which indicated
8 that he was, indeed, competent to stand trial at that time.
9 We have one after the fact in 2016, which indicates that he
10 is, indeed, competent.

11 We also have a transcript that dispositively states that
12 he was, indeed, on his medication at that time and that he
13 had the -- and based on the colloquy between the defendant
14 and the judge, clearly, he understood what was going on. He
15 certainly was not forced to enter the plea. There was some
16 discussion or some allegation that there was coercion, but
17 the plea is dispositive. The plea colloquy is dispositive
18 that there was, indeed, no coercion.

19 One of the things I think that is -- I think that the
20 applicant has failed to meet their burden of proof by a
21 preponderance of the evidence and, specifically, there's been
22 some discussion about medical records and what his mental
23 state was. Obviously, it has not been presented to the
24 record -- into the record which would seem to indicate that
25 he would have been incompetent on that time.

1 And clearly, if there was an indication that he would
2 have been incompetent at that time or if he would have been
3 insane and could have alleged that he didn't comply with the
4 M'Naghten Rule, then -- then we would have to have medical
5 testimony here to do that, and there is none to that effect.

6 So I'll ask that you prepare an order to that effect.
7 Send a copy of it to Mr. Waller to ensure that it accurately
8 reflects my ruling.

9 And good luck to you, Mr. Byrd.

10 MS. MCCALLISTER: Thank you, Your Honor.

11 MR. WALLER: Thank you, Your Honor.

12 THE COURT REPORTER: Judge, I need the transcript of the
13 plea.

14 THE COURT: The what?

15 THE COURT REPORTER: The transcript of the plea. She
16 kept it.

17 THE COURT: All right. Ms. McCallister, you need to
18 make the transcript a part of the record. I think you took
19 it with you.

20 MS. MCCALLISTER: Oh. Yes, sir.

21 (WHEREUPON, the proceedings ended at 11:15 a.m.)

22

23 --- END REQUESTED TRANSCRIPT ---

24

25

1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 49, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 15th
13 day of November, 2017.

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

17 s/Krystal J. Smith

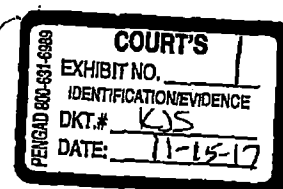
18 Court Reporter

20	Florence, South Carolina
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21 | October 7, 2018

COMPETENCY TO STAND TRIAL EVALUATION

Name: Byrd, Willie Terrel
Date of Birth: [REDACTED] 85 (age 31)
County: Florence
Charges: Armed Robbery
Case No.: 2013-CP-21-02766
Date of Evaluation: 8/24/16
Date of Report: 9/5/16
Examiners: Rozanna Tross, Psy.D.
Elizabeth Whetstone, LISW-CP



IDENTIFYING INFORMATION

Mr. Willie Terrel Byrd is a 31-year-old, black male who pled guilty to Armed Robbery on 4/3/13 for an offense occurring on 4/2/12. He was sentenced to 11-years' incarceration. Mr. Byrd filed an application for Post-Conviction Relief with the Florence County Court of Common Pleas on 10/21/13. On 7/18/16, the Court of Common Pleas ordered Mr. Byrd to undergo an evaluation to determine his competency to stand trial. The order stated, "I have considered the showing made in support of this evaluation and have reason to believe Applicant may have lacked the competency to understand the criminal proceeding or to assist with the defense as a result of mental competence." The order further stated,

This Order is issued based on the following representations made by PCR counsel: Applicant has been treated for mental health issues since childhood. Applicant's various conditions have been treated with numerous medications although there have been times where he was not on medications. PCR counsel stated that during his meetings with Applicant, Applicant has provided to him documentation of such diagnoses and medication and that Applicant has difficulty understanding or retaining information provided to him. PCR counsel states that medications that Applicant is currently prescribed are substantially similar to the medications that he was prescribed during his prior representation for the armed robbery charge at issue. Counsel further states that Applicant has informed him that Applicant was previously found to be not competent for a period between 2004 and 2007, at which point Applicant regained competency. Counsel for Applicant states that he has concerns and that based upon these observations he believes Applicant may not have entered into his guilty plea knowingly and voluntarily due to a possible disability.

This evaluation is an assessment of Mr. Byrd's competency to stand trial.

SOURCES OF INFORMATION

1. Clinical interview and evaluation of Willie Terrell Byrd on 8/24/16 for approximately two hours.
2. A South Carolina Department of Mental Health Forensic Evaluation Services Social Work Assessment by Elizabeth Whetstone, LISW-CP dated 8/24/16.

3. Florence County Court of Common Pleas Order for Competency to Stand Trial Evaluation Pursuant to *State v. Blair* dated 7/18/16.
4. Joint DDSN/DMH Forensic Evaluation of Competency to Stand Trial by Michael Cross, MD & Phillip Cornelius, Ph.D., dated 4/3/06.
5. Application for Post-Conviction Relief dated 10/21/13.
6. Florence County Court of General Sessions Transcript of Record dated 3/4/13.
7. Evaluation Service of Forensic Division Evaluation for Competency to Stand Trial by Michael Cross, MD dated 3/2/06.
8. Psychiatric Social Work Re-Admission Assessment by Carol M. David, dated 2/22/06 & 3/23/06
9. Florence County Probate Court Judgment and Order for Commitment dated 5/18/15
10. State of South Carolina Florence County Indictments, Incident Reports, and Affidavits.
11. Records from William S. Hall Psychiatric Institute (WSHPI).
12. Records from Pee Dee Mental Health Center (PDMHC).
13. Records from South Carolina Department of Corrections (SCDC).

NOTIFICATION

Mr. Byrd was provided with information as to the nature and purpose of this evaluation. He was advised that the information gleaned from the interview as well as other records would be used in a report that would be sent to the judge and the attorneys in his case. He was also informed that specific information related to his charges would not be included in the report. Mr. Byrd verbally acknowledged he understood the nature and purpose of the evaluation and was able to repeat back an understanding in his own words. He stated he did not have any questions related to the nature and purpose of this evaluation.

RELEVANT HISTORY

Prior records suggest limited collateral information was available regarding Mr. Byrd's personal history. Information for this current report was gathered from the sources listed above, Mr. Byrd's self-report and his great aunt's report to the social worker.

Personal History

Mr. Byrd's aunt indicated Mr. Byrd was primarily raised by her as his biological mother "didn't have time for him." She indicated she took custody of Mr. Byrd from the age of three months to one year but that his mother resumed custody after that. However, she stated his mother "was on the streets, told him she loved his brother more than him" and did not provide him with "clothes and food he needed." She described early behavioral problems for Mr. Byrd that appeared to have increased with his age. She indicated that by the age of 10 he was "involved with DJJ," was "was deceitful, destroyed property" and "didn't obey mom." As a teenager, she stated Mr. Byrd was removed from the home and was "in and out of boys homes" due to his behavior. He has never been married but reported he has one child (currently age 11).

Educational History

Consistent with available records, Mr. Byrd's aunt indicated he completed the 10th grade though his grades were "not good" and he consistently had behavioral problems. She indicated he "acted out in class," "fought" and was expelled from school. One report indicated he was expelled from school for "making a bomb threat." Mr. Byrd told hospital staff he was illiterate,

"although he demonstrated an ability to read on March 2, 2006" during a competency to stand trial evaluation.

Work History

Mr. Byrd's work history is sparse. His aunt indicated he worked at a car wash and as a bouncer but that these did not last. Mr. Byrd reported he was working prior to his current arrest. He stated he worked "detailing cars" and had been at this job approximately eight months.

Substance Abuse History

Mr. Byrd's aunt denied a history of substance use or abuse for Mr. Byrd though he reported smoking marijuana regularly since the age of 13. He stated his use was "daily" and that he also consumed alcohol regularly since the age of 13.

Medical History

Mr. Byrd's aunt reported Mr. Byrd was assaulted by peers five years ago that resulted in hospitalization. He reported he was in a "car accident" in 2004, which injured his leg. He denied any other medical history.

Mental Health History

Mr. Byrd's aunt indicated Mr. Byrd has been receiving medication since the age of six or seven for behavioral problems and that he continued this medication as an adult. However, she indicated his compliance is/was poor. She described his behavior as "acting out," "not listening," and getting upset when he does not get to do what he wants to do. She indicated there are times when he is sad, does not sleep, or has too much energy. Mr. Byrd reported he has been receiving mental health treatment since his early childhood and that he has diagnoses of "ADD, Bipolar, and Schizophrenia." He stated, "they tell me I'm like windshield wipers, lash out at times." He stated he has consistently been prescribed medications and that he takes them as prescribed. However, when asked for details of his mental health history he was unable to provide any other than to say he was seen at Pee Dee Mental Health Center as a child. When asked for descriptions of his symptoms, he provided vague descriptions of hearing "voices all day every day" and feeling suicidal "every day." He added he tries to kill himself "twice a day" and that staff "are always stopping me from killing myself, hanging myself" since he has been at the detention center. He stated he has not tried a different way to harm himself, only hanging because he did not want to "cut myself, my skin is too pretty." Mr. Byrd stated he hears "voices all day" and that "they tell me to do stuff" but acknowledged he did not hear them during the interview.

Mr. Byrd's prior competency to stand trial evaluation dated 3/2/06, noted,

There were a number of inconsistencies in Mr. Byrd's self-report and he was an unreliable historian. Pee Dee Mental Health Center saw Mr. Byrd in 1997, although the extent of that treatment is currently unknown. He never had a psychiatric hospitalization through the South Carolina department of Mental Health. There is no known psychotic illness or diagnoses prior to his November 2004 arrest and detention. In May 2005, the detention center hospitalized him due to his agitation and his assertions of experiencing psychotic phenomena.

Despite documentation that he received multiple write-ups while in the detention center, Mr. Byrd denied that he ever had behavioral problems...Records note that he provided vague descriptions of his psychotic symptoms and mental health history. When he arrived to the hospital he requested food, behaved appropriately, made no odd statements and slept throughout the first night. The next morning he told the treating psychiatrist, "I own this place...Willie Byrd is president...In my yard is an underground tree." He also suggested that mundane events were psychotic, such as seeing a red bird. He vaguely described auditory hallucinations concerning his mother and brother. Throughout the hospitalization, records note significant disparity between his self-report to the psychiatrist and his behavior noted by nursing and other staff...Psychiatric staff started psychiatric medications due to his violent behavior at the detention center. However, he had multiple behavioral problems and rule violations despite using medications. Records note he was quick to argue and fight others over trivial matters such as when he could not choose the television channel. He attacked another patient whom he accused of stealing his juice on May 18, 2005. Several days before his discharge, he started an altercation with staff and spread feces in a room because he was not allowed to make a social telephone call when he wished. His discharge diagnoses were Chronic Undifferentiated Schizophrenia, Mild Mental Retardation and Antisocial Traits...Records note that his behavioral disruptions, while often severe, do not indicate products of psychotic disturbance. Given that there is evidence that he has been an unreliable historian, there are doubts if his self-reported psychiatric symptoms are genuine.

The report further noted, "He received a number of juvenile psychiatric diagnoses like Mental Retardation, Attention-Deficit/Hyperactivity Disorder, and Conduct Disorder...He has been a client of the South Carolina Department of Disabilities and Special Needs (DDSN) for a number of years. He was at Wilowglen DDSN facility in Florence, SC in early 2003 Wilowgreen records note significant problems with conforming to rules, peers and authority relationships, and verbal and physical aggression. His demands often led to agitation or aggression when his expectations were unmet."

During the mental status portion of the exam, Mr. Byrd,

Tended to portray himself in a favorable light or as a victim. He did not have problems answering specific questions relating to his non-psychiatric history. He proffered psychotic experiences such as "voices and seeing demons, they be the devil." When asked to detail his experiences and symptoms he was extremely vague and evasive. At other times, he asked examiners inappropriate personal questions...A full cognitive exam was not possible as he stopped answering questions and he wanted to end the interview...he did not appear to be responding to internal stimuli.

During his second competency to stand trial evaluation date 4/3/06, in which he was opined to be competent to stand trial, he, "appeared more opened and motivated answering questions. ...he denied hallucinations. There was no evidence of delusions. There was no evidence of internal

distraction." The report indicated that he "received past diagnoses of Schizophrenia and Mild Mental Retardation but he does not currently have symptoms of severe intellectual delay, psychotic symptoms, disorganization, or other mental problems that would interfere with his ability to go to court."

Records from Pee Dee Mental Health Center (PDMHC) reflect two service dates in 2011. The first date, 8/4/11, indicated he was "referred after incarceration for treatment for thought disorder and conduct issues with r/o ADHD....His primary complaint is insomnia. He neither reports nor presents with mood, thought process, behavioral, or known judgment or risk issues secondary to Axis I." He was diagnosed with Intermittent Explosive Disorder and Mood Disorder, Not Otherwise Specified. Mr. Byrd was prescribed Vistaril "for insomnia." He was seen again on 6/16/11 wherein the note stated he was released from a five year, four month sentence for Robbery and probation violation on 4/9/11. Notes indicated, a "history of treatment at Waccamaw MHC/Lee County DOC. No psych admissions, no history of suicide attempts. History of seeing a psychiatrist as a child. Says he has a history of diagnosis of schizophrenia/bipolar. Says he can't stay focused. Has a temper problem. History of hearing voices off & on, dead grandmother would say helpful things. Says his attitude is worse off Tegretol (which he took in jail), ran out in early May." His diagnoses remained Intermittent Explosive Disorder and Mood Disorder, Not Otherwise Specified

SCDC records from early 2014 indicated Mr. Byrd was given Thorazine to assist with "mood swings" as he reported taking this "on the outside" and Zoloft to "help decrease his desire to masturbate." His diagnosis was listed as Impulse Control Disorder, Not Otherwise Specified. More recent records reflected consistent behavioral problems, poor impulse control, and manipulative/malingering behaviors. Specifically he was noted to be mediation seeking and to feign suicidal ideation when he did not get his way (e.g., see a counselor, get medication he wanted, come off lock down, make a phone call, etc.). His attempts to see mental health appear out of frustration or a desire to see female staff wherein he would then expose himself and masturbate in front of. Despite sanction, redirection, and regular counseling, his inappropriate behaviors remained. His diagnoses typically included Intermittent Explosive Disorder, Antisocial Personality Disorder or Personality Disorder, and Depressive Disorder Unspecified. Several notes indicated the likelihood of malingering and all consistently noted the absence of observed psychiatric symptoms, even when he reported experiencing them. Several notes highlight his tendency to "act out" just to get attention and to manipulate female staff. Notes indicated his prescription for Zoloft was "because he has a 'habit of jacking'" and his Thorazine is for "behavior and nothing else as he is not mentally ill." In November 2015, he was transferred to another institution wherein the posited he may have Depressive Disorder with Psychotic Features. However, consistent with prior notes, he was not observed to have psychiatric symptoms, continued to masturbate/expose himself to female staff, and acted out when he did not get his way. Additionally, he appeared to seek certain types of medication (e.g., Tegretol) and feign suicidal ideation when he did not get his way. However, his diagnoses were listed as Mood Disorder, Unspecified and Psychosis, Unspecified. Mr. Byrd was again transferred to a different facility wherein the records suggest his diagnoses were carried over though no notes reflect the presence of psychotic symptoms. His behavioral problems (e.g., verbal aggression, physical aggression, and sexual inappropriateness) continued.

Criminal History

No official criminal history was provided for this assessment. However, SCDC records suggest a prior incarceration for armed robbery and carjacking in 2004. SCDC records also reflect numerous charges for sexual misconduct and physical assaults on staff. Mr. Byrd's aunt indicated he has a history with DJJ though no details were provided.

MENTAL STATUS EXAMINATION

Mr. Willie Terrel Byrd is a 31-year-old, single, black male. He was seen at the Forensic Evaluation Services building on the South Carolina Department of Mental Health campus in Columbia, South Carolina. He presented as appropriately dressed and adequately groomed. He knew what month and year it was, knew who he was, and knew why he was meeting with these evaluators. Mr. Byrd's speech was goal-directed and organized and his tone, volume, and rate were all within normal limits. He was easily understood. He made appropriate eye contact and his attention and concentration were adequate. No unusual tics, compulsions, or behaviors were evident and he did not appear to be responding to auditory or visual hallucinations. His short-term memory appeared adequate. His expressive and receptive language abilities appeared adequate. Mr. Byrd denied any suicidal or homicidal ideation though he reported regular suicidal ideation earlier in the interview.

CLINICAL FINDINGS

Based on the information available at the time of this report Mr. Byrd appears to meet criteria for Antisocial Personality Disorder and Malingering. He does appear to have some symptoms of depression (e.g., irritability, sleep disturbance), but these appear related to his overall adjustment problems, poor coping skills, and low frustration tolerance rather than clinical depression.

COMPETENCY TO STAND TRIAL

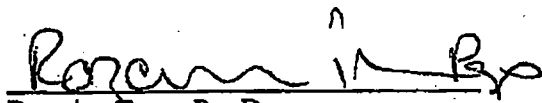
Mr. Byrd demonstrated an understanding and appreciation of the nature and object of the proceedings. He was able to describe the various members of the court (i.e., the judge, attorneys, witness, etc.) as well as the role of each. He was able to differentiate between his attorney and the Solicitor as well as express a clear understanding of their individual roles. He was able to accurately discuss the court process (e.g., cross-examination, presentation of evidence), understand the rules surrounding testifying (for self and for witnesses), and note the differences between a bench trial and a jury trial. He was also able to accurately discuss his charges and provide his own account leading up to his arrest.

Mr. Byrd was able to note the difference between a felony and a misdemeanor and was aware that his charge was "serious." He appeared to understand the nature of a plea bargain, the various pleas that could be entered (i.e., guilty, not guilty, Not Guilty by Reason of Insanity) and was able to describe how he would go about deciding on a plea offer with his attorney. Additionally, he was able to discuss past plea bargain examples. Mr. Byrd was able to state the various rights given up when taking a plea bargain (e.g., the right to a trial, the right to testify, right to appeal). He understood he could choose to testify or not, knew what evidence was, and was able to discuss this in relation to his case. He was also able to state the possible sanctions against him for his charge (e.g., "prison") and was able to discuss the best and worst outcomes as well as his desired outcome for his case.

Mr. Byrd was able to demonstrate an ability to assist in his defense. He reported he has spoken to his attorney and feels he is working in his best interest. He expressed an understanding of how to assist with his defense and communicate with his attorney. He appeared to understand the nature of attorney/client privilege (i.e., confidentiality) and expressed an understanding of how to interact with his attorney while inside the courtroom. He also reported an understanding of how to discuss his case with his attorney and work through disagreements or resolve conflicts over things he did not understand. Mr. Byrd was able to discuss what perjury and contempt of court were and what he would need to do behaviorally to avoid problems in these areas. Throughout the evaluation, he demonstrated an ability to communicate with these evaluators and demonstrated thought and reason in his responses. It is likely that these tactics would generalize to his ability to render assistance and aid his attorney in his legal matters.

CLINICAL IMPRESSIONS REGARDING COMPETENCY TO STAND TRIAL

At the present time, it does appear Mr. Byrd has the capacity to understand the proceedings against him and assist in his own defense. The available record suggests his current presentation is not markedly different from previous periods of presentation, to include his 2006 competency to stand trial evaluations wherein he was also found competent to proceed. There are no current mental health symptoms that are impeding his ability to understand the proceedings against him or assist in his own defense.


Rozanna Gross, Psy.D.
Chief Psychologist
SC# 1270

9/6/16
Date

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Willie T. Byrd, #319760,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2013-CP-21-2766

ORDER OF DISMISSAL

FILED
 2018 JUN 21 PM 4:13
 DONALD FORBES O'HARA
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 21, 2013, by Willie Terrell Byrd (Applicant). Respondent made its Return on April 23, 2014. An evidentiary hearing into the matter was convened on November 15, 2017, at the Florence County Courthouse. 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. John R. Etheridge, Jr., Esquire, and B. Scott Suggs, Esquire, testified for the State. After hearing testimony and the arguments of counsel, the Court now denies and dismisses the application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In September 2012, the Florence County Grand Jury indicted Applicant for armed robbery (2012-GS-21-1129). John R. Etheridge, Jr., Esquire, (Etheridge) and B. Scott Suggs, Esquire, (Suggs) represented Applicant. On March 4, 2013, Applicant entered a negotiated plea of guilty as indicted. The Honorable D. Craig Brown sentenced Applicant to eleven years' imprisonment. Applicant did not appeal his guilty plea or sentence.

CERTIFIED: A TRUE COPY
Donna Pauls O'Hara
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

SUMMARY OF FACTS ADDUCED AT GUILTY PLEA

On April 2, 2012, Claudia Germis (Victim) had just gotten in to her car to go to work when Applicant and his co-defendant pulled up in a second vehicle. Tr. p. 14. Applicant got out, went over to Victim's vehicle, and smashed the driver's side window with a handgun. Tr. p. 14. Applicant then reached into Victim's car and took her purse, which contained several credit cards. Tr. p. 14. The credit cards were then used at several stores in the area, where Applicant was captured on video surveillance. Tr. p. 14. Law enforcement received a tip as to Applicant's whereabouts and went to his apartment complex. Tr. p. 14. The complex security officer identified Applicant, and when officers searched his apartment, they recovered a gun matching the one used in the robbery. Tr. pp. 14-15.

ALLEGATIONS

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

1. "Trial counsel was ineffective when he knew evidence supported an 'accessory before and after the fact of a felony' charge but still advised Applicant to plead guilty to a more severe charge."
2. "Trial counsel who was retained rendered ineffective assistance, when he forced Applicant to proceed with a counsel not of his own choice."
3. "Trial counsel ineffective for failing to request a competency hearing."
4. "Trial counsel was ineffective for failing to investigate and pursue a insanity defense."
5. "Guilty plea not knowingly, intelligently and voluntarily entered."
 - a. Applicant was intoxicated from methadone on the day

At the start of the evidentiary hearing, Counsel for Applicant submitted as Court's Exhibit 1 a competency evaluation dated September 5, 2016, which was performed during the course of this action. This Court has reviewed the report and finds Applicant is competent now and was also competent at the time of the entry of his guilty plea.

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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, an 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. 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. Butler, 286 S.C. at 442, 334 S.E.2d at 814. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. An 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).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State,

342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, an applicant must prove 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 that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

A. Accessory Charge

Applicant alleges the evidence in his case supported both an accessory before the fact and accessory after the fact charges, but plea counsel advised him to plead guilty to the more severe armed robbery charge. Applicant testified he only met with his attorneys one or two times prior the guilty plea, and they did not discuss the charges, evidence, defenses, or potential penalties with him. Applicant testified Etheridge told him they had not received any discovery or paperwork at the time of their meeting, so Applicant never had a chance to review any discovery materials, including the surveillance video and statements from witnesses, with his attorneys. Applicant testified he asked about lesser-included charges, but his attorneys had not received

discovery at that time. Applicant testified he eventually received a copy of discovery prior to his guilty plea, but he did not have time to go over it with either attorney prior to the plea.

Etheridge testified it was his usual practice to review discovery with clients, and he had no reason to think that practice was not followed in this case. Suggs testified he met with applicant at least once prior to the plea and again the day the plea was entered. Suggs testified he and Applicant discussed the facts and circumstances of the case, Applicant's prior record, Applicant's history of mental health issues, the possible penalties Applicant was facing, and the armed robbery charge. Suggs further testified his practice is to err on the side of redundancy, and he takes care to ensure the client is aware of all the information in a case.

This Court finds Applicant's contention that his attorneys provided him with deficient advice leading to him pleading guilty to more severe charge is without merit. The Court finds the testimony of both Etheridge and Suggs to be credible, while also finding Applicant's testimony is not credible. Suggs testified he thoroughly reviewed the facts and circumstances of the case with Applicant and, specifically, they discussed the fact that this was an armed robbery charge. The Court has also reviewed the guilty plea transcript and finds the underlying facts presented by the State, to which Applicant unequivocally agreed, support the armed robbery charge and that Applicant was a principal in the robbery. Tr. pp. 14-15. In fact, it was Applicant who wielded the gun. Tr. p. 14.

This Court therefore finds Applicant has failed to prove the first prong of the Strickland test – that either counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant, particularly in light of Applicant's admission of guilt during the plea hearing. This Court also finds Applicant has

failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance, and this allegation is denied and dismissed.

B. Counsel of Choice

Applicant alleges Etheridge provided ineffective assistance of counsel and deprived Applicant of his counsel of choice when Suggs appeared on Applicant's behalf at the plea hearing rather than Etheridge. Applicant testified he had never met Suggs until the day of the plea, and he did not know Suggs would be representing him. Applicant further testified Etheridge and Etheridge's son, Kevin, were present at the hearing, but when he asked for them, Suggs told him he would be representing him instead. Applicant testified he did not think Suggs was his attorney because his family had paid the Etheridges to represent him.

Etheridge testified Applicant's mother hired him, and then he brought in his son, Kevin Etheridge, and Suggs to review the file and assist with the case. Etheridge testified he split the fee Applicant paid him with Suggs. Etheridge also testified all three attorneys met with Applicant and his mother multiple times in the office and at court hearings, and Applicant and his family were aware that Kevin and Suggs were involved with the case. Etheridge further testified he met with Applicant and the solicitor on the day of the plea, but Suggs actually represented Applicant during the hearing. Suggs testified he met with Applicant at least twice and reviewed the case with him, including the potential punishments and the option to take the case to trial. Suggs also testified he explained to Applicant who he was, why he was meeting with Applicant, and his association with the Etheridges. Further, Suggs testified Applicant never told him he wanted someone else to represent him.

This Court finds Applicant's contention Etheridge provided him with deficient representation and deprived him of his choice of counsel is without merit. The Court finds the testimony of both Etheridge and Suggs to be credible, while also finding Applicant's testimony is not credible. Further, this Court has reviewed the hearing transcript and notes the plea judge specifically asked Applicant if he had any complaints about Suggs's representation, and Applicant said he did not. Tr. p. 13. The record also reflects the plea judge gave Applicant a chance to address the court himself, and though Applicant spoke at length, at no time did he inform the plea court he did not want Suggs as his attorney or say he thought Etheridge should have been present instead. Tr. pp. 18-20.

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 v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[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 therefore finds Applicant has failed to prove the first prong of the Strickland test – that either counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence Etheridge or Suggs committed either errors or omissions in their representation of Applicant, particularly in light of Applicant's failure to raise this issue in response to the court's direct question on the matter during the plea hearing. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by his counsels' performance. This Court concludes Applicant has not met his burden of proving Etheridge or Suggs failed to render reasonably effective assistance, and this allegation is denied and dismissed.

C. Failure to request competency evaluation/pursue insanity defense/involuntary guilty plea

Applicant alleges his counsels were inefficient for failing to request a competency evaluation and pursue an insanity defense prior to Applicant's guilty plea. Applicant also contends, because of these failures, his guilty plea was entered involuntarily.

Applicant testified he has a history of mental issues for which he takes medication. At the time of the hearing, Applicant testified he was taking several medications which helped him understand the PCR proceeding. Applicant testified he was not on medication at the time of his arrest. Applicant gave conflicting testimony as to whether he was taking medication on the day of his guilty plea. First, he testified he had taken some medication which would have helped him understand what he was doing, but it did not. Then he testified he had not taken any medicine that day because he "ran out," and that was the reason why he wanted his mental health records. On cross-examination, Applicant testified he remembered being in the courtroom for the plea, but did not remember what he said to the judge, including telling the judge he had taken his medication that morning.

Applicant testified he entered the guilty plea because Suggs "forced" it upon him. Applicant testified Suggs told him he could either take the plea offer or go to trial the next week. Applicant testified he did not have his mental health records at the time and did not know what was going on. Applicant also testified his attorneys never explained the trial process or discussed trying the case with him, except to say he would get thirty years if he went to trial. On cross-examination, Applicant testified he wanted a trial solely to contest his mental health, not his guilt as to the charges. Applicant also acknowledged he told the judge during the plea colloquy that he was entering the plea freely and voluntarily and never informed the judge he felt "forced" by someone to enter it.

Etheridge testified he had no reason to think Applicant had any competency issues, as Applicant appeared to understand all of their conversations and never indicated he did not understand something. Etheridge also testified his firm requested and paid for Applicant's mental health records in 2015, at Applicant's request. He testified the file did not reflect an investigation of Applicant's mental health prior to the plea. Etheridge also testified Applicant's main concern during the case was negotiating a plea, which they were able to do.

Suggs testified he was aware Applicant had a history of mental health issues, but he had no reason to believe those issues affected Applicant's competency or made him unable to understand the proceedings. Suggs testified one of the standard questions he asks his client is whether or not they take medication, but he did not recall if he and Applicant specifically discussed Applicant's medication compliance at the time of the crime. Suggs testified Applicant never directed him to obtain mental health records, and Applicant only ever mentioned them in the context of seeking another bond hearing, not as a potential defense to the charges. Suggs testified Applicant was able to assist him in reviewing the case and preparing a defense, and Applicant never indicated he did not understand what was going on. Further, Suggs testified Applicant himself negotiated directly with the solicitor because Applicant was concerned about a previous armed robbery charge from 2006 on his record, and Applicant was able to negotiate the State's recommendation down from twelve years to eleven years.

This Court finds Applicant's contention that his attorneys were deficient for failing to request a competency evaluation and/or investigate or pursue an insanity defense is without merit. The Court finds the testimony of both Etheridge and Suggs to be credible, while also finding Applicant's testimony is not credible. "The test of competency to enter a plea is the same as required to stand trial. The accused must have sufficient capability to consult with his lawyer

with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea.” Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992) (internal citations omitted).

As noted above, this Court has reviewed the evaluation conducted in 2016 during the course of this action and finds Applicant was competent at the time of this hearing, as well as at the time of his guilty plea. Additionally, Applicant failed to present any mental health or medical records during the hearing, so Applicant has not met his burden of proof. There is no evidence, other than Applicant’s own testimony, before this Court to support Applicant’s contention he was incompetent at the time of the plea or unable to conform his conduct at the time of the crime. See id. at 233-34, 417 S.E.2d 596 (“To show prejudice for failing to pursue this defense, the [applicant] must produce some evidence of insanity or a showing that with the exercise of due diligence, an insanity defense could have been developed.”); see also Garren v. State, Op No. 2015-000756 (S.C. Sup. Ct. filed Apr. 25, 2018) (Shearouse Adv. Sh. No. 17 at 63-64) (“[T]he only evidence in the record supporting Garren’s claim is his own PCR testimony... that he did not recall or understand the plea proceedings. Even under our deferential standard of review, this testimony alone is insufficient to establish Garren’s plea was involuntary.”).

This Court also finds Applicant’s allegation that his plea not entered voluntarily to be without merit. This Court finds the record fully supports the knowing and voluntary nature of Applicant’s guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant’s knowing and voluntary waiver of statutory or constitutional rights in a

guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). This Court has reviewed the hearing transcript and notes Applicant told the plea court he was medicated at the time of the plea, he understood why he was in court that day, he understood the negotiation with the State, and he wished to plead guilty. Tr. pp. 6-8. The Court also finds Applicant did so of his own free will and was not coerced or pressured to plead guilty. Tr. pp. 10-13. "A guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (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)). Applicant has presented no such reasons, and therefore, this Court finds these allegations should be 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 trial and sentencing proceedings. Neither Etheridge nor Suggs was deficient, nor was Applicant prejudiced by counsels' representation. Therefore, this PCR application must be denied and dismissed with prejudice.

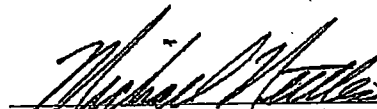
The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant

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:

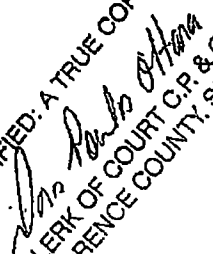
1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 13 day of June, 2018.


 MICHAEL G. NETTLES
 Presiding Judge
 Twelfth Judicial Circuit

Florence, South Carolina.

FILED
 2018 JUN 21 PM 4:13
 DORIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

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

WITNESSES

Lee Davis Florence Police Department

DOCKET NO. 2012-GS-21-01129

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2012

THE STATE

vs.

RASHAWN BYRD

WILLIE T BYRD

John C Jeperfinger

ARREST WARRANT NUMBER

M379684 M379683

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

**ARMED ROBBERY
(TWO COUNTS)**

CERTIFIED: A TRUE COPY
J. J. J. J.
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2012 SEP -6 AM 11:04
CONNIE REEL-SHEARIN
CCOP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ARMED ROBBERY
 (TWO COUNTS)

At a Court of General Sessions, convened on SEPTEMBER 6, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

That RASHAWN BYRD, along with another co-defendant, did in Florence County on or about April 2, 2012, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Claudia Girmes from or in the immediate presence of Claudia Girmes with intent to deprive Claudia Girmes of possession of a tote bag and its contents, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT TWO- ARMED ROBBERY

That WILLIE T. BYRD, along with another co-defendant, did in Florence County on or about April 2, 2012, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Claudia Girmes from or in the immediate presence of Claudia Girmes with intent to deprive Claudia Girmes of possession of a tote bag and its contents, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), 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

IN THE COURT OF GENERAL SESSIONS

115

COUNTY OF
STATE

Florence

VS.

Willie T Byrd

AKA:

Race: B Sex: M Age: 27

DOB: -1985 SS#:

Address: Clement St Lot 1

City, State, Zip: Florence, SC 29501-2387

DL#: SID#:

*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 weapon

INDICTMENT/CASE#: 2012-GS-21-01129

A/W#: M379683

Date of Offense: 4/2/2012

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

in 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 w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: 9876 SC Bar# 012896
Depertinger, John C 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 11 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 334 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	
TOTAL		\$ 105.00

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: 2160Sentence Date: 3-4-13

Clerk of Court/ Deputy Clerk

Court Reporter: K ReidCERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & S.C.
FLORENCE COUNTY, SC.

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

Rashawn Byrd

AKA:

Race: B Sex: M Age: 27

DOB: 1985 SS#: [REDACTED]

Address: Ervin Ct Apt C

City, State, Zip: Florence, SC 29501

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Common law robbery, strong arm robbery (6-13)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-21-01129

A/W#: M379684

Date of Offense: 4/2/2012

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 9826 SC Bar# [Signature] 76222 SC Bar#
[Signature] Reporting, John C. [Signature] Rashawn Byrd Defendant [Signature] Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 13 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
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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

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*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
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3% to County (if paid in installments)	\$	\$
TOTAL		\$ 105.00

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_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.