

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Abbeville County

Honorable J. Mark Hayes, Circuit Court Judge
—————

RECEIVED

MAR 08 2019

S.C. SUPREME COURT

ALLEN BOBO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001083

—————
APPENDIX
—————

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1 State of South Carolina
 2 County of Abbeville In the Court of General Sessions

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 4 State of South Carolina,)
 5) 2016-GS-01-0009,0011,
 6 -vs-) 0012 & 0122
 7 Allen Bobo,) March 1, 2016
 8 Defendant.)
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B E F O R E:

The Honorable R. Scott Sprouse, Judge

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

Christopher Lance Sheek, Assistant Solicitor
 Cecil Yates Brown, Jr., Assistant Solicitor
 Attorneys for the State

Yasha Pravin Patel, Esquire
 Attorney for Defendant

Diane L. Marcengill, RPR, CRR
 Circuit Court Reporter

1 MR. SHEEK: Stands before you is Allen Antowian
2 Bobo on indictments 1611, 1609, 1612 and 1622. He's
3 pleading guilty to unlawful neglect, domestic violence
4 high and aggravated nature, pointing and presenting,
5 and then also a PWID marijuana second offense.

6 THE COURT: Okay. Is there any recommendation
7 from the State?

8 MR. BROWN: Judge, there's no recommendation other
9 than we have agreed to a cap of 12 on this, and there
10 is a probation violation also that's involved with this
11 case. And Mr. Sears with the probation department can
12 add more to that, but I believe he's got six years over
13 his head on an assault and battery charge.

14 THE COURT: Okay. How many days time served does
15 he have?

16 MS. PATEL: Judge, for the DV HAN charge,
17 146 days, and for the distribution charge, about three
18 months.

19 THE COURT: Okay.

20 You are Allen Antowian Bobo; is that correct, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. You have four charges
23 before this Court. You have pointing and presenting a
24 firearm, which carries up to five years and/or a fine
25 to be imposed by the Court. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have unlawful neglect of a child
3 or helpless person charge which carries a maximum
4 sentence of ten years. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You have domestic violence of a high
7 and aggravated nature which carries a maximum sentence
8 of up to 20 years. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you also have a manufacture,
11 possession of Schedule I, II, III controlled substance
12 second offense.

13 What particular drug?

14 MR. BROWN: Marijuana.

15 THE COURT: Marijuana?

16 MR. BROWN: Yes, sir.

17 THE COURT: Second offense.

18 Mr. Bobo, that carries up to ten years. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, when you have multiple charges, a
22 Court can impose consecutive sentences, meaning that
23 you have to serve one sentence before you serve the
24 next one. They could all be stacked on top of one
25 another. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have heard the State's statement
3 that they're not recommending a particular amount of
4 time, but they're recommending a 12-year cap on the
5 sentences. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Understand I am not bound by the
8 State's recommendation. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Knowing that, how do you wish to plead
11 to pointing and presenting a firearm?

12 THE DEFENDANT: Guilty, your Honor.

13 THE COURT: How do you wish to plead to unlawful
14 neglect of a child?

15 THE DEFENDANT: Guilty, your Honor.

16 THE COURT: How do you wish to plead to domestic
17 violence of a high and aggravated nature?

18 THE DEFENDANT: Guilty, your Honor.

19 THE COURT: And how do you wish to plead to
20 manufacture or possession with intent to distribute
21 marijuana?

22 THE DEFENDANT: Guilty, your Honor.

23 THE COURT: Do you understand that's a second
24 offense which makes the penalty worse?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you pleading guilty to these four
2 charges of your own free will?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anybody coerced you or forced you
5 to plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you under the influence of any
8 alcohol, drugs or anything else that might affect your
9 judgment today?

10 THE DEFENDANT: No, sir.

11 THE COURT: When you plead guilty, you give up
12 rights that you would have had. You would have had a
13 right to a trial by jury on these four charges. A jury
14 of 12 of your peers would sit and hear the evidence in
15 these cases, and in order for you to be convicted, they
16 would have to be unanimous in finding you guilty. Do
17 you understand that right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You also would have had the right to
20 call witnesses on your behalf, the right to confront
21 the witnesses against you, the right to remain silent
22 and it couldn't be held against you, and also the
23 opportunity to present any defenses that you might have
24 to the charges. Do you understand those rights?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: The State would have had the burden of
2 proving you guilty beyond a reasonable doubt. Do you
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, you have been represented by
6 Ms. Patel in these cases. Have you had enough time to
7 talk to her?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has she answered your questions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions of her now?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you completely satisfied with her
14 services?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right.

17 Mr. Solicitor, tell me about it.

18 MR. BROWN: Judge, I'll start with the PWID
19 marijuana. Back on November 26, 2014, an officer with
20 the Calhoun Falls Police Department responded to 23
21 West Russell Lake Boulevard in Calhoun Falls in
22 Anderson County to a disturbance at a gas station
23 there. Once there, he did find an Allen Bobo there.
24 During his interaction, he smelled just a very strong
25 odor of marijuana coming from Mr. Bobo. And due to the

1 disturbance there, he did arrest Mr. Bobo and did find
2 58.5 grams of marijuana in his pocket.

3 MR. SHEEK: Your Honor, turning to the other three
4 indictments, these all three occurred at the same time.
5 It was September the 17th of 2015. The defendant has a
6 child with this young lady standing right here to my
7 right. He had been using her car by her permission.
8 She went to him that day, wanted the car back. He
9 wouldn't give her the car back and an argument ensued.
10 And during that argument, he actually produced a
11 handgun and pointed it at her while she was holding
12 their seven-month-old child that he has with her.
13 Subsequently, he left the scene, went down the road.
14 When she went to where he was to recover the car. He
15 had shot the car seven times. It had seven bullet
16 holes in it. So that forms the basis for the unlawful
17 conduct, pointing the gun with the child in her arms,
18 the possession of a weapon, the DV HAN, Judge.

19 THE COURT: Okay. Mr. Bobo, did you hear the
20 statement of the facts from each solicitor about the
21 four cases?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you agree that the facts as stated
24 by the solicitors are the facts of case?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Ms. Patel, have you been able to go
2 over the facts and applicable law on all of these cases
3 with your client?

4 MS. PATEL: Yes, your Honor.

5 THE COURT: And do you believe he understands his
6 rights on all these cases?

7 MS. PATEL: Yes, your Honor.

8 THE COURT: And do you concur in his decision to
9 plead guilty to all these charges?

10 MS. PATEL: Yes, your Honor.

11 THE COURT: I find there is a factual basis for
12 the pleas to all these charges. I find the defendant
13 pleads guilty freely, voluntarily, and knowingly with
14 the advice of competent counsel with whom he is
15 satisfied.

16 All right. Let me hear from the solicitor
17 regarding prior record, and then I'll -- does the
18 victim wish to address the court?

19 MR. SHEEK: I think she does.

20 THE COURT: Then I'll hear from the victim, and
21 then I'll hear from Ms. Patel and her client.

22 MR. BROWN: Thank you, your Honor. Judge,
23 beginning with the first part of his record, 2005,
24 there is an assault on a police officer while resisting
25 arrest; simple assault, 2008; entering premises after

1 warning, 2010; second entering premises after warning,
2 2011; DUS in 2013; possession of marijuana conviction
3 in 2013, and another entering premises after warning;
4 DUS in 2013; and then the charge he's on probation for
5 right now is assault and battery first degree and
6 that's 2014, then all these charges. There are two
7 sets, the drug charge and then the DV charge.

8 THE COURT: Okay. All right. Let me hear from
9 the victim.

10 Ma'am, if you would come forward to the microphone
11 and state your name.

12 MS. JOHNSON: Nakela Johnson.

13 THE COURT: Be happy to hear from you.

14 MS. JOHNSON: I just -- it was just all a big
15 misunderstanding, and my kids are suffering. They're
16 kids suffering, and I just pray that you have mercy on
17 him because I forgive him for what he did, you know,
18 and my kids miss him a whole lot. So I just pray that
19 you have mercy for him.

20 THE COURT: Thank you, Ms. Johnson. All right.
21 Anything further?

22 I'm going to deal with probation after we finish
23 with the plea.

24 Anything else from the State regarding these new
25 convictions?

1 MR. BROWN: No, sir.

2 MR. SHEEK: No, sir.

3 THE COURT: Ms. Patel.

4 MS. PATEL: Thank you, Judge.

5 Mr. Bobo is here with his family. As you can
6 tell, he's got several individuals from his family here
7 today to support him. He is 25 years old. He attended
8 Abbeville High School. He went up until the eleventh
9 grade and is currently working on his GED.

10 Judge, before he was arrested, he was working at
11 Electrolux for about four months, and due to some
12 transportation issues, he lost his job. But even
13 before that he was working at Bernsteins, and he had to
14 leave Bernsteins due to some family health issues. He
15 was the primary caretaker of his mother, who is present
16 here today, and she had some mental health issues and
17 so she could not be left alone so Mr. Bobo was watching
18 after her 24/7. He told me that his employer was ready
19 to hire him once he settled his family issues, he never
20 had any troubles out of Mr. Bobo, would hire him once
21 he got his affairs in order.

22 As you heard, your Honor, he does have four kids.
23 He has been supporting them up until when he was
24 working. Since he's been incarcerated, he has not been
25 able to work and send his support to his kids but he

1 does love them very much and misses them. Very early
2 on when he was arrested, we met in the jail. He was
3 telling me that one of his younger kids had pneumonia
4 and he was very concerned. I think his health did
5 improve.

6 Your Honor, he's very close to his family. As you
7 can see, they're all here. Everyone is from Abbeville.
8 They attended family functions together, they went to
9 church together. I think he's got some cousins -- he's
10 got some cousins that he basically served as an older
11 brother to.

12 Your Honor, his family is going to miss him, and
13 we're just asking that you go along with the minimal
14 sentence in this case. He is only 25 years old. I
15 don't want prison to break him. I don't want to turn
16 him into -- I don't want prison to break him, and so
17 I'm asking -- I know that he can't just walk out
18 scot-free, but I'm asking for a minimal sentence
19 followed by a probationary sentence that can -- so he
20 can gain the tools necessary that he can go out and get
21 a job and continue to provide for his family.

22 Perhaps -- I know that probation hasn't been so
23 great this time around, but I'm asking for an intensive
24 supervision, maybe house arrest or some sort of
25 monitoring, where Allen can go and report so the Court

1 feels comfortable with releasing him.

2 I just want to correct for the record that the
3 resisting arrest and assault on a police officer did
4 come from a juvenile record. I don't think it was a
5 part of his adult record. Judge, we're just asking
6 that you consider all of the circumstances in this
7 case. He is very young. And we're asking that you
8 have mercy on him. I believe that his family would
9 like to address you whenever your Honor feels
10 appropriate.

11 THE COURT: Yes, ma'am. Be happy to hear from
12 you.

13 MALE SPEAKER: I'm Allen's father. I just want to
14 say I know that the charges he's faced with seems like
15 he may be a troublemaker or whatnot, but he's not.
16 He's a good kid, and I just feel like he has some
17 issues that he needs to resolve on his own and get his
18 priorities together and turn his life around. And
19 that's all I want to say right now.

20 THE COURT: Thank you, sir.

21 Yes, ma'am.

22 FEMALE SPEAKER: I am Allen Bobo's mother. He be
23 with me all the time when I'm sickly and stuff. And
24 I'm asking to give him a chance and have mercy on him.

25 FEMALE SPEAKER: I'm his aunt and I want to say

1 that Allen is really a good kid. I know he might have
2 got into a little trouble, whatever, but he is really a
3 good kid, like I say. I have three girls, teenage
4 girls, and they look up to him as a big brother that
5 they ain't never had, and they really -- I don't -- you
6 know, I just want to say have mercy on him today. I
7 think he'll really change his life around.

8 THE COURT: Thank you, ma'am.

9 FEMALE SPEAKER: I am Allen Bobo's wife. He's a
10 very good young man, and he got a four-month-old son he
11 never held or anything.

12 FEMALE SPEAKER: I'm Jasmine. I'm one of Bobo
13 baby-mamas. He been helpful to me. I've been in
14 school, been working. He been watching our son while I
15 do all those things. Since he's been here, he can't do
16 too much to help out with me.

17 THE COURT: Thank you, ma'am.

18 THE DEFENDANT: Stop crying, man.

19 THE COURT: All right.

20 Mr. Bobo, anything you would like to tell me?

21 THE DEFENDANT: For the record, I would like to
22 apologize to the courtroom. It's embarrassing to
23 appear in front of y'all as a criminal. I just want
24 everybody to understand I'm just a young man that want
25 to build a future for their kids. I got two boys, two

1 girls, and I just want to be there for them to push
2 them through life, you know what I'm saying, for like I
3 had somebody putting me through school and stuff.
4 Yeah, I might have started out with a good life, but
5 like when my parents separated when I was young, it
6 kind of did take effect on me, even though nobody
7 noticed it or none of that. But I just don't want
8 nobody to think that I'm the type of person that need
9 paperwork and all this, you know. I mean, I do
10 whatever I can to help my mama with her mental
11 problems, my stepdad in a wheelchair. I do everything.
12 I do the best to be the bestest young man. I did
13 everything I could to be the bestest father in the
14 world to my kids. I love my kids to death and I know
15 my kids love me to death. Not a day goes by that I
16 don't miss them. When I watch the news and stuff
17 happening to kids out there, I don't know what's going
18 on with my kids. I don't know if they're safe. I
19 don't know who around them. All I can do is just pray
20 every day that, you know, their mothers is being the
21 best mothers in the world that they can to them and
22 that they ain't in no type of danger or violence to be
23 around them because all I want to do is give them the
24 best of the future. I want to see my kids' mothers be
25 somebody and I want to see my kids be somebody and I

1 want to see myself be somebody. I mean, my goal in
2 life was to go to school, get my GED, you know, so I
3 could find a better career in life and a future to help
4 support all of them. I just want to be the best I can
5 be for my family. That's all I ever tried to do.

6 THE COURT: Thank you, Mr. Bobo.

7 All right. Let me hear from probation. Does he
8 have any violations of probation other than these new
9 convictions?

10 PROBATION OFFICER: Yes, sir.

11 Mr. Bobo was placed on probation for assault first
12 degree on March 31st of 2014. That stemmed from an
13 incident with his wife, Ms. Mian -- well, the warrant
14 was Mian Wharton, but they got into an altercation that
15 ended up physical. He began to hit her with his closed
16 fist, and she ended up unconscious in that particular
17 altercation. So the judge sentenced him to six years
18 suspended to two days he had been in jail and two years
19 probation then the case could PTUP upon anger
20 management completion and 24 hours of public service.

21 We did a warrant on Mr. Bobo on November 22nd
22 of -- let me take that back. I'm looking at the wrong
23 date. The first day of December 2014 for -- because he
24 had failed to report per his instructions, having last
25 reported on July 31, 2014. He had moved without

1 notification as verified on 9/25/2014. His whereabouts
2 were unknown and thereby he was charged with absconding
3 supervision. He failed to notify his agent upon his
4 arrest, and a lot of these -- these arrests are what
5 he's before you today for. It was a possession with
6 intent to distribute marijuana, possession with intent
7 to distribute cocaine, habitual traffic offender, DUS.
8 He also had several monetary obligations that he failed
9 to pay court fees and whatnot. He did not owe any
10 restitution related to this case.

11 So we served that warrant on him on December 1st,
12 and then he got out on bond, at which time he came -- I
13 had him coming in every week and reporting to the
14 office and tried to get him back enrolled in anger
15 management because that's one of the things he did not
16 complete the first time. And I think he did go to a
17 couple of those classes, but then he quit reporting
18 again and quit doing the anger management. And, of
19 course, while he was out on bond, he also picked up the
20 other charges related to the weapon, the possession of
21 a firearm by a person convicted of a violent felony,
22 malicious injury to personal property, having a weapon
23 during a violent crime, CDV HAN, endangering a child.
24 So those are the charges he's before you today on. So
25 we have two different warrants, basically, on him, a

1 lot of which is related to the cases that he's pleading
2 to today and then a few others.

3 THE COURT: Mr. Bobo, aside from these four
4 charges which are obvious violations of your probation,
5 did you hear the agent's statement of your alleged
6 violations of probation -- failure to report multiple
7 times, the other things, did you hear that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you agree or disagree that you
10 violated your probation?

11 THE DEFENDANT: I mean, as far as like the
12 switching locations, like moving without -- without
13 notice, you know, I ain't never moved. Like I got a
14 wife, you know. Like I was staying with my mama
15 watching her, but I ain't going to lie, every other
16 night I would go spend the night at home. But mainly I
17 had to be with my mama, you know. She told me, you
18 know what I'm saying, she's like, "Your probation
19 officer was by here but you weren't here at the
20 moment." So I had to call him and whatnot, you know.
21 I did that, but I never changed addresses. I ain't
22 going to lie, like I got two families, but I never
23 changed addresses.

24 THE COURT: Did you fail to report like he stated?

25 THE DEFENDANT: Yeah. I ain't going to lie, I

1 didn't report every time like I was supposed to every
2 time. And a lot of times I did report, I might have
3 come at the wrong time, but I should have been more
4 responsible to come back, even though if they was on
5 lunch break or whatnot, and come back again still, you
6 know. But I wasn't thinking, just left it at that and
7 just...

8 THE COURT: Okay. All right. I find there has
9 been a willful violation of probation.

10 Ms. Patel, let me hear from you on the issue of
11 the probation. He's got six years hanging over his
12 head on the probation?

13 MS. PATEL: Yes, your Honor. Judge, we're just
14 asking that you go along with the minimal sentence.
15 Mr. Bobo did indicate to me that he was having
16 transportation issues in going from, you know,
17 different homes. It was difficult for him to report to
18 his agent, but he did come the few times that Mr. Sears
19 did say.

20 One of the main reasons why he lost his job was
21 because he didn't have transportation on the recent
22 one. So, your Honor, I'm just asking that you take all
23 of that in consideration and that he says that he did
24 try to call his officer but did not get ahold of him.

25 THE COURT: Okay. What's the Department's

1 recommendation?

2 PROBATION OFFICER: Just a revocation to run
3 concurrent with whatever you decide today.

4 THE COURT: State has no problem with a concurrent
5 sentence?

6 PROBATION OFFICER: No, sir.

7 THE COURT: Okay. All right.

8 Mr. Bobo, you have apologized to the State and the
9 Court, but we're not the people you need to apologize
10 to. The people you need to apologize to are standing
11 behind you. Your family obviously loves you very much
12 or they wouldn't be up here today.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I don't know how -- you are a parent.
15 You've told me that you have children. Your children,
16 apparently, are young, but there's no way you can
17 comprehend what you have put your mom and daddy
18 through, making them come to court. And you're on
19 probation, so this is the second time you've been in
20 this courtroom.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I mean, no parent should have to stand
23 and listen to what your two parents have had to listen
24 to. No parent. They didn't commit these offenses.
25 And you have got a situation where if all the time is

1 added up on this, you're looking at 55 years in prison.
2 Do you understand the gravity of what you've done here?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Plus six on the probation. Now, I've
5 seen three women come forward that are mothers of your
6 children. They obviously are in a bad situation. They
7 have got a child and a father of their child is in
8 jail.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Not because somebody else did it to
11 him. Because you did it. You have voluntarily taken
12 yourself out of your children's lives.

13 THE DEFENDANT: Yes, sir. I blame myself.

14 THE COURT: All right. This is -- I don't
15 think -- Ms. Patel, I appreciate what you've told the
16 Court, but Mr. Bobo is not a good candidate for
17 probation, so I'm going to craft a sentence here to
18 when he's finished with this, he's done and he can move
19 on with his life.

20 On -- let's see here. Let me make sure I've got
21 the indictment correct. This is indictment
22 2016-GS-01-0012: Defendant will be confined to the
23 Department of Corrections for a term of ten years. And
24 then on 0122, defendant will be confined to the
25 Department of Corrections for a term of ten years

1 concurrent. Then on 0009, confined to the Department
2 of Corrections for a term of five years concurrent, and
3 0011, confined to the Department of Corrections for a
4 term of ten years concurrent. He is to receive credit
5 for 146 days time served.

6 So get your time behind you, move on with your
7 life, and don't be back in this courtroom again.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Good luck to you. Good
10 luck to all your family who are here.

11 PROBATION OFFICER: In regards to the probation,
12 your Honor?

13 THE COURT: Probation, six years concurrent.
14 Terminate probation. Convert any fines or monies owed
15 to a civil judgment.

16 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Abbeville County, South Carolina, on the 1st day of March 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

August 22, 2016

Diane L. Marcengill

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 County of Abbeville)
)
Allen BoBo 367299)
 Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2016-CP-01-164

STATE OF SOUTH CAROLINA
 CLERK OF COURT
 JUN - 9 11 12: 54
 COURT REPORTER

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

TRUE COPY
 BY [Signature]
 ABBEVILLE COUNTY CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Abbeville County detention Center
21 old Cathounfalls rd. Abbeville SC, 29620
2. Name and location of Court which imposed sentence Abbeville County
court house 102 Court Square Abbeville SC, 29620
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) march, 1, 2016
 - (b) 10 years None-Violent + 1 year time Credit
 - (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?
yes i did try to appeal it but i never heard nothing back

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. Abbeville County Court house / Clerk of Court
 - 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. _____
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) N/A

(c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Because Yasha Patel Wasnt truthful to me and I was forced To Plea falsify statements
- (b) _____
- (c) Ineffective Assistant counsel

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

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

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. N/A
 - iv. _____

- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. N/A
 - iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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?

N/A

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

(a) which grounds have been presented:

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

N/A

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

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

N/A

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) ~~Yasha Patel~~ _____
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. yasha patel, Suite 208, Park Plaza
600 Monument St Box P-133 Greenwood SC, 29646
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

Ineffective Assistant counsel and I would like
to get back into court on Yasha Patel behalf on
forcing me to take this harsh plea for 10 years.

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

N/A

STATE OF SOUTH CAROLINA)
County of Abbeville)

VERIFICATION

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

SWORN to and subscribed before me this _____ day of _____.

Notary Public (L.S.)

My Commission Expires: _____

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

I, Allen Bobo, 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.

Allen Bobo
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)
)
 Allen Bobo,)
 S.C.D.C. No. 367299,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE EIGHTH JUDICIAL CIRCUIT

2016-CP-01-0164

RETURN¹

Respondent, making its Return to the application for post-conviction relief (PCR) filed June 9, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. Applicant was indicted at the January 2016 term of the Abbeville County Grand Jury for pointing or presenting a firearm (2016-GS-01-0009), unlawful neglect of a child (2016-GS-01-0011), domestic violence of a high and aggravated nature (2016-GS-01-0012). Applicant was indicted at the April 2016 term for possession of marijuana with intent to distribute (2016-GS-01-0122). Applicant was represented by Yasha Patel, Esquire. On March 1, 2016, Applicant appeared before the Honorable R. Scott Sprouse, and pled guilty as indicted. Judge Sprouse sentenced Applicant to imprisonment for five years for pointing or presenting a firearm, ten years for unlawful neglect of a child, ten years for DVHAN, and ten years for possession of marijuana with intent to distribute.

Applicant did not file a notice of appeal.

¹ Respondent requests that counsel be appointed.

II.

In his current application for post-conviction relief, and the amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Yasha Patel wasn't truthful to me and I was forced to plea"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

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

III.

Respondent submits plea counsel rendered effective assistance of counsel. 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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

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

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that 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 construes Applicant's application to allege that guilty plea was not voluntarily made. Respondent submits that this allegation is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (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, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

[Signature block following page]

V.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

November 7, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)
)
)
)
 ALLEN BOBO, #367299,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2016-CP-01-0164

AFFIDAVIT OF SERVICE BY MAIL

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

Allen Bobo, #367299
Wateree Correctional Institution
PO Box 189
Rembert, SC 29128-0189

DATED this 7th day of November, 2016.



 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

ALLEN BOBO,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA)
 DEFENDANT.)
 _____)

CASE NO.: 2016-CP-01-0164

TRANSCRIPT OF RECORD

MARCH 1, 2018
LAURENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MARK HAYES, JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

THOMAS J. THOMPSON, ESQUIRE

ATTORNEY FOR DEFENDANTS:

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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E X H I B I T S

Applicant's Exhibit 1: Statement of victim

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Allen Bobo-Direct Examination

4

1 THE COURT: Mr. Hunter?

2 MR. HUNTER: Good Morning, Your Honor. The first case
3 this morning is *Allen Bobo vs the State of South Carolina*,
4 2016-CP-01-164. Your Honor, he was indicted by the
5 Abbeville County Grand Jury for pointing and presenting a
6 firearm, unlawful neglect of a child, domestic violence of a
7 high and aggravated nature, and PWID marijuana. He was
8 represented by Yasha Patel on March 1, 2016. He pled guilty
9 before Judge Sprouse as indicted. He was sentenced to five
10 years on the firearm charge and 10 years on all the other
11 charges. They were set to run concurrently. He did not
12 file a notice of appeal. He filed this current action June
13 9, 2016. He is present today represented by Mr. Tommy
14 Thompson.

15 MR. THOMPSON: Your Honor, may it please the Court.
16 Your Honor, we call Mr. Bobo to the stand.

17 ALLEN BOBO, having first been duly
18 sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 MR. THOMPSON: May it please the Court?

22 Q Mr. Bobo, you're currently incarcerated with the South
23 Carolina Department of Corrections?

24 A Yes, sir.

25 Q And what are you serving time for?

Allen Bobo-Direct Examination

5

1 A Domestic violence high and aggravated nature and child
2 neglect, and pointing and presenting, and PWID marijuana.

3 Q All right, sir. And you've got a ten-year sentence; is
4 that correct?

5 A Yes, sir.

6 Q All right, and you understand that you filed a post
7 conviction relief action?

8 A Yes, sir.

9 Q And do you understand that you're asking for a new
10 trial?

11 A Yes, sir.

12 Q You're asking for your sentence to be set aside.

13 A Yes, sir.

14 Q Now, if the Court should grant that, you and I have
15 spoken about you have certain exposure by -- what I mean is
16 that you could actually go to trial and could potentially
17 get more time.

18 A Yes, sir.

19 Q You understand that?

20 A Yes, sir.

21 Q You're willing to accept that risk?

22 A Yes, sir.

23 Q And you want to go forward today?

24 A Yes, sir.

25 Q All right, sir. Mr. Bobo, you were arrested, roughly,

Allen Bobo-Direct Examination

6

- 1 when?
- 2 A I want to say October 7, 2015.
- 3 Q All right, sir. And this came out of an altercation
- 4 that you had?
- 5 A Yes, sir.
- 6 Q And who was that altercation with?
- 7 A My child mother.
- 8 Q Okay. And what's her name?
- 9 A Nakelia Johnson.
- 10 Q Okay. And, Ms. Johnson, she's here today?
- 11 A Yes, sir.
- 12 Q Okay. Now, when you were arrested, Mr. Bobo, did you
- 13 hire an attorney or were you appointed an attorney?
- 14 A I was appointed an attorney.
- 15 Q Okay. And who was appointed to represent you?
- 16 A Ms. Yasha Patel.
- 17 Q Now, how long did it take your case to come up for
- 18 trial?
- 19 A Like five months. Five or six months.
- 20 Q During that period of time, were you in the County
- 21 Detention Center?
- 22 A Yes, sir.
- 23 Q Did you make bond?
- 24 A No, sir.
- 25 Q Okay. Did you have an opportunity to speak with you

Allen Bobo-Direct Examination

7

1 attorney?

2 A Yes, but it was brief. Like, it wasn't no more than
3 like four -- three, four minutes.

4 Q So she'd have to come see you?

5 A Yes, sir.

6 Q Okay. And when you -- how many times did you meet with
7 her?

8 A Three.

9 Q During those periods of time, did you talk about what
10 the evidence that the State had against you? What we call
11 the discovery.

12 A No, sir,.

13 Q Did you ever see your discovery information?

14 A Not until -- I mean, I put in a request for it, but it
15 came back around that -- like as soon as I got it, I went to
16 court. I ain't really study it or nothing. Like, soon as I
17 got it, I went to court. I came about like a -- I want to
18 say a month or a couple weeks before I went to court.

19 Q All right. Now, you disagreed with some of the things
20 that they said that you did?

21 A Yes, sir.

22 Q And what did you disagree with?

23 A The -- they saying I pointed a gun in my child mother
24 face and threatened to kill her, and I want to say that
25 about it.

Allen Bobo-Direct Examination

8

1 Q All right. And is that where you got the charges for
2 the domestic violence high and aggravated?

3 A Yes, sir.

4 Q And also the unlawful neglect?

5 A Yes, sir.

6 Q And did you talk with your attorney about those issues
7 that you --

8 A I mean, I talked to her, but I don't know if she was
9 listening.

10 Q All right.

11 A Like, I mean, we ain't never really build on it.

12 Q Okay. Now, how about as far as Ms. Johnson? Did you
13 -- do you know if your attorney spoke with Ms. Johnson?

14 A No, sir.

15 Q You don't know or you don't --

16 A She never spoke to her.

17 Q She never spoke to her. All right. And what was Ms.
18 Johnson's position during this period of time in which you
19 were waiting to go for trial? Wait a minute. What was Ms.
20 Johnson saying about what happened? What was her
21 understanding?

22 A From my understanding of what happened?

23 Q Yes, sir.

24 A Basically, like she told me it was all a
25 misunderstanding. Like, you know what I'm saying? It wasn't

Allen Bobo-Direct Examination

9

1 really what it seemed. Like, like it just an altercation
2 between two people with a kid. A altercation --

3 Q So y'all -- you admit that you had an altercation?

4 A Yeah. I admit that.

5 Q All right. But what you're saying that wasn't true was
6 the fact about the gun --

7 A Yeah. They saying I pointed a gun in her face and
8 threatened to kill her and all that.

9 Q While she was holding the child?

10 A While she was holding the child.

11 Q Okay. Now, did you talk to Ms. Patel about whether you
12 were going to try this case or accept a plea?

13 A I told her I wanted a jury trial.

14 Q And why did you want a jury trial?

15 A 'Cause I knew what I did I ain't do it. Like, I know I
16 ain't do it.

17 MR. THOMPSON: Okay. Your Honor, may I approach?

18 Q Mr. Bobo, I want to show you this document and see if
19 you can recognize that if you know what that is.

20 A A statement written by my child mother.

21 Q All right, sir. And did you -- did you see that
22 document in your discovery?

23 A Yes, sir.

24 Q Did you have an opportunity to talk to your attorney
25 about that statement?

Allen Bobo-Direct Examination

10

1 A I really -- I don't think so.

2 Q But that was a statement that was in your discovery
3 that you received from Ms. Patel?

4 A Yes, sir.

5 MR. THOMPSON: All right. Your Honor, we'd like to
6 move that as Applicant's 1.

7 MR. HUNTER: No objection.

8 THE COURT: It will be Applicant's 1.

9 MR. THOMPSON: Thank you, Your Honor.

10 (Whereupon, Applicant's Exhibit Number 1, victim
11 statement, was marked for identification purposes and
12 admitted into evidence.)

13 MR. THOMPSON: May I approach again, Your Honor?

14 Q Mr. Bobo, I want to show you a copy of that statement
15 that's been admitted as Applicant's 1 and does it say
16 anything in there about the gun and pointing?

17 A It don't -- I mean, it states something about a gun,
18 but it never say nothing about pointing a gun in her face
19 though while holding the child.

20 Q All right. And it says -- actually, it says he pulled
21 a gun. Is that what it says?

22 A Yes, sir.

23 Q Okay. Now, Mr. Bobo, were you offered any kind of plea
24 deals with this case?

25 A No, sir.

Allen Bobo-Direct Examination

11

1 Q Did you -- did you ever get an offer for a cap of 12
2 years?

3 A Yes, sir.

4 Q But that was the only offer that you ever received?

5 A That was the first offer, the first time I ever heard
6 anything.

7 Q Okay. And if you wanted to go to trial, why did you
8 accept that offer?

9 A The reason why I accepted the offer was because when I
10 went to court, I'm thinking it's for a bond hearing. What I
11 was promised was I was going to be able to get a bond
12 reduction, and then bond out. When I went to court, I walked
13 right into a trial that I knew nothing about.

14 Q You didn't know it was going to trial that day?

15 A I didn't know nothing about a trial. I walked straight
16 into a trial I knew nothing about. So when I was trying to
17 explain to my public defender that I don't want no -- I'm
18 not taking no plea, I don't want none of that, she state to
19 me that I'm guaranteed to lose that trial because of the
20 statement.

21 Q And that's the same statement --

22 A And that's the same statement.

23 Q -- that we were just looking at?

24 A Yes, sir.

25 Q All right, sir. And did she give you any options at

Allen Bobo-Direct Examination

12

1 all?

2 A No, sir. I even asked her could I get another lawyer.

3 She said it would be a waste of money and time. The results
4 still would be the same. They would find me guilty because
5 of the statement.

6 Q Did you feel like she was ready to go to trial that
7 day?

8 A No, sir.

9 Q Were you ready to go to trial that day?

10 A No, sir.

11 Q Okay. Had you prepared this case for trial? Had you
12 sat with your attorney and prepared it?

13 A No, sir.

14 Q Okay. And when you discussed this cap of 12, what was
15 your understanding about, if you accepted this plea, what
16 was going to happen?

17 A From my understanding -- I ain't even going to lie.

18 From what I understand, I even know nothing about no cap of
19 12 or nothing. All I know is something about, I guess, the
20 judge can't go over 12 years or something like that.

21 Q Okay.

22 A But I ain't really -- really find out about what it was
23 until when I went to prison and went into the law library.

24 But, anyway. I didn't know nothing about what a cap 12 was.

25 I didn't have no understanding of what a cap 12 was.

Allen Bobo-Direct Examination

13

1 Q Did Ms. Patel talk with you about whether this was a
2 violent or non-violent charge?

3 A No, sir. She -- I was told that it was going to be
4 non-violent.

5 Q Now, who told you that?

6 A Ms. Yasha Patel.

7 Q All right. And with it being non-violent, were -- did
8 you discuss parole eligibility?

9 A What I was told, I was -- what I was told, it was going
10 to be non-violent, I'd be able to get parole eligibility.
11 I'd be able to do something like PI where you work and you
12 save money for when you get out and something about I'd be
13 able to get into programs and stuff like that.

14 Q All right. So when you got to the Department of
15 Corrections, did that turn out to be true?

16 A No, sir.

17 Q So what is your situation today?

18 A What is my situation today?

19 Q What -- are you eligible for parole?

20 A No, sir.

21 Q And what custody level are you?

22 A Level two.

23 Q All right. And you're not in an open institution?

24 A What do you mean by open?

25 Q What institution are you at?

Allen Bobo-Direct Examination

14

1 A Evans.

2 Q All right. So they have a level fence around it?

3 A Yes, sir.

4 Q Okay. And are you able to go to work release?

5 A I can't get no work credits. I'm not eligible for
6 parole. I really can't even get a job because I'm violent.

7 They say if I'm violent. I can't really do nothing.

8 Q Are you 85 percent?

9 A Yes, sir.

10 Q Okay. So you'll serve 85 of that ten?

11 A Yes, sir.

12 Q Okay. Mr. Bobo, you and I talked about this. You
13 entered into this plea and you understand that your plea has
14 to be freely and voluntarily given?

15 A You say -

16 Q Freely -- the plea -- did you enter into this plea
17 freely and voluntarily?

18 A No, sir. I don't feel like that.

19 Q And why not?

20 A I don't feel like that because for one, I wanted to
21 take a different route, but I was constantly pushed in with
22 these bad thoughts of oh, you're going to do this much time,
23 you're going to do this much time if you don't take this
24 plea. Like, when I was like, well, can I just go back to
25 the county and just sit and thing about it, you can't do

1 that. You know what I'm saying? Regardless of what, you're
2 going to prison today because of your probation and all
3 types of just -- it just a bunch of negativity was just
4 thrown my way when I'm presenting to her, that look, this
5 case is - you can beat this case. It's not no hard case,
6 but you're still throwing in my head if I go to trial, I'll
7 lose. If I -- like, it'll be a long, long time before I see
8 my kids again.

9 Q Okay. Now, also, the plea has to be knowingly and
10 intelligently given. Do you feel like you had all the facts
11 that you needed to be able to enter --

12 A No, sir.

13 Q -- into this plea?

14 A No, sir.

15 Q Okay. Now, Mr. Bobo, I know you're saying that you did
16 not point this gun at your girlfriend and your child. Did
17 you have a gun?

18 A Yes, sir.

19 Q All right. And where was the gun?

20 A Laying in my lap on my seat.

21 Q Did you ever point it at anybody?

22 A No, sir. I ain't never pointed it. I ain't never
23 touch it.

24 Q So this altercation, did it take place like standing
25 face to face or how did it -- how did this argument happen?

Allen Bobo-Direct Examination

16

1 A No. I'm sitting in the car and my child mother, when
2 she walked up to the car, you know what I'm saying, me and
3 her fussing. But when she walked up to the car -- when she
4 walked up to the car, and glanced in, she see the gun
5 sitting there. You know what I'm saying? So -- you feel --
6 we all in the heat of the moment, emotions and everything
7 running over and like, you know, she just -- you know, I
8 guess, she just act out of, you know what I'm saying, heart
9 broken or emotions or whatever.

10 Q Right. Okay. Did you ever get out of the car?

11 A Never got out the car.

12 Q I've got one last question and I always ask this and it
13 doesn't mean that I have forgotten to ask you anything or
14 that I have missed something. But you've been waiting a
15 long time to come to court today?

16 A Yes, sir.

17 Q Is there anything else that you would like to tell the
18 Court that you feel like that I haven't asked you or that
19 you feel is important?

20 A What I'm -- like something that -- something that
21 bothers me that I don't understand, from my public defender,
22 I'm looking into like from the first beginning of the whole
23 situation. Okay. If you look at the dispatch call, you'll
24 see that it just -- it don't say nothing about no
25 altercation, about no guns, no nothing. It say I just want

1 my car back. You know what I'm saying? Then, when she meet
2 with the police at the station, she give the same verbal
3 statement, I just want my car back. Like -- you know what
4 I'm saying? It's nothing -- no type of involvement with no
5 gun. I just want my car back. But I was later on down the
6 line, I'd say about five hours later when they finally found
7 her car and call her on the scene. You know what I'm
8 saying? Y'all -- they ask her, you know what I'm saying, is
9 this your car and I guess when she seen her car, she just
10 lost it 'cause her car was vandalized. So you know what I'm
11 saying? She just -- I guess she just flipped out and
12 started saying stuff, saying stuff. But, at that point, now
13 y'all want her to write a statement and y'all want to try to
14 make this stick to me when like -- I feel like I try to tell
15 my public defender, like, look at all that. Look at all
16 that. Like look at the time -- the timing and everything
17 between everything. Like, come on. You got to look at the
18 first statements and stuff that were given, and then look at
19 the last statement. I'm trying to prove to you that this is
20 not what it seem. It's not what you think it is.

21 Q All right. You never threatened anybody?

22 A Never threatened.

23 MR. THOMPSON: Okay. Your Honor, I have no further
24 questions.

25 MR. HUNTER: Just a few things.

Allen Bobo-Cross Examination

18

1 CROSS-EXAMINATION

2 BY MR. HUNTER:

3 Q Now, do you remember the judge going over the potential
4 sentence you could receive for all these charges during the
5 plea hearing?

6 A Yeah.

7 Q Okay. And I believe he explained to you that there was
8 a cap of 12 years -- that the State was recommending a cap
9 of 12 years and that he didn't have to -- or he didn't have
10 to accept their recommendation.

11 A I mean --

12 Q Do you remember that? Okay. So are you saying that
13 your attorney never explained to you what that cap meant?

14 A (Non-verbal response)

15 Q And you received how many years?

16 A Ten.

17 Q So under the cap. And you told the judge -- I believe
18 the judge asked you, are you pleading guilty freely and
19 voluntarily and you said yes. Do you remember that?

20 A (Non-verbal response)

21 Q Why didn't you say no?

22 THE COURT: Sir, you have to give verbal answers.

23 THE WITNESS: Yes, sir.

24 THE COURT: Thank you.

25 Q Now, how come you didn't stop the plea hearing at any

1 point?

2 A Because when we were back there in the room, a promise
3 was made. She made me promise that when I go out there,
4 please don't say nothing to mess this up and she promised me
5 that I wouldn't get that much time. I was just following
6 orders. She's supposed to be the one who's leading me.

7 Q So she ordered you to not say anything?

8 A She told me, promise me when we go out here you is not
9 going mess this up. Please don't say nothing to mess this
10 up. I promise you, you is not going to get that much time.

11 Q So of all the statements you gave -- I mean, are you
12 saying you were lying during the hearing, then?

13 A You said lying during the hearing?

14 Q Yeah. When you said you were pleading guilty freely
15 and voluntarily and that you agreed with the facts that the
16 State gave. Those weren't true?

17 A I was just going along with my public defender.

18 Q Okay.

19 A I was doing what she told me to do.

20 MR. HUNTER: I understand. That's all I have. Thank
21 you.

22 THE COURT: Any redirect limited to what he went into?

23 MR. THOMPSON: No, Your Honor.

24 THE COURT: Thank you, sir. You may step down. Watch
25 your step as you're stepping down.

1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 MR. THOMPSON: Your Honor, could I have just a minute
4 or two. I know Ms. Johnson just walked in and I just wanted
5 to --

6 THE COURT: Yes, sir.

7 MR. THOMPSON: -- if I could, just beg the Court's
8 indulgence.

9 THE COURT: All right. We'll take a short recess.

10 (Whereupon, a brief recess was held.)

11 THE COURT: Applicant ready to call their next witness?

12 MR. THOMPSON: Yes, Your Honor. If it please the
13 Court, we would call Ms. Johnson to the stand.

14 THE COURT: Ms. Johnson, just come on up here.

15 NAKELIA JOHNSON, having first been
16 duly sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. THOMPSON:

19 MR. THOMPSON: May it please the Court.

20 Q Ms. Johnson, what relationship do you have with Mr.
21 Bobo? /

22 A He's the father of my kids.

23 Q Okay. And how long have y'all known each other? A
24 long time?

25 A Yeah. Been knowing each other for a long time, but --

1 Q Okay. All right. And y'all were girlfriend, boyfriend
2 or kind of almost we don't have it anymore, but common law
3 married? That type thing?

4 A Yes, sir.

5 Q Okay. Now, you understand that you're here to tell the
6 truth today?

7 A Yes, sir.

8 Q And you're not here to reward anybody or try to help
9 somebody out. You're to tell the truth; is that correct?

10 A Yes, sir.

11 Q And that's what you intend to do?

12 A Yes, sir.

13 Q Okay. Now, when this altercation happened, did Mr.
14 Bobo ever take a gun and point it at you or the child?

15 A No, sir.

16 Q All right. Let me show you this statement that you --
17 which is, I think, marked as Exhibit Number 1 -- Applicant's
18 1 and I want you to look. I've underlined this right here.
19 Would you read that for me? Just the underlined part.

20 A And he pulled a gun out while I had my child in my
21 arms.

22 Q All right. Now, when you made that statement, did you
23 intend for that to say that he pointed the gun and you and
24 your child?

25 A No, sir.

Nakelia Johnson-Direct Examination

22

1 Q Because that's not what happened?

2 A No, sir.

3 Q But he did have a gun?

4 A Yes, sir.

5 Q Okay. And you feel like that this part of the
6 statement was misunderstood or misconstrued?

7 A Yes, sir. It was all a big misunderstanding. I was
8 angry at the moment.

9 Q Yes, ma'am.

10 MR. THOMPSON: Your Honor, may I approach again?

11 THE COURT: Yes, sir.

12 MR. THOMPSON: Your Honor, this is page nine of the
13 transcript and this is lines 14 through 15.

14 Q Ms. Johnson, I'm going to show you this. This is a
15 transcript from when you were in court, when Mr. Bobo did
16 his plea.

17 A Which one? Right here?

18 Q Right here.

19 A Okay.

20 Q And the court is talking with you. And what did you
21 tell the judge?

22 A I told him it was all just a big misunderstanding and
23 my kids are suffering without their daddy.

24 Q Okay. So that's consistent with what you're telling us
25 today?

1 A Yes, sir.

2 Q And when you had this altercation with Mr. Bobo, were
3 you ever scared?

4 A No, sir.

5 Q You weren't fearful --

6 A No, sir.

7 Q -- that he was going to hurt you or hurt the child?

8 A No, sir.

9 Q Okay. And it's not true that he pointed a gun at you
10 and the child?

11 A No, sir.

12 Q Okay.

13 A It was just laying in his lap.

14 MR. THOMPSON: Okay. Your Honor, I have no further
15 questions.

16 MR. HUNTER: Just a few things.

17 CROSS-EXAMINATION

18 BY MR. HUNTER:

19 Q When you gave that statement, did you ever give a
20 subsequent statement after that or was that the only one?

21 A That was the only one.

22 Q Okay. So pretty much that statement, and then you
23 spoke at the plea hearing. Did you have any other
24 involvement? Did you talk to Ms. Patel?

25 A When I got to the courtroom that day, I asked her to

Nakelia Johnson-Cross Examination

24

1 talk and she said wait a minute and by that time, that's
2 when they brought Allen out and we never did get to -- well,
3 no. Because I walked to the back with -- was it you and
4 her, and I said that I had did a affidavit. I had filled a
5 -- went and signed a affidavit saying I no longer had wanted
6 anything -- involvement in it, period, and that was the only
7 time.

8 Q So, I guess, from the time he was arrested to the plea
9 hearing date, did she ever contact you?

10 A Her whatever -- secretary contacted me --

11 Q What --

12 A -- once or twice, I think.

13 Q What did they contact you about?

14 A She was asking questions. The first time she contacted
15 me, she was asking questions and I was just like I'm done, I
16 don't want no involvement with it, and then I think that was
17 -- that might have been the only time that I did talk to her
18 because I was trying to call her to get in contact with her,
19 but I never could reach her to tell that -- you know, just
20 let her know and touch bases with her. So I never did get
21 back in contact. The first time was at the courtroom when I
22 seen her -- actually seen her and I never did get to talk to
23 her one on one.

24 Q Okay. But you knew that she was his attorney when they
25 tried to contact you the first time?

1 A No. Until the lady told me.

2 Q Okay. So -- okay. And did you ever offer to help or
3 provide any assistance to them?

4 A Not the first time.

5 Q Why's that?

6 A The first time, that's when she contacted -- when the
7 secretary contacted me and I remember saying, no, I don't
8 want no involvement in it period.

9 Q Okay. I understand. And during -- yeah, during the
10 plea hearing you said it was all a big misunderstanding.
11 Did you ever think to say he never had a gun, he didn't
12 point it at me, he didn't do all these things the State said
13 he did?

14 A No, sir.

15 MR. HUNTER: Okay. Okay. That's all I have.

16 THE COURT: Any redirect limited to what he went into?

17 MR. THOMPSON: Your Honor, just one.

18 REDIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q Now, you said that you told Ms. Patel or whoever called
21 for Ms. Patel that you wanted no involvement in it?

22 A Uh-huh.

23 Q Now, what did that no involvement mean? Did you want
24 to prosecute this case or you didn't want to prosecute it or

25 -

Yasha Patel-Direct Examination

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1 A I didn't want to prosecute it.

2 Q Okay. All right. Do you know if -- did you tell them,
3 at any point, or get an opportunity to tell them, at any
4 point, that he did not point the gun at you?

5 A No, sir.

6 MR. THOMPSON: Okay. Thank you, Your Honor.

7 THE COURT: Thank you, ma'am. You may step down.
8 Watch your step.

9 (Whereupon, the witness stepped down from the witness
10 stand).

11 MR. THOMPSON: Your Honor, if it pleases the Court,
12 that's the Applicant's case.

13 MR. HUNTER: Your Honor, the State -- the State would
14 call Ms. Yasha Patel.

15 THE COURT: For purposes of the record to be sure we
16 have it, Ms. Johnson's first name was --

17 MR. THOMPSON: Nakelia. N-a-k-e-l-i-a, Your Honor.

18 THE COURT: Thank you.

19 MR. THOMPSON: Yes, sir.

20 YASHA PATEL, having first been duly
21 sworn, testifies as follows:

22 DIRECT EXAMINATION

23 BY MR. HUNTER:

24 MR. HUNTER: May it please the Court.

25 Q Can you please state your name for the record?

Yasha Patel-Direct Examination

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1 A Yasha Patel.

2 Q Where are you currently employed?

3 A I'm self-employed.

4 Q Now, what was your employment before that?

5 A I worked at the Public Defender's Office for Abbeville
6 County.

7 Q Is that how you became involved in this case?

8 A Yes.

9 Q So you were appointed?

10 A I was.

11 Q And about how long was it between your appointment and
12 the plea date?

13 A So I was initially assigned the case in 2015 for some
14 pending charges that Mr. Bobo had. I'm -- and I'm regarding
15 to my notes from my file. It looks like our first entry was
16 from May 13th of 2015. We had a appointment scheduled for
17 my office and I asked my secretary to move the date to the
18 next following day and we met in our office on May 14th of
19 2015. So, I guess, that's where it started. And then, our
20 -- we closed the case March of 2016.

21 Q Okay. So about how many times during that time span
22 did you meet with him?

23 A Three times. Three or four times.

24 Q And about how long were those meetings each time? Do
25 you recall?

Yasha Patel-Direct Examination

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1 A They would vary. It would be from 45 minutes to, it
2 could be, over an hour. I can't remember.

3 Q Okay. So your initial meeting, did you already have
4 discovery at that point?

5 A No.

6 Q Okay. Can you just explain the process of getting
7 discovery?

8 A Sure. So I -- when we set up our client appointments,
9 the initial appointments, just to establish a relationship,
10 get to know our client, get to know their background history
11 and to learn about their version of the facts. We go over
12 the charges, what they carry, and then if we don't have
13 discovery in our file, we email the Solicitor requesting a
14 followup. From the time the file gets opened up, our office
15 sends a generic letter saying that we're requesting
16 discovery, but usually we don't have it by then. So after I
17 met with Mr. Bobo, I emailed the Solicitor assigned to the
18 charges at that time, because there was a second set of
19 charges that came during my representation of Mr. Bobo.

20 Q So did you -- after that email, did you receive a
21 response from them?

22 A I did not immediately. No. And I don't have my
23 electronic software to know when the discovery was actually
24 emailed.

25 Q But you did ultimately receive discovery?

1 A I did.

2 Q Do you recall what all was in that discovery?

3 A We get the entire file from the warrant, to the
4 incident report, to statements, to any other request for
5 discovery.

6 Q Did you go over all of that with Mr. Bobo?

7 A I did.

8 Q And, if you recall, during your first meeting or second
9 meeting, did he give you his version of events?

10 A Yes.

11 Q Do you recall what those were?

12 A I don't. I don't have exactly what he said.

13 Q Well, just in general terms, as far as the defense
14 theory is concerned, what was your defense theory in this
15 case?

16 A I'm sorry?

17 Q Were you prepared for trial?

18 A It was never scheduled for trial.

19 Q Okay.

20 A We were in court for a probation violation. So it was
21 -- the court had scheduled his probation hearing and that's
22 what we were there for, and then also pending charges that
23 stemmed out of this case.

24 Q Okay. I guess what I'm getting at, were you -- during
25 your representation, were you in a trial posture or a plea

1 posture? Where were you all headed?

2 A Plea and probation violation posture.

3 Q Okay. So did he ever ask for a trial?

4 A No.

5 Q Did he ever indicate in any way that he wanted a trial
6 on these charges?

7 A Yes. We did -- we did discuss the possibilities of
8 what would happen at a trial.

9 Q Okay.

10 A And that's usually something that we go over during our
11 first meeting. What a trial is, what could happen based on
12 what you told me. I have notes in my file where we're
13 supposed to follow up with a victim in the case and where
14 our investigator did reach out to the victim and I can
15 elaborate on that whenever you need me to.

16 Q Right. And that's my next question. Can you just
17 explain your interactions -- all of your interactions with
18 the victim?

19 A So when we do get -- what I do is I task our in-house
20 investigator with contacting the victim and having her come
21 in and go over what we've been told. In this case, I tasked
22 our investigator to reach out to the victim. Sorry. I just
23 need to refer to my notes. I had her reach out on -- in
24 December. I explained the case, what the charges were and
25 what we needed to talk to -- about with the victim, gave a

1 phone number and it looks like our investigator reached out
2 shortly after and said that the victim denied, like speaking
3 with us. In regard to refuting the facts, she gave more of
4 her opinion on what the sentence would be like. Said that
5 she didn't want him to do five to 10 years, but a couple of
6 years. Wasn't planning on coming to court if that would
7 help get him a lighter sentence. It did say that they share
8 two children and had one on the way, that she was nice, but
9 didn't want him to do most of the time. They were willing
10 to write a statement, but just on how he doesn't take
11 responsibility for his actions. So our investigator asked
12 if she wanted to give a statement on the facts of the case
13 and that's where she denied helping the defense.

14 Q And did you ever have any other interactions with her
15 after that?

16 A I may have in court, but I can't recall.

17 Q Okay. And do you recall seeing her that morning of the
18 plea hearing?

19 A Yes.

20 Q Did she come up and talk to you?

21 A She may have. I can't say for certain.

22 Q Okay. Now, you had her statement, correct?

23 A Yes.

24 Q Did you go over her statement with Mr. Bobo?

25 A Yes.

1 Q And what were your concerns about that statement?

2 A The shooting of the gun, the possession of the gun when
3 he's on probation. I believe that I did speak with the
4 lieutenant at time and he said that they did find bullet
5 holes in the vehicle. And, again, it was just a
6 misunderstanding is what I was told, but never disputing the
7 actual facts of what happened. I tried to explain that just
8 because a witness says that they aren't going to show up to
9 court doesn't mean that the State would drop the charges.
10 That they would -- the State would, in fact, make sure that
11 that witness would be there to testify. I believe sometimes
12 that was a battle trying to explain that.

13 Q Okay.

14 A So I never got any type of, you know --

15 Q Now -- sorry. Back to what he said a second ago. He
16 said it was all a misunderstanding, but I believe you said
17 he never contested the facts?

18 A Correct.

19 Q And, I guess, are those the facts of that statement or
20 would -- or are they the facts that the State would present?
21 Because, apparently, the statement says misunderstanding.
22 Did you -- in your investigation, did you see it to be more
23 than that?

24 A Are you saying whether this happened or not?

25 Q Right. Well, I guess what I'm getting at is, the State

1 presents the facts during the hearing that the gun was fired
2 at the car. He denies it and the statement doesn't
3 necessarily say that. Did you discuss that with him that,
4 okay, here's what the State is going to say?

5 A Right. And I told him that the victim, from what we've
6 been told, is going to corroborate that story.

7 Q The story that shots were fired; is that correct?

8 A Right.

9 Q Okay. And did you -- did you see the car?

10 A I did not see the car.

11 Q Okay. Did you -- and just to kind of loop back around.
12 Did you have any other investigation in this case?

13 A Aside from our investigator speaking with the victim?

14 Q Correct.

15 A No.

16 Q Okay. Now, can you describe the plea offers that came
17 from the State?

18 A Yes. So if I could just kind of -- this case was
19 complicated because I met with my client in my office, and
20 then there was a probation violation, and then my client was
21 released out on bond, and then he was rearrested. So that
22 was -- there was a second probation violation. So that's
23 why the probation officer brought him to court and we were
24 there to address the probation violation and there were
25 pending charges. So, at that time, we went over the charges

Yasha Patel-Direct Examination

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1 again and the probation violation. He was going to go for
2 about six years. I believe that's what was suspended on
3 that sentence. And then, we discussed leaving the charges
4 pending or whether we should go ahead and address them at
5 that point. Does that make sense?

6 Q It does.

7 A Okay.

8 Q And so, I guess the question is, during that morning
9 before you plead guilty, were you all -- did you know you
10 were going to plead guilty or that he was going to plead
11 guilty that morning or did you think it was just probation?

12 A They brought him up for -- to address the pending
13 charges --

14 Q Okay.

15 A -- and a probation violation.

16 Q Okay. So y'all knew ahead of time it was those
17 charges, as well?

18 A Yes.

19 Q Okay.

20 A So the plea offer. I'm sorry. It was to dismiss --
21 it was to give a cap and also to dismiss some underlying
22 charges that he had. And I don't have my actual file, just
23 the electronic notes. And it was for the cap of 12 to plead
24 guilty to a DVHAN, unlawful neglect, pointing and
25 presenting, and distribution of marijuana.

1 Q Okay. So did you explain to him ahead of time what a
2 cap of 12 meant?

3 A I did.

4 Q Do you believe that he understood that?

5 A I did.

6 Q And what was the ultimate sentence?

7 A Ten years -- 10 years on the unlawful neglect, DVHAN.
8 Five years on pointing and presenting, 10 years on the
9 distribution of marijuana, and then the six years on the
10 probation violation. Credit for 146 days.

11 Q Okay. Did you discuss with him whether or not these
12 charges were violent, parolable, anything of that sort?

13 A I did.

14 Q What did you tell him?

15 A Usually what I do is use the form -- the sentencing
16 form as a guide to walk through the charges and explain what
17 each box meant for each charge and it's at that time that I
18 go over what that sentence carries, whether it's a
19 non-violent or violent charge and whether they're waiving
20 presentment. I can't recall the form -- what it looks like,
21 but that's when I discuss all of those details.

22 Q Okay. And you did that in this case?

23 A I did.

24 Q Did he ever have any questions for you at that plea
25 hearing that indicated he didn't understand what was going

1 on?

2 A If I could just refer to my notes.

3 Q Sure.

4 A So I believe we did have a meeting with my client and
5 his family members. It was at that time where I discussed
6 if he had any questions about the probation violation and
7 the pending charges. I asked if he wanted to wait for the
8 -- to address the pending charges, that that was fine.
9 After he would return from SCDC serving his violation time,
10 we could talk about his charges then. His family was in the
11 room and they advised him to wrap up all of the charges
12 together. I also advised him of the same, but the client
13 was not happy about that. Philip, who was the probation
14 officer at the time, was going to address the probation
15 violation. I went over everything with the family in the
16 room. We got all of the charges done, the four charges,
17 with the State dismissing the rest. I went over the cap of
18 12, what that meant. The judge with run the VOP concurrent
19 with the sentence. Client, at that time, thought he was
20 going to get 12 years, but I, again, explained what that
21 could mean and what the different types of plea were. The
22 client understood what that meant. Still was held up
23 because the victim -- said that the victim wanted to dismiss
24 the charges, and then we talked about the children, and then
25 I, again, went over the fact that he had two probation

1 violations at this time and we couldn't prolong the
2 probation violation.

3 Q Okay. Can you just go over again the fact the victim
4 wanted to dismiss the charges? How does that affect your
5 representation?

6 A So the way I usually handle it when a client tells you
7 that the victim wants to dismiss the case -- the Solicitor's
8 Office, at the end of the day, controls whether a case will
9 be dismissed or not. It is not a right that the victim has.
10 It's whether -- they can change their statement if they want
11 to when they come to court, but there's still going to be --
12 that charge will still move forward. They don't have the
13 ultimate right of dismissing a charge. I went to the
14 solicitor and said the victim in this case does not want to
15 participate. I believe the Solicitor in that case was Lance
16 Sheek. He said that he would have the victim there. He
17 also presented me a letter at that time that came with
18 discovery that my client wrote to the victim. I advised him
19 not to have any contact with the victim in the case because
20 there was a no contact. So -- sorry. Just circling back
21 around to that. Lance Sheek said that he would not be
22 dismissing the charge.

23 Q And you explained all of this to the Defendant,
24 correct?

25 A Yes.

Yates Patel-Cross Examination

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1 Q All right. What did this letter say?

2 A I don't have it with me. I believe it is a part of the
3 discovery file that the client wrote to -- Mr. Bobo wrote to
4 Ms. Johnson while he was at the detention center in
5 Abbeville asking him -- asking her to tell the State the
6 charges were a big misunderstanding. And it goes on
7 further, but I can't recall what all of the details of that
8 letter were.

9 Q If you recall, during the plea hearing, did Mr. Bobo
10 ever give any indication to you that he did not understand
11 what was going on?

12 A He did not.

13 Q Did he ever -- if you recall, indicate to the Court
14 that he did not understand what was going on?

15 A He did not.

16 Q Based on your experience and your representation and
17 just knowing him, did you believe that his plea was given
18 freely and voluntarily?

19 A I do believe that.

20 MR. HUNTER: Okay. That's all I have. Thank you.

21 MR. THOMPSON: Your Honor, may it please the Court.

22 CROSS-EXAMINATION

23 BY MR. THOMPSON:

24 Q Ms. Patel, you did -- I think that you read in your
25 notes. You said that the victim had informed your office

1 that she did want to drop the charges?

2 A I think I said she didn't want to drop the --

3 Q Oh, she did want -- she wanted to drop the charges?

4 A No. She didn't want to drop the charges, but she gave
5 her input on how much time he should get.

6 Q Okay. All right. Did you ever personally speak with
7 her?

8 A I did not.

9 Q All right. And do you know whether or not she tried to
10 reach out to you at the -- at the actual plea?

11 A I can't recall.

12 Q All right.

13 A She may have. I can't say for certain.

14 Q Okay.

15 MR. THOMPSON: Your Honor, may I approach? Your Honor,
16 I want to refer to page seven in the transcript and this is
17 pages 13 through 16.

18 THE COURT: Lines 13?

19 MR. THOMPSON: Lines 13 through 16, Your Honor, if it
20 pleases the Court.

21 Q I'll let you look at that. Now, I was a little bit
22 confused in your prior testimony because you said that --
23 you know, that he had fired the gun. But he didn't fire the
24 gun at the scene of the altercation, did he?

25 A My prior testimony when? I didn't talk about shooting

Yates Patel-Cross Examination

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1 a gun.

2 Q Okay.

3 A Right now?

4 Q I thought you said that the gun had been fired.

5 A I didn't say that.

6 Q All right. Maybe I just misunderstood. But the gun
7 was actually not fired at the -- at the scene of the
8 altercation?

9 A I didn't say that.

10 Q Okay.

11 A But it wasn't shot.

12 Q Okay. So there was no gunshots when --

13 A No. I'm saying I didn't say that -- whatever you're
14 saying earlier. That --

15 Q Okay. All right. Well, I must have just misunderstood
16 you, because what I thought you said was that, at the time
17 that this altercation occurred, that there were gunshots
18 fired.

19 A I didn't say that.

20 Q All right. So that's not true?

21 A What's written on this statement?

22 Q No. Did -- were there -- all right. Were there
23 gunshots fired at the altercation?

24 A Yes.

25 Q When he and --

Yates Patel-Cross Examination

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1 A Based on what's in the report. I mean, I'm sorry.

2 Q All right.

3 A I really don't know what you're referring --

4 Q Okay.

5 A -- to what I said earlier.

6 Q All right. Let me ask you this. In your investigation
7 of the case --

8 A Yes.

9 Q -- there's two -- kind of two different things going on
10 here. There is an altercation where he has her vehicle
11 where the allegations was -- were that he pointed the gun at
12 her and the child; is that true?

13 A Yes.

14 Q All right.

15 A That's what he pled to.

16 Q Okay. And then, if you look at page seven in lines 13
17 through 16 where the Solicitor is giving a statement of the
18 facts to the Court -- and I can show you this again. I
19 think it says on line 13 that he left the scene.

20 A And who's giving that statement? Would that be Mr.
21 Sheek? The State is giving the --

22 Q Mr. Brown.

23 A Right here. Mr. Sheek.

24 Q Okay. Mr. Sheek. Yeah.

25 A Yes. He's saying --

Yates Patel-Cross Examination

42

- 1 Q Telling the court that he left the scene?
- 2 A It appears that Mr. Sheek did say that.
- 3 Q All right. That he left the scene of the altercation
- 4 and that then, when the car was recovered, the car had been
- 5 shot?
- 6 A Yes. It does say that.
- 7 Q Okay. But there's no indication that he ever fired a
- 8 gun at the time of the altercation?
- 9 A I guess it appears in Mr. Sheek's recitation of the
- 10 facts. Yes.
- 11 Q Okay. But you don't remember personally then?
- 12 A I don't remember personally. It was a long time ago.
- 13 Q Okay. All right. Okay. All right. I just
- 14 misunderstood because I thought you were saying that he had
- 15 fired the gun at the time that this altercation occurred and
- 16 that's not what you were saying?
- 17 A I don't remember what I just said a little while ago.
- 18 I --
- 19 Q Okay.
- 20 A But I'm just saying, yes. This is what Mr. Sheek said.
- 21 Q And the reason I ask that is because we've got a
- 22 domestic violence high and aggravated, which has two
- 23 components or has the components of it as one, a physical
- 24 battery or the apprehension of fear; correct?
- 25 A Yes.

- 1 Q And in this case, there is no physical battery?
- 2 A Well, I believe he pointed a gun at her.
- 3 Q All right. They said that he pointed the gun at her.
- 4 A And then, shot it. Slapped the guns together and
- 5 pulled off and a shot was fired out the window. That's what
- 6 -- I'm looking at the statement.
- 7 Q Okay. And who's statement is that?
- 8 A Ms. Johnson's statement.
- 9 Q Okay. Now -- so in her statement, this is saying that
- 10 this is when she's leaving the scene -- when he's leaving
- 11 the scene?
- 12 A He pulled a gun out while I had my child in my arms
- 13 saying he was going to kill me, because I said I was going
- 14 to call the police, and then we followed him to Ridge
- 15 Street. I dropped his baby son, and then he said he was
- 16 going to get me. By the time he had two guns out, slapping
- 17 together and pulled off the shot -- and a shot was fired.
- 18 Q Okay. But you never spoke to her in regards to this
- 19 statement?
- 20 A I never spoke to her. Our investigator did.
- 21 Q Okay. All right. Now, during the period of time that
- 22 these charges, I guess, he had a probation violation? Is
- 23 that what you were testifying to?
- 24 A There were two probation violations.
- 25 Q Okay. And when he brought -- was brought to court that

Yates Patel-Cross Examination

44

1 day, that was to address the probation violation?

2 A And the pending charges. The Solicitor will put on
3 like a list of roll call and clients who are in detention
4 for the week and that's -- this was not a trial week. It
5 was for clients in detention and for probation violations.
6 So, yes. When they come, we ask if they want to address
7 their pending charges at that time.

8 Q All right. Did you ever -- did you speak to him prior
9 to this court appearance?

10 A I did.

11 Q Okay.

12 A It was in mid-December at some point. He was in
13 detention for those charges.

14 Q Okay. And to the best of your knowledge, did he
15 understand that this was going to be a plea?

16 A I believe so.

17 Q All right. And did he speak with you about the
18 pointing and the presenting at his girlfriend and the child?

19 A Yes.

20 Q And he told you that he did not do that?

21 A He never said that he did not do it. We discussed the
22 statement and what happened. I don't have exactly what he
23 said and I can't recall every detail that he told me, but he
24 decided to move forward with the plea.

25 MR. THOMPSON: Your Honor, may I beg the Court's

1 indulgence. Your Honor, may it please the Court, I have no
2 further questions.

3 THE COURT: Any redirect limited to what he went into?

4 MR. HUNTER: No, Your Honor.

5 THE COURT: Thank you, ma'am. You may step down.
6 Watch your step as you're stepping down.

7 (Whereupon, the witness has stepped down from the
8 witness stand).

9 MR. HUNTER: The State has no further witnesses, Your
10 Honor.

11 THE COURT: Applicant have any reply witnesses?

12 MR. THOMPSON: Your Honor, could I beg the Court's
13 indulgence just for a second.

14 We have nothing in reply, Your Honor.

15 THE COURT: All right. Thank you very much. I will
16 let you know.

17 MR. HUNTER: Thank you.

18 MR. THOMPSON: Okay. Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 - - - END OF TRANSCRIPT OF RECORD - - -

21

22

23

24

25

Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 1st day of March, 2018.

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

Tara T. Scott

Tara T. Scott, CVR
Circuit Court Reporter
October 4, 2018

VOLUNTARY STATEMENT

DATE 9-18-15 TIME 3:50 PM PLACE Abbeville city Pd
I, Nakelia Johnson, am 29 years old and I live at

I am giving this statement to Lt. Ron Bostic, I.D. 2641, who has identified himself as Lt. Ron Bostic

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial, that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever.

I call Allen several of times for him to return my car bc I was going to anderson to look for a job and when I finally got him I told him to bring my car and he said ok so I ended up passing by him turning into the back of pinelli cable and he pulled a gun out while I had my child in my arms saying he would kill me he said I was going to call the police on him and we followed him to ruth st. to drop off his baby mama and son and then he said he wasn't going to give it to me and by that time he had two guns slapping them together and pulled off and a shot was fired out of the window not sure if the shot in the air are to the back where we were and after that he text him and as we were texting he said he shot up my car.

~~X NJ~~
~~X NJ~~
~~X NJ~~

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Nakelia Johnson
Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by

WITNESS
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2010 MAR -6 AM 9:56
CLERK OF COURT

(This must be one and the same person as named above)

PLAINTIFF'S EXHIBIT 6060
16-01-164
NO. 1 JCS

STATE OF SOUTH CAROLINA)
 COUNTY OF ABBEVILLE)
)
 Allen Bobo,)
 S.C.D.C. No. 367299,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE EIGHTH JUDICIAL CIRCUIT

2016-CP-01-0164

ORDER OF DISMISSAL

TRUE COPY
 BY *[Signature]*
 ABBEVILLE COUNTY CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 9, 2016. Respondent made its Return on or about November 7, 2016. An evidentiary hearing into the matter was convened on Thursday, March 1, 2018, at the Laurens County Courthouse in Laurens County, South Carolina. Applicant was present at the hearing and represented by Tommy Thomas, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General’s Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant’s trial counsel, Yasha Patel, Esquire, and his girlfriend Nakeila Johnson testified. This Court had before it a copy of Applicant’s records from the Abbeville County Clerk of Court, Applicant’s records from the South Carolina Department of Corrections, the plea transcript, Applicant’s PCR Application, and Respondent’s Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. Applicant was indicted at the January 2016 term of the Abbeville County Grand Jury for pointing or presenting a firearm (2016-GS-01-0009), unlawful neglect of a child (2016-GS-01-0011), and domestic violence of a high and aggravated nature (DVHAN) (2016-GS-01-0012). Applicant was indicted at the April

[Handwritten initials]

2016 term for possession of marijuana with intent to distribute (2016-GS-01-0122). Applicant was represented by Yasha Patel, Esquire. On March 1, 2016, Applicant appeared before the Honorable R. Scott Sprouse, and pled guilty as indicted. Judge Sprouse sentenced Applicant to imprisonment for five years for pointing or presenting a firearm, ten years for unlawful neglect of a child, ten years for DVHAN, and ten years for possession of marijuana with intent to distribute. Applicant did not file a notice of appeal.

PCR Application

In his application for post-conviction relief, Applicant alleged the following grounds of relief:

1. Ineffective Assistance of Counsel

- a. "Because Yasha Patel wasn't truthful to me and I was forced to plea, falsify statements."

At the PCR hearing, Applicant additionally alleged Counsel was ineffective for failing to prepare for trial, including that Counsel never went over his case with him and did not fully investigate the victim, Nakeila Johnson, who said the incident was a misunderstanding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, the exhibits received at the PCR hearing, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

A. Ineffective Assistance of CounselRelevant Testimony

Applicant alleged Counsel was ineffective for failing to fully investigate and discuss his case. He testified he only met Counsel three times for three to four minutes prior to pleading guilty. He testified they did not go over discovery. Applicant testified Counsel did not speak to the victim, Ms. Johnson, who claimed the incident was a misunderstanding. Applicant presented Ms. Johnson's voluntary statement given where she explains Applicant pulled a gun on her, but Applicant testified it does not state that he pointed the gun at her. Applicant testified he had a gun in his lap while he was in his car but he did not point the gun at Ms. Johnson. He testified the victim walked up to his car to see the gun. Applicant also testified the dispatch call did not mention an altercation involving a gun. Applicant testified Counsel should have looked at all of Ms. Johnson's statements.

Ms. Johnson testified Applicant did not point a gun at her and said in her statement that Applicant pulled a gun out while she had her child in her arms. She testified her statement was misconstrued and she told the plea court the incident was a misunderstanding. Ms. Johnson testified she was not able to talk to Counsel prior to the plea. She testified Counsel's assistant contacted her and Ms. Johnson told the assistant she did not want any involvement in the prosecution. Ms. Johnson further testified she was not able to tell anyone her side of the story, that Applicant did not commit the crime.

Counsel testified she met with Applicant three to four times prior to the plea for forty-five minutes to one hour each time. She testified she received discovery and discussed with Applicant the charges, potential sentences, and his version of the facts. She testified she discussed with Applicant what would happen at a trial. Counsel testified the incident involved an

altercation at a vehicle where Applicant pointed a gun at Ms. Johnson, and when Applicant left the scene he shot at Ms. Johnson.

Counsel testified she had her investigator reach out to Ms. Johnson, but Ms. Johnson denied speaking to her. Counsel testified Ms. Johnson ultimately told her she did not want Applicant to do five to ten years but would come to the plea hearing if he received a couple years. Counsel testified Ms. Johnson did not want to come to the plea hearing. Counsel testified she discussed Ms. Johnson's statement and told Applicant the State would not drop the charges simply because Ms. Johnson said the incident was a misunderstanding. Counsel testified she told the solicitor about Ms. Johnson's recantation, and the solicitor told her he had a letter from Applicant to Ms. Johnson where Applicant told Ms. Johnson to tell the State it was a misunderstanding.

Applicable Law

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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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).

Findings

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to discuss and investigate his case, and to fully investigate Ms. Johnson. This Court finds Counsel appeared very knowledgeable about the underlying case and appeared well-prepared and was credible. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). This Court finds Counsel met with Applicant sufficiently and to discuss his case. This Court finds Counsel employed a private investigator to contact Ms. Johnson and ultimately was able to contact her. This Court finds Counsel was not deficient in investigating Ms. Johnson's

version of events or her recantation, and she fully discussed with Applicant that the solicitor still had control of the prosecution. Even though this Court can conclude the victim remains loyal to Applicant and wishes he was not in prison, she did not state that she did not want him prosecuted at the plea hearing. Additionally the decision to prosecute the applicant for the DVHAN was for the solicitor to make, not his attorney. This Court finds Applicant has failed to meet his burden of proving Counsel was deficient in her investigation or preparation. Furthermore, this Court finds Applicant has failed to meet his burden of proving he would not have pled guilty but proceeded to trial but for Counsel's actions. Accordingly, this allegation must be dismissed.

B. Involuntary Guilty Plea

Relevant Testimony

Applicant alleges that his plea was given involuntarily. Applicant alleged he accepted the plea because his attorney said he was guaranteed to lose at trial because of Ms. Johnson's statement. He testified he did not know he was pleading guilty but thought he was going to court for a bond hearing. Applicant testified he was only offered a cap of twelve years. Applicant testified his plea was not made freely and voluntarily because he was told he would get a large amount of time and there was a lot of negativity given to him around the plea. He testified Counsel told him prior to the plea hearing not to say anything that could mess up the plea.

Counsel testified she explained to Applicant the State was recommending a twelve year cap for sentencing. She testified she explained to Applicant the potential sentences he faced, whether they were violent or non-violent, and the parole eligibility. She testified they talked before his plea and told Applicant he did not have to plead guilty yet, but Applicant's family wanted him to plead. Counsel testified Applicant knew he was pleading guilty the day of the plea.

Applicable Law

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; 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, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

"A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise

independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486).

Findings

This Court finds, and the record reflects, Applicant was fully advised that he was pleading guilty. Although Applicant claims he never pointed the gun at Ms. Johnson, there is evidence to counter his position, including his agreement on the record at the plea with the State’s presentation of the facts that he produced and pointed a handgun at Ms. Johnson. There is also evidence that bullet holes were found in the vehicle. At the PCR hearing, Applicant contended that his lawyer was not ready for trial; however, the record does not support the conclusion that that the plea was anything other than a free and voluntary decision by him. The plea came with a recommendation of a cap of twelve years to a potential twenty year sentence. He received a ten year sentence. Applicant complained at the PCR hearing of the “negativity” that was “thrown at him” at the time of his plea. On cross-examination he acknowledged that Counsel told him, “you are not going get that much time.” She was correct as Applicant received less than the twelve years the State recommended.

A review of the plea transcript indicates that Applicant waived all of his rights, including his right to a jury trial. Tr. 5-6. Applicant also acknowledged that no one had coerced or forced him to plea to the charges. Tr. 5. He also told the judge he was not under the influence of anything that was affecting his judgment. Tr. 5. He told the judge he was pleading guilty because he was guilty of the charges. Moreover, after the solicitor stated the facts behind the case, including the fact that he produced the gun and pointed the gun at the victim while she held their seven-month-old child, Applicant told the court he heard those facts and that he agreed with those facts. Tr. 6-7. Additionally, Applicant acknowledged to the judge that he was completely

satisfied with his Counsel's representation of him. Tr. 6. Given the totality of what he was pleading to, including the probation violations, and the sworn statements made by Applicant to the court, this Court finds Applicant's plea was freely, voluntarily and knowingly entered. This Court also finds that Applicant has presented no evidence that he did not understand the plea proceeding or that his plea was not freely, voluntarily, or intelligently made. Accordingly, this allegation must be dismissed.

III. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

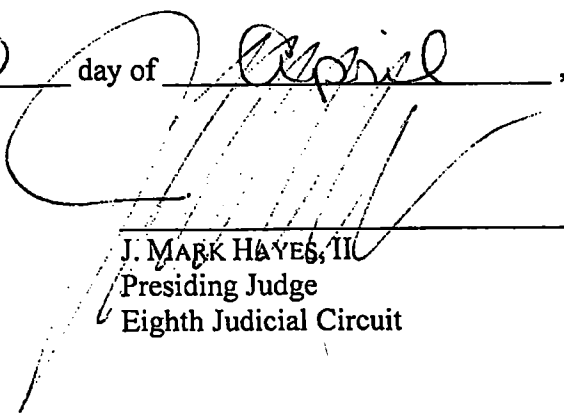
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 30 day of April, 2018.



J. MARK HAYES, III
Presiding Judge
Eighth Judicial Circuit

Abbeville, South Carolina

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2018 MAY 3 AM 8 44
EMILY Y MCHAHAN
CLERK OF COURT

STATE OF SOUTH CAROLINA,)
COUNTY OF ABBEVILLE.)

IN THE COURT OF COMMON PLEAS.

Allen Bobo #367299,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

CERTIFICATE OF SERVICE BY MAIL

16-CP-01-00-164

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that a copy of Order of Dismissal in the above-referenced matter was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 31st day of May, 2018, addressed as follows:

Megan Harrigan Jameson
Office of the Attorney General
Post Conviction Relief
Post Office Box 11549
Columbia, SC 29211-1549

Solicitor's Office (hand delivered)
ATTN: Yates Brown/Micah Black
P.O. Box 516
Greenwood, SC 29648

Allen Bobo #367299
Wateree River Correctional Inst.
Dorm 4A
P.O. Box 189
Rembert, SC 29128


Melinda Kennedy, Common Pleas Clerk

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR

POINTING OR PRESENTING FIREARM

§16-23-0410

At a Court of General Sessions, convened on the 19th day of January, 2016, the Grand Jurors of Abbeville County present upon their oath:

That Allen Antowian Bobo, on or about September 18, 2015, in Abbeville County, willfully and unlawfully without just cause or excuse present or point a firearm at [REDACTED] seven (7) months of age, in violation of Section 16-23-410 of the South Carolina Code of Laws, 1975, as amended.

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


Assistant Solicitor

WITNESSES

Neddra Singleton
Abbeville County Sheriff

WARRANT NUMBER

2015A0110200055

TRUE BILL

Carline Blackwell

Foreman of the Grand Jury

Date: JAN 19 2016

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

January, 2016 Term
Indictment # 16GS01-0009

THE STATE

vs.

Allen Antowian Bobo

INDICTMENT FOR

POINTING OR PRESENTING FIREARM
§16-23-0410
CDR: 0122

TRUE COPY
BY *Shandal Boggs*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

INDICTMENT FOR
UNLAWFUL NEGLECT OF CHILD
§63-05-070

At a Court of General Sessions, convened on the 19th day of January, 2016, the Grand Jurors of Abbeville County present upon their oath:

That Allen Antowian Bobo, on or about September 18, 2015, in Abbeville County, willfully and unlawfully while being a person who had charge or custody of a child, or who was the parent or guardian of a child, or who was responsible for the care and support of a child, one **MINOR** 7 months of age, did place the said child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or caused to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child was endangered or was likely to be endangered; or willfully abandoned the said child, in violation of the provisions of Section 63-5-70 of the South Carolina Code of Laws, 1976, as amended.

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


Assistant Solicitor

WITNESSES

Neddra Singleton
Abbeville County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

January, 2016 Term

Indictment # 16GS01-0011

WARRANT NUMBER

2015A0110200053

THE STATE

Allen Antowian Bobo

TRUE BILL

Caroline Blackwell

Foreman of the Grand Jury

Date: JAN 19 2016

INDICTMENT FOR

UNLAWFUL NEGLECT OF CHILD

§63-05-0070

CDR. 2481

VERDICT

Foreman:

TRUE COPY
BY *Shandal Boop*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

INDICTMENT FOR
DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE
§16-25-0065

At a Court of General Sessions, convened on the 19th day of January, 2016, the Grand Jurors of Abbeville County present upon their oath:

That Allen Antowian Bobo, on or about September 18, 2015, in Abbeville County, willfully and unlawfully caused physical harm or injury to his own household member or offered or attempted to cause physical harm or injury to his own household member, Nakelia Johnson, with apparent present ability under circumstances reasonably creating fear of imminent peril and he committed the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim resulted; or he committed the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would have reasonably caused a person to fear imminent great bodily injury or death; or he violated a protection order and, in the process of violating the order, committed domestic violence in the first degree, in violation of Section 16-25-65 of the South Carolina Code of Laws, as amended.

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


Assistant Solicitor

WITNESSES

Neddra Singleton
Abbeville County Sheriff

WARRANT NUMBER

2015A0110200052

TRUE BILL

Caroline Blackwell

Foreman of the Grand Jury

Date: JAN 19 2016

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

January, 2016 Term

Indictment # 16GS01-0012

THE STATE

vs.

Allen Antowian Bobo

INDICTMENT FOR

DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE

§16-25-0065

CDR: 3814

TRUE COPY

BY *Shandal Boenig*
ABBEVILLE COUNTY CLERK OF COURT

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

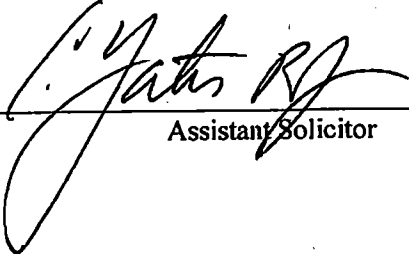
COUNTY OF ABBEVILLE

POSSESSION OF MARIJUANA
WITH INTENT TO DISTRIBUTE
§44-53-0370

At a Court of General Sessions, convened on the 1st day of April, 2016, the Grand Jurors of Abbeville County present upon their oath:

That Allen Antowan Bobo, on or about November 26, 2014, in Abbeville County, willfully, unlawfully, and knowingly possess with the intent to distribute, dispense, or deliver and/or did otherwise, aid, abet, attempt, or conspire to possess with the intent to distribute, dispense, or deliver, marijuana, a Schedule I controlled substance defined in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, in violation of the provisions of Section 44-53-370 of the South Carolina Code of Laws, 1976, as amended

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


Assistant Solicitor

WITNESSES

D. L. Brinston
Calhoun Falls Police Department

WARRANT NUMBER

2014A1020000099

Foreman of the Grand Jury

Date: _____

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

April Term, 2016
Indictment # 16GS01-0122

THE STATE

vs.

Allen Antowan Bobo

INDICTMENT FOR

POSSESSION OF MARIJUANA
WITH INTENT TO DISTRIBUTE

§44-53-0370

CDR: 0187

I DO HEREBY WAIVE MY RIGHT TO GRAND JURY PRESENTMENT

X Allen Bobo
DEFENDANT

3/1/16
DATE

[Signature]
WITNESS

TRUE COPY
BY Shanda Boggs
ABBEVILLE COUNTY CLERK OF COURT