

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

DERRICK L. WALKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001705

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

INDEX

INDEX i

PLEA HEARING TRANSCRIPT (OCTOBER 26, 2015).....1

APPLICATION FOR POST-CONVICTION RELIEF18

RETURN AND PARTIAL MOTION TO DISMISS25

POST-CONVICTION RELIEF HEARING TRANSCRIPT (MARCH 1, 2018)34

ORDER OF DISMISSAL.....57

INDICTMENTS68

SENTENCE SHEETS72

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PLEA

WITNESS/DESCRIPTION

PAGE NO.

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 17

State v. Derrick Walker

10/26/15

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1 THE COURT: Who's next?

2 MS. CORNWELL: State calls Derrick Walker.

3 May it please the Court, Your Honor?

4 THE COURT: Yes, ma'am.

5 MS. CORNWELL: Before you is Derrick Walker with his
6 attorney, Minh Wyman. He is here to plead guilty under
7 waived indictment 2015-GS-38-0093 and 1620. Both of those
8 are waived indictments for assault and battery in the first
9 degree. The State is not making any recommendations on
10 sentencing, however, we are requesting a maximum on each
11 one. It's not a recommendation, it's a request.

12 THE COURT: Okay.

13 (WHEREUPON, Derrick Walker was duly
14 sworn.)

15 THE COURT: Ms. Wyman, you represent Mr. Walker?

16 MS. WYMAN: Yes, sir.

17 THE COURT: And you've had an opportunity to review with
18 him the evidence State has against him regarding these two
19 charges?

20 MS. WYMAN: Yes, sir.

21 THE COURT: You've explained to him the law that applies
22 in these situations?

23 MS. WYMAN: I did.

24 THE COURT: Is the maximum up to 15 on each one?

25 MS. CORNWELL: It's zero to 10, Your Honor.

1 THE COURT: Oh, zero to 10. Okay.

2 Well, you've advised him of his constitutional rights?

3 MS. WYMAN: I have.

4 THE COURT: And do you believe he's understood
5 everything that you've told him?

6 MS. WYMAN: Yes, sir.

7 THE COURT: Okay.

8 All right. Mr. Walker, You're 54?

9 MR. WALKER: Yes, sir.

10 THE COURT: Okay. And Mr. Walker before you were
11 arrested were you working somewhere?

12 MR. WALKER: I was doing yard work.

13 THE COURT: Okay. And who were you doing that for?

14 MR. WALKER: I'm working for Mr. (inaudible).

15 THE COURT: How long you been working for Mr.
16 (inaudible)?

17 MR. WALKER: About three years.

18 THE COURT: Three years?

19 MR. WALKER: Yeah.

20 THE COURT: And that's pretty much all year?

21 MR. WALKER: Yeah, yeah. We find something to do.

22 THE COURT: Okay. How far did you go in school?

23 MR. WALKER: Graduated, twelfth grade.

24 THE COURT: You graduated?

25 MR. WALKER: Yes, sir.

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THE COURT: From which school?

MR. WALKER: Orangeburg Wilkinson.

THE COURT: Okay. And have you ever been treated for any mental health issues?

MR. WALKER: No, sir.

THE COURT: Ever been treated for drug or alcohol abuse or dependency?

MR. WALKER: No.

THE COURT: Are you taking any kind of medication that effects your ability to understand what you're doing here?

MR. WALKER: No, sir.

THE COURT: Okay. So you're thinking clearly today?

MR. WALKER: Yes, sir.

THE COURT: You know exactly what you're doing?

MR. WALKER: Yes, sir.

THE COURT: I'm told you're pleading guilty to two different charges of assault and battery, first; is that your understanding?

MR. WALKER: Yes, sir.

THE COURT: Okay. Now, Ms. Wyman has met with you and reviewed with you the evidence the State has against you on both of these charges?

MR. WALKER: Yes, sir.

THE COURT: She's explained to you the law that applies in this situation?

1 MR. WALKER: Yes, sir.

2 THE COURT: You know you're facing, as I've just been
3 corrected, up to 10 years on both of these?

4 MR. WALKER: Yes, sir.

5 THE COURT: Okay. She's also advised you of your
6 constitutional rights? You understand you have the right to
7 have a jury trial on these two charges?

8 MR. WALKER: Yes, sir.

9 THE COURT: Do you want a jury trial?

10 MR. WALKER: No, sir.

11 THE COURT: You want to go forward with these pleas?

12 MR. WALKER: Yes, sir.

13 THE COURT: Okay. You understand if you plead guilty
14 you have to admit to me that you are, in fact, guilty of
15 these assault and batteries?

16 MR. WALKER: Yes, sir, I am guilty by Alford.

17 THE COURT: Huh?

18 MS. WYMAN: We forgot to mention this, Your Honor.
19 He'll be pleading under North Carolina verses Alford.

20 THE COURT: Oh, all right. Well, Mr. Walker, then let
21 me phrase it this way, because of the fact that she's gone
22 over the evidence with you and advised you of the law in
23 this situation; do you realize that if you go to trial there
24 is a likelihood that you will be convicted, a substantial
25 likelihood that you will be convicted of these charges. Is

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that correct?

MR. WALKER: Yes, sir.

THE COURT: So you want to take advantage of the guilty pleas; is that correct?

MR. WALKER: Yes, sir.

THE COURT: Now, just so we'll know, if I happen to say you're pleading guilty, I understand you're pleading guilty under North Carolina verses Alford; is that correct?

MR. WALKER: Yes, sir.

THE COURT: All right. Now, you understand whether you plead under North Carolina verses Alford or a straight guilty plea it's still going to show up as two convictions on your record; you understand that?

MR. WALKER: Yes, sir.

THE COURT: And pleading under North Carolina verses Alford doesn't change the fact that you are going to be found guilty of this; you understand that?

MR. WALKER: Yes, sir.

THE COURT: You understand that by pleading you give up your right to remain silent; you understand that?

MR. WALKER: Yes, sir.

THE COURT: You give up your right to present any defenses you may have to these charges; you understand that?

MR. WALKER: Yes, sir.

THE COURT: And you understand, finally, that you -- it

State v. Derrick Walker

10/26/15

8

1 does away with the requirement that the State prove you're
2 guilty beyond a reasonable doubt; do you understand that, as
3 well?

4 MR. WALKER: Yes, sir.

5 THE COURT: And you're willing to give up all of those
6 rights?

7 MR. WALKER: Yes, sir.

8 THE COURT: Okay. Are you satisfied with the services
9 of your attorney?

10 MR. WALKER: Yes, sir.

11 THE COURT: Do you need any more time to talk with her?

12 MR. WALKER: No, sir.

13 THE COURT: And you've already told me you don't want a
14 jury trial?

15 MR. WALKER: Right.

16 THE COURT: Has anybody promised you anything to get you
17 to plead guilty here today?

18 MR. WALKER: No, sir.

19 THE COURT: You're doing this freely and voluntarily?

20 MR. WALKER: Yeah.

21 THE COURT: You know exactly what you're doing?

22 MR. WALKER: Yes, sir.

23 THE COURT: All right.

24 Ms. Cornwell.

25 MS. CORNWELL: Thank you, Your Honor.

State v. Derrick Walker

10/26/15

9

1 For purposes of the record, under the benefit of the
2 bargain, the State is allowing the plea -- he was originally
3 charged with attempted murder --

4 THE COURT: Uh-huh. (Affirmative response)

5 MS. CORNWELL: -- the State is allowing him to plead to
6 the two counts of assault and battery. His benefit on that
7 is his exposure goes from 30 years to 20 years. Also there
8 is the distinction between violent and non-violent. So that
9 would be the bargain under the benefit for the plea.

10 THE COURT: All right.

11 Now, these sentencing sheets are not checked as no-
12 violent, violent, serious or most serious at all?

13 MS. CORNWELL: I apologize, Your Honor. They are non-
14 violent.

15 THE COURT: Okay. I'm going to make those marks on
16 there as non-violent. Go ahead.

17 MS. CORNWELL: May it please the Court.

18 THE COURT: Yes, ma'am.

19 MS. CORNWELL: On November 14, 2014, officers responded
20 to a shooting incident that occurred in the Orangeburg area
21 of Orangeburg County. While in route, officers were flagged
22 down by a witness who stated this defendant came to her
23 house and called 9-1-1. Officers followed the defendant
24 back to the incident location where the defendant advised
25 officers that he shot the victim and hoped he did not bleed

1 to death. Officers observed the victim with a gun-shot
2 wound to his left leg in the calf area. The victim advised
3 that he and the defendant had gotten into an altercation
4 over a female friend and that the defendant went inside his
5 room, came back with a shotgun and shot him in the leg. He
6 then began hitting the victim with the gun, which he had to
7 wrestle away from the defendant. Along with being shot in
8 the leg area, officers also observed a laceration above the
9 defendant's left eye with swelling and bruising. According
10 to the defendant, the victim came over to his house while he
11 was cooking. He claims the victim punched him in the mouth
12 area three times and that he knew he couldn't beat the
13 victim which is why he went to the bedroom, got his shotgun,
14 came back and shot him. The defendant claims he dropped the
15 gun on the floor before leaving to ask for help at a
16 neighbor's house.

17 Officers did speak to witnesses who were in the home
18 when this incident occurred. One witness reported they were
19 in the bathroom, that they could hear arguing and then they
20 heard a gun-shot. She said when she came out of the
21 restroom she saw this defendant beating the victim with the
22 wooden butt-end of the shotgun in the head. The other
23 witness said he did not see anything because he was in the
24 bedroom the entire time, but he heard the victim come in the
25 residence and he heard an argument before he heard the gun-

State v. Derrick Walker

10/26/15

11

1 shot. While he was on the phone with 9-1-1, because that
2 witness also called 9-1-1, he heard a second gun-shot.

3 There is evidence to show that this defendant did fire at
4 the victim twice. The first shot went into the leg, the
5 second shot went into the floor near the victim. There were
6 two shell casings found in the living room, along with the
7 shotgun. The defendant states he did throw the shotgun down
8 next to the victim and said to the victim, look what you
9 made me do.

10 The victim's leg, unfortunately, had to be amputated.

11 Under Alford, if we were to go to trial the State would
12 have the victim testify as to what occurred. We would also
13 have both witnesses to say they heard arguing and gunshots
14 and the one witness to say that after the gunshot she
15 observed this defendant beating the victim in the head with
16 the butt of the gun.

17 He does have a prior record. He has a 2004 reckless
18 endangerment and handgun on a person. That charge is out of
19 Maryland. He's got a 2007 disorderly conduct out of
20 Maryland and a 2008 burglary in the fourth degree, out of
21 Maryland.

22 Your Honor, the victim is here and would like to
23 address the Court at the appropriate time.

24 THE COURT: Now, would be good, if you want to come on.

25 MS. CORNWELL: You can come forward. If that's too much

1 you can stay. Whatever is easiest for you.

2 If you'll just state your name for the record.

3 MR. JENNINGS: My name is Kelvin Jennings.

4 THE COURT: Kelvin Jennings?

5 MR. JENNINGS: Yes, sir.

6 THE COURT: All right, Mr. Jennings. Yes, sir.

7 MR. JENNINGS: He just took part of my life away from
8 me. I can't work anymore, I can't do anything anymore.

9 THE COURT: Yes, sir.

10 MR. JENNINGS: I just want the Court to give him all the
11 time you can give him.

12 THE COURT: All right. And Mr. Jennings, just out of
13 curiosity, before this happened what were you doing for a
14 living?

15 MR. JENNINGS: I worked 20 years in insulation.

16 THE COURT: Oh, insulation work. Okay.

17 MR. JENNINGS: Yes, sir.

18 THE COURT: All right. I'm really am sorry about your
19 leg.

20 MR. JENNINGS: Yes, sir.

21 THE COURT: Anything else you want to tell me?

22 MR. JENNINGS: No, sir.

23 THE COURT: Okay. All right. Thank you, Mr. Jennings.

24 MS. CORNWELL: That would be all from the State, Your
25 Honor.

State v. Derrick Walker

10/26/15

13

1 THE COURT: All right.

2 Mr. Walker, you heard the evidence that the State was
3 going to present at trial, you heard what the Solicitor said
4 they were going to present at trial; is that correct?

5 MR. WALKER: Yes, sir.

6 THE COURT: Okay. And you realize that as a result of
7 -- you've gone over that evidence with your attorney as
8 well; is that correct?

9 MR. WALKER: Yes, sir.

10 THE COURT: Okay. And this is kind of to reiterate what
11 I mentioned earlier, you understand that if we went to trial
12 there is a substantial likelihood that you would be found
13 guilty of this charge, of both of these charges; is that
14 correct?

15 MR. WALKER: Yes, sir.

16 THE COURT: Okay. So you are pleading guilty to the
17 Indictment 2015-GS-0093, which was originally an attempted
18 murder charge and now is -- they are allowing you to plead
19 to assault and battery, first degree; is that correct?

20 MR. WALKER: Yes, sir.

21 THE COURT: And you're pleading guilty to that under
22 North Carolina verses Alford; is that correct?

23 MR. WALKER: Yes, sir.

24 THE COURT: Okay. And Indictment No. 2015-1620 was
25 originally -- it was an assault and battery, first degree,

1 charge and you are pleading to the second assault and
2 battery first degree charge; is that correct under North
3 Carolina verses Alford?

4 MR. WALKER: Yes, sir.

5 THE COURT: You understand if I accept your guilty pleas
6 under North Carolina verses Alford to these two charges they
7 are going to be two convictions on your record?

8 MR. WALKER: Yes, sir.

9 THE COURT: And you understand that you've got 10 days
10 from today's date to appeal my decision?

11 MR. WALKER: Yes, sir.

12 THE COURT: Okay. Do you want me to accept your guilty
13 pleas to these two charges?

14 MR. WALKER: Yes, sir.

15 THE COURT: Okay. Mr. Walker, I find your decision to
16 plead guilty to these two charges is freely, voluntarily and
17 intelligently made. I find you've had the advice and counsel
18 of a competent attorney. I find you're satisfied with the
19 services of your attorney. I find there's a factual basis
20 on which to base these guilty pleas and I also find that
21 based on the evidence or the summary of the evidence that
22 has been presented to me had you gone to trial there would
23 be a substantial likelihood that you would be convicted of
24 these two charges; do you understand that?

25 MR. WALKER: Yes, sir.

State v. Derrick Walker

10/26/15

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1 THE COURT: Okay. So I am going to accept your guilty
2 pleas under North Carolina verses Alford to both of these.

3 Ms. Wyman?

4 MS. WYMAN: Thank Your Honor.

5 Mr. Walker is 54. He's been in Orangeburg most of his
6 life. He is a high school graduate.

7 Your Honor, we discussed at length about taking this to
8 trial under the various self-defense -- after hearing the
9 evidence and talking to a couple of witnesses it's his wish
10 to take advantage of the plea offer here today.

11 Your Honor, this was an altercation that got way out of
12 hand. He is sorry about what happened. It was never his
13 intention for their fight to lead to this. I will say that
14 he did call 9-1-1 to get help for Mr. Jennings as soon as he
15 could.

16 Your Honor, he's been in jail since November 15 of last
17 year. By my count that's 345 days. We ask that you give him
18 credit for that.

19 THE COURT: Since November 15, 2014?

20 MS. WYMAN: Yes, Your Honor.

21 THE COURT: Okay. All right. Mr. Walker in the
22 indictment ending in 93, the sentence of this Court is that
23 you are committed to the State Department of Corrections for
24 a period of 10 years. I'll give you credit for the time
25 that you have served since November 15, 2014. And the

State v. Derrick Walker

10/26/15

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1 indictment ending in 1620, sentence of this Court is that
2 you are committed to the State Department of Corrections for
3 a period of 10 years, suspend that upon the service of four
4 years in jail and five years probation. Sentences are
5 consecutive. Good luck to you.

6 MS. CORNWELL: Thank Your Honor.

7 MS. WYMAN: Thank Your Honor.

8 (This proceeding was concluded.)
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State v. Derrick Walker

10/26/15

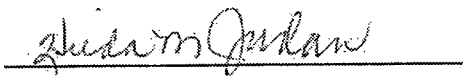
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PLEA IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 26 DAY OF NOVEMBER, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

September 10, 2016

FORM 5

STATE OF SOUTH CAROLINA)

County of Orangeburg)

Derrick L. Walker)

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

v.)

State of South Carolina)

ATTEST: TRUE COPY)

Winnaja B. Clark

CLERK OF COURT **INSTRUCTIONS - READ CAREFULLY**

ORANGEBURG COUNTY, SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2014-CP-38-00099

APPLICATION FOR

POST-CONVICTION RELIEF

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 Ridge land Correctional Institution

2. Name and location of Court which imposed sentence Orangeburg County Courthouse
General Sessions 151 Docket St., P.O. Box 9000, Orangeburg, S.C. 29116

3. Name(s) of co-defendant(s) (if any) None

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015GS.38-0093 Assault @ Battery 1st 10yrs MAX

(b) 2015GS38-1620 Assault @ Battery 1st 10yrs suspended to 4yr Prison - 5yrs Probation

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10-26-15 10 yrs
 - (b) 10-26-15 10 yrs suspended to 4 yrs S.C.D.C. and 5 yrs Probation
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? NO

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) my Attorney failed to do as requested by me!
 - (b) _____

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

- (a) In Effective Assistance of Counsel
- (b) Double Jeopardy in Convictions/ And Sentences/ US constitutional Violations
State constitutional Violations
- (c) Violation of Procedural Due Process/ Due Process
see State v Walsh 388 SE2d 777 (1988) Double Jeopardy Punishment

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

- (a) Attorney failed to investigate the witnesses statements that conflicted with evidence
- (b) Attorney did not object to Double Jeopardy in charges and in sentencing punishments
- (c) Applicant Claims he was erroneously held without arrest warrant served on him for 2015 6538
1620

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

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? **NO**

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Because my defense counsel refused and did not file
- (b) my Notice of Intent To Appeal my convictions (Pleas)
- (c) AS requested.

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? No
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

- (a) the name and address of each attorney who represented you:
 - i. Mink Lee Wyman
Orangeburg County Public Defenders Office
 - ii. 190 Gibson St, Room 110, P.O. Box 1112
Orangeburg, S.C. 29116-1112
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea and Sentencing
 - ii. _____
 - iii. _____

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

That sentences be vacated, or reversed, and allowed
to plead to (1)st OF Assault Battery to time served

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

NO

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

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

X Derrick Walker

SWORN to and subscribed before me this 29 day of January, 2016.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

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

I, Derrick L. Walker, 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.

X Derrick Walker
Applicant

SWORN or affirmed to and subscribed before me this
29 day of January, 2016.
Virginia Roberson
Notary Public

My Commission Expires: May 20, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
))
))
Derrick L. Walker, #365914,)
))
Applicant,)
))
v.)
))
State of South Carolina,)
))
Respondent.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2016-CP-38-0099

**RETURN AND PARTIAL
MOTION TO DISMISS**

In response to the post-conviction relief application filed on February 1, 2016, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Orangeburg County Clerk of Court's orders of commitment. Applicant was indicted by the January 2015 term of the Orangeburg County Grand Jury for one (1) count of attempted murder (2015-GS-38-00093). Applicant was subsequently indicted by the October 2015 term of the Orangeburg County Grand Jury for one (1) count of assault and battery, first degree (2015-GS-38-1620). Minh Lee Wyman, Esquire, represented him. On October 26, 2015, Applicant pled guilty, pursuant to Alford¹, to two (2) charges of assault and battery, first degree. The Honorable Edgar W. Dickson sentenced Applicant to ten years for the first count of assault and battery, first degree (2015-GS-38-0093). Applicant was also sentenced to ten (10) years for the second count of assault and battery, first degree (2015-GS-38-1620), but it was suspended to service of four (4) years with five (5) years' probation. The sentences are set to run consecutively. Applicant did not appeal his convictions or sentences.

II. ALLEGATIONS

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

1. "Ineffective assistance of counsel"
 - a. "Attorney failed to investigate the witnesses statements that conflicted with evidence"
2. "Double Jeopardy in Convictions/And Sentences/US Constitutional Violations/ State Constitution Violations"
 - a. "Attorney did not object to Double Jeopardy in charges and in sentencing punishments"
3. "Violation of Procedural Due Process/Due Process"
 - a. "See State v. Walsh 388 SE 2d 777(1988)" (sic)
 - b. "Applicant claims he was erroneously held without arrest warrant served on him for 2015-GS-38-1620"
4. "The applicant contends that he unknowingly and involuntarily plead guilty to two counts of assault and battery in the first degree..."
5. "The applicant contends that S.C. Code 17-25-50 constitutes the offense of assault and battery first degree to be treated as one offense. Since the applicant never left the scene and all his actions constitutes one offense of assaults and batteries

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

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent construes Applicant's allegations as alleging ineffective assistance of plea counsel. Respondent asserts that Applicant's allegation of ineffective assistance of plea counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney

¹ North Carolina v. Alford, 394 U.S. 956, 89 S. Ct. 1306 (1969).

performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

IV. DOUBLE JEOPARDY

Applicant also makes an allegation of double jeopardy regarding his convictions and sentences. The Court finds that this allegation must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An

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

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

S.C. Code Ann. § 17-27-20.

Double jeopardy is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence. Applicant's contention that such a ground is impliedly created by S.C. Code Ann. § 17-27-90 is meritless, as that section does not pertain to *what* may be raised, but *how* valid grounds must be raised.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court shall dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

V. DUE PROCESS

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails

to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VI. UNKNOWNING, INVOLUNTARY GUILTY PLEA

Applicant further claims his plea was not entered knowingly or voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an Applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his

statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

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

VII. MERGER OF CHARGES

Applicant also makes an allegation that his two first-degree assault and battery offenses should be treated as one offense. The Court finds this allegation must be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160.

Applicant's claim is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence. Applicant's contention that such a ground is impliedly created by S.C. Code Ann. § 17-27-90 is meritless, as that section does not pertain to *what* may be raised, but *how* valid grounds must be raised.

For these reasons and pursuant to Rule 12(b)(6), SCRCRCP, the Court shall dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VIII. AMENDMENTS

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not **specifically** laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

{Conclusion and signature block on following page}

IX. CONCLUSION

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. WHEREFORE, Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRISON JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: 
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April 20, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 DERRICK L. WALKER, #365914,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2016-CP-38-0099

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 and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

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

DATED this 20th day of April, 2017.



 Brianna Arnone, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
) Court of Common Pleas
 2 COUNTY OF ORANGEBURG) Case No. 2016-CP-38-0099
 (held in Dorchester))
 3 _____)
)
 4 DERRICK L. WALKER,)
)
 5 Applicant,)
)
 6 vs.) Transcript of Record
)
 7 STATE OF SOUTH CAROLINA,)
)
 8 Respondent.) DATE: March 1, 2018
 _____)
 9

10
 11 B E F O R E:
 12 THE HONORABLE MAITE MURPHY
 13
 14

15 A P P E A R A N C E:
 16 JONATHAN D. WALLER
 Attorney for the Applicant
 17
 18 CHRISTIAN SAVILLE
 Attorney for the Respondent

Karen V. Andersen, RMR, CRR
 Circuit Court Reporter

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 22
 23
 24
 25

INDEX

EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Witness Name

Page

DERRICK WALKER

Direct by Mr. Waller 4

Cross by Mr. Saville 11

Re-Direct by Mr. Waller..... 13

MINH LEE WYMAN

Direct by Mr. Saville 14

Cross by Mr. Waller 18

Re-Direct by Mr. Saville 20

1 MR. SAVILLE: May it please the Court. This is
2 Derrick Walker vs. The State of South Carolina, Docket No.
3 2016-CP-38-0099. Applicant was indicted by the January 2015
4 term of the Orangeburg County grand jury for one count of
5 attempted murder. But he was subsequently indicted by the
6 October 2015 term of the Orangeburg County grand jury for one
7 count of assault and battery first degree. He was represented
8 by Minh Lee Wyman, Esquire. Ashley Cornwell prosecuted the
9 case.

10 On October 26th, 2016, applicant pled guilty pursuant
11 to *Alford* to two waived indictments of assault and battery
12 first degree. The Honorable Edgar W. Dixon sentenced him to 10
13 years for the first count of assault and battery first degree,
14 and another 10 years for the second count. But the second
15 count was suspended upon the service of four years with five
16 years probation. The sentences were said to run consecutively
17 and applicant did not appeal his convictions or sentences.

18 He filed a timely PCR application on February 1st,
19 2016, alleging ineffective assistance of counsel for failure to
20 investigate the witness statements that conflicted with
21 evidence. Also, the attorney did not object to double jeopardy
22 in charges and in sentencing punishments.

23 Applicant also alleged a violation of his procedural
24 due process claiming that he was erroneously held without an
25 arrest warrant served on him.

1 He also claims an involuntary guilty plea and that the
2 offense of assault and battery should have been treated as one
3 offense rather than two.

4 The State made its return on April 20th, 2017. And
5 applicant is present today and represented by Mr. Jonathan
6 Waller. I will turn it over to Mr. Waller.

7 THE COURT: Mr. Waller.

8 MR. WALLER: Thank you, Your Honor. I call Derrick
9 Walker.

10 THE COURT: All right. Mr. Walker, come up onto the
11 stand.

12 DERRICK WALKER,
13 having been duly sworn, testifies as follows:

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

16 DIRECT EXAMINATION

17 BY MR. WALLER:

18 Q. Good morning, Mr. Walker. How are you today?

19 A. Fine, sir.

20 Q. All right. Mr. Walker, do you recall when you were
21 arrested on the one charge that -- the original charge that you
22 are in here today for? Do you recall that?

23 A. Yeah.

24 Q. Okay. What were you originally arrested for?

25 A. Attempted murder.

1 Q. Okay. And what was the allegations, if you remember,
2 that the State made against you?

3 A. They said that I shot him with a shotgun and that I
4 had beat him with the gun.

5 Q. And he was shot in the leg; is that right?

6 A. Right.

7 Q. How long did the State allege all those -- that
8 incident took place? How long did it take?

9 A. The whole incident?

10 Q. How long did they say it took? I know you pled under
11 *North Carolina vs. Alford*. So you did not admit your guilt.
12 How long did the State allege it took?

13 A. Actually, they said it happened right away, I guess.

14 Q. So all there together?

15 A. All there together, yeah.

16 Q. So after you were arrested on the attempted murder
17 charge, did you have an attorney?

18 A. Yeah.

19 Q. Okay. Who was your attorney?

20 A. Minh Lee Wyman.

21 Q. How many times do you think you met with Ms. Wyman?

22 A. Three times.

23 Q. Okay. When you met with her, when was the first time
24 you met with her, if you remember?

25 A. It was about a month and a half into when I first got

1 locked up.

2 Q. So about a month and a half after you got arrested?

3 A. Yes.

4 Q. Do you remember what y'all talked about?

5 A. Main thing we talked about at the time was how rough
6 was the -- this --

7 THE COURT: Mr. Walker, can you slow down a little bit
8 so the court reporter can understand what you're saying.

9 A. We talked about the attorney Ms. Caldwell mostly. We
10 talked about the case, you know. She was saying about how
11 rough she was and stuff. And she going to take the stuff and
12 all this, you know. That was the only thing I got from it.

13 Q. Ms. Caldwell is the prosecutor in the case?

14 A. Yeah.

15 Q. Did you and Ms. Wyman have a chance to discuss the
16 potential penalties that attempted murder carried?

17 A. Yeah.

18 Q. Did you all discuss what the State would have to show,
19 what evidence they would have to present in order for you to be
20 found guilty of that?

21 A. Yes, I believe she did mention some of that, yeah.

22 Q. Did you all talk about any potential defenses you
23 might have?

24 A. No, not really.

25 Q. Did you think you had any defenses?

1 A. Yeah.

2 Q. What did you think your defenses were?

3 A. I think I felt it was -- I was saying it was
4 self-defense because I was being attacked by this guy.

5 Q. Okay.

6 A. I had to try to protect myself for the best way I know
7 how.

8 Q. Okay. You said y'all didn't talk about it. Did you
9 bring it up to Ms. Wyman that you had a potential defense?

10 A. Yes, I did brought it up.

11 Q. What did she say?

12 A. She really kind of talked around it, you know. She
13 really never really talked to me straight up about that.

14 Q. Okay. Did you give her any information or any
15 witnesses you wanted her to talk to?

16 A. No. I told her I didn't really have no witnesses, you
17 know. And, actually, the guy, he claimed he had witnesses.
18 But, you know, you can tell by the report that just what he
19 said, that he was lying about what he was saying. And she read
20 that. Maybe that would have made a big difference in my
21 case.

22 Q. Okay. Now, at what point were you charged with the
23 extra charge?

24 A. That was coming up to just -- that was maybe about
25 seven or eight months after, you know, the initial charge.

1 Q. Okay. And for that charge, you waived presentment to
2 the grand jury. Did you understand what that meant?

3 A. Not exactly.

4 Q. Okay. Did you all ever talk about the grand jury?

5 A. We talked some, a little about it, but I really didn't
6 understand, you know, exactly what she was saying.

7 Q. Okay. You testified earlier that Ms. Wyman discussed
8 the potential penalties for attempted murder and what the State
9 would have to show. Did you all do the same thing for this new
10 charge?

11 A. No.

12 Q. Okay. What did you all talk about related to the new
13 charge?

14 A. Really didn't talk about anything.

15 Q. Okay. Did you ask her why you had a new charge?

16 A. I kind of asked her about it. And she said the
17 prosecutor, you know, that's the only way the prosecutor will
18 be able to give it to me that I could get a nonviolent case.

19 Q. Okay. What was your understanding of why you were
20 charged with this second one?

21 A. I never really understood that one; I never really
22 did.

23 Q. Okay. What was your understanding of the allegations
24 in the second charge, the assault and battery charge?

25 A. The second assault and battery? I felt that, you

1 know, that it really didn't happen, you know. It was -- I
2 mean, what you call that? For that to be called assault and
3 battery, you know, I mean, I would have to leave out and come
4 back and jump on him. I never left the room for really -- I
5 never left his -- the time I shot him in the leg that time, I
6 never left the room to get that charge, another charge.

7 Q. So as far as you know, the allegations were the exact
8 same?

9 A. Exact same, yeah.

10 Q. And there was no break in the sequence of events?

11 A. No, no.

12 Q. Did you ask Ms. Wyman why you had been charged with
13 something else?

14 A. Well, I started to ask her, but it was like before --
15 main thing that was before me was to get the lesser charge.

16 Q. Explain that, if you can.

17 A. Okay. For me to get a lesser charge, I mean, for me
18 to be, whatever it is, nonviolent, for me to get nonviolent
19 charge, I have to take that extra charge there, or something
20 like that, for it to be assured nonviolent on the paperwork or
21 whatever so I wouldn't have to do -- it was different where
22 you're housed, nonviolent, you know.

23 Q. So it affected where you would be housed?

24 A. Yeah.

25 Q. Okay. In your application, you used the term "double

1 jeopardy". Is this what you mean by the two different
2 charges?

3 A. Yeah, pretty much, yeah.

4 Q. I just wanted to clarify that so Judge Murphy
5 understands. All right. Mr. Walker, at some point, you
6 decided to plead guilty.

7 A. Yeah.

8 Q. Why? What went into that decision?

9 A. Because at the time, she said there was no way else
10 out of it, you know. I didn't want to have to do 30 years.
11 And with violent, she said it wasn't going to be much help for
12 me to get a better charge. You know what I mean? For me to --
13 it would have been real risky for me. Seemed like she wasn't
14 helping me none, you know.

15 Q. What about that second charge? What went into your
16 decision to plead guilty to that?

17 A. That was because I was scared. You know, I didn't
18 want to go -- be housed on a rougher yard. I wanted an easier
19 yard to go on.

20 Q. Okay. Why do you think you couldn't have been
21 convicted of two separate charges for this incident?

22 A. Because it was only one incident.

23 Q. Okay. If you had known that then, would you have
24 still pled guilty?

25 A. No.

1 Q. Okay. Would you have gone to trial?

2 A. Yeah, I would.

3 Q. Mr. Walker, I've asked you all the questions that I
4 have for you. Is there anything you think I've left out about
5 Ms. Wyman's representation of you?

6 A. No. I think we pretty much covered it.

7 MR. WALLER: Thank you. Please answer any questions
8 Mr. Saville has.

9 THE COURT: Cross-examination.

10 MR. SAVILLE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SAVILLE:

13 Q. Thank you for being here today, Mr. Walker.

14 Now, Mr. Walker, you testified that you wanted to make
15 sure that your sentence sent you to a nonviolent sentence.
16 Now, do you want a trial on these charges, understanding that
17 if you proceeded to trial and were found guilty of attempted
18 murder, you would be facing up to 30 years as a violent
19 sentence?

20 A. Yes.

21 Q. Do you recall telling the judge at your guilty plea
22 that you were satisfied with your representation?

23 A. Yes. I probably told her that just to get out of it
24 at the time.

25 Q. So you were just going through the motions?

1 A. Yeah.

2 Q. Do you remember swearing on the Bible to tell the
3 whole truth during the plea hearing?

4 A. Yeah.

5 Q. Now, did you give Ms. Wyman any leads or witnesses to
6 investigate?

7 A. I give -- well, I talk about the case with her, but
8 being that I didn't have an eyewitness, I didn't have an
9 eyewitness, so I couldn't give her that.

10 Q. Yes, sir. Now, do you recall waiving your right to a
11 jury trial at the plea hearing?

12 A. At the time, yeah.

13 Q. Now, you testified earlier that you didn't exactly
14 understand what you were doing when you were pleading guilty
15 pursuant to *Alford*; is that correct?

16 A. Well, yeah.

17 Q. Now, do you recall telling the plea judge that you
18 knew exactly what you were doing?

19 A. I don't remember that.

20 Q. For the record, it's page 8 of the transcript, line
21 21.

22 Now, do you recall the plea judge advising you that
23 you were facing up to 10 years on each charge of assault and
24 battery?

25 A. Well, I know about one 10 years, but I thought it was

1 less of another one, something like that.

2 Q. Well, he was just advising that you could face a
3 maximum of 10 years on each charge?

4 A. I believe he did mention that.

5 Q. Yes, sir. Now, do you recall telling the plea judge
6 that you understood you were pleading guilty to two separate
7 charges of assault and battery first degree?

8 A. No, not necessarily, no.

9 Q. For the record, that's page 5 of the transcript, line
10 16.

11 Now, do you recall the plea judge advising you that
12 this would show up on your record as two separate convictions?

13 A. I remember him saying something like that.

14 Q. And do you recall telling the plea judge that if you
15 went to trial, there was a substantial likelihood you would be
16 convicted?

17 A. Yeah. No, no, I don't remember him saying that, no.

18 MR. SAVILLE: For the record, that's page 6, line 20
19 of the transcript.

20 And that's all I have, sir. Thank you.

21 THE COURT: Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. WALLER:

24 Q. Mr. Walker, Mr. Saville asked you about several points
25 in the transcript. The judge asked you some questions and went

1 over some things with you. Do you remember the judge going
2 over your right to file an appeal from this decision?

3 A. Yeah, I believe he did say something, yeah.

4 Q. Okay. Did you ever want to do that?

5 A. At the time? No.

6 Q. Well, at the time or after?

7 A. Yeah.

8 Q. Did you talk to Ms. Wyman about that?

9 A. No, I didn't, no.

10 Q. Did you ask her to file an appeal for you?

11 A. No, no. Once I -- I never talked with Ms. Wyman no
12 more after that.

13 MR. WALLER: Okay. Nothing further, Mr. Walker.
14 Thank you.

15 THE COURT: You may step down. Thank you.
16 You may call your next witness.

17 MR. WALLER: Nothing further from the applicant, Your
18 Honor.

19 MR. SAVILLE: The State calls Ms. Wyman.

20 MINH LEE WYMAN,
21 having been duly sworn, testifies as follows:

22 DIRECT EXAMINATION

23 BY MR. SAVILLE:

24 Q. Good morning, Ms. Wyman. How are you doing today?

25 A. Good. How are you?

1 Q. How long have you been practicing law?

2 A. Since 2012.

3 Q. And has your practice been primarily in criminal?

4 A. Yes, sir.

5 Q. How many times did you meet with Mr. Walker prior to
6 his guilty plea?

7 A. May I check my notes?

8 Q. Absolutely.

9 A. Nine times in 11 months.

10 Q. And could you refresh yourself on the facts of this
11 case as alleged by the State?

12 A. Sure. Mr. Walker was originally charged with
13 attempted murder. The State alleged that he and the victim,
14 Mr. Jennings, were in a verbal altercation which led to
15 Mr. Walker shooting Mr. Jennings in the leg with a shotgun and
16 then beating him in the head with a gun.

17 There were two other people in the house at the time.
18 One witness heard the shot and called 911. The other witness
19 heard the gunshot, came out and saw Mr. Walker beating
20 Mr. Jennings with the gun. And then Mr. Walker was charged
21 with attempted murder.

22 Q. Okay. Now, how did the two charges for assault and
23 battery first degree come about?

24 A. Originally, the State agreed to reduce the charge to
25 assault and battery of a high and aggravated nature.

1 Mr. Walker indicated he did want to plead, but he had concerns
2 about being in a violent facility at the department of
3 corrections. So I relayed that concern to the solicitor. And
4 she came up with a proposal that would satisfy her position of
5 Mr. Walker serving a somewhat lengthy sentence and Mr. Walker
6 being able to be in a nonviolent facility. And that was to
7 plead to two counts of assault and battery in the first degree.

8 And we talked to the judge in chambers. He indicated
9 he thought around 10 years would be appropriate for this, for
10 the facts of this case. And Mr. Walker agreed to that plea.

11 Q. And did you discuss this plea deal with Mr. Walker?

12 A. Absolutely, I did.

13 Q. Did he seem to understand the terms?

14 A. Yes, sir. And I will say that I met with him after
15 coming up with that plea agreement. I met with him four times,
16 two of which was with another attorney in my office to go over
17 the extent of the offer.

18 Q. Okay. Thank you. Now, did you discuss any possible
19 defenses with him if you were to proceed to trial?

20 A. Yes, sir. We talked about potentially arguing
21 self-defense in this case. Our investigator went out to speak
22 to the other witnesses. And I relayed to Mr. Walker their
23 position and what they saw and heard. And they also said some
24 unfavorable things about him. And I think between that and the
25 situation of it being a verbal altercation where he had use of

1 the gun, we decided to step back from trying to argue
2 self-defense.

3 Q. Did you follow up on any witnesses he told you to
4 follow-up with?

5 A. I did, the witnesses in the house at the time, and
6 also, our investigator talked to the victim in this case too.

7 Q. And did he make a statement to police in this case?

8 A. He did.

9 Q. What did he say?

10 A. He said -- hold on just a moment.

11 Q. Sure. Take your time.

12 A. He did give a statement to the police, a verbal
13 statement, where he said that they were in an argument. He
14 believes he fired two shots at the victim. And then they asked
15 him if he hit the victim in the head with a gun. And he said
16 he thinks he might have; he's not sure. And that he threw the
17 gun down after shooting the victim and said, look what you made
18 me do. And then he left the scene and tried to get help too.

19 Q. Okay. Thank you. Did you review his constitutional
20 rights with him before he pled guilty pursuant to *Alford*?

21 A. I did. In my office, we have this guilty plea
22 checklist that we go over with all our clients. And in that is
23 all the rights and pretty much everything that's involved in a
24 guilty plea.

25 Q. Did he ever indicate that he didn't understand

1 something about pleading guilty to *Alford*?

2 A. No, sir.

3 Q. Was it his decision to plead guilty?

4 A. Yes, sir.

5 Q. Did he ever indicate he wanted to go to trial after
6 receiving the plea deal?

7 A. No, sir.

8 MR. SAVILLE: That's all I have. Thank you. Please
9 answer Mr. Waller's questions..

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. WALLER:

13 Q. Good morning, Ms. Wyman. How are you today?

14 A. I'm good. Thank you.

15 Q. Ms. Wyman, what was the factual basis for the second
16 charge, as you understood it?

17 A. Yes, sir. One of the assault and battery firsts was
18 for the shooting. And the other assault was for the beating
19 with the gun.

20 Q. Did you do any research -- I know you said you crafted
21 this as a plea. Did you do any research into whether the
22 incident could sustain two charges?

23 A. I know traditionally that is probably what would have
24 not happened and he wouldn't have been charged with two
25 separate charges like that for one incident. But what I was

1 trying to do was what he wanted me to do, which was get him a
2 sentence in a non -- with a nonviolent charge.

3 Q. And under *Alford*, when a person is pleading, they are
4 not admitting their guilt, obviously. But they are admitting
5 that there's a substantial likelihood they would be found
6 guilty if they proceeded to trial. In your estimation, would
7 he have been found guilty of both of these things if he had not
8 pled guilty but had he proceeded to trial?

9 A. Yes, sir.

10 Q. Of both charges?

11 A. Of there being allegations of Mr. Jennings being shot.
12 He did have to get his leg amputated from the shotgun. And all
13 the pictures show that his -- excuse me, his head was swollen.
14 And the witness saw that he was being beat with a gun too. So,
15 I mean, supporting those facts, yes.

16 Q. Have you done any research or reviewed Section
17 17-25-50 -- and I am not trying to put you on the spot and have
18 you recall South Carolina Code off the top of your head --
19 about considering closely connected offenses as one offense?

20 A. Yes, sir. But this, I will say, having turned the
21 original attempted murder charge into two separate charges,
22 that didn't come up until way later in this case when we
23 started trying to craft a plea.

24 MR. WALLER: Beg the Court's indulgence, please.

25 Nothing further. Thank you, Ms. Wyman.

1 THE COURT: Any redirect?

2 MR. SAVILLE: Just very briefly.

3 REDIRECT EXAMINATION

4 BY MR. SAVILLE:

5 Q. Now, Ms. Wyman, the reason that the attempted murder
6 was turned into two separate charges for this one incident was
7 so that he could achieve the results he wanted in the plea
8 deal?

9 A. Correct.

10 MR. SEVILLE: That's all I have. Thank you.

11 THE COURT: You may step down, Ms. Wyman. Thank you.
12 You may call your next witness.

13 MR. SAVILLE: That's all the State has. Thank you.

14 THE COURT: Parties care to give a brief closing?

15 MR. WALLER: Just briefly, Your Honor. Your Honor, I
16 understand Ms. Wyman's position. I understand that she was
17 attempting to do what her client asked her to do or tried to
18 accomplish his goal. However, I don't think that we can get
19 outside the bounds of the law when we are doing that.

20 Your Honor, he pled under *North Carolina vs. Alford*.
21 I don't see how, under the framework of our statutes and our
22 code, how Mr. Walker could have possibly been convicted of both
23 of these incidents that took place immediately with each other.

24 Your Honor, I certainly understand the concept of
25 pleading to a legal fiction, but that's different than adding a

1 completely separate charge. I don't believe that Mr. Walker
2 completely understood what he was doing as far as the second
3 charge.

4 I have no problem with him having pled guilty to one
5 of the charges, whatever that may be, but I don't think we can
6 start -- it's a very slippery slope when we start adding
7 charges to kind of defeat the system in this case or in any
8 other case.

9 THE COURT: Counsel.

10 MR. SAVILLE: Briefly. Thank you, Your Honor. I just
11 don't think the applicant can show prejudice in this case. I
12 think the record reflects that Ms. Wyman thoroughly
13 investigated the case and she reached a satisfactory plea deal
14 which, as he testified, he was satisfied with at the plea
15 hearing. And by doing that, she did have to take the attempted
16 murder, which would have been a much more serious charge, and
17 break it into two assault and batteries.

18 One thing I will note about SC Code 17-25-50, I
19 believe that says: The Court shall treat as one offense any
20 number of offenses which have been connected at times so
21 closely connected that they may be considered one offense.

22 And it says this is for determining the number of
23 offenses for the purpose of the imposition of the sentence.

24 I believe that is more relevant in situations such as,
25 like, a distribution second offense charge, distribution first

1 offense. I don't think that's relevant here where you have --
2 he's not getting charged more for one assault and battery
3 because it's a second offense. I don't think that is analogous
4 to this situation. And I just don't think there's any
5 reasonable probability that he would have wanted a trial absent
6 the fact that he did get -- he did plead to two separate
7 charges. He waived any defenses in his guilty plea and
8 testified that he understood everything he was doing. Thank
9 you.

10 THE COURT: Thank you, Counsel. I will take the
11 matter under advisement and notify you of my opinion.

12 MR. WALLER: Thank you, Your Honor.

13 MR. SAVILLE: Thank you, Your Honor.

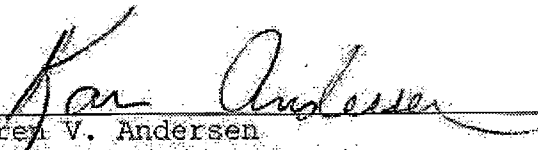
14 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)
)
 Derrick L. Walker,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE FIRST JUDICIAL CIRCUIT

2016-CP-38-0099

ORDER OF DISMISSAL

FILED
 2018 APR 11 AM 11:55
 CLERK OF COURT
 ORANGEBURG COUNTY
 SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 1, 2016. Respondent submitted its return on April 20, 2017, moving to dismiss all allegations other than ineffective assistance of counsel and the allegation that Applicant's guilty plea was involuntary. An evidentiary hearing into the matter was convened on March 1, 2018, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the State's Return, and the application.

I. PROCEDURAL HISTORY

The records before this Court indicate that Derrick L. Walker ("Applicant") is presently confined pursuant to orders of commitment of the Clerk of Court for Orangeburg County. The Orangeburg County Grand Jury first indicted Applicant at their January 2015 term for one count of attempted murder (2015-GS-38-0093). On October 26, 2015, Applicant pled guilty pursuant to Alford v. North Carolina, 400 U.S. 25 (1970), before the Honorable Edgar W. Dickson under

two waived indictments for assault and battery, first-degree (2015-GS-38-0093 and -1620). Minh Lee Wyman, Esquire ("Plea Counsel"), represented Applicant. Ashley Cornwell, Esquire, prosecuted the case. Judge Dickson sentenced Applicant to imprisonment for ten years for the first count of assault and battery, first-degree. For the second count of assault and battery, first-degree, Judge Dickson sentenced Applicant to a concurrent term of imprisonment for ten years, suspended upon the service of four years, with five years or probation. Applicant did not appeal from his guilty plea or sentence.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel
 - a. "Plea Counsel failed to investigate the witnesses' statements that conflicted with evidence."
2. "Double Jeopardy in Convictions/ Sentences/US Constitutional Violations/ State Constitution Violations"
 - a. "Plea Counsel did not object to Double Jeopardy in charges and in sentencing punishments."
 - b. "Applicant contends that S.C. Code § 17-25-50 constitutes the offense of assault and battery first degree to be treated as one offense since the applicant never left the scene and all his actions constitutes one offense of assaults and battery."
3. "Violation of Procedural Due Process/Due Process"
 - a. "See State v. Walsh, 388 S.E.2d 777 (1988)."
 - b. "Applicant claims he was erroneously held without arrest warrant served on him for 2015-GS-38-1620."
4. "The applicant contends that he unknowingly and involuntarily pled guilty to two counts of assault and battery in the first degree."

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant testified on his own behalf at the hearing. Applicant's Plea Counsel also testified at the hearing.

Applicant's testimony

At the PCR hearing, Applicant recalled that he was arrested for attempted murder, and the police alleged he shot the victim in the leg and beat him with the shotgun. Applicant testified he met with Plea Counsel three times before the plea, with the first meeting having taken place about one month after he was arrested. Applicant testified Plea Counsel discussed the charges and penalties with him as well as how "tough" the prosecutor was, but did not discuss defenses. Applicant believed he had a self-defense argument because he was being attacked. According to Applicant, he raised this issue to Plea Counsel. Applicant also claimed there were no witnesses to the incident.

Applicant testified his second charge of assault and battery, first-degree was brought several months after the first. Applicant did not believe the second charge was valid because he never left the room between shooting the victim and subsequently beating the victim. He recalled Plea Counsel advising him he would have to take the extra charge in order to get the "non-violent" charges of assault and battery, first-degree, as opposed to his original "violent" charge of attempted murder.

Applicant recalled he pled guilty because he did not want to serve the potential thirty year sentence for attempted murder. While Applicant conceded he waived presentment on both charges, he claimed he did not understand what that meant. Applicant also testified he did not believe Plea Counsel helped him, and he would not have pled guilty had he not been charged with the second charge. However, during cross-examination, Applicant conceded he told the plea judge he was satisfied with Plea Counsel's services. Moreover, Applicant recalled waiving his right to a jury trial, and telling the plea judge he knew exactly what he was doing.

Plea Counsel's testimony

Plea Counsel testified she met with Applicant nine times in eleven months. Plea Counsel also explained there were two witnesses in the house. Plea Counsel recalled the decision was made not to argue self-defense after speaking with the witnesses and the victim. Furthermore, Plea Counsel recalled Applicant gave a verbal statement to police in which he admitted to firing a shot at the victim and later another shot near but not at the victim.

Plea Counsel testified four of the meetings with Applicant took place after the agreement was reached for Applicant to plead guilty to two counts of assault and battery, first-degree, and Applicant understood what they were doing in order to receive a "non-violent" charge. Originally, the State agreed to reduce the charge of attempted murder to assault and battery of a high and aggravated nature ("ABHAN"), but Applicant did not want a "violent" charge, with the consequences such as housing which a "violent" conviction entails. According to Plea Counsel, Applicant strongly wished to avoid serving a "violent" sentence in prison. Therefore, the agreement to plead to two counts of assault and battery, first-degree was reached. Plea Counsel acknowledged that usually this would amount to a single charge because the actions were so closely connected, but explained this agreement was reached in order to procure Applicant the deal he wanted, a non-violent sentence. Plea Counsel explained one of the charges of assault and battery, first degree was for the shooting, and the second charge was for the beating, considered separately. Plea Counsel recalled Applicant never said he wanted to proceed to trial, nor did Applicant ever tell her he did not understand something. Plea Counsel also testified she believed Applicant would have been convicted of attempted murder had he proceeded to trial.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations

in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, 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, 106 S.Ct. 366 (1985).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to

observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in her representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant 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 applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

In the present case, this Court finds Applicant has failed to prove that he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Furthermore, after closely passing on the credibility of the testimony by both Applicant and Plea Counsel, this Court finds Plea Counsel's credibility to be credible and Applicant's testimony to be self-serving and not credible.

Failure to investigate

Applicant alleges Plea Counsel was ineffective for failure to investigate witness statements which conflicted with evidence. This Court finds this allegation to be meritless. At the PCR hearing, Plea Counsel recalled there were two witnesses at the house when Applicant shot

and beat the victim. Plea Counsel credibly testified she spoke with the witnesses and her investigator also spoke with the victim.¹ Based on these conversations, Plea Counsel decided not to pursue a defense of self-defense. Plea Counsel also testified Applicant gave an oral statement to police in which he admitted to firing at the victim once with a shotgun before later firing another shot not at but near the victim. This Court finds Applicant has failed to meet his burden of proving Plea Counsel's performance was deficient in this regard, and therefore this allegation fails to satisfy the first prong of Strickland. Notwithstanding, Applicant has also failed to meet his burden of proving prejudice from the alleged deficient performance. The record reveals Applicant voluntarily and knowingly waived any defenses when he pled guilty. Transcript p. 7, ll. 22-24. Applicant was originally charged with attempted murder for not only shooting the victim at close range with a shotgun, but also proceeding to beat the victim with the butt of the shotgun after he was already severely wounded. This Court finds Applicant has presented nothing to suggest that but for Plea Counsel's alleged failure to investigate he would have proceeded to trial, and further, has presented nothing to suggest a viable self-defense strategy would have even existed if he proceeded to trial. For these reasons, this allegation is denied and dismissed with prejudice.

"Double-jeopardy"

Applicant alleges Plea Counsel was ineffective for not objecting to "double-jeopardy" in his charges and sentence. This Court finds this allegation to be meritless. At the PCR hearing, Plea Counsel explained Applicant's offense would usually not result in two charges because his shooting of the victim occurred in close proximity to his beating of the victim. Applicant was therefore originally charged with one count of attempted murder. According to Plea Counsel's testimony, the State was willing to allow Applicant to plead guilty to ABHIAN, but Applicant

¹ The witnesses to the incident were not eye-witnesses to the shooting, but were able to overhear the incident.

really wanted to avoid a “violent” conviction and sentence. Therefore, Plea Counsel was able to secure a plea deal, to Applicant’s benefit, allowing Applicant to instead plead guilty to two counts of assault and battery, first-degree, which are “non-violent” charges, for the shooting and the beating of the victim. Plea Counsel credibly testified she met with Applicant multiple times about this arrangement, and Applicant understood why he was pleading to the two charges. Therefore, this Court finds Applicant has failed to meet his burden of proving Plea Counsel’s performance was deficient in this regard, and thus fails to satisfy the first prong of Strickland. Plea Counsel negotiated a favorable plea agreement for Applicant which satisfied his desire to avoid a “violent” conviction and sentence, and also allowed him to avoid a likely conviction of attempted murder, which carries a maximum sentence of thirty years. Likewise, Applicant has failed to prove any prejudice from the alleged deficient performance as this plea agreement was to his own benefit and met his wish of avoiding a “violent” conviction. Moreover, Applicant testified he pled guilty to avoid a thirty year sentence for attempted murder, which this plea allowed him to do. Plea Counsel testified she believed Applicant would have been convicted of attempted murder had he proceeded to trial. Plea Counsel interviewed witnesses to the shooting and beating who gave unfavorable accounts to Applicant, and Applicant himself admitted to shooting the victim. For these reasons, there is no reasonable probability Applicant would have chosen to proceed to trial but for Plea Counsel’s alleged deficiency. For these reasons, this allegation is denied and dismissed with prejudice.

“VIOLATION OF PROCEDURAL DUE PROCESS”

Applicant alleged a violation of procedural due process as well in his original PCR application and claimed he was “erroneously held without an arrest warrant.” Applicant did not proceed on the allegation regarding an arrest warrant, nor did he present any evidence or

testimony regarding the allegation. Accordingly, this Court finds this allegation to be abandoned and it is dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant argues his plea to two counts of assault and battery, first-degree was entered unknowingly and involuntarily. This Court disagrees and finds the record and testimony establishes that his plea was free, knowingly entered, and voluntary. 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). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between 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).

In this case, Plea Counsel credibly testified at the PCR hearing that she met with Applicant multiple times to discuss the plea agreement, and Applicant understood why he was pleading to two charges of assault and battery, first-degree. This is corroborated by the guilty

plea transcript, which reveals Applicant testified he knew exactly what he was doing and was pleading guilty voluntarily. Transcript p. 8, ll. 19-22. Furthermore, Applicant's charges as well as the terms of the plea agreement were thoroughly explained multiple times at the plea hearing. Transcript p. 3, ll. 5-11; p. 5, ll. 16-23; p. 9, ll. 1-9; p. 13, ll. 16 – p. 14, ll. 1-4. The guilty plea transcript reveals a more than adequate plea colloquy. The transcript shows Applicant was fully advised of his rights and the consequences of pleading guilty pursuant to Alford, and voluntarily and knowingly pled guilty to a favorable plea deal. Applicant has failed to present any probative or credible evidence that he did not knowingly and voluntarily plead guilty. Furthermore, Applicant has failed to produce any evidence that but for any alleged conduct, he would have proceeded to trial. As stated above, Applicant significantly benefited from his plea deal which allowed him to avoid a substantially likely "violent" conviction and a potential sentence of thirty years at trial. Applicant has failed to meet his burden of proving this allegation, and this allegation is therefore denied and dismissed with prejudice.

VI. CONCLUSION

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

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1 day of May, 2018.

St. George, South Carolina

Maité Murphy
MAITÉ MURPHY
Chief Administrative Judge
First Judicial Circuit

WITNESSES

Lamonte Edwards

Orangeburg County Sheriff

2014010195

ARREST WARRANT NUMBER

2014A3810200312

Arrested: November 15, 2014

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: January 26, 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS38-0093

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

January 26, 2015 TERM

THE STATE

vs.

Derrick L Walker

Indictment for

ATTEMPTED MURDER

ATTEST: TRUE COPY

Winnaja B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury. 00

Defendant

I Derrick Walker
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Assault & Battery 1st

Derrick Walker
Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2015GS38-0093

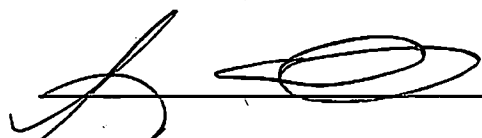
At a Court of General Sessions, convened on January 26, 2015 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Derrick L Walker, did in Orangeburg County on or about November 14, 2014 did with the intent to kill, attempt to kill one Kelvin Jennings with malice aforethought by shooting the victim with a gun. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

ORIGINAL COPY
JAN 26 2015
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA

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


Ashley B. Cornwell, Solicitor

WITNESSES

Lamonte Edwards

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2015ORB73

Arrested: November 15, 2014

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: October 14, 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS38-1620

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 19, 2015 TERM

THE STATE
vs.

Derrick L Walker

Indictment for

ASSAULT AND BATTERY 1ST DEGREE

ATTEST: TRUE COPY

Winnya B. Clark

CLERK OF COURT
SC Code: 16-3-600(C)(1)
ORANGEBURG COUNTY, SOUTH CAROLINA

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

70

Derrick L Walker
Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2015GS38-1620

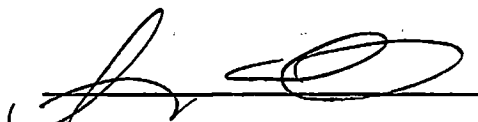
At a Court of General Sessions, convened on October 14, 2015 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That Derrick L Walker did in Orangeburg County on or about November 14, 2014, unlawfully injure the victim to wit: the defendant did hit the victim with a gun, causing great bodily injury, thereby violating Section 16-3-600 (C)(1), Code of Laws of South Carolina, 1976, as amended.

[Faint handwritten notes and a vertical stamp reading "SOUTH CAROLINA" are visible on the right side of the page.]

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


Ashley B. Cornwell, Solicitor

STATE OF SOUTH CAROLINA
 COUNTY OF Orangeburg
 STATE VS.
Derrick L Walker
 AKA:
 Race: BLACK Sex: M Age: 54
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Orangeburg, SC 29115
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2015GS38-0093
 A/W#: 2014A3810200312
 Date of Offense: 11/14/2014
 S.C. Code § : 16-3-29
 CDR Code #: 3410

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault and Battery 1st Degree

CONVICTED OF or PLEADS

in violation of § 16-3-600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. J.W. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: [Signature] 70577 [Signature] 100381
 Cornwell, Ashley B. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 11/15/14
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
 Set by SCDPPPS

Recipient:

*Fine:		\$	
§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCA Surcharge)	\$5	\$	<u>5.00</u>
3% to County (if paid in installments)		\$	<u>3.90</u>
TOTAL		\$	<u>133.90</u>

PTUP
 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 ORANGEBURG. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

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

Clerk of Court/ Deputy Clerk: V. Glenn
 Court Reporter: Helda Jordan
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2153
 Sentence Date: 10/26/15

COUNTY OF Orangeburg
STATE VS.
Derrick L Walker
AKA:
Race: BLACK Sex: M Age: 54
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2015GS38-1620
A/W#: 2015ORB73
Date of Offense: 11/14/2014
S.C. Code §: 16-3-600(C)(1)
CDR Code #: 3412

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Assault and Battery 1st Degree

CONVICTED OF or PLEADS

in violation of § 16-3-600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45
w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury: (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Cornwell, Ashley B. SC Bar# 710572
Defendant
Attorney for Defendant
SC Bar# 100381

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 4 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$18.90, TOTAL \$648.90

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug-Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ beginning
ORANGEBURG COUNTY, SOUTH CAROLINA
\$ paid to Public Defender Fund
Other:

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

Clerk of Court/ Deputy Clerk - V. Glenn
Court Reporter: Hilda Jordan
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2153
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