

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Horry County

Honorable Brooks P. Goldsmith, Circuit Court Judge

\_\_\_\_\_

CHRISTOPHER E. SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001822

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

LANELLE CANTEY DURANT  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

JOHNNY ELLIS JAMES, JR.  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF HORRY	)	(2014-GS-26-00935) (00936)
STATE	)	
VERSUS	)	TRANSCRIPT OF RECORD
CHRISTOPHER EVON SMITH	)	December 2, 2014
	)	Conway, S. C.

B E F O R E:

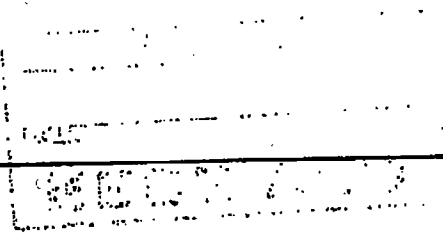
HONORABLE STEVEN H. JOHN, Judge.

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

STEPHEN GROOMS, ESQ.  
ASSISTANT SOLICITOR FOR HORRY COUNTY  
ATTORNEY FOR STATE

ALEX HYMAN, ESQ.  
JORDAN HYMAN, ESQ.  
ATTORNEYS FOR DEFENDANT

DIXIE COX EUBANK  
CIRCUIT COURT REPORTER  
FIFTEENTH JUDICIAL CIRCUIT



1 (THE FOLLOWING TAKES PLACE ON DECEMBER 2, 2014.)

2 MR. GROOMS: Your Honor, this is the State versus  
3 Christopher Smith. This is indictment (2014-GS-26-00956), for  
4 attempted murder of Aaron Campbell.

5 Your Honor, the Defendant is pleading guilty to that  
6 charge with no recommendation from the State based on  
7 conversations we had with Your Honor.

8 Your Honor, this is also a true-bill indictment, (2014-  
9 GS-26-00935) for murder. Your Honor, Defendant is pleading  
10 guilty to the lesser included of voluntary manslaughter, for  
11 the voluntary manslaughter of Cortland Gore.

12 Your Honor, the Defendant is pleading without  
13 recommendation based on conversations we had with Your Honor.

14 The victim's family is present, may wish to speak, but  
15 at this point do not.

16 COURT: Very good, sir.

17 All right. Thank you. These are your copies. I have  
18 the originals. I'm sorry, Solicitor.

19 All right, Mr. ---

20 I'm sorry. Madame Clerk, would you place Mr. Smith  
21 under oath, please.

22 (DEFENDANT, BEING FIRST DULY SWORN, RESPONDS AS  
23 FOLLOWS:)

24 COURT: All right, Mr. Smith, the State has indicated  
25 that you are coming forward and wishing to plead guilty to the

1 following crimes, that is, (2014-GS-26-00936), and that is  
2 attempted murder, and (2014-GS-26-00935), and that is  
3 voluntary manslaughter; is that correct?

4 A. Yes sir.

5 COURT: All right, sir. Now, you understand, regarding  
6 voluntary manslaughter, the potential sentence there from one  
7 to thirty years; you understand that?

8 A. Yes sir.

9 COURT: And the attempted murder is from zero to thirty  
10 years; you understand that?

11 A. Yes sir.

12 COURT: You understand that, regarding both of these  
13 crimes, the voluntary manslaughter and the attempted murder,  
14 they are set forth as violent and most serious offenses by the  
15 State of South Carolina; you understand that?

16 A. Yes sir.

17 COURT: Now, regarding that it has a couple of  
18 purposes. One of those is, whatever sentence the Court  
19 imposes you understand you are going to have to serve eighty-  
20 five percent of that before you are eligible for parole; you  
21 understand that?

22 A. Yes sir.

23 COURT: And it doesn't mean that you automatically get  
24 parole, it just means before you can be eligible to get parole  
25 you have to serve eighty-five percent of the sentence; you

1 understand that?

2 A. Yes sir.

3 COURT: All right, sir. It also gives you -- on most  
4 serious you it's -- you know, South Carolina has a two-strike,  
5 three-strike law, two-strike regarding most serious, three-  
6 strike regarding serious, so if you came back before the Court  
7 on a serious offense, or a most serious offense you would be  
8 facing life in prison without the possibility of parole; do  
9 you understand that?

10 A. Yes sir.

11 COURT: You know, if that other crime -- if that would  
12 happen, and that other crime is a serious or most serious  
13 offense, no matter what it normally would be sentenced to,  
14 because you already had these crimes that you are pleading  
15 guilty to, that makes that one life in prison without the  
16 possibility of parole; do you understand that?

17 A. Yes sir.

18 COURT: Very good. Now, regarding this, you understand  
19 that both these matters are coming before the Court without  
20 negotiations or recommendations as to the sentence from the  
21 State of South Carolina; you understand that?

22 A. Yes sir.

23 COURT: All right, sir. So, understanding all of these  
24 things that we have just talked about, do you want to go  
25 forward with your two guilty pleas at this time?

1 A. Yes sir.

2 COURT: Are you currently under the influence of any  
3 drugs or intoxicants or any kind, or currently have them in  
4 your system?

5 A. No sir.

6 COURT: Are you suffering from any kind of physical,  
7 mental, emotional problem that would keep you from  
8 understanding what we are doing here today?

9 A. No sir.

10 COURT: When you plead guilty you give up certain  
11 Constitutional Rights. Among those is the right to remain  
12 silent, so by speaking to me you give that right up; you  
13 understand that?

14 A. Yes sir.

15 COURT: Other rights are the presumption of innocence,  
16 the right against self-incrimination at a trial. The State  
17 has to prove you guilty beyond a reasonable doubt. When you  
18 plead guilty you are giving up those rights; you understand  
19 that?

20 A. Yes sir.

21 COURT: You are entitled to a jury trial, and obviously  
22 we've been here, and you understand we've picked a jury, and  
23 we would be ready to go forward with a jury trial in this  
24 matter, but by pleading guilty you give up that jury trial;  
25 you understand that?

1 A. Yes sir.

2 COURT: And in that jury trial, with your attorney, you  
3 could question the witnesses and the evidence presented by the  
4 State. If you wanted to you could present a defense, testify,  
5 call witnesses, present evidence on your behalf, but when you  
6 plead guilty you give up all those rights; you understand  
7 that?

8 A. Yes sir.

9 COURT: Now, you are coming before the Court and you  
10 are pleading guilty to the crimes of voluntary manslaughter,  
11 and attempted murder. Are you pleading guilty to both of  
12 these crimes freely and voluntarily?

13 A. Yes sir.

14 COURT: Of your own freewill and accord?

15 A. Yes sir.

16 COURT: Pleading guilty because you are, indeed, guilty  
17 of these crimes?

18 A. Yes sir.

19 COURT: Did anybody promise you anything, or threaten  
20 you, or force you in any way to get you to plead guilty?

21 A. No sir.

22 COURT: You are here today with your attorney, Mr.  
23 Hyman; is that correct?

24 A. Yes sir.

25 COURT: Did you tell him everything you needed to tell

1 him about all of these cases?

2 A. Yes sir.

3 COURT: Have you had enough time to talk to him?

4 A. Yes sir.

5 COURT: Do you need any more time to talk to him?

6 A. No sir.

7 COURT: Satisfied with his help and representation?

8 A. Yes sir.

9 COURT: Any complaints about his help or  
10 representation?

11 A. No sir.

12 COURT: All right, Mr. Hyman, you represent the  
13 interest of your client, Mr. Smith, in these matters?

14 MR. A. HYMAN: I do.

15 COURT: And he comes before the Court tendering his  
16 pleas of guilty to the two offenses named. Do you concur?

17 MR. A. HYMAN: I do.

18 COURT: And do you believe he's coming before the Court  
19 of his own freewill and accord?

20 MR. A. HYMAN: I do.

21 COURT: And have you explained to him his  
22 Constitutional Rights, any defenses he might have, as well as  
23 the information, the evidence in the possession of the State?

24 MR. A. HYMAN: I have.

25 COURT: Thank you very much.

1 All right, Solicitor, the facts of the two cases, please  
2 sir.

3 MR. GROOMS: Thank you, Your Honor.

4 On November 23rd, 2013, this Defendant did become  
5 involved with the victim in this case, Cortland Gore, as well  
6 as Aaron Campbell. Your Honor, they did purchase marijuana  
7 from him with counterfeit money.

8 Your Honor, this Defendant then did make the choice that  
9 he was going to do harm to those individuals. He had a forty  
10 caliber handgun, did begin pursuit of those individuals down  
11 Highway 71. Your Honor, he reached them at the intersection  
12 of Highway 22 and 31 where he did fire multiple rounds into  
13 that vehicle, one of those bullets striking the victim,  
14 Cortland Gore, in the back of the head. He later died from  
15 those injuries, Your Honor.

16 Those shots were also fired in the direction of victim,  
17 Aaron Campbell, who is here, and has just let me know that he  
18 would like to speak at the appropriate time.

19 Your Honor, these acts all happening in Horry County,  
20 the voluntary -- being the voluntary actions of the Defendant  
21 in an attempt to kill Cortland Gore, as well as the -- I'm  
22 sorry, he did kill Cortland Gore -- a lesser included of  
23 murder, and the voluntary acts that he did attempt to kill the  
24 victim, Aaron Campbell.

25 Defendant has no record, Your Honor.

1 COURT: All right. Very good.

2 MR. GROOMS: Thank you.

3 COURT: All right, Mr. Smith, you heard the facts of  
4 these two cases stated by the Solicitor, a summary of those  
5 same facts are in your indictment, understanding you are  
6 pleading guilty to the lesser charge of voluntary manslaughter  
7 for the murder charge. My question to you is, are those facts  
8 true and correct?

9 A. Yes sir.

10 COURT: And you understand when you engaged in that  
11 kind of activity you were committing crimes; you understood  
12 that?

13 A. Yes sir.

14 COURT: Have you understood my questions here today?

15 A. Yes sir.

16 COURT: Have all your answers to me been the truthful?

17 A. Yes sir.

18 COURT: Anybody tell you how to answer my questions?

19 A. No sir.

20 COURT: And you understand you have the right to appeal  
21 your guilty pleas within ten days?

22 A. Yes sir.

23 COURT: I find there's been a substantial factual basis  
24 for the pleas, I find the Defendant's decision to plead guilty  
25 has been done freely, voluntarily, knowingly and intelligently

1 made, he has had the advice of competent counsel with whom  
2 he's satisfied, therefore Mr. Smith's decision to plead guilty  
3 to attempted murder and voluntary manslaughter is accepted by  
4 the Court.

5 All right, Solicitor, you indicated that ---

6 MR. GROOMS: Yes sir, Your Honor.

7 COURT: Yes sir.

8 MR. GROOMS: I will be speaking on behalf of both  
9 victims. Your Honor, the victim, Aaron Campbell wanted me to  
10 express that he lost a friend in this situation, and also I  
11 want to let the Court know that he's here of his freewill, he  
12 has no charges pending in Horry County. Your Honor, we did  
13 have him brought down, but he wanted to testify to the loss of  
14 his friend, and the fact that his life would have been taken,  
15 in his words, except for divine intervention.

16 Your Honor, the victims in this case -- Mr. Carl Gore is  
17 the victim's father, and Charlotte Samour, the victim's mother  
18 -- I just wanted to let the Court know that they were here for  
19 a murder trial, and they realize the charge is being reduced  
20 as a result of our conversations. I wanted the Court to be  
21 aware that Cortland Gore has a two-year-old daughter that he  
22 will never see again. She will never see her daddy again.

23 Thank you, sir.

24 COURT: Thank you very much.

25 Mr. Hyman.

1           **MR. A. HYMAN:**   Thank you, Your Honor.

2           As Your Honor heard yesterday, through some of our  
3 motions, Christopher did own up to this. He knew he had made  
4 a mistake. And Judge, this whole situation was just a series  
5 of bad decisions, bad decisions on the victims' parts, and  
6 ultimately bad decisions on my client.

7           Judge, this is something that should never have  
8 happened. As you could tell from the audio of the recording,  
9 as Mr. Smith showed remorse, was sobbing, Judge, since day one  
10 he's been very remorseful to me. I don't think, in any way,  
11 is he a bad, violent, just mean person.

12           Judge, as the State stated, he has absolutely no record.  
13 I've -- we've run it, and the only thing that we could find  
14 was a seatbelt ticket out of North Myrtle Beach.

15           He works, he always had employment, in fact, while I was  
16 representing him at times he had two jobs. Judge, I think  
17 it's important to show, he actually has three biological  
18 children, but takes care of five children. He has a one-year-  
19 old from his current wife, and he has two children from a  
20 prior relationship, but also still helps out with that prior  
21 relationship's other two children, because they were born  
22 right before he started dating her. He has always taken care  
23 of those kids, Judge.

24           He understands that he made a horrific mistake that  
25 night. If anybody could take it back it would be him. He

1 wants nothing more than to see his children grow up, and to  
2 continue trying to do right. I think if you will -- you will  
3 notice from Officer Lent and Officer Kathman who are in the  
4 back, their discussions in the statement that he gave were, we  
5 don't think you are a bad dude, we know that this was a  
6 mistake, it was brought on and it shouldn't have happened like  
7 this. And Judge, it shouldn't have, never should have  
8 happened. You know, you heard him say, why did they have to  
9 come down here, you know, why did I get myself into this. He  
10 understands that. He knows he should have never gotten into  
11 this, knows he should have never followed them. Even states  
12 in the -- in his statement, I should have just let them go, I  
13 should have just let them go. He says that repeatedly.

14 Judge, his is thirty-one years old. He's from Loris.  
15 He does have a high school degree.

16 Judge, in my interactions with him he has been nothing  
17 other than kind, respectful. Everything has been yes sir, no  
18 sir. As we briefly spoke in chambers, he did have some people  
19 possibly not telling him what he needed to hear. His family  
20 is here supporting him. They are all in the front right here.  
21 He's got his cousin, his wife, his mother, his father. He's  
22 got a support group, and luckily that support group has  
23 repeated and told him they are going to help take care of his  
24 kids, they are going to take care of those children and make  
25 sure that they grow up like they are suppose to.

1 Judge, since day one, when he and I started talking  
2 about pleas, and negotiating, and everything like that, it's  
3 never been about him when we've talked about it. It's always  
4 been, well, I need to talk to my family to make sure that they  
5 are going to be okay, which doesn't change what happened, but  
6 it does show that he is a stand-up kind of guy. He stood up  
7 and admitted what he did was wrong. He did that the day that  
8 it occurred. He told the police, I did this, and admitted  
9 right then, I shouldn't have done this.

10 Judge, we would just ask that you have mercy on him. He  
11 is pleading to two serious offenses, and what happened that  
12 night can't be taken back. There's a family that doesn't have  
13 a son, and there's another gentleman who doesn't have a dog,  
14 and doesn't have a friend.

15 Judge, I would just respectfully ask that you have mercy  
16 on him. He's not a bad guy. He made a bad decision, but  
17 judging over the totality of his life that appears to be  
18 pretty much his only bad decision he's made.

19 I know that, like I said, he's been extremely remorseful  
20 to me about it. I understand that the victim's family is  
21 actually from Horry County. I know -- he's just been somewhat  
22 eaten up over that.

23 Judge, we just ask that you have mercy.

24 COURT: All right. Thank you very much.

25 Regarding these matters, first I would say to the

1 victims in this matter, the relatives of Mr. Gore, and to Mr.  
2 Campbell, and to the relatives of Mr. Smith, it's just an  
3 absolute tragedy, this matter, all the way around. There's  
4 just no question about it. It has destroyed the lives of  
5 several families, and it's just an absolute tragedy, and I  
6 appreciate the fact that Mr. Smith has come before the Court  
7 and accepted responsibility, and apparently accepted  
8 responsibility, basically at -- shortly after it occurred, but  
9 it can't undo the fact that one person is not -- is no longer  
10 here, and what untold effect that will have on the people that  
11 are left, and now Mr. Smith going to jail for an extended  
12 period of time, the effect that has on his family.

13 With that, (2014-GS-26-00935), State of South Carolina,  
14 County of Horry, versus Christopher Evon Smith, regarding  
15 voluntary manslaughter, the sentence of the Court is,  
16 Defendant is committed to the State Department of Corrections  
17 for a determinate term, thirty years.

18 Defendant is given credit for the time he has already  
19 served.

20 (2014-GS-26-00936), attempted murder, sentence of the  
21 Court is, Defendant is committed to the State Department of  
22 Corrections for a determinate term, thirty years, concurrent  
23 with (2014-GS-26-00935).

24 Defendant given credit for any time that he has already  
25 served.

1 Thank you very much.

2 MR. A. HYMAN: Judge, just for the record, I think he  
3 did have five months before he bonded out, and then I think he  
4 has about a month.

5 COURT: Well, I have indicated on the face of the  
6 sentence sheet that he is to be given credit for any time that  
7 he did serve.

8 MR. A. HYMAN: Thank you, sir.

9 COURT: Thank you very much.

10 MR. A. HYMAN: Judge, I didn't realize that -- I think  
11 he did want to say something, not to the Court. He just said  
12 he wanted to apologize to the Gore family ---

13 COURT: I'm sorry. Just hold on one second.

14 Yes sir. I'm sorry, Mr. Smith.

15 DEFENDANT: I just wanted to apologize to the Gore  
16 family, and my family for the pain and suffering that I put  
17 y'all through.

18 COURT: All right, sir. And I assume that extends to  
19 Mr. Campbell's as well.

20 DEFENDANT: Yes sir, to the Campbells.

21 COURT: All right. Thank you very much.

22 Thank y'all.

23 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the GUILTY PLEA of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 2nd day of December, 2014.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

July 28, 2015

*Dixie Cox Eubank*  
DIXIE COX EUBANK

CIRCUIT COURT REPORTER  
FIFTEENTH JUDICIAL CIRCUIT

John

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
Christopher E Smith 00362308 )  
Full name and prison number (if any) of Applicant. )

IN THE COURT OF COMMON PLEAS

20 15 CP26 4185

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible 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 which question any such continued answer refers.

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HORRY COUNTY

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

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

1. Place of detention Lee Correctional Institution / Bishopville, S.C.
2. Name and location of Court which imposed sentence Horry County Court of General Sessions
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) 13-HO-6029 / unknown what the offense(s) exactly
  - (b) are for the indictment because I dont have indictment
  - (c) available at this time. However, I believe I pled guilty to  
Voluntary Manslaughter and Attempted Murder
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) December 2, 2014 / 30 years
  - (b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

NO

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

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) my attorney did not file an Appeal.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel
- (b) Involuntary Plea
- (c) 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment United States Constitution Violations

11. State concisely and in the same order the facts which support each of the grounds set out in (10): <sup>ii.</sup> Ineffective assistance of counsel for failing to file an Appeal which would have enabled me to challenge trial court's admission of statement which was involuntarily made. <sup>ii</sup> my plea was involuntarily entered because my attorney coerced me to stop trial and plead guilty.

12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
  - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
  - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
  - (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (b) the name and location of the Court in which each was filed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_
  - (c) the disposition thereof:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

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

No

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

- (a) which grounds have been presented:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

- (b) the proceedings in which each ground was raised:
  - i. N/A
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

- (a) my ~~attorney~~ <sup>attorney</sup> did not file an Appeal. Also, Ineffective
- (b) Assistance of Counsel Claims are cognizable only on
- (c) PCB; which is what I'm now filing for the first time

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

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

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

- (a) the name and address of each attorney who represented you:
  - i. Alex Hyman, Esq.
  - ii. 1208 3rd Avenue
  - iii. Conway, S.C. 29526
- (b) the proceedings at which each such attorney represented you:
  - i. plea and sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Vacate <sup>conviction</sup> ~~plea~~ and remand ~~to~~ new trial

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

No

STATE OF SOUTH CAROLINA )

County of Horry )

VERIFICATION  
20 15 CP26 4185

I, Chris Smith, 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.

Chris Smith

SWORN to and subscribed before me this 1  
day of June, 2015.

Debra Surles (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

HORRY COUNTY  
2015 JUN -5 PM 3: 34  
CLERK OF COURT

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

20 15 CP26 4185

I, Chris Surf 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.

Chris Surf  
Applicant

SWORN or affirmed to and subscribed before me this  
day of June, 2015.

Debra Surgo  
Notary Public

My Commission Expires: 11-4-2015

HORRY COUNTY  
2015 JUN -5 PM 3:34  
WELLS FARGO BANK  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
OF THE FIFTEENTH JUDICIAL CIRCUIT

Christopher E. Smith, )  
S.C.D.C. No., 00362308 )

Case No.: 2015-CP-26-4185

Applicant, )

**RETURN**

v. )

State of South Carolina, )

Respondent. )  
\_\_\_\_\_ )

2016 FEB 22 PM 2:13  
Horry County

In response to the post-conviction relief application filed June 5, 2015 the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted the Applicant at the February 2014 term of General Sessions for murder (2014-GS-26-00935) and attempted murder (2014-GS-26-00936). Alex B. Hyman, Esquire represented the Applicant.

On December 2, 2014 the Applicant pled guilty to the charge attempted murder, as well as to the lesser included-offense of voluntary manslaughter. These pleas were made without sentencing recommendation from the State. The Honorable John H. Steven sentenced the Applicant to thirty (30) years' imprisonment for voluntary manslaughter and to thirty (30) years' imprisonment for attempted murder, to be served concurrently. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Horry County Clerk of Court regarding the subject convictions, the Applicant's records from the South

Carolina Department of Corrections, and the guilty plea transcript.

## II.

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

1. Ineffective assistance of counsel.
  - a. "Failing to file an Appeal which would have enabled me to challenge trial court's admission of statement which was voluntarily made."
2. Involuntary guilty plea.
  - a. "My plea was involuntarily entered because my attorney coerced me to stop trial and plead guilty."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690; 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the 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. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

#### IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. 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)). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and

intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for 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, 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); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.


Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

JESSICA E. KINARD  
Assistant Deputy Attorney General

By:

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

Feb. 18, 2016

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 )  
 CHRISTOPHER E. SMITH, #362308 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2015-CP-26-4185

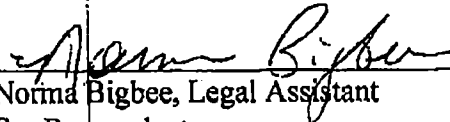
2016 FEB 22 PM 2:13  
 CLERK OF COURT

AFFIDAVIT OF SERVICE BY MAIL

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

**Steven W. Fowler, Esquire**  
**1019 Highway 17 South #222**  
**North Myrtle Beach, SC 29582**

DATED this 18<sup>th</sup> day of February, 2016.

  
 Norma Bigbee, Legal Assistant  
 For Respondent

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STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY ) CASE NO: 2015-CP-26-04185

PCR HEARING

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**B E F O R E:** The Honorable Brooks Goldsmith  
November 15, 2016  
-----

CHRISTOPHER E. SMITH,  
Petitioner/Applicant,

vs.

STATE OF SOUTH CAROLINA,  
Respondent.  
-----

**APPEARANCES:**

Steven Fowler, Esq.  
For the Petitioner.

Jessica Kinard, Esq.  
For the Respondent.  
Attorney General's Office

Court Reporter:  
Natalie Dahl, RPR

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I-N-D-E-X

**APPLICANT'S WITNESSES**

CHRISTOPHER SMITH

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Cross-Examination by Ms. Kinard.....	24
Redirect Examination by Mr. Fowler.....	29

**RESPONDENT'S WITNESSES**

ALEX HYMAN, ESQ.

Direct Examination by Ms. Kinard.....	33
Cross-Examination by Mr. Fowler.....	43

E-X-H-I-B-I-T-S

EXHIBITS

MARKED & ADMITTED

(NO EXHIBITS MARKED)

## P-R-O-C-E-E-D-I-N-G-S

1  
2 MS. KINARD: This is Christopher Smith versus  
3 South Carolina, 2015-CP-26-4185. We're before the  
4 Court on an application for post-conviction relief  
5 filed June 5, 2015. Applicant presently is  
6 incarcerated pursuant to commitment orders of the  
7 Horry County Clerk of Court with the South Carolina  
8 Department of Corrections for the crime of murder and  
9 attempted murder. These are the results of an  
10 indictment before the Horry County Grand Jury in the  
11 February 2014 term. The Applicant was represented on  
12 these charges by Alex V. Hyman.

13 On December 2, 2014, the Applicant pled guilty to  
14 the charge of attempted murder, as well as to the  
15 lesser included offense of voluntary manslaughter.  
16 The plea was made without sentencing recommendation  
17 from the State. Honorable Steven John sentenced him  
18 to 30 years of imprisonment for voluntary  
19 manslaughter, and 30 years for attempted murder to be  
20 served concurrently. He did not appeal.

21 State is present and ready to proceed, and the  
22 Applicant is present and represented by Steven Fowler,  
23 and I believe he has motion before the court.

24 MR. FOWLER: I've spoken with Mr. Smith a couple  
25 of times about this, and we've had -- he has done, in

1 my opinion, an excellent job with note taking and  
2 legal research, but he brought things to my attention  
3 today that I feel -- and you can certainly ask him any  
4 questions you would like -- there is an audio tape  
5 apparently out there that indicates -- approximately  
6 two hours and 30 minutes long that shows -- that is an  
7 interrogation of him by two law enforcement officers,  
8 and that is one of the things we plan to go into  
9 today, or whenever this case is heard, in that only  
10 part of the interrogation tape was used apparently by  
11 his attorney.

12 There is also a transcript of this that is out  
13 there that he feels would be helpful to him in this  
14 matter. These things were brought to my attention  
15 earlier today. He and I discussed them, I think,  
16 thoroughly. At this time, I would like to move for a  
17 continuance so that by the next court day or court  
18 session we could have that transcript and/or tape so  
19 that we can be more accurate in terms of what was said  
20 on that tape and indicate where his attorney did not  
21 go into that in his representation of my client in  
22 these matters.

23 MS. KINARD: Your Honor, I oppose this. This is  
24 a guilty plea. It did result after trial had begun --  
25 or at least after the jury was picked and pretrial

1 motions were made. I believe that is what Mr. Fowler  
2 was referring to as far as his attorney only using  
3 parts of the tape. If you see Page 11, there is  
4 reference to the judge being able to hear the audio of  
5 the recording. Regardless, this was stopped, and  
6 Mr. Smith entered a guilty plea, and that's why we're  
7 here.

8 MR. FOWLER: If I may. Apparently, only part of  
9 the tape was used of that tape, according to my  
10 client -- and certainly he can speak -- is out of  
11 context. It is only a part of a larger two-and-a-half  
12 hour, approximately, time period of an audio tape that  
13 goes into law enforcement's use of perhaps negative  
14 tactics, you know, forcing my client to perhaps  
15 testify against his will or say something in that 30  
16 minutes that was heard before the Court that was not  
17 entirely accurate or contextual.

18 So we feel that that tape is very important and,  
19 once again, we move to continue to get a copy of that  
20 tape by the next term of court, or whenever this would  
21 be heard again.

22 THE COURT: Well, now, I mean the tape has been  
23 known by someone to be in existence for how long? At  
24 least.....

25 MS. KINARD: The guilty plea was entered

1 December 2, 2014, so certainly it was known before  
2 that. As far as Mr. Fowler's knowledge, I don't have  
3 his order of appointment in front of me. But the  
4 application was filed in June of 2015, and typically  
5 as soon as our office receives the application, we  
6 appoint counsel.

7 MR. FOWLER: Your Honor, with all due respect to  
8 the Attorney General, my understanding is that this is  
9 something that he and I kind of hashed out over the  
10 last several weeks to talk about, and he has come to  
11 the decision that this is an important part of his  
12 case, and if you do look at the transcript, on Page  
13 11, there is a fairly large section about it. You can  
14 tell from the audio, the recording, Mr. Smith showed  
15 remorse with sobbing, et cetera. That is Line 7  
16 through 11. So that is where we are, Your Honor. We  
17 feel it is important and in the interest of justice.  
18 My client and I have been talking about this, and we  
19 feel like it is an important thing to bring before the  
20 Court today.

21 THE COURT: I understand the reasons for the  
22 request, but I'll deny the motion for continuance.

23 MR. FOWLER: I'll call Christopher Smith to the  
24 stand.

25 (CHRISTOPHER SMITH, having been duly sworn,

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 testified as follows:)

2 DIRECT-EXAMINATION

3 BY MR. FOWLER:

4 Q State your full name for the record.

5 A Christopher Smith.

6 Q Spell that?

7 A C-H-R-I-S-T-O-P-H-E-R, S-M-I-T-H.

8 Q And do you know your SCDC number?

9 A 362308.

10 Q Mr. Smith, you applied for post-conviction  
11 relief; is that correct?

12 A Yes, sir.

13 Q What is your impression of -- today's hearing is  
14 to talk about what, exactly, in your own words?

15 A My attorney, if he was going to -- my whole  
16 statement was dealing with coercion, of they used my  
17 wife, threatened me, beating on the table during the  
18 confession tape, and I can only prove that with the  
19 tape.

20 Q One of the reasons you asked for the audio tape  
21 is because it was mentioned in the transcript; is that  
22 correct?

23 A Yes, sir.

24 MR. FOWLER: May I approach, Your Honor?

25 THE COURT: Yes.

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 Q If you can identify this document for me, please.

2 What is that?

3 A Transcript of recording.

4 Q What date is that?

5 A December 2.

6 Q Year?

7 A 2014.

8 Q And what page is that?

9 A 11.

10 Q And what does it say here? Can you read it  
11 between 7 and 11, if you can read that?

12 A Judge, this is something that should never have  
13 happened as you could tell from the audio -- audio  
14 recordings. Mr. Smith showed remorse with sorrow,  
15 Judge, since day one. He has been very remorseful to  
16 me.

17 Q Very good. So the audio tape was mentioned at  
18 the plea; is that correct?

19 A Yes, sir.

20 Q That is one of the other reasons -- is that one  
21 of the reasons you feel it is important to have the  
22 full context of the tape?

23 A Yes, sir.

24 Q In your application, you allege several things  
25 that we can go into today. One is ineffective

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 assistance of counsel for failing to file an appeal  
2 which should have enabled you to challenge the trial  
3 court's admission of statement, which was involuntary  
4 made; that is one of your issues, correct?

5 A Yes, sir.

6 Q Second one was your plea was involuntarily  
7 entered because my attorney coerced me into stopping  
8 trial and pleading guilty; is that correct?

9 A Yes, sir.

10 Q You and I kind of have gone over that. Let's  
11 talk about the tape. Tell me about when the tape was  
12 played and what the tape -- tell me about the context  
13 of the tape, when and where it was made?

14 MS. KINARD: Object to relevance. The tape is  
15 not at issue. He pled guilty and, therefore, could  
16 not challenge the sufficiency of any evidence. Just  
17 because it was referenced in the transcript does not  
18 mean that it has any bearing on his guilty plea.

19 MR. FOWLER: Basically, it is mentioned in the  
20 transcript. It is mentioned of something pertinent  
21 there, and it goes into the plea was involuntarily  
22 entered with his attorney, so it shows that there are  
23 some issues about the audio tape, and I would like to  
24 bring it out with my client.

25 THE COURT: What kind of issues are you going to

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 bring out that would be relevant to --

2 MR. FOWLER: Apparently, there was only a portion  
3 of the tape that was used that was referenced in  
4 context by his attorney. It was a larger tape with a  
5 lot of things that were pertinent on it. Certainly it  
6 goes, perhaps, to some of the evidence in the case,  
7 but the tape itself was something that my client  
8 indicated to me has a relevant status on this case.  
9 It shows that he was basically coerced into this, and  
10 that coercion bled over to his attorney telling him to  
11 -- how to plea.

12 THE COURT: See if I understand. He gave a  
13 statement, I take it, to law enforcement?

14 MR. FOWLER: Yes, sir, is my understanding.

15 THE COURT: And he is arguing now that perhaps  
16 that statement was -- whatever he said was coerced by  
17 law enforcement?

18 MR. FOWLER: Yes, sir.

19 THE COURT: Isn't that all behind us now?

20 MR. FOWLER: No. I think when he puts in his  
21 application that one of the things is that the lawyer  
22 coerced me to stop the trial and plead guilty, and the  
23 lawyer in the transcript talks about the audio tape,  
24 and my client expresses to me there is a larger issue  
25 with the audio tape, I'm just bringing out issues

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 about -- I'm not going into depth, just a background  
2 where the tape was, who might have spoken with him on  
3 it, and how my client felt leaving that two-and-a-half  
4 hour audio tape statement.

5 THE COURT: I'll let you go briefly down that  
6 trail.

7 Q (MR. FOWLER) Talk briefly about the tape, okay.  
8 You are saying that you had an interrogation with law  
9 enforcement; is that correct?

10 A Yes, sir.

11 Q What department of law enforcement did the tape?

12 A Horry County detectives.

13 Q Do you remember their names?

14 A Lynn and Casman (phonetic) or something.

15 Q You are saying that the tape was trying to show  
16 how you were trying to prove your innocence in that  
17 discussion?

18 A Yes, sir.

19 Q And you are saying that you mentioned to me about  
20 only 30 minutes of it was being used; could you tell me  
21 about that?

22 A He just played the last 30 minutes of the  
23 confession, which the 30 minutes was confession.

24 Q Who is "he"?

25 A Mr. Hyman.

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 Q He played it to who?

2 A To the judge and the Solicitor.

3 Q So you are saying Mr. Hyman selectively used part  
4 of a tape, that if it was shown in larger context, it  
5 would be different, your perspective would be  
6 different?

7 A Yes, sir.

8 Q Is there any threats or violation to get your  
9 plea?

10 A Yes, sir.

11 Q Who sent you threats or how did they articulate  
12 threats to you?

13 A The detectives beating on the table, getting  
14 loud, cussing, slamming stuff, saying I'm going to jail  
15 for a long time, saying they are going to lock my wife  
16 up, when she was eight months pregnant, stressed out at  
17 the time, emotional.

18 Q Was your attorney present at that audio taping?

19 A No, sir.

20 Q Why was he not present at that interrogation?  
21 Was he your attorney at that time?

22 A No, sir.

23 Q But you asked for an attorney shortly afterwards?

24 A Yes, sir.

25 Q Why did you do that?

## CHRISTOPHER SMITH - DIRECT EXAMINATION

- 1 A I felt a need for one.
- 2 Q Why did you feel a need then?
- 3 A Because they said I did it when I didn't do it.
- 4 Q So you felt something wasn't appropriate?
- 5 A Yes, sir.
- 6 Q In terms of inner-family relations, or what have  
7 you, you said that somebody in your family, they were  
8 crying or something and you felt the need to plead, or  
9 something; explain that to me a little bit.
- 10 A You are talking about the confession, or when I  
11 took the plea?
- 12 Q We can talk about both. Tell me about the  
13 confession.
- 14 A The confession, the whole time in two hours I was  
15 telling --
- 16 Q Are he still talking about the interrogation with  
17 law enforcement?
- 18 A Yeah, the interrogation. About 10 minutes after  
19 the two-hour mark, the detective got a phone call. He  
20 was saying your wife wants to talk to you, so I got on  
21 the phone. She was crying, all upset saying they  
22 saying you killed someone, they say you need to tell  
23 them what happened, and all of this and that. I said I  
24 don't know nothing.
- 25 Q Are you saying that law enforcement used your

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 family's emotional stress to encourage you to plead  
2 guilty?

3 A Yes, sir.

4 Q You said there was also a situation at the plea,  
5 was there a situation where your family was -- I don't  
6 want to say they were used against you, but used in a  
7 sense to encourage you to plead guilty; is that  
8 correct?

9 A Yes, sir.

10 Q Tell me about that.

11 A Mr. Hyman came to me saying the judge wants to  
12 offer you another plea, so I was like what kind of  
13 plea, and he said 30 years. I said, no, I ain't going  
14 to plea to that. He said, You still want to take a  
15 trial? I said, yeah. He was like, well, I won't let  
16 you make that decision by yourself, you have a wife and  
17 your mama here. Then he had a meeting with us telling  
18 them if he don't take a plea, he is going to get 40  
19 years for murder, and then after that, five years for  
20 the gun.

21 Q How did your family respond to that?

22 A Started crying, saying please take the plea, take  
23 the plea.

24 Q Why do you think Mr. while brought you in for  
25 that discussion?

## CHRISTOPHER SMITH - DIRECT EXAMINATION

- 1 A He knew the love I had for my family.
- 2 Q You are saying that your love for your family  
3 blinded you from your legal position?
- 4 A Yes.
- 5 Q So in reality, Mr. Hyman used emotional distress  
6 in you taking the plea, correct?
- 7 A Yes, sir. Yes, sir.
- 8 Q One of the basic things, were you given Miranda  
9 rights in this matter?
- 10 A He read them to me.
- 11 MS. KINARD: Objection, legal opinion.
- 12 THE COURT: Sustained.
- 13 Q (MR. FOWLER) You are saying that your lawyer  
14 gave you bad advice on stopping the plea; is that  
15 correct?
- 16 A Yes, sir.
- 17 Q He indicated if you went to trial and the jury  
18 heard your statement, they would find you guilty?
- 19 A Yes, sir.
- 20 Q And you are saying that there is a discrepancy  
21 between what the Solicitor offered at one point in  
22 time, and what they offered later; could you explain  
23 that to me? I mean, it sounds like there was a  
24 several-month delay in what they offered you, based on  
25 our discussions. Tell me how a plea was first given to

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 you, and then how it changed months later, perhaps.

2 MS. KINARD: I'll object. It is outside of the  
3 scope of the allegation that is presented.

4 MR. FOWLER: Your Honor, basically what this is  
5 saying is that he did not -- his plea was changed from  
6 one time to another, and the attorney may have had  
7 something to do with it to cover his tracks, perhaps.  
8 There was a several-month delay in terms of what I  
9 understand to be his initial plea, and what he  
10 eventually pled to. His lawyer did not apparently  
11 offer him that plea within a reasonable time frame of  
12 even a month or so, so that is what I would like to  
13 discuss with him.

14 THE COURT: The State's objecting to it that that  
15 is not one of the grounds stated.

16 MS. KINARD: That's the first time that he raised  
17 it as a potential ineffective assistance of counsel  
18 argument, although it is not delineated as such in his  
19 allegation, there is no reference to an un conveyed  
20 plea offer. That was the ground for my objection, it  
21 is not within the bounds of his allegations presented  
22 today.

23 MR. FOWLER: Our contention is ineffective  
24 assistance of counsel, Your Honor. I think that  
25 relates to it in terms of an umbrella of if his lawyer

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 truly gave him a plea within a reasonable time, I  
2 think we would show that on direct examination.

3 THE COURT: How would the State defend against  
4 that without any knowledge of it?

5 MR. FOWLER: Your Honor, we're here to talk about  
6 involuntary -- ineffective assistance of counsel, and  
7 with that comes baggage such as this, where apparently  
8 a plea was given to him in the spring and wasn't  
9 delivered until the fall, and it changed over.

10 Also, apparently, there is issues with what the  
11 Solicitor offered and perhaps what the judge finally  
12 provided to him, and I don't know if he understands  
13 that based on his relationship or lack of  
14 communication with his attorney.

15 THE COURT: All right. Go ahead.

16 Q (MR. FOWLER) So you are saying the judge added  
17 five years; is that correct?

18 A Yes, sir.

19 Q Give me the timeline for the Court. You are  
20 saying there was a potential plea given to you in one  
21 month, and your attorney did not deliver it to you  
22 until later, and then at that point it was changed; is  
23 that correct?

24 A Yes, sir.

25 Q Tell me about that in your own words.

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 A First time I heard about the 25-year plea was  
2 November, right around November 10<sup>th</sup> before I went to  
3 a hearing or whatnot, that is when the plea was brought  
4 to my attention, but he was like, well, we're going to  
5 see if we can get it knocked down some.

6 Q But you indicated there was a plea officially  
7 offered by the Solicitor's Office several months  
8 before; is that correct?

9 A No, that is the plea right there. The second  
10 plea that the lawyer gave him, that he said the judge  
11 gave him that offered me, that was December 2<sup>nd</sup> at  
12 the trial.

13 Q Are you saying the judge changed the plea?

14 A Yes. He said the judge wanted -- he is afraid if  
15 the jury heard my statement they would convict me.

16 Q How did your lawyer -- I mean, did he not -- you  
17 are saying when your attorney went before the Court  
18 discussed this with the judge, the judge added five  
19 years?

20 A Yes. His exact words were the judge say he  
21 wouldn't give you 25-year plea, he'll add another five  
22 years to make the Solicitor happy.

23 Q Tell me about discovery in this matter. Did you  
24 receive any discovery or information?

25 A I got sentenced December 2, and I didn't get no

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 motion until March 2014, three, four months later.

2 Q You say "motion," but you are saying the  
3 substance of your discovery?

4 A Yeah, Rule 5.

5 Q What the Solicitor gave to him -- so you are  
6 saying before you pled, you did not have discovery  
7 information?

8 A I ain't have nothing.

9 Q Did the attorney go over anything with you, or  
10 did he explain -- did he go over any discovery with you  
11 orally instead of looking at a piece of paper?

12 A No, sir.

13 Q So you are saying you went into the plea without  
14 having accurate discovery; is that correct?

15 A Yes.

16 Q Did he explain why you didn't have discovery?

17 A No.

18 Q Did he file a Rule 5 motion, to the best of your  
19 knowledge?

20 A No, sir.

21 Q You don't know, do you?

22 A I filed my Rule 5 off of my sentencing sheet.

23 Q Okay. Did you say -- did you indicate to your  
24 attorney that you were the wrong man, though, who  
25 allegedly did these acts?

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 A Yes, sir.

2 Q How did you tell him that?

3 A I told him, They have the wrong guy.

4 Q Did you consistently say that through --

5 A Yes, sir.

6 Q What did he say in response?

7 A He said that the detectives know they have the  
8 wrong guy, just that I wouldn't tell him who it was.

9 Q Is that the truth?

10 A I'm not on trial to say if I did it or not.

11 Q But you are saying you were not the correct  
12 person, right?

13 A No, sir.

14 Q My question is this. Did he initiate anything  
15 with law enforcement, any discussions or what have you,  
16 to work out who the correct person was -- strike that.

17 Did he ever try to get your innocence shown in  
18 discussions with law enforcement, in your opinion?

19 A No, sir.

20 MS. KINARD: I don't see the relevance to this.  
21 It is a guilty plea.

22 MR. FOWLER: If he had information about his  
23 innocence, or potential innocence, that would have  
24 gone into what he needed to show into his decision to  
25 make a guilty plea or not.

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 THE COURT: I'll sustain the objection.

2 Q (MR. FOWLER) Did your attorney go into anything  
3 about the search warrants with you?

4 A No, sir.

5 Q Is that an important reason why you did not plead  
6 guilty?

7 A Yes, sir.

8 Q Tell me what he did -- are you saying he should  
9 have done active work on finding out more information  
10 about the search warrants?

11 A Yes, sir. I think he should have done  
12 investigation.

13 Q Such as what?

14 A On the search warrant that they got sworn in  
15 front of the judge August 31, 2009, and the search  
16 warrant was executed November 23, 2014.

17 Q Well, is that from August 31, 2009 to  
18 November 24, 20 --

19 A Yes, sir.

20 Q So that is about -- that is four years, isn't it?

21 A Four years and about three months old.

22 Q So what did your attorney tell you about why  
23 there was -- the reasons for that?

24 A He never spoke about search warrants.

25 Q You are saying that, basically, there was a

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 limitation on the effectiveness of the search warrant?

2 MS. KINARD: Object to any further questioning on  
3 this. The incident that charges arose from was in  
4 2013.

5 MR. FOWLER: And the search warrant was provided  
6 in 2009, and I'm trying to get to the reasoning why  
7 his attorney -- there was a four-year lapse in that  
8 search warrant.

9 MS. KINARD: I have no evidence of a search  
10 warrant. There is no discussion of a search warrant  
11 because there is a guilty plea. The facts stated on  
12 the record is that the incident occurred on November  
13 23, 2013, so any search warrant from 2009, I don't see  
14 how it is relevant to these charges.

15 MR. FOWLER: This goes to the ineffective  
16 assistance of counsel in terms of if there was a  
17 search warrant out there for several years, what his  
18 attorney did or did not tell him about it.

19 THE COURT: I'll sustain the objection.

20 Q (MR. FOWLER) You stated case law?

21 A Yes, sir. Jones versus United States --

22 MS. KINARD: I'll object to these.

23 THE COURT: Overruled.

24 Q (MR. FOWLER) There is another one?

25 A I ain't got it up here with me.

## CHRISTOPHER SMITH - DIRECT EXAMINATION

1 Q Brock versus -- Gordon Brock case?

2 A Yep.

3 Q You are familiar with the Strickland versus  
4 Washington case where there is a standard of evidence  
5 for your attorney?

6 A Yes, sir.

7 Q Before we go to that, how was your professional  
8 relationship with your attorney? Did he contact you  
9 frequently talking about the case?

10 A No, sir.

11 Q When you say that, how often did he contact you?

12 A Just contacted me to come by to see him like one  
13 or two times through the whole thing.

14 Q Was that one or two times enough for you to  
15 accurately determine you wanted to plea on this?

16 A No, sir.

17 Q Why not?

18 A All he was talking about was the statement, audio  
19 tape I made.

20 Q Is that why you feel it is so important to have  
21 that audio tape?

22 A Yes, because he was arguing about the whole time,  
23 being coerced.

24 Q So you are saying that your attorney, on several  
25 occasions, said that the audio take provided coercion?

## CHRISTOPHER SMITH - CROSS-EXAMINATION

1 MS. KINARD: You already ruled that we won't  
2 consider the audio tape because we're moving forward  
3 today.

4 MR. FOWLER: We're not considering the audio  
5 tape, but it is a part of the discovery or something  
6 that he feels is important to his state of mind in  
7 terms of what he pled guilty, as opposed to going on  
8 with a trial in this -- I mean, we're not going to  
9 discuss it anymore.

10 THE COURT: Go ahead. Overruled.

11 Q (MR. FOWLER) How would you describe your  
12 attorney's performance and reputation of you?

13 A Poor.

14 Q And do you think because he represented you in a  
15 poor manner, that is why you are in a situation at this  
16 point and you pled guilty?

17 A Yes, sir.

18 MR. FOWLER: Nothing further.

19 CROSS-EXAMINATION

20 BY MS. KINARD:

21 Q You stated you felt you were coerced during the  
22 confession, but you also stated that Mr. Hyman did not  
23 represent you at that time?

24 A Say again.

25 Q Mr. Hyman did not represent you during the

## CHRISTOPHER SMITH - CROSS-EXAMINATION

1 confession you have been talking about; is that  
2 correct?

3 A No, ma'am.

4 Q When you went to trial -- excuse me, when you  
5 pled guilty, this was after a jury was pooled for your  
6 trial; is that correct?

7 A Yes, ma'am.

8 Q And after pretrial motions?

9 A Pretrial motions is -- what is that?

10 Q For example, did the attorneys talk to the judge  
11 about legal matters outside of the presence of the  
12 jury?

13 A Yes, ma'am.

14 Q Is that when the audio tape was played?

15 A Yes, ma'am.

16 Q And you decided to plead guilty after that?

17 A I plead guilty because he said the judge will  
18 give me more time than what it was.

19 Q What do you mean by "what it was"?

20 A He said the judge said I would do 40 years and  
21 then five for the gun. How can he give me five years  
22 for gun, I ain't never have a gun?

23 Q He explained that is the amount of time you were  
24 facing for your charges?

25 A No, he assumed.

## CHRISTOPHER SMITH - CROSS-EXAMINATION

1 Q Did he convey that that is what you would get on  
2 your charges if you went to trial?

3 A Yes, ma'am.

4 Q So, instead, you decided to plea?

5 A He used my family against me.

6 Q You don't believe that your family's advice was  
7 valuable?

8 A I do, but at the same time, I'm the one on trial,  
9 and when he asked do I want to take it to trial, I  
10 said, yes, but he went behind me and got my mom and  
11 wife in the middle of it.

12 Q When you entered your plea, was that pursuant to  
13 a recommendation or negotiation with the Solicitor's  
14 Office?

15 A I think that is with the judge, that is what he  
16 told me. The judge offered a plea, not the Solicitor.

17 Q When you pled, did you have a firm number of  
18 years that you were pleading to?

19 A I think it said like 1 to 30, I think -- or just  
20 30.

21 Q So it doesn't sound familiar that you would have  
22 pled without recommendation?

23 A No.

24 MS. KINARD: Your Honor, that is on Page 2.

25 Q Do you remember answering questions at the plea

## CHRISTOPHER SMITH - CROSS-EXAMINATION

1 entry?

2 A Like what?

3 Q Anything the judge asked you. For example, you  
4 understand what you were doing?

5 A Yes, ma'am.

6 Q And that you were doing it freely and  
7 voluntarily?

8 A Yes, ma'am.

9 Q And do you recall discussing the complications or  
10 collateral consequences of your plea, such as the  
11 strike rule, how much time you would have to serve,  
12 parole, consequences, things like that?

13 A No, ma'am.

14 Q I wanted to use this to refresh your memory. On  
15 Page 4, it talks about the possibility of parole. You  
16 see that, the strike rules and all of that (indicates)?

17 MR. FOWLER: What line?

18 MS. KINARD: Generally, Page 4.

19 A I see it.

20 Q (MS. KINARD) Do you recall any of that?

21 A I see it.

22 Q Do you recall the judge talking about your  
23 Constitutional rights, such as the fact you could do a  
24 jury trial and you are presumed innocent?

25 A No, ma'am, I don't recall all of it.

## CHRISTOPHER SMITH - CROSS-EXAMINATION

1 Q You don't recall that?

2 A No, ma'am.

3 MS. KINARD: If I may approach again, Your Honor?

4 This is on Page 5.

5 Q Right to remain silent, Lines 11 and 12.

6 Presumption of innocence, jury trial?

7 MR. FOWLER: Could you repeat those again?

8 MS. KINARD: 10, 15 and 21.

9 MR. FOWLER: On page?

10 MS. KINARD: Five.

11 Q (MS. KINARD) So, basically, you went through  
12 these questions with the judge. Do you recall telling  
13 him you were satisfied with your attorney?

14 A I don't really remember.

15 Q That is on Page 6. You are here with your  
16 attorney, Mr. Hyman? Line 22. Yes, sir. You told him  
17 everything you need to tell him? Page 7, yes, sir.  
18 Enough time to talk to him? Yes, sir. Do you need  
19 more time to talk to him? No, sir. Satisfied, Line 8.  
20 Yes, sir. No complaint? Is that correct?

21 A Yes, but my lawyer told me the only thing I  
22 should say is yes, sir.

23 Q Which you did, and you said yes, sir and no, sir,  
24 according to the way you were supposed to; is that  
25 correct?

CHRISTOPHER SMITH - REDIRECT EXAMINATION BY MR. FOWLER

1 A Yes, ma'am.

2 Q Do you recall someone reading the facts of the  
3 crimes as they were?

4 A No, ma'am. I can't recall.

5 Q So you don't remember a whole lot about this, but  
6 you testified at the time that you were of sound mind  
7 and knew what you were doing?

8 A I wouldn't say I knew what I was doing, because I  
9 don't know the law.

10 Q Did you feel like you were making the best choice  
11 for you at that time?

12 A No, ma'am.

13 Q But you went ahead and did it anyway?

14 A Yes, ma'am.

15 MS. KINARD: No further questions.

16 REDIRECT-EXAMINATION

17 BY MR. FOWLER:

18 Q You mentioned that your attorney did not  
19 represent you at the time of the discussion,  
20 two-and-a-half hour tape, what have you, with law  
21 enforcement, and he didn't represent you at that time,  
22 did he?

23 A No, sir.

24 Q But he did represent you on charges that came out  
25 of that discussion with law enforcement, correct?

CHRISTOPHER SMITH - REDIRECT EXAMINATION BY MR. FOWLER

1 A Yes, sir.

2 Q So the discussion that she referred to in terms  
3 of him not representing you, he still had to deal with  
4 the consequences of what came out of that -- what you  
5 said and they said, and what they did to you at that  
6 time, correct?

7 A Yes, sir.

8 Q So it was, basically, still his responsibility to  
9 deal with that discussion with law enforcement,  
10 correct?

11 A Yes, sir.

12 Q She asked you about pretrial motions, and you  
13 said what is that. Were you not aware that there were  
14 pretrial motions or -- let me rephrase. Did your  
15 attorney go over what pretrial motions he was going to  
16 provide to the Court?

17 A No, sir, I can't really remember. I don't know  
18 what no pretrial is or prehearing is.

19 Q So did he go over anything that was done pretrial  
20 with you, any kind of motions he was going to file with  
21 the Court?

22 A No, sir.

23 Q It was mentioned on cross-exam that law  
24 enforcement, apparently, and your attorney turned --  
25 you said in your words turned your family against you?

CHRISTOPHER SMITH - REDIRECT EXAMINATION BY MR. FOWLER

1 A Yes, sir.

2 Q So you are saying that they played an emotional  
3 card against you to get you to do what you did in terms  
4 of pleading guilty; is that correct?

5 A Yes, sir. That is the only reason I pled guilty.

6 Q Why is that?

7 A Because they used my family against me.

8 Q So it wasn't on any particular evidence or  
9 anything, you said it was because, in your words, as  
10 you said, they used your family against you, right?

11 A Yes, sir.

12 Q You said that you did not know how many years --  
13 on cross-examination, you indicated that the plea was  
14 with the judge, and correct me if I'm wrong, but you  
15 didn't know how many years you were getting; is that  
16 correct?

17 A No, sir.

18 Q How is that possible? Were you just relying on  
19 what your attorney said to you and said take whatever  
20 the judge provides?

21 A Yes. He said the judge has another plea, but  
22 he's going to give you five more.

23 Q So you were relying on your attorney's knowledge  
24 of law in terms of pleading guilty?

25 A Yes, sir.

CHRISTOPHER SMITH - REDIRECT EXAMINATION BY MR. FOWLER

1 Q In the cross-examination, she went over various  
2 things, various lines, in terms of Constitutional  
3 rights, self-incrimination, jury trial and things; did  
4 your attorney go over that with you? Break it down.  
5 Did your attorney go over your Constitutional rights?

6 A No, sir.

7 Q Did he go over self-incrimination at trial  
8 possibilities?

9 A No, sir.

10 Q Did he go over your right to a jury trial?

11 A No, sir.

12 Q But what he did do is he said, You say yes, sir  
13 when the judge asks you a question; is that correct?

14 A Yes, sir.

15 Q So you were basically relying on the attorney  
16 about what to do that day?

17 A Yes, sir.

18 MR. FOWLER: Nothing further.

19 MS. KINARD: No recross.

20 THE COURT: You may step down.

21 MS. KINARD: State calls Alex Hyman.

22 (ALEX HYMAN, having been duly sworn, testified  
23 as follows:)

24 THE CLERK: State your name for the Court.

25 THE WITNESS: Alex Hyman.

## ALEX HYMAN - DIRECT EXAMINATION

1 DIRECT-EXAMINATION

2 BY MS. KINARD:

3 Q How long have you been practicing law?

4 A Since 2006, 10 years.

5 Q And what percent of your practice is criminal  
6 law?

7 A When I first started practicing, did a little  
8 civil work, some mechanics liens, but the vast bulk has  
9 been criminal.

10 Q How did you become involved in this case?

11 A I was hired by Mr. Smith and his family.

12 Q Do you recall how they contacted your office and  
13 how you first became involved?

14 A Vaguely. I represented some of Mr. Smith's  
15 wife's family in the past, and if I'm not mistaken, one  
16 of them reached out to me. He was incarcerated, was  
17 not out on bond, and they contacted me as far as  
18 representing him and possibly getting a bond.

19 Q Do you recall, approximately, how many times you  
20 meet with him to discuss these charges?

21 A I don't know how many. I would say -- Chris  
22 would come and make payments at my office. A majority  
23 of the time he made payments, he would stick his head  
24 in. Sometimes we did not talk about the case,  
25 sometimes we talked about his wife, talked about how

## ALEX HYMAN - DIRECT EXAMINATION

1 his kids were, but quite a few times we did discuss the  
2 case. There was a little bit of a break in the case.  
3 The original prosecutor was Donna Elder, and she took  
4 another job and it was assigned -- I cannot remember  
5 the second prosecutor, but that prosecutor did not have  
6 it long before they took another job, and I think the  
7 third prosecutor was actually Jimmy Richardson, and  
8 then at trial it was Steven Grooms there with Jimmy  
9 Richardson. So it had a tumultuous ebb and flow as far  
10 as who the prosecutor was on it up until days before  
11 trial.

12 Q If he came by to give you payments, you were  
13 successful in getting him bond?

14 A Uh-huh.

15 Q And the fact he would come and not talk about the  
16 case sometimes, leads me to believe that you had a  
17 fairly good relationship?

18 A I like Chris. He is a good guy. His wife is a  
19 nice lady. I got to know Chris fairly well. If you  
20 look in the transcript, I spoke highly of him, and I  
21 wasn't just saying that. Chris is a good guy.

22 MS. KINARD: I believe he is referring to 11.

23 Q As part of your representation, did you discuss  
24 the indictments with Mr. Smith?

25 A I did.

## ALEX HYMAN - DIRECT EXAMINATION

1 Q Did you review possible punishments for each  
2 charge?  
3 A I did.  
4 Q And did you discuss collateral consequences?  
5 A I did. In discussing the different charges,  
6 there were -- he had a murder charge and attempted  
7 murder, but he had a weapons charge. I think there was  
8 confusion about that. They never -- the weapon he is  
9 referring to, they didn't find. That is one of the --  
10 that was the five-year thing that got talked about.  
11 When I talked to Chris about this, it was always how  
12 much does that carry, what does that do, what does that  
13 do. Chris would ask a good many questions, and the  
14 weapons charge is what he was talking about with the  
15 plus five.

16 One of the things that I think kind of got a  
17 little confusing was the initial offer was not  
18 actually a written offer. It was by Donna Elder, and  
19 I believe it was at a -- I don't remember the exact  
20 date, but I think I had a bond returnable or roll  
21 call, it was either in May or June I think. Chris got  
22 out in March, and I believe it was shortly after that  
23 that he had an initial appearance and then bond  
24 returnable. I think the 25 years was offered at the  
25 bond returnable. Donna also told us at that bond

## ALEX HYMAN - DIRECT EXAMINATION

1 returnable, if I'm not mistaken, she was out the door  
2 and was not going to be prosecuting the case. That 25  
3 years was relayed at bond returnable, but also relayed  
4 to him that that was not going to be his prosecutor  
5 any longer. If I'm not mistaken, the way we left it,  
6 we'll see who else gets assigned and we'll keep  
7 working on the case.

8 But to answer your question, how many times we  
9 actually talked about it, I would say -- my guess is  
10 12 to 15 times that we met at the office, and during  
11 that, we actually did listen to the audio he's  
12 referring to. There wasn't a whole lot of -- this was  
13 not a case that had a thousand pages -- let me change  
14 that, maybe a thousand pages if you included the  
15 transcripts of the audio, but the majority of the  
16 evidence involved in this were pictures that were  
17 taken and also the audio interview of Chris, and the  
18 audio interview of Aaron Campbell, who was a victim in  
19 this.

20 Q These meetings were with the goal of going to  
21 trial?

22 A Well, yes and no. Throughout this entire period  
23 I still had a theory what occurred, and still have a  
24 theory what occurred. It was never a definite trial,  
25 but never a definite plea. It was always it may be a

## ALEX HYMAN - DIRECT EXAMINATION

1 plea if we get a right number, and if not, it may be a  
2 trial. One of the things we discussed quite  
3 frequently -- and I think he said this -- was the  
4 statement. I was pretty adamant that if that statement  
5 came in, I thought he would be in trial. Prior to  
6 beginning the trial, we did do a Jackson v. Denno, as  
7 well as a Neil v. Biggers.

8 Q What was the results of those?

9 A Judge denied both. I don't remember it just  
10 being a portion -- I'm not saying it is inaccurate, I  
11 just don't recall that. It was my recollection, and I  
12 may be incorrect, but I was under the recollection that  
13 the judge let the jury go for the day, and that we  
14 actually played the recording. But I may be wrong on  
15 that.

16 Q Did you inform him of his Constitutional rights,  
17 including that at a jury trial he could testify, call  
18 witnesses?

19 A Yes. We talked about him testifying. Chris  
20 didn't video any record, which defense attorneys always  
21 think about, If I'm going to call him, is his past  
22 going to come back to bite him. With Chris, that  
23 wasn't the case. He had no record and we discussed the  
24 possibility of him testifying. Again, it kind of came  
25 back to are we going to be able to get that -- and I

## ALEX HYMAN - DIRECT EXAMINATION

1 really thought we had a 50/50 shot of getting the audio  
2 kicked. There was stuff in there concerning his wife,  
3 not necessarily threats, but certainly insinuations  
4 that they could potentially charge her.

5 Q Did you discuss Mr. Smith's version of the facts  
6 of the case?

7 A Yes.

8 Q What did he tell you?

9 A As far as the facts?

10 Q Yes.

11 A His version of the facts were consistent with his  
12 confession; however, I don't necessarily think that  
13 that was true. I don't think his confession told  
14 everything that was there. I think there were other  
15 people there, and I'm almost positive there was other  
16 people in car with him, but Mr. Smith wouldn't give any  
17 of that information to me or law enforcement, even  
18 though there were some negotiations discussed about a  
19 possible proffer. There was -- they had an idea of who  
20 they thought was in the car as well, and the gentleman  
21 they believed was in the car, law enforcement believed  
22 was more of a threat than Chris, I'll put it that way.  
23 There was a good bit of talk about that -- even after  
24 his plea -- concerning him coming back and talking.

25 Q Did you file a discovery motion in this case?

## ALEX HYMAN - DIRECT EXAMINATION

1 A I did.

2 Q Do you believe you received everything that  
3 should have been in there, everything you expected?

4 A I went and looked back at my file. I'm assuming  
5 that Jim Richardson did this because he wanted to make  
6 sure that everything was sent to me, but in November, I  
7 was re-sent everything I already had. So I'm assuming  
8 when he took the case, he wanted to make sure there  
9 wouldn't be an issue.

10 As far as discovery, I had everything that I  
11 thought I needed, and actually used a private  
12 investigator to do a background check on the two  
13 victims.

14 Q You reviewed all of this discovery with  
15 Mr. Smith?

16 A As I said, most of the discovery was audio.  
17 There was very little in way of anything written. It  
18 was generally all audio and pictures, so, yes.

19 Q I believe you also stated there was no fact  
20 witnesses to really interview?

21 A The only real witness was one of the victims,  
22 Aaron Campbell. That was really the bulk of the  
23 State's witnesses. That was it. I think that maybe  
24 they had people that were willing to testify what Chris  
25 drove, but that was generally the only fact witness.

## ALEX HYMAN - DIRECT EXAMINATION

1 Q Did you discuss possible defenses with him, what  
2 you present at trial?

3 A I did. Most of the discussions kind of went away  
4 around the confession, coercion type of things.

5 Q Did you come up with a defense theory of the  
6 case?

7 A Yes and no. It was kind of hard to say that --  
8 to form a theory that he was there and he didn't do it,  
9 but also form a theory that he was coerced into a  
10 statement. They were kind of cross-theories. In  
11 talking with Chris, our general view going into it was  
12 that we needed to say he was coerced, that needs to be  
13 our plan. I truly do -- the audio does show there was  
14 possibly some coercion there.

15 Q You heard Mr. Smith say that you used his family  
16 to coerce him into a plea?

17 A Right.

18 Q Can you tell me about that?

19 A Chris, in talking to me, always, always came back  
20 to his family was very, very concerned with his wife  
21 and their small son. I think their son is two now, if  
22 I'm not mistaken. Chris, and that is one of the  
23 reasons I liked him so much, I have a son who is two as  
24 well, and we discussed that a good bit. But I could  
25 tell that Chris was very, very family oriented. What

## ALEX HYMAN - DIRECT EXAMINATION

1 he is talking about what happened is after the judge  
2 denied the two motions, he asked to speak to me and the  
3 Solicitor, and it was in the back that the judge  
4 basically requested that the Solicitor put manslaughter  
5 back on the table. He certainly didn't order him to do  
6 that, but asked what his thoughts were on it, and the  
7 Solicitor said, well, I'm against it. I will think  
8 about putting it on the table, but it would need to be  
9 30 years, is where that came from.

10 I went out and asked the judge if there was any  
11 possible way we could clear the courtroom so I could  
12 speak candidly with my client and his family. Judge  
13 John allowed that. The victims and their families  
14 were removed from the courtroom. The only person who  
15 stayed was a deputy, and what I did was I let Chris  
16 turn around, and we talked, talked to he and his  
17 family and discussed what the possibilities were. At  
18 no point was it you are going to get 40 years plus  
19 five or anything like that, it was always an  
20 if-convicted-you-could-get-this,  
21 if-convicted-you-could-get-this. If that was  
22 coercion, it certainly wasn't meant to be. I would  
23 never use his family against him. It was more -- I  
24 knew how much he was concerned about his wife, and  
25 that was more of the question. I thought it was good

## ALEX HYMAN - DIRECT EXAMINATION

1 for him to understand that they were going to be okay  
2 with it.

3 Q And you believe he understood that he was  
4 entering a plea that was not pursuant to a negotiation  
5 or recommendation?

6 MR. FOWLER: Objection, that speaks to what my  
7 client thought, not to what he thought he knew.

8 A As far as --

9 THE COURT: Hold on a second. The transcript  
10 refers to that?

11 MS. KINARD: Yes, Your Honor.

12 MR. FOWLER: Yes, sir.

13 THE COURT: Whether he knew it or not, the  
14 transcript indicates that that was stated before the  
15 plea.

16 MS. KINARD: I'll be happy to move on.

17 Q (MS. KINARD) Based on your familiarity with  
18 Mr. Smith and your relationship with him, do you think  
19 he understood what happened?

20 A He is a smart guy, he understood.

21 Q Did he decide to plead out of his own free will?

22 A I think so.

23 Q So you believe his plea was freely and  
24 voluntarily?

25 A I do. I think he was scared, but I think he was

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 | scared of the consequences either way, to be honest,  
2 | but I think it was free and voluntary.

3 | Q And you think it was in his best interest?

4 | A I do.

5 | Q And you recommended that he take that plea?

6 | A I did.

7 | MS. KINARD: Nothing further. Thank you.

8 | CROSS-EXAMINATION

9 | BY MR. FOWLER:

10 | Q You mentioned that both he and his family came by  
11 | to pay you. Did his family pay you as well, or he was  
12 | the only one?

13 | A As far as the initial down payment, I think his  
14 | wife brought it by to -- honestly, I don't know if I  
15 | collected it or the staff did. Quite frequently --  
16 | Chris was a hard worker --

17 | Q Guess my question is, you know, was the  
18 | attorney/client agreement with him, or with him and his  
19 | family, or was there any confusion about who you  
20 | represented in this?

21 | A There was no confusion. And I've represented,  
22 | and I still represent, some of his family. There never  
23 | has been any confusion about which one.

24 | Q Earlier in your direct examination, you said that  
25 | the numbers you didn't know, and later in the direct

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 exam you said you met 12 to 15 times; which was it? I  
2 mean, am I confused on that or what? Because there  
3 seems to be two different statements in terms of how  
4 many times you met Chris on this action.

5 A What I said was I don't know how many times I met  
6 with him total. If you will go back, what I said was  
7 he would come by sometimes and make a payment, and we  
8 would talk about things that has nothing to do with  
9 this case, but in regards to how many times on this  
10 case, my guess is between 12 and 15.

11 Q But you don't have any logs as in a record,  
12 correct?

13 A No.

14 Q And you do say that mixed in there is several  
15 discussions of none-case related matters, right?

16 A Several.

17 Q And explain to me the weapons in terms of not  
18 finding the weapons, that's why they added five years,  
19 was that the day of the trial or day of the plea that  
20 the five years was added, or was that added beforehand,  
21 or at what moment in time was that added to his  
22 sentence?

23 A That had nothing to do with the addition to his  
24 sentence. The addition to his sentence is that he  
25 turned down the initial 25, so they had taken that

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 offer off.

2 Q When did he turn down the initial offer?

3 A That is what I said, I think it was in June of  
4 that year at bond returnable.

5 Q How did you present that to him?

6 A We sat at a table with Donna Elder, that is how  
7 they all work here most of the time. To my knowledge,  
8 we never had a written offer. A lot of that goes to  
9 the fact that there were four different prosecutors.  
10 If I may, when Jimmy Richardson got involved, which  
11 would have been in October, that is when I found out  
12 Jimmy had taken over the case. He called me, and I was  
13 in Camden, of all places.

14 Q I guess my point is there was initially offered a  
15 25-year plea, and he pled eventually to more than that?

16 A That's correct.

17 Q Was there a way to get the Solicitor down back to  
18 the 25-year plea? Donna presented it, and then Jimmy  
19 took it, and then eventually he pled to 30; so is there  
20 any way you could have asked the solicitor before Donna  
21 left to get it back down to that original plea?

22 A There would have been a way to go way down, but,  
23 again, Chris wasn't willing to do that. And as far as  
24 the Solicitor's Office goes, it is their policy once  
25 you decline an offer, and on eve of the trial, they are

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 not lowering it. To be honest, Judge John, I thought,  
2 did something, and I was very gracious of.

3 Q What is that?

4 A Well, Judge John surely didn't tell the Solicitor  
5 you have to put manslaughter back on the table, but he  
6 suggested.

7 Q I appreciate it. I mean, let's stick within the  
8 scope of the question, if you don't mind. So you are  
9 saying, in your opinion, you don't think you could get  
10 it back down to 25?

11 A I begged and pleaded to get it back down to 25.

12 Q Did you send any letters to the Solicitor's  
13 Office asking to have the 25-year plea?

14 A I went and met with him.

15 Q So you met instead of sending a paper trail,  
16 correct? You didn't send letters or correspondence?

17 A I met with him multiple times and talked with him  
18 multiple times.

19 Q In terms of the Jackson --

20 A One more thing to add to that. While I was  
21 talking with the Solicitor --

22 Q Let me --

23 THE COURT: Mr. Hyman, let him answer the  
24 question.

25 A It was responding to the question.

ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 THE COURT: Don't interrupt me. Let him ask the  
2 question, and you answer the question.

3 Q (MR. FOWLER) To be clear, I have specific  
4 questions based on your direct, and what have you.  
5 So, I mean, that is why I'm interested in getting --  
6 in terms of Jackson versus Denno and Biggers, those  
7 were pretrial motions on the day of his plea; is that  
8 correct?

9 A Correct.

10 Q How did you inform him of those pretrial motions  
11 and those activities?

12 A As far as the Biggers motion, I explained that he  
13 had been identified by one of the victims and that we  
14 were going to argue that the identification was not  
15 legal. They had used a practice in showing a picture  
16 that should not have been used. They put --

17 Q So you are saying that items that the Solicitor  
18 used in some fashion were improperly done; is that  
19 correct?

20 MS. KINARD: Object to this line of questioning  
21 as it deals with pretrial matters.

22 MR. FOWLER: It was her witness, and it was  
23 discussed -- in my notes, I'm just going by what her  
24 direct examination opened the door.

25 THE COURT: Go ahead.

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 A As far as you -- what we were trying to get the  
2 victim who lived, the attempted murder, identified  
3 Mr. Smith, but the identification was that he was  
4 hooded or had a beanie on. It was very dark. We  
5 argued as to the validity of the identification.

6 Q That was another thing that was brought out on  
7 direct examination about how there may have been  
8 another person responsible for what Chris pled to; is  
9 that correct?

10 A Absolutely.

11 Q If that's the case, how did you investigate  
12 getting that other person identified and providing that  
13 or getting that information from law enforcement?

14 A It didn't come from law enforcement, because they  
15 didn't know.

16 Q What are you basing this speculation or reasoning  
17 on? You are saying that there could have been someone  
18 else sitting where Chris is sitting right now in terms  
19 of sentencing or alleged crime? You are saying that  
20 there is someone else out there that there was no  
21 investigation or follow-up by your office?

22 A No.

23 Q How did you investigate it?

24 A The victim testified. As far as his  
25 identification, it was that there were multiple people

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 in the car. The victim got out of his car and ran and  
2 looked back. There were multiple people in the car  
3 that was driven by Christopher Smith. The law  
4 enforcement officers never found those people. It was  
5 my theory, and my thought, the entire time that while  
6 Mr. Smith may have been the driver, he was not the  
7 shooter.

8 Q Was there any DNA evidence taken -- strike that.  
9 Was there any gun powder residue testing done on my  
10 client here?

11 A I don't believe there was. I believe there was  
12 on Aaron Campbell.

13 Q Could you repeat the last part?

14 A I don't believe that there was on Chris. Chris  
15 was -- it wasn't immediately found, but I think there  
16 may have been gunshot residue done on Aaron Campbell.

17 Q Did you get the Aaron Campbell gun residue  
18 information?

19 A I'll be honest, I don't remember.

20 Q So you don't remember if you received discovery  
21 on someone else who may have been the shooter from the  
22 car?

23 A Aaron was not in his car. He was in the car that  
24 burned up, the victim.

25 Q You never got DNA from him?

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 A I don't remember, is what I am saying.

2 Q And there was no gun powder residue testing done  
3 on Chris, was there?

4 A Not that I remember.

5 Q You said on direct examination that a lot of this  
6 was on audio and photos. What do you mean there was a  
7 lot of audio?

8 A The two-and-a-half hours of Chris. There was an  
9 interview, if I'm not mistaken, with Aaron Campbell.  
10 There may have been one with Chris' wife, but I don't  
11 remember for sure if there was one.

12 Q Did you ever get the audio tapes of those  
13 discussions?

14 A They were on CDs.

15 Q Well, did you get a copy of the CD with Chris and  
16 the law enforcement officers you are referring to?

17 A Yes.

18 Q So you have a copy in your files?

19 A Yes. It is either in my files or on the hard  
20 drive at my office.

21 Q In terms of what you are saying, there was no  
22 other gun powder residue on Chris, but there is a CD of  
23 his discussions with law enforcement?

24 A There is.

25 Q Did you discuss with Chris how law enforcement

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 treated him, or discuss your interpretations of how law  
2 enforcement interacted with him on that tape or  
3 whatever recording?

4 A We listened to it in the office, and I told him I  
5 thought he was coerced.

6 Q So you are saying there is coercion -- you are  
7 saying you thought there was coercion, so you are  
8 saying you thought there was coercion by law  
9 enforcement on Chris on this matter, correct?

10 A Yes.

11 Q And, yet, Chris still pled guilty to these  
12 charges, correct?

13 A Yes. After the Jackson v. Denno.

14 Q What about the photos?

15 A If I'm not mistaken, I think there were four  
16 sets. There was Chris' car, the car involved in the  
17 alleged murder that had caught on fire, so there was a  
18 lot of photos of that. There was photos of the  
19 surrounding area, scene of the accident, autopsy  
20 photos, photos I think of Chris' house.

21 Q There weren't any -- there was no evidence  
22 showing that he actually did the crime with those  
23 photos, right? I mean, there was just random photos of  
24 the crime scene, correct?

25 A Correct. Yeah, I mean.....

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 Q All right. Let me refer back to the audio tape  
2 or CD you brought up on direct examination. Only --  
3 correct me if I'm wrong, but only 30 minutes of that  
4 was heard on the day of the guilty plea?

5 A I don't remember that, and I'm not saying that  
6 that is incorrect. If my memory serves correctly the,  
7 Solicitor's Office played their marked copy for the  
8 judge.

9 Q Was that abbreviated?

10 A No, I don't believe it was.

11 Q But you don't know, do you?

12 A I can't remember.

13 Q I guess my point is if there was possible  
14 coercion on the CD, and that is what I'm referring to  
15 as the interrogation, was that presented to the judge  
16 or to the Court by the Solicitor's Office?

17 A As far as what was played on the CD, I do recall  
18 that the portion that I thought was the most coercive,  
19 which dealt with when he spoke with his wife, and then  
20 a few minutes later someone pushed and leaned on him  
21 pretty hard the fact that his wife could get in trouble  
22 and stuff, I know that was heard. The transcript  
23 that --

24 Q So you are saying that it was almost an emotional  
25 reaction by Chris pleading guilty than a legal one; is

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 that correct?

2 A I didn't say that at all.

3 Q My understanding of what you are saying is that  
4 device where the family was brought in, both at the  
5 interrogation on the CD and with you on the guilty plea  
6 day to discuss this with Chris; is that correct?

7 A No. The second time with Chris at the guilty  
8 plea, the family was being brought in simply to console  
9 him, to basically explain to him that it is going to be  
10 okay. They certainly were not used as tools to  
11 threaten him in any way.

12 Q So there was no pre-guilty plea discussion with  
13 his family with him, to your knowledge, on how to plea  
14 that day?

15 A Well, we weren't going in there to plea that day.

16 Q There was no -- well, did you coordinate a  
17 meeting with his family to discuss possible options  
18 what to do that day?

19 A I spoke with his wife. The rest of the family --  
20 and I say the rest, there were -- I'll be honest, I  
21 don't remember how many people were there, but he had a  
22 good showing of family that supported him. For many of  
23 them, that was the first time I ever met them.

24 Q You said earlier on direct examination that he  
25 understood what he was doing. Do you know Chris has a

## ALEX HYMAN - CROSS-EXAMINATION BY MR. FOWLER

1 high school education, right?

2 A Went to Loris, yeah.

3 Q But he's not an attorney, right?

4 A No.

5 Q So there was a lot of technical terms being  
6 bantered in terms of legal terminology; is that  
7 correct?

8 A That is correct, which is one of the reasons that  
9 I wanted to have the courtroom cleared, so I could  
10 speak with him and his family.

11 Q But you said you were speaking with him several  
12 months before?

13 A I had, yes.

14 MR. FOWLER: If I may have a moment?

15 THE COURT: All right, sir, take your time.

16 Q (MR. FOWLER) Did Chris indicate that he wanted  
17 to go to trial on these charges?

18 A I guess you are referring to that day, or before?

19 Q Well, I'm talking about at any time beforehand.

20 Did he indicate to you that he wanted to go to trial on  
21 these charges?

22 A No, he actually said the opposite.

23 Q But, yet, you brought in his wife, brought in  
24 eventually to talk with him about these issues,  
25 correct?

## ARGUMENT

1 A His wife came in a couple of times.

2 Q Before he pled?

3 A Yeah. I mean, again, it was somewhat random. I  
4 mean a lot of times when Chris would stop by, we  
5 wouldn't have a meeting scheduled. It was my -- where  
6 my office is, I'm directly next to the waiting room.  
7 So I would hear Chris and stick my head out and say  
8 hey. It was not uncommon for that to happen, and it  
9 wouldn't be uncommon for his wife on occasion to be  
10 with him.

11 MR. FOWLER: After discussing with my client, no  
12 further questions.

13 MS. KINARD: No redirect.

14 THE COURT: You may step down.

15 MS. KINARD: State rests.

16 MR. FOWLER: I would like to reply. No other  
17 witnesses.

18 THE COURT: Sure, briefly.

19 MR. FOWLER: I think this discussion about the  
20 case opened up a lot of eyes. He mentioned that we  
21 asked for this CD. We asked for this information  
22 before we went and asked for the motion to continue,  
23 Your Honor. That was denied. In my opinion, based on  
24 Mr. Hyman's discussion today, it shows that there is  
25 important information on this coercion of this. It

## ARGUMENT

1 shows there was no gun powder testing of my client,  
2 and also in two situations, both with law enforcement  
3 and somehow around the day of the plea, there was  
4 family involvement that created emotional stressors on  
5 my client, Your Honor.

6 The day of the guilty plea, my client indicated  
7 that he did not understand the specifics of it. Mr.  
8 Hyman said he didn't know how many times they met.  
9 Towards the end he mentioned 12 to 15 time, so I don't  
10 know how many times they met. I don't know the depth  
11 of the conversation.

12 There was an initial offer written by Donna  
13 Elder. There was no paper trail by the attorney to my  
14 client indicating that if you don't accept this plea  
15 within a certain amount of time, it will be withdrawn.  
16 It might have been a conversation or it might not have  
17 been, we don't have any kind of transcript of the  
18 conversation or paper trail showing that he offered my  
19 client a lesser sentence than what he got.

20 My understanding is that my client did not  
21 understand what he was getting into, and there were  
22 emotional stressors put on him. His -- my direct exam  
23 of him earlier today touched on these issues. My  
24 client did an excellent job, in my personal opinion,  
25 getting my information on these -- on this matter, and

## ARGUMENT

1 it was really almost comforting to me to hear Mr.  
2 Hyman speak that Chris -- that he felt that Chris was  
3 coerced in this. It is a high penalty to pay, but it  
4 was a coercion nonetheless, so we ask that you rule in  
5 our favor. We feel we met the Strickland standard in  
6 terms that the attorney was defective in his  
7 performance, and but for that deficiency, the outcome  
8 would have been different. We ask for a rule in our  
9 favor, Your Honor.

10 THE COURT: Thank you, Mr. Fowler.

11 MS. KINARD: Your Honor, just to sum it up.  
12 There is a different standard in guilty pleas, which  
13 is Johnson v Kato where the performance was deficient  
14 or there is a reasonable probability that but for any  
15 errors, the defendant would not have pled guilty.  
16 There is no evidence in this case to support  
17 ineffective assistance of counsel based on those  
18 standards or any involuntary guilty plea, so we ask  
19 you deny any relief requested.

20 THE COURT: Mr. Fowler, I can't find anything  
21 that Mr. Hyman did that would warrant a finding  
22 against him. I find the Applicant failed to meet the  
23 Applicant's burden. All the issues, whether he was  
24 coerced or not, was ruled on by the trial judge and a  
25 matter for appeal. Please prepare an order.

## ARGUMENT

(Whereupon, the proceedings concluded.)

## CERTIFICATE OF REPORTER

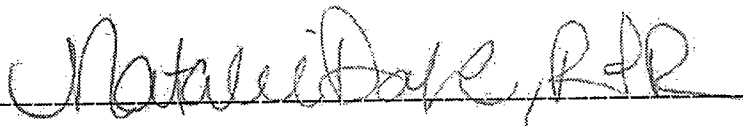
State of South Carolina)

County of Horry )

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 15th day of November, 2016.

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

January 21, 2018



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

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

Christopher E. Smith,  
S.C.D.C. No. 362308,

) Case No.: 2015-CP-26-04185  
)

Applicant,

) **ORDER OF DISMISSAL**  
)

v.

State of South Carolina,

)

Respondent.

)

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JES

This matter comes before the Court by way of an application for post-conviction relief filed by Christopher E. Smith ("Applicant") on June 5, 2015. Respondent made its return on or about February 18, 2016. The Court convened an evidentiary hearing into the matter on Tuesday, November 15, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Jessica E. Kinard, Esq. Steven W. Fowler, Esq., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Alex B. Hyman, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Horry County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the February 2014 term of the Horry County Grand Jury for murder (2014-GS-26-00935), attempted murder

(2014-GS-26-00936). Alex B. Hyman, Esq., and Jordan Hyman, Esq., represented Applicant. J. Stephen Grooms, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On December 2, 2014, Applicant pled guilty as indicted for attempted murder, and to the lesser-offense of voluntary manslaughter. The Honorable Steven H. John sentenced Applicant to imprisonment for concurrent terms of 30 years. Applicant did not appeal his plea or sentence.

### **Present Application**

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

1. "Ineffective Assistance of Counsel"
  - a. "Ineffective assistance of counsel for failing to file an Appeal which would have enabled me to challenge trial court's admission of statement which was involuntarily made."
2. "Involuntarily Plea"
  - a. "My plea was involuntarily entered because my attorney coerced me to stop trial and plead guilty."
3. "5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment United States Constitution Violations"

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

### **A. Ineffective Assistance of Counsel**

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or

she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

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, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have



been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

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 Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (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. See Crawford v.



United States, 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir.1985)).

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 instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (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.

#### ***1. Failure to File a Notice of Appeal***

Applicant alleges Counsel was ineffective by failing to file a notice of appeal. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted).

Therefore, in a collateral action attacking a guilty plea, the "bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief." Jones v. State, 382 S.C. 589, 598, 677 S.E.2d 20, 23-24 (2009) (quoting Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995)).

Applicant was informed during his plea proceeding that he had the right to appeal his guilty plea within ten days. (Tr. 9, ll. 20-22). At the evidentiary hearing, Applicant merely

acknowledged the allegation was in his application for relief. Applicant offered no substantive testimony on the subject, nor was Counsel asked about the issue by either party. Applicant at no point indicated a desire for a belated appeal in either his application for relief, or in the evidentiary hearing before this Court. Applicant has failed to meet his burden of proof, and further failed to demonstrate *any* desire in the relief that would be available if he had met his burden.<sup>1</sup> Accordingly, Applicant's demand for relief by way of this allegation is **DENIED**.

## ***2. Coerced Guilty Plea***

Applicant broadly alleges Counsel coerced him to plead guilty. At the plea proceeding, Applicant denied that anybody promised him anything, threatened him, or otherwise forced him to plead guilty. (Tr. 6, ll. 19-21). At the evidentiary hearing, Applicant asserted his family was used against him at least twice prior to his pleading guilty: during an interrogation by law enforcement and while determining whether to accept a late plea offer.

### ***a. Coerced Interrogation***

First, Applicant testified that during an interrogation by law enforcement, the interviewing detective received a phone call which turned out to be Applicant's wife. Applicant recalled his wife was crying, upset by the allegation that Applicant had killed somebody, and that law enforcement wanted him to disclose what happened. Nonetheless, Applicant recalled that he replied to her that he didn't know anything, though he did ultimately confess. Applicant conceded he was not represented by Counsel at the time of the interrogation. Counsel agreed with Applicant that he felt the interrogation was coercive, but conceded that Applicant's explanation to him was consistent with the confession.<sup>2</sup> Counsel set out to try and exclude the

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<sup>1</sup> Applicant only requests this Court "vacate conviction and remand for new trial."

<sup>2</sup> However, Counsel opined that Applicant was not entirely forthcoming in either his confession or in his consistent disclosure to Counsel. Counsel theorized that Applicant was covering for others who had been in the car at the time

confession, but also determined that the trial strategy would need to focus on arguing he was coerced if the confession came in at trial. Counsel challenged the confession in a Denno<sup>3</sup> hearing, but the motion to exclude was denied by the trial judge. Applicant pled guilty after the Denno hearing.

An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). To the extent Applicant contests he was coerced into pleading guilty by the interrogation, the allegation constitutes a direct appeal issue not here cognizable, and the request for relief by way of this allegation is DENIED.

*b. Coerced by Family to Plead Guilty*

Second, Applicant testified that he initially rejected the 30 year plea offer when Counsel communicated it to him at trial. Counsel then stated that Applicant should not make the decision alone and organized a meeting including Applicant, Counsel, Applicant's wife, and Applicant's mother. Applicant testified Counsel declared the trial court would sentence Applicant to a total of 45 years if he didn't take the plea. Applicant's wife and mother thereafter began to cry and insisted Applicant take the plea offer. Applicant felt Counsel used emotional distress to cause him to take the plea offer. On cross-examination, Applicant asserted that once he refused the plea offer, Counsel should not have thereafter drawn his family into the matter.

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of the killing, and noted that they had discussed the possibility of Applicant cooperating with law enforcement even after his plea and sentence.

<sup>3</sup> Jackson v. Denno, 378 U.S. 368 (1964).

Counsel recalled that Applicant's chief concern was his family—namely his wife and newborn son. Counsel similarly had a newborn son at the time of his representation and the men found common ground on the subject. After a plea offer was put back on the table, the trial judge cleared the courtroom, excepting a single deputy law enforcement officer, to permit Applicant an opportunity to speak candidly with both Counsel and his family. Counsel denied ever telling Applicant he would get any specific amount of time if he went to trial, but rather he explained the possible exposure if Applicant were convicted. Counsel denied using Applicant's family against him, but instead testified he included them in the conversation about the plea offer based on Applicant's long-established concern for his wife and her opinion on the subject. Pressed on cross-examination, Counsel additionally offered the family was brought in simply to console Applicant.

The Court finds Applicant has failed to meet his burden of proving either deficiency on the part of counsel, or prejudice. To the extent the testimony at the evidentiary hearing conflicts, the Court finds Counsel's testimony credible and Applicant's testimony not credible. The Court reaches this credibility finding based upon its opportunity to closely listen to and observe the witnesses at the evidentiary hearing, and is particularly relevant or potentially relevant on two points: the nature of Counsel's discussion of Applicant's sentencing exposure during consideration of the late plea offer, and the nature of how Applicant's family came to be present during the conversation. The Court finds Counsel did not tell Applicant he would receive 45 years, but rather properly explained the relevant sentencing ranges at issue if Applicant were convicted at trial as compared to if he accepted the opportunity to plead to voluntary manslaughter. The Court additionally finds Counsel did not summon Applicant's family in response to Applicant's refusal of the plea offer, but rather they were retained in the courtroom



from the start of the conversation as all other parties were excluded, excepting a single deputy. As such, Applicant's family was not summoned in response to a firm refusal of a plea offer, that he might be browbeat into accepting a plea he did not want—they were properly included in the process from the outset with Applicant's consent, and with a mind to Applicant's desires and priorities.

Indeed, there is no evidence to show Applicant ever wished to refuse or exclude his family, or that he did not wish to speak with them. Nor is there any evidence that their inclusion misled Applicant from a proper understanding of the nature of the charges against him or the potential sentence he faced. Ultimately, Applicant's allegation devolves to that his plea was involuntary in light of the considerable emotional strain he was under after Counsel's efforts to exclude inculpatory evidence were defeated. Facing criminal prosecution for a serious felony is understandably a highly stressful circumstance, loaded with emotional tumult and grave consequences, but that distress is not a basis for concluding a guilty plea was not voluntarily entered. See, e.g. Meachem v. Keane, 899 F.Supp. 1130, 1141-42 (S.D.N.Y. 1995) ("Emotional turmoil from being accused of a crime does not give rise to a finding of coercion."); State v. Leyva, 389 P.3d 1266, 1271-72 (Ariz. Ct. App. 2017) ("'Distress' and 'nervousness' are the characteristics of most persons facing immediate trial under a criminal prosecution, and to accept such a normal emotional reaction as a ground to vitiate a plea would make a shambles of the guilty plea procedure") (quotations omitted); Wojtowicz v. United States, 550 F.2d 786, 791-92 (2d Cir. 1977) ("[A]dvice [or] even strong urging by those who have an accused's welfare at heart, based on the strength of the State's case and the weakness of the defense, does not constitute undue coercion.") (quotations omitted). Accordingly, Applicant's request for relief by way of this allegation is DENIED.



### ***3. Failure to Communicate Plea Offer, Judicial Interference With Plea Offer***

Not properly alleged in the application, but raised by Applicant in the course of his testimony, is an allegation that Counsel was ineffective in failing to properly communicate an offer to plead to voluntary manslaughter in exchange for a 25 year sentence, and that the offer was thereafter adjusted by the trial court without objection by Counsel. Failure of counsel to communicate a plea offer constitutes deficient performance, and prejudice may be established by evidence to show that but for counsel's failure the applicant would have accepted the proposed bargain and benefitted from the offer. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). That stated, defendants have no constitutional right to plea bargain, and a trial judge is not required to accept a plea. Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). The prosecution has broad discretion in plea bargaining, and may choose to pursue a case to trial, or bargain the matter down to a lesser offense, or decide against prosecuting at all. Id., 333 S.C. at 684-85, 511 S.E.2d at 400-01 (quoting State v. Thrift, 312 S.C. 282, 291-92, 440 S.E.2d 341, 346-47 (1994)). As to judicial engagement in the plea bargaining process, it is explicitly permitted, if not encouraged, subject to guidelines adopted by the Supreme Court. Medlin v. State, 276 S.C. 540, 540-43, 280 S.E.2d 648, 648-49 (1981) (quoting Harden v. State, 276 S.C. 249, 277 S.E.2d 692 (1981)). In particular, "the judge may indicate what charge or sentence concessions would be acceptable or whether the judge wishes to have a pre-plea report before rendering a decision." Harden, 276 S.C. at 254, 277 S.E.2d at 694.

At the evidentiary hearing, Applicant testified he first heard about a 25 year plea offer around November 10, 2014, but that Counsel advised he would try to get a better deal. Applicant testified he was offered a second, different deal on December 2, 2014, and that Counsel advised

the solicitor<sup>4</sup> would not give the 25 year offer again and that the trial judge added five years to make the solicitor happy. On cross-examination, Applicant insisted the judge offered the plea, not the solicitor.

Counsel testified that the initial offer he received from the State was an oral offer from Donna Elder, Esq. The solicitor communicated the offer to Counsel at a bond hearing or roll call, and additionally informed Counsel that she was departing the office and would no longer be responsible for prosecuting the case. Counsel recalled he and Applicant decided to decline the offer, keep working on the case, and wait to see which solicitor was assigned in Elder's stead. The initial offer ceased to be available after it was turned down.

Counsel recalled that after Applicant's pre-trial motions were denied, Judge John called the attorneys into his chambers, where he suggested the solicitor re-open the offer to plead to voluntary manslaughter. The solicitor expressed his opposition, but offered that he would consider it for a sentence of 30 years. Counsel thereafter asked to have the courtroom to consult with his client, which Judge John cleared as discussed in Section II.A.2.b., above. Counsel then communicated the offer to Applicant, who accepted it and pled guilty. Counsel testified he begged to get the 25 year offer back, but was unsuccessful. Counsel noted the Fifteenth Circuit Solicitor's Office has a policy of typically not re-offering or lowering plea offers once they have been rejected and the case has proceeded to trial.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. The Court finds the trial judge did not change the plea, as Applicant asserted, but that the original plea offer was rejected and a new one offered upon consultation with Judge John. The Court finds, as both parties agree, that the original 25 year offer was communicated to Applicant.

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<sup>4</sup> The exact words reported by Applicant at the evidentiary hearing are unclear if he is referring to the trial judge or the solicitor, but context and other testimony strongly suggests he meant the solicitor.

Applicant has failed to meet his burden as to either prong of Strickland, and accordingly his request for relief by way of this allegation is **DENIED**.

***4. Failure to Play Entire Tape***

Not properly alleged in the application, but raised by Applicant in the course of his testimony, is an allegation that Counsel was ineffective in failing to properly prepare and utilize the recording of his confession during the pre-trial hearing on his motion to suppress. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

The Court permitted some testimony on this allegation, but will not belabor it—Applicant has not met his burden. This ground was neither properly raised to the Court in the application, nor in any amendment. Applicant did not present the recording at the evidentiary hearing.<sup>5</sup> As such he cannot meet his burden and his request for relief by way of this allegation is **DENIED**.

<sup>5</sup> This Court acknowledges Applicant, by and through PCR counsel, orally requested a continuance at the outset of the PCR hearing for the purposes of obtaining the tape and an additional transcript. The tape was known to Applicant at the time of his plea. The application was filed June 5, 2015, and the evidentiary hearing did not occur until November 15, 2016. Taking notice of the Court's schedule, the evidentiary hearing had already been continued once before. Applicant and PCR counsel enjoyed ample time to procure a copy of the recording and failed to do so. This Court, in its discretion, denied Applicant's motion to continue.

### III. CONCLUSION

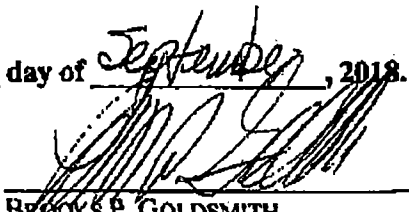
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention 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 must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 25 day of September, 2018.

  
 BROOKS P. GOLDSMITH  
 Presiding Judge  
 Fifteenth Judicial Circuit

\_\_\_\_\_, South Carolina

DOCKET NO. 2014-GS-26-00935

C

**WITNESSES**

Adam Skellet Horry County Police Department

**The State of South Carolina  
County of Horry**

Donna E. Elder

13H06028

**COURT OF GENERAL SESSIONS**

**February, 2014 TERM**

FILED  
HORRY COUN.  
2014 DEC -2 AM 11:38  
CLERK OF COURT  
COURT DATE  
PLEA GUILTY/TRIAL

**ARREST WARRANT NUMBER**

2013A2610203853

CDR: 0116 16-03-0010, 0020

DOA: 11/25/2013

**THE STATE**

vs.

Christopher Evon Smith  
B/ M



**ATTORNEY: Hyman, B. Alex**

**ACTION OF GRAND JURY**

Foreperson of Grand Jury  
Date: MAR 20 2014

**VERDICT**

**Indictment for**

**Murder**

**Jimmy A. Richardson, II, Solicitor**

Foreperson of Petit Jury  
Date:

**ORIGINAL**

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

INDICTMENT

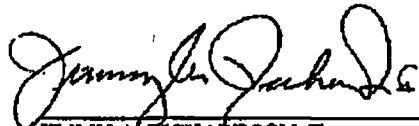
At a Court of General Sessions, convened on February 20, 2014, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Christopher Evon Smith did in Horry County, on or about November 23, 2013, willfully, feloniously, and intentionally kill the victim, Cortland Gore, with malice aforethought, either express or implied, by means of gun shot, and the victim did die as a proximate result thereof on or about November 23, 2013 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

DOCKET NO. 2014-GS-26 00936

**The State of South Carolina**

**County of Horry**

Donna E. Elder 13H06029

**COURT OF GENERAL SESSIONS**

**February, 2014 TERM**

FILED  
HORRY COL.  
2014 DEC -2 AM 11:38  
COURT DATE  
MELANE [unclear]  
CLERK OF COURT  
**PLED GUILTY/TRIAL**

**WITNESSES**

Adam Skellet Horry County Police Department

**ARREST WARRANT NUMBER**

2013A2610203654  
CDR: 3410 16-03-0029  
DOA: 11/25/2013

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date: MAR 20 2014

**VERDICT**

Foreperson of Petit Jury  
Date:

**THE STATE**

vs.

Christopher Evon Smith  
B/ M



**ATTORNEY: Hyman, B. Alex**

**Indictment for  
Attempted Murder**

**Jimmy A. Richardson, II, Solicitor**

**ORIGINAL**

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF HORRY          )

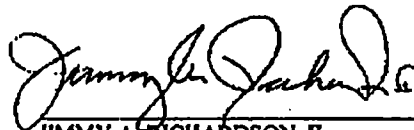
## INDICTMENT

At a Court of General Sessions, convened on February 20, 2014, the Grand Jurors of Horry County present upon their oath:

**ATTEMPTED MURDER**  
CDR: 3410 16-03-0029

That Christopher Evon Smith did in Horry County on or about November 23, 2013 with intent to kill Aaron Campbell, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry  
STATE VS.

INDICTMENT/CASE#: 2014GS2600935

Christopher Evon Smith

A/W#: 2013A2610203653

AKA: \_\_\_\_\_

Date of Offense: 11/23/2013

Race: BLACK Sex: M Age: 31

S.C. Code § : 16-03-0010, 0020

DOB: \_\_\_\_\_

CDR Code #: 0116

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

DL#: \_\_\_\_\_

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Voluntary Manslaughter (1-30)

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

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

The charge is:  As Indicted  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury. (defendant's initials)

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

ATTEST: Richardson, II, Jimmy A. SCB13632 SC Bar# Chris Smith Defendant Thompson Attorney for Defendant 75416 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 30 ~~days~~ 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.

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 \_\_\_\_\_ days/hours Public Service Employment

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>

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 \$ 25.00 beginning 12/2/2014  
\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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

Presiding Judge: Deen H. John  
Judge Code: \_\_\_\_\_  
Sentence Date: 12/2/14

Clerk of Court/ Deput. Clerk: Melanie Huggins-Ward  
Court Reporter: Dore Fubank  
SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry VS. STATE

Christopher Evon Smith

AKA:

Race: BLACK Sex: M Age: 31

INDICTMENT/CASE#: 2014GS2600936

A/W#: 2013A2610203654

Date of Offense: 11/23/2013

S.C. Code § : 16-03-0029

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: Murder / Attempted Murder (0-30)

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

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

ATTEST: Richardson, N, Jimmy A. SCB13632 SC Bar# Defendant Attorney for Defendant SC Bar# 75416

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 30 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: 2014-GS-26-935 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 16-25-25 (Criminal Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered 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

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, 3rd to County (if paid in installments) \$, TOTAL \$13390

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 2000 beginning 12/2/14 \$ 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 Melanie Huggins-Ward Court Reporter: Dixie Eubank SCCA 217 (03/2011)

Presiding Judge: Steven H. John Judge Code: 129 Sentence Date: 12/2/14

CLERK DEC-2 AM 11:38