

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

J. Cordell Maddox, Circuit Court Judge

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S.C. SUPREME COURT

EDRICK PEREGO,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO. 2018-000928

APPENDIX

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

3
4 State of South Carolina,)
5) 2014-GS-04-01598
6 -vs-) 2014-GS-04-01834
7 Edrick Perego,) 2014-GS-04-01835
8 Defendant.) May 13, 2016
9) Transcript of Record
-----) Plea & Sentencing

10

11

B E F O R E:

12

The Honorable R. Scott Sprouse, Judge

13

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

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Attorney for the State

16

17 Hervery Young, Esquire
Attorney for Defendant

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21 Diane L. Marcengill, RPR, CRR
22 Circuit Court Reporter

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I N D E XE x h i b i t s

For the Court:

<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
1	Department of Mental Health evaluation report	6	

For the State:

<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
1-9	Photographs	16	16

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 11:54 a.m.)

4 MR. CAMPBELL: Your Honor, before you stands
5 Edrick Norris Perego pleading to indictment number
6 2014-1835 and 1834, two counts of assault and battery
7 high and aggravated nature, and 2014-GS-04-1598, two
8 counts of arson third degree.

9 Mr. Perego was actually on the trial docket for
10 Monday. As a result of him indicating he wishes to
11 enter a plea today, we have agreed just for a cap of
12 ten years, and we're going to argue for the sentence.
13 That's basically where it's at.

14 MR. YOUNG: Your Honor, if it please the Court,
15 Mr. Perego is a little hard-of-hearing, so I would ask
16 if the Court could ask everyone to speak up. He has
17 got a hearing device to help magnify sound, but there's
18 still some signs that it's not doing a full and
19 accurate job.

20 THE COURT: Thank you, Mr. Young.

21 Now, I would note for the record that Mr. Perego
22 had a competency evaluation. I have been handed a
23 document from the South Carolina Department of Mental
24 Health with a cover letter that was dated May 3, 2016,
25 addressed to Solicitor Rame Campbell, Assistant

1 Solicitor of Tenth Circuit. This letter was signed by
2 Allison Sipes of the Forensic Evaluation Services,
3 Department of Mental Health. The evaluation was
4 conducted by Rozanna Tross, chief psychologist.

5 And, gentlemen, other than this evaluation, is
6 there anything that either party wishes to put in the
7 record regarding Mr. Perego's competency to be able to
8 enter this plea?

9 MR. CAMPBELL: No, sir. You have -- the State's
10 doctor has evaluated him. He's been evaluated a couple
11 times, and he comes back competent to stand trial and
12 to assist his attorney.

13 THE COURT: Mr. Young.

14 MR. YOUNG: Your Honor, we would rely upon that
15 report and stand on that he is competent to stand trial
16 and enter this plea.

17 THE COURT: Do you have any questions in your mind
18 that your client is able to understand the proceedings
19 today?

20 MR. YOUNG: No, sir.

21 THE COURT: All right. In your opinion as his
22 lawyer, do you feel that he's competent to go forward?

23 MR. YOUNG: I believe he is competent to go
24 forward to enter a plea. However, at the appropriate
25 time, we would offer some information by way of

1 mitigation regarding his mental status.

2 THE COURT: As I understand it, you have a
3 psychiatrist on the phone now?

4 MR. YOUNG: Yes, sir.

5 THE COURT: Could you tell for the record, tell
6 who that is?

7 MR. YOUNG: It is Dr. Amanda Salas, S-a-l-a-s.

8 THE COURT: And what is her organization?

9 MR. YOUNG: She is a doctor with the Palmetto
10 Center of Psychiatrics, and we retained her to do a
11 mental status evaluation on Mr. Perego in order to let
12 us know, basically, what his mental status was given
13 his advanced age.

14 THE COURT: Okay. Do you wish to have her put
15 anything on the record?

16 MR. YOUNG: Not at this time as it relates to the
17 issue of him being competent or not competent. I
18 believe she is -- she concurs, she has had an
19 opportunity to review the report from the Department of
20 Mental Health, and she does not have anything to add or
21 take away from that report. But she would, at the time
22 of us offering mitigation, offer some information and
23 explanation to the Court as to what his current status
24 is, which is consistent with some of the findings in
25 the Department of Mental Health report.

1 THE COURT: Okay. All right. Let's make the --
2 do you have another copy of the report that you could
3 make an exhibit or is this --

4 MR. CAMPBELL: Yes, sir. That's the copy I was
5 handing the Court, but I can make a copy for the
6 exhibit.

7 THE COURT: Make a copy to make it an exhibit.
8 (WHEREUPON, Court's Exhibit Number 1 was marked
9 for identification.)

10 THE COURT: I will note for the record that the
11 aforementioned report that's being made an exhibit does
12 find the defendant competent and neither party
13 challenges that.

14 Mr. Perego, are you able to understand my
15 questions?

16 THE DEFENDANT: I'm having a hard time hearing,
17 but if I need for you to explain, I will ask, please.

18 THE COURT: Okay. If at any point you do not
19 understand or you can't -- you can't hear me clearly,
20 ask me to repeat the question. Okay?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. If you answer the
23 question, I'm going to assume that you understood the
24 question. Okay?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. All right.

2 You are Edrick Norris Perego; is that correct,
3 sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You have two counts of assault and
6 battery of a high and aggravated nature. Each one of
7 those counts carries a maximum sentence of up to
8 20 years incarceration. Do you understand those
9 sentences?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You also have two counts of arson
12 third degree. Each --

13 THE DEFENDANT: Yes.

14 THE COURT: Each one of those counts carries a
15 maximum sentence of up to 15 years. Do you understand
16 those potential sentences?

17 THE DEFENDANT: Yes, sir.

18 MR. YOUNG: Your Honor, it should be one count of
19 arson.

20 MR. CAMPBELL: It's a double indictment.

21 MR. YOUNG: Oh, okay.

22 MR. CAMPBELL: It's a two-count. One indictment,
23 two counts.

24 THE COURT: They put two indictments on the same
25 sentence sheet. Okay.

1 Now, Mr. Perego, do you understand that this Court
2 can impose consecutive sentences?

3 THE DEFENDANT: What did he say?

4 MR. YOUNG: Could you repeat that, your Honor?

5 THE DEFENDANT: Let me see if I can get him to
6 tell me.

7 (Off-record discussion between Mr. Young
8 and the defendant.)

9 THE DEFENDANT: Yes, sir. Yes, sir.

10 THE COURT: Do you understand what a consecutive
11 sentence is?

12 THE DEFENDANT: Yes, sir.

13 I'm still having trouble with this.

14 THE COURT: It means you have to serve the
15 sentence on one before you can serve it on the other
16 and they can all be stacked on top of one another in
17 that fashion.

18 THE DEFENDANT: Sir, I can't hear you. I'm sorry.
19 I need some --

20 THE COURT: Let's wait until that -- let's wait
21 for that --

22 THE DEFENDANT: I just can't hear him.

23 Do you want me to put this in the other ear and
24 see if it works better? Let me put it in the other
25 ear.

1 THE COURT: All right. Can you hear me better
2 now?

3 THE DEFENDANT: Yes, sir, I can hear you better.

4 THE COURT: Let me ask you that last question
5 again.

6 THE DEFENDANT: All right, sir.

7 THE COURT: Do you understand that this Court can
8 impose consecutive sentences? Do you understand what a
9 consecutive sentence is, where you have to serve one
10 sentence before you begin the next one and they can all
11 can stacked on top of one another? Do you understand
12 that?

13 THE DEFENDANT: Well, I don't understand all about
14 it, but I guess whatever it is, I...

15 THE COURT: Do you need time to talk to your
16 attorney about that?

17 THE DEFENDANT: We talked about it and --

18 (Off-record discussion between Mr. Young
19 and the defendant.)

20 THE COURT: Okay. Have you had your questions
21 answered, Mr. Perego?

22 THE DEFENDANT: Yes.

23 THE COURT: Now, you have heard the State say that
24 they have agreed to a cap, meaning that they're not
25 seeking more than ten years incarceration. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand they're going to
4 argue for ten years, and I assume your attorney is
5 going to argue for something less than that. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir. Yes, sir.

8 THE COURT: Do you understand you could get the
9 full ten years? Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If I go along with that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Knowing that, how do you wish to plead
14 to two counts of assault and battery of a high and
15 aggravated nature? How do you plead to those two
16 charges?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How do you plead? Do you plead guilty
19 or not guilty?

20 (Off-record discussion between Mr. Young
21 and the defendant.)

22 THE DEFENDANT: Yes, sir. Guilty. Yes, sir.

23 THE COURT: You plead guilty to those two charges?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How do you plead to the two counts of

1 arson third degree?

2 THE DEFENDANT: Yes, sir. Guilty.

3 THE COURT: Are you pleading guilty of your own
4 free will?

5 THE DEFENDANT: Yes, sir.

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

9 THE DEFENDANT: No, sir.

10 THE COURT: When you plead guilty, you give up
11 rights that you would have had. You would have had a
12 right to have a jury trial on all of these charges.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: A jury of 12 of your peers would hear
15 the evidence in these cases, and in order for you to be
16 convicted, they would have to be unanimous in finding
17 you guilty.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You also would have had the right to
22 call witnesses on your behalf. Do you understand that
23 right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You also would have had the right to

1 cross-examine and confront the witnesses who are
2 against you in the case. Do you understand that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You also would have had the right to
5 remain silent and that couldn't be held against you.
6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you also would have had the right
9 to present any defenses that you might have to the
10 charges. Do you understand that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: The State would have had the burden of
13 proving you guilty beyond a reasonable doubt. Do you
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, you have been represented in this
17 case by Mr. Young. Have you had enough time to talk to
18 him?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has he answered your questions?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions of him now?

23 THE DEFENDANT: Not that I know of right now, no,
24 sir.

25 THE COURT: Are you completely satisfied with his

1 services?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Mr. Campbell, tell me the
4 facts.

5 Now, Mr. Perego, what I'm going to have the
6 solicitor do is give me a summary of the facts of what
7 happened in the case. I want you to listen very
8 carefully to the facts. Okay?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right, Mr. Campbell.

11 MR. CAMPBELL: May it please the Court. Your
12 Honor, on the day in question, which was June 5, 2014,
13 the incident occurred at Tiger Cove Campground here in
14 Anderson County. The owner in the case or in the
15 business is Ms. Becky Lash, who is present in the
16 courtroom today.

17 Mr. Perego lived across the street in a building
18 that he was renting at the time, in a house that he was
19 renting at the time, and he had a couple of little
20 trailers there on his side of the property. On that
21 day, he was actually being evicted by the Anderson
22 County Sheriff's Office by the owner of the property,
23 which is Robert Banister. During that morning,
24 approximately -- it was getting close to lunchtime,
25 Ms. Lash was in the office. Mr. Perego was outside.

1 Mr. Harold Flowers, who's present in the courtroom
2 today is also listed as a victim, had just gone inside
3 the bar and grill there. Two employees, Katie Pigeon
4 and Joseph Brushwood were also present. They were in
5 the back doing inventory on the stock of food to get
6 ready for the weekend. This was on a Thursday.

7 While they were inside the grill area there, which
8 is where Ms. Lash has her office, they heard a loud
9 noise, and they had seen him prior to it. He was seen
10 outside. And he took -- he lit some wood items in the
11 back of the bed of the truck, started the truck, put a
12 stick of wood between the gas pedal and the seat, and
13 then let the truck drive straight through the bar and
14 grill while they were inside.

15 After that -- when that occurred, Ms. Lash was
16 trapped inside the building and could not -- was unable
17 to get out at that point in time. Mr. Flowers was
18 close enough and in a position where he saw what was
19 going on and was able to jump into the truck. The
20 truck, the motor as revving, the tires were spinning,
21 smoke was coming out of the tires, smoke coming out of
22 the bed of the truck. He knocked the wood away and was
23 able to jump in and get it in reverse and back it out.

24 In doing so, he actually rammed into the other
25 truck that Mr. Perego was driving, a gold Ford F-150.

1 After that, Mr. Perego had gone up -- his house where
2 he was living was seen on fire. Then he went up to
3 another cabin that was on the property and started
4 dousing it with gasoline, but the tenant who happened
5 be present came outside with the a gun and threatened
6 him off. He then went over to another cabin and set it
7 on fire. 911 was called by Ms. Lash.

8 THE DEFENDANT: I didn't understand that part now.

9 MR. YOUNG: Could you repeat that?

10 THE COURT: Repeat that last sentence.

11 MR. CAMPBELL: After he was threatened off from
12 the property by the owner with the gun, he went next
13 door to another cabin and set it on fire.

14 (Off-record discussion between Mr. Young
15 and the defendant.)

16 THE COURT: Mr. Young, I'll ask your client when
17 Mr. Campbell is finished if he has any exceptions to
18 the facts.

19 MR. YOUNG: Yes, sir.

20 THE DEFENDANT: I just didn't understand that
21 part.

22 THE COURT: I'm going to -- listen very carefully,
23 Mr. Perego. He's going to continue.

24 All right, Mr. Campbell.

25 MR. CAMPBELL: Then he went to another cabin that

1 was on the property, set it on fire. At that point, he
2 left and law enforcement was called. They responded.
3 Fire department, Centerville Fire Department, also
4 responded. Three to four fire trucks were there. They
5 started pumping water out of the lake and were able to
6 get the house fires under control. It did destroy the
7 property that was lit on fire.

8 He then went over to the Fairplay-Townville area
9 in which there was a BOLD. They were looking for him,
10 law enforcement, be on the lookout for him, trying to
11 find his vehicle. They were actually able to locate
12 him there. At that point he was arrested and placed
13 into custody, which is where he has remained since
14 June 5, 2014.

15 I will hand up -- and I have already showed these
16 to Mr. Young -- the photographs that we want the Court
17 to take a look at. The first one I'm going hand up --
18 do you want me to mark these?

19 THE COURT: Yes.

20 (WHEREUPON, State's Exhibit Numbers 1 through 9
21 were marked for identification.)

22 MR. CAMPBELL: I'll explain these as I hand them
23 up. I'm going to show you what's been marked as
24 State's Exhibit -- this is actually what the Tiger Cove
25 Bar and Grill looked like before the truck, the Dodge

1 Ram truck, was sent through the front of it.

2 THE COURT: Mr. Young, have you seen these?

3 MR. YOUNG: I have, your Honor.

4 MR. CAMPBELL: Next in line is State's Exhibit 2
5 I'm going to hand up. This is showing the hole that
6 the truck made when it came in. This outside wall or
7 the wall there from where the doors are, formerly the
8 doors, to the bar area was actually 12 feet.

9 This is State's Exhibit 3, just another view from
10 the inside looking out. You can actually see the fence
11 that was outside which is approximately 34 feet from
12 the bar. That truck pushed it all the way back.
13 That's the force that it took when it hit.

14 State's Exhibit Number 4 is showing the house
15 where Mr. Perego lived at the time. State's Exhibit
16 Number 5 is showing one of the cabins that was set on
17 fire. Number 6 is showing the fire with the Dodge
18 truck. That was the one that went through the front of
19 the grill. Number 7 and 8 are showing the structure
20 fire that was ongoing as law enforcement and fire
21 department showed up.

22 And then State's Exhibit Number 9 is showing a
23 front end photograph of the Dodge truck to show the
24 damage that it received when it went through the grill.

25 That's the facts of case. I can go into more

1 detail at the appropriate time when you're ready for
2 that, and the victims do want to speak.

3 THE COURT: All right. Mr. Perego --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- did you hear the solicitor's
6 statement of the facts of the case?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you agree that those are the facts
9 of the case?

10 THE DEFENDANT: As I understand them, it seems
11 like it is.

12 THE COURT: Do you need to talk to your attorney?

13 THE DEFENDANT: Sir?

14 THE COURT: Do you need to talk to your attorney
15 about the facts?

16 MR. YOUNG: Your Honor, I think what he is
17 somewhat hesitant about is the allegation that he was
18 threatened that day by another one of the tenants or
19 something out there. And that was the part that he was
20 stating earlier that he disagreed with because he was
21 never threatened or anything.

22 THE COURT: Okay. With that --

23 MR. YOUNG: And I don't think that fact has
24 anything to do with the factual basis for the elements
25 of the crimes that he is pleading to.

1 THE COURT: All right.

2 Well, Mr. Perego, with it noted, what your
3 attorney just said, do you agree that those are the
4 facts?

5 THE DEFENDANT: This hearing aid is not working
6 very good for me. I just can't hear as good.

7 Now, sir.

8 THE COURT: With it noted, what your attorney just
9 told me, do you agree that those are the facts of the
10 case?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. All right.

13 Mr. Young, have you been able to go over the facts
14 and the applicable law with your client?

15 MR. YOUNG: Yes, sir.

16 THE COURT: And are you satisfied that he
17 understands his rights?

18 MR. YOUNG: Yes, sir.

19 THE COURT: Do you concur in his decision to plead
20 guilty to these four counts?

21 MR. YOUNG: Yes, sir, I do.

22 THE COURT: All right. I find there is a factual
23 basis for the plea, so I find that the defendant pleads
24 guilty freely, voluntarily and knowingly with the
25 advice of competent counsel with whom he is satisfied.

1 I further find the defendant is competent based on
2 evaluations done by the Department of Mental Health,
3 and the parties stipulate that the defendant is
4 competent. I also find that based on the defendant's
5 responses to my questions and the Court doesn't have
6 any questions about his competency.

7 All right. Mr. Campbell, let me hear from you
8 first and then I will hear from Mr. Young and anything
9 that your client wishes to present.

10 MR. CAMPBELL: Okay.

11 THE COURT: Mr. Campbell.

12 MR. CAMPBELL: Your Honor, this case has taken a
13 while due to the fact that we have had to have several
14 mental evaluations. In April of 2015 he was first
15 evaluated, found competent. As we were progressing and
16 getting this case up for trial, getting it ready,
17 Mr. Young had expressed some concerns about his mental
18 stability and ability to understand what was going on.
19 He was re-evaluated again, and actually he was
20 evaluated twice. He went down April 13, 2016, to
21 Department of Mental Health in Columbia where he
22 basically was faking it. They found he was, as they
23 said, malingering, that he was intentionally trying to
24 stall the process and act like he didn't know what was
25 going on.

1 I talked to Dr. Tross and she asked for us to send
2 out phone calls from the jail, which we were able to
3 collect six phone calls. He went back down on
4 April 25th, 2016, in which he was re-evaluated again by
5 the doctors down there, and this time they had the
6 benefit of having the phone calls in which they could
7 really hear how he truly was, not in the clinical
8 setting that they were in. And, actually, those phone
9 calls did mention the fact that he knew he was faking
10 it and he was making up stuff to try to throw them off.
11 That's where they gave a report on April 3rd -- I mean,
12 excuse me, May 3rd, 2016, which is what I had presented
13 to the Court.

14 Initially this case was placed on the trial
15 docket. We had been in -- this case has been difficult
16 for the victims in this case. They are ready to see
17 closure on this. They were in agreement to -- we
18 reduced it down from attempted murder -- because the
19 fact that he saw the individuals go into the bar right
20 then and that's when the truck came through after he
21 knew they were in there -- to an ABHAN. And we did
22 agree upon a cap.

23 He currently is on probation. He does have a
24 prior criminal history. On April 16, 2013, he pled
25 guilty to two counts of solicitation to commit a

1 felony. He was given ten years suspended to five years
2 probation. He's currently on probation, and then he
3 received these current charges that are pending against
4 him. Two of the charges we didn't proceed upon due to
5 the fact that the victims in the case are no longer
6 around, Ms. Pigeon and Mr. Brushwood, so we went on the
7 two charges in which the victims are still present and
8 are currently in the courtroom today.

9 He has currently been incarcerated for 708 days.
10 His date of birth is [REDACTED] '26. As of today, he's
11 89 years old. I know and I'll speak at the end, but
12 the State feels that ten years, he should get the
13 maximum of the cap that we agreed upon due to the fact
14 that he has been given several chances, several
15 opportunities. He has terrorized these people. They
16 are afraid. And I'll let Ms. Lash speak and then
17 Mr. Flowers speak, and I also need to read the victim
18 in the arson case, Robert Gary Banister, through his
19 attorney, Lee Cole, yesterday sent an e-mail to both
20 myself and Mr. Young regarding what he would like us to
21 address to the Court.

22 THE COURT: Yes. I'll be happy to hear from the
23 victims.

24 MR. CAMPBELL: Your Honor, at this time I'll let
25 Ms. Lash come forward.

1 MS. LASH: Good morning, your Honor. My name is
2 Becky Lash, L-a-s-h. I wrote this this morning. There
3 have been issues that happened earlier today that has
4 changed a lot of what went into this. I'm going to try
5 to get through it. My family, along with myself, own
6 and operate Tiger Cove Campground and Tiger Cove Grill
7 located across the property Mr. Perego was being
8 evicted from in 2014. We had nothing to do with his
9 eviction process. Thank you for giving me the
10 opportunity to express myself today before the Court.

11 In making your decision today, I would ask that
12 you take into consideration not only the violent
13 criminal acts of Mr. Perego --

14 THE DEFENDANT: I can't hear.

15 MR. YOUNG: Can we ask her to speak up?

16 THE DEFENDANT: I just can't hear any of this.

17 THE COURT: Try to speak up a little bit,
18 Ms. Lash.

19 MS. LASH: Certainly.

20 In making your decision today, your Honor, I'd ask
21 that you take into consideration not only the violent
22 criminal acts of Mr. Perego on June 5, 2014, but also
23 the results of his actions. He not only burned
24 buildings and sent a burning pickup truck through my
25 place of business, but he changed the lives of many

1 people that day. I became a victim, and I don't really
2 like it. I'm not the same Becky Lash that I was on
3 June 4th of 2014. I'm not the same confident,
4 energetic and happy person that I was. I continue to
5 work towards that through psychological counseling and
6 I can say that I'm better, but I'll never be the same.

7 This has not only made me a victim, but my family
8 members are victims also. They have had to deal with
9 knowing the mental difficulties I've tried to conquer
10 regarding this matter, and I know they have been
11 hurting right along with me. Our two businesses, Tiger
12 Cove Campground and Tiger Cove Grill, are also victims.
13 They have suffered economic damages, not just with the
14 property damage but loss of business from the grill
15 being closed all of last year along with the loss of
16 campground business due to the appearance of the burnt
17 debris for over a year that our customers drove up upon
18 to check into our campground. Potential customers left
19 because they didn't feel safe to stay at our location.

20 I personally lack the energy the drive and the
21 concentration levels needed to rebuild my businesses
22 due to this event. Again, this is something that I've
23 had to rebuild in my own mindset in order to rebuild my
24 businesses. With the help of family members and
25 friends, we're slowly achieving that goal. I'm sure

1 Mr. Flowers, Buddy, has had to endure the same in his
2 fight to recover from this event. I have always been
3 told that God never gives you more than you can handle.
4 One of my most difficult things in my life has been
5 being able to forgive Mr. Perego. And this lies heavy
6 on my heart. I pray every day that I might accomplish
7 this as I feel it would continue to hold me back in my
8 recovery until I do forgive him. And, Lord, I hope one
9 day I can. I try every day. Perhaps today will be a
10 big step towards that closure and I can close the book
11 and move on towards my recovery. But only if the Court
12 does not take sympathy in considering Mr. Perego's age
13 but treats him as the individual he is without the age
14 factor being considered.

15 A light sentence today would just compile the
16 hardships that we've had to endure as victims. I would
17 kindly ask for you to take these factors into account
18 in considering your sentencing. Mr. Perego chose this
19 avenue for himself. No one made him do this. He
20 planned what he was going to do that day, and he knew
21 exactly what he was doing and didn't care what lives it
22 would alter, and I think he should be punished for
23 that. I did not make -- I didn't get to make the
24 choice to be a victim or not. As I stated earlier, I
25 hate it. It's not fair. And he had no right to take

1 that away from me and my family. I feel bad for his
2 family, I really do. And I'm sorry that this has
3 happened to y'all also. I'm not the bad guy here.
4 And, Mr. Perego, I pray for you.

5 THE DEFENDANT: I can't hear a word she's saying.
6 I can't understand. I need something so I can hear.

7 MS. LASH: I would ask that he be sentenced to the
8 maximum time that the State is requesting so that he
9 can't harm anyone else during his lifetime, however
10 long it may be. I know we don't have a crystal ball.
11 We know about Mr. Perego's history, and this isn't the
12 first time he's tried to harm lives but we just want it
13 to be the last time. Thank you for letting me speak.

14 THE COURT: Thank you, Ms. Lash.

15 MR. FLOWERS: Your Honor, my name is Harold Arthur
16 Flowers. They call me Buddy.

17 THE COURT: Mr. Flowers, let me ask you to speak
18 up.

19 MR. FLOWERS: Okay. Yes, sir. On that day, I was
20 to attempting to help get Mr. Banister off the --
21 Mr. Perego off the property by request from
22 Mr. Banister. And I had no idea what was going to be
23 in front of me. But I sat down that day contemplating
24 the actions that were going to be taking place for me
25 to do and said a prayer and said, "Give me strength and

1 courage to do what I needed to do." And when I drove
2 that truck out of that building, that was one of them.
3 And after I found, in fact, that there were two little
4 girls that could be sitting there celebrating a
5 birthday, that's when it really bothered me, the
6 thought that that could have ever happened. And I've
7 been a friend and tried to be a friend to Mr. Perego
8 many times. We have confided in a lot of things. He
9 asked me one day if I believed that God would forgive
10 him. This is way before this happened. And I told
11 him, "God will forgive you for anything if you ask."

12 All I can say today, your Honor, is that I hope
13 that Mr. Perego does come to reality of what he's done
14 and ask God for forgiveness. And that's about all I
15 can say at this time. Thank you.

16 THE COURT: Thank you, Mr. Flowers.

17 MS. LASH: Excuse me. Can I say one more thing?

18 Your Honor, I kind of alluded to it a little bit
19 about something happening this morning. I have
20 received phone calls. I don't know if they would be
21 considered a threat or a warning, but it was relayed in
22 three different phone calls this morning and I had to
23 have security walk me in the door because I was in fear
24 of my life this morning that Mr. Perego, if he ever got
25 out, would take care of me and my family and make sure

1 that we were taken care of the bad way. I don't want
2 to continue to look back behind in fear for my life
3 every day. I can't do that. But these phone calls
4 this morning are something that I guess we may have to
5 continue to deal with. I don't know. I don't know if
6 Mr. Perego staying incarcerated is going to be the end
7 of that. But it was a very upsetting thing today. I
8 have had a couple of other instances that people have
9 walked in our business and we were concerned that they
10 were sent by him, and we've been in fear of our life
11 continuously. I just wanted to reiterate that that
12 this morning kind of changed a lot of things again in
13 my heart for fearing for my family and myself. And
14 like I said, I pray for him, but thank you.

15 THE COURT: Mr. Campbell.

16 MR. CAMPBELL: Your Honor, I'm going to go into
17 actually more information about what she was alluding
18 to for the Court's information. Robert Gary Banister,
19 he is the victim on the arson cases, yesterday, through
20 his attorney, Lee Cole, he sent a statement he wanted
21 me to read to the Court. He also sent it to Mr. Young
22 at the same time so Mr. Young knows what it says.

23 What he put down was, "My client understands that
24 the court may take Mr. Perego's advanced age into
25 consideration in sentencing. However, after Mr. Perego

1 has proven by his actions that he is still a violent
2 and dangerous man despite his age. My client is in
3 fear for his safety if Mr. Perego is released. He was
4 told after Mr. Perego burned down the property that
5 Mr. Perego had a hit out on him. Also immediately
6 after the property was burned down, Mr. Perego's
7 relatives and friends came back to my client's property
8 and stole many items from him. My client has also
9 suffered substantial financial loss as a result of
10 Mr. Perego's crime. Taking all this into
11 consideration, my client would respectfully ask the
12 Court to sentence Mr. Perego to the maximum amount of
13 prison time allowed by law." And also on that day
14 Mr. Banister did file on an information only a report
15 with the sheriff's office, a one-line sentence which I
16 informed Mr. Young about yesterday. It says, "I,
17 Deputy McKinney, responded to a residence and contacted
18 the victim" -- Mr. Banister in this case -- "in
19 reference to death threats." So, I mean, there is some
20 seriousness involved with Mr. Perego. And what
21 Ms. Lash was alluding to is this morning on her way
22 here to court, she called up to our office hysterical,
23 crying, upset that her sister, who is present in the
24 courtroom today in the back, she was at the campground
25 and she had received three phone calls from an

1 individual that stated that Mr. Perego had told his
2 wife who told a friend that when he gets out of
3 incarceration that he was going to harm the individuals
4 in this case, Ms. Lash, Mr. Flowers. It was two phone
5 calls -- three phone calls. It was recorded. It was
6 serious enough that law enforcement currently is
7 working on that, to trace the calls. I did --
8 Mr. Young and I and Ms. Lash's sister did go out. I
9 let Mr. Young listen to the recordings so he understood
10 or knew what we referring to. I did inform him earlier
11 regarding that.

12 But the point is they were made this morning
13 knowing that we were going to court. And it put a lot
14 of fear into Ms. Lash. I mean, she was visibly shaken.
15 We did have to get security to walk her in to make sure
16 nothing was wrong. And furthermore in this case, what
17 Mr. Flowers kind of alluded to, that five minutes
18 either way when this accident happened, there could
19 have been some serious injuries involved. Ms. Lash was
20 actually in the process of getting ready for her
21 granddaughter's birthday. It was actually June the
22 5th. And those children typically would have been
23 sitting directly in front of the bar playing in the
24 floor where that truck came through. And they arrived
25 five minutes after this. So given that time frame, I

1 mean, we could very easily have been dealing with a lot
2 worse than we are. I know it hurt them monetarily and
3 emotionally, but physically it could have been a lot
4 worse.

5 Ms. Lash has been very active in this case from
6 the get-go. She has kept in constant contact with me
7 as this case has evolved and gone on. As you can see,
8 she's visibly upset. She has been the entire time.
9 And part of this, doing this today, is to actually help
10 her to try to move on, too. Because I gave the victims
11 option -- I mean, based on in the light of what took
12 place this morning, "Do y'all want to go through with
13 this?" And they said, "Yes, we want to move on with
14 our lives."

15 Mr. Perego, due to his age, he's 89 going on 90
16 August 20th, still can't take the meanness out of you.
17 Doesn't matter how old you are. He took deliberate
18 action, and those actions were to intentionally try to
19 harm or physically damage property and other people.
20 And, I mean, for that he should be held accountable and
21 responsible. He's already been given his shot. He was
22 on probation at the time for solicitation to commit
23 another felony, which I actually handled that case.
24 The only difference in that case and this one is the
25 victims in that case did not want to cooperate. Here

1 at least they had the courage to stand up and see what
2 is right.

3 Because he is already on probation at the time, we
4 ask that the ten years that he currently has pending,
5 that he gets the ten-year sentence. And I appreciate
6 it, your Honor.

7 THE COURT: Thank you, Mr. Campbell.

8 All right, Mr. Young.

9 MR. YOUNG: If it please the Court, I want to
10 initially address these calls that were brought to my
11 attention this morning that are being linked to my
12 client. As of this moment right here, there's
13 absolutely nothing that links those calls as being
14 directed by Mr. Perego, being initiated by him,
15 anything of that nature. The calls that I listened to,
16 the person, the caller, identified Mr. Perego and
17 conveyed a hearsay versus a hearsay on top of hearsay
18 of what supposedly was said.

19 This hearing date was set on yesterday.
20 Mr. Perego is the only one that knew of this hearing
21 date. And I know that he could not have made any calls
22 to tell anybody to issue any threats or to make any
23 calls on his behalf or anything because at the time he
24 didn't have any monies on his account over at the jail
25 in order to make any calls at the jail. I had my

1 office, after I was informed of these calls, to verify
2 with the jail whether or not there were any calls made
3 and charged to his account last night. No calls have
4 been made.

5 Now, having investigated and looked into all of
6 this stuff that have led us to this point, I would
7 venture to say that one -- that Mr. Banister is the
8 only other person, male, that could have made that call
9 or caused that call to be made. Because some of the
10 things that were said in that call were reflected in
11 the e-mail that his attorney sent and asked to be read
12 to your Honor. That's just my speculation, and that's
13 the reason I asked the solicitor, "Have y'all checked
14 the phone records and stuff at the jail?" Because
15 according to the jail, no calls were made from
16 Mr. Perego's account on last evening.

17 Your Honor, I have had an opportunity to sit down
18 with Mr. Perego a number of days to talk about this
19 case, to talk about what should happen in this case,
20 and ultimately, your Honor, I believe this thing stems
21 from a real estate transaction between Mr. Perego and
22 another company that is represented or purportedly
23 represented by Mr. Banister.

24 There was a five-year agreement between Mr. Perego
25 and this company in order for him to purchase this

1 land. The cabins that are on that land were purchased
2 by Mr. Perego and another business partner of his. The
3 cabin that burned down was his own cabin. It wasn't --
4 the land belonged to Mr. Banister or the company that
5 he purportedly represents.

6 THE DEFENDANT: You do want to mention private
7 owner. We don't even know who owns that.

8 MR. YOUNG: So there was an agreement for
9 Mr. Perego to purchase that land. That five years was
10 coming to an end, which is the reason that sparked the
11 purported eviction notice for Mr. Perego. One thing
12 led to another and we are here. He's here to accept
13 full responsibility for the fires and the truck and
14 everything.

15 In looking at what the Court should do as far as a
16 sentence in this case, I know the victim has stated
17 don't take his age into account and don't consider any
18 of that. Unfortunately, I think this Court is
19 obligated to take that into consideration. I believe
20 that is one of the many factors that the Court has to
21 consider when talking about the history and the
22 characteristics of the defendant that stands before
23 you.

24 Likewise, I think, you know, it's obvious this
25 case here has -- the nature of it is just horrific.

1 The potential of what could have happened is horrific.
2 We understand that. There is absolutely nothing that
3 can be done at this point in time to take away from
4 that other than the fact of Mr. Perego accepting
5 responsibility. As the solicitor stated, he is 89
6 years old. He will be 90 years old in a matter of
7 months, in about three months. He suffers from a
8 number of health ailments which are expected of
9 somebody who is of his age. He has a knee replacement
10 that's giving him serious problems now. He is taking
11 blood thinners that are not properly regulated at this
12 point in time. In talking with him for a while at the
13 jail, they were not doing the necessary blood draws in
14 order to regulate his blood thinning medicine. As a
15 result, at one point in time his left leg was almost
16 purple because of his blood thinners not being properly
17 regulated. He has, your Honor, in the past, he has
18 helped, through his business investments and stuff,
19 helped develop a number of properties and real estate
20 in the area that has helped the Anderson County area
21 overall. For the majority of his life, from looking at
22 his criminal history, he has been a law-abiding
23 citizen. Nothing indicates until 2013 when he was
24 accused of soliciting for that felony.

25 So, your Honor, he is a man who does not have a

1 history of criminal activity, as the picture is trying
2 to be painted. The Court has to, in my opinion,
3 structure a sentence that is sufficient but not greater
4 than necessary to achieve the purposes of sentencing.
5 You know, to address the seriousness of these charges,
6 to offer a just punishment for him, to offer adequate
7 deterrent not only for Mr. Perego but also for the
8 general -- general public to know that this type of
9 conduct cannot be tolerated in our society; a sentence
10 that will protect the public from any further crimes by
11 Mr. Perego, to protect the public from any further
12 behavior of this nature. The Court has to structure a
13 sentence that is sufficient to provide the necessary
14 training and education and medical requirements needed
15 for Mr. Perego.

16 Now, at the age of 89 turning 90, education and
17 vocational training is not an issue here. The issue
18 more so for him is providing the necessary medical
19 treatment. I think it is obviously clear that in the
20 past two years the necessary medical treatment has not
21 been provided to him. We have been before this Court
22 on at least two prior occasions asking for an order
23 requiring him to be provided with the appropriate
24 medical treatment, and the information that we were
25 given was that he was being given life-sustaining

1 treatment. You know, they're not taking care of every
2 ailment that an 89-year-old man would need. They're
3 giving enough to keep him alive, is how it was couched
4 when we had one of our hearings. The Court has to take
5 into consideration the types of sentences that are
6 available. This court, I believe, could order
7 Mr. Perego to serve anywhere from zero to ten years
8 based on the agreement of this plea offer. This Court
9 can also consider an alternative to incarceration, and
10 that is an alternative of home incarceration. I think
11 that is an alternative that is a viable alternative in
12 this case. I think this Court can impose a sentence of
13 anywhere upwards to I think ten years of home
14 incarceration. That will restrict Mr. Perego's
15 movement. It will confine him to his home with the
16 exception of allowing him to go to his medical
17 appointments. I believe a sentence of home
18 incarceration is actually more severe than a sentence
19 of incarceration. The reason being is because if he is
20 placed in the HIP program, he would have to serve day
21 for day of the sentence that this Court gives versus if
22 he would get a sentence of incarceration at the
23 Department of Corrections, he would then be entitled to
24 his good time credit which means that a large portion
25 of that sentence he will not have to do, assuming that

1 he meets the requirements of good time credit. Not
2 only that, but the expense of home incarceration would
3 be one that would be borne by Mr. Perego, not the
4 citizens of Anderson County, not the State of South
5 Carolina. Mr. Perego would have to pay not only for
6 the time but also out of pocket for his incarceration
7 for his decisions that he made. Likewise, he's
8 89 years old in need of a lot of medical treatment.
9 It's projected that, assuming that he lives a full ten
10 years, that he's going to need even more medical
11 treatment. Home incarceration would put that sentence
12 on Mr. Perego, not on us.

13 (Off-record discussion between Mr. Young
14 and the defendant.)

15 MR. YOUNG: What he just shared with me, your
16 Honor, was that he's a veteran and that he will be able
17 to receive some type of benefits through the VA
18 hospital. But I ask the Court to take into
19 consideration those factors in determining what an
20 appropriate sentence is.

21 I want your Honor to hear from Dr. Salas who came
22 to do an evaluation, and it was her evaluation that
23 identified that Mr. Perego suffers from at least the
24 beginning stages of dementia. She will share with your
25 Honor, you know, what she observed as well as the

1 projected outcome of his dementia as well as the stages
2 of it for the Court's understanding. Then we would ask
3 some of the members of the family to address the Court,
4 and then Mr. Perego would be able to address the Court.

5 THE COURT: All right.

6 MR. YOUNG: Dr. Salas.

7 DR. SALAS: Yes. Can you hear me?

8 THE COURT: Can everyone hear?

9 All right. Proceed.

10 DR. SALAS: I'm sorry, did you say proceed?

11 MR. YOUNG: Yes, ma'am.

12 DR. SALAS: Okay. I just wanted to start by
13 letting you know that I had a chance to evaluate
14 Mr. Perego at Mr. Young's request. I did two
15 interviews with him, one on December 2015, again in
16 February of 2016, and I spent a combined total of
17 approximately four hours with him doing an evaluation.
18 I've also reviewed multiple records that are outlined
19 in the report that I have addressed to Mr. Young dated
20 March 3, 2016, and that includes records from the
21 detention center, from his family practice doctor, and
22 from Anderson AnMed Health Hospital, and I also had a
23 chance to review the South Carolina Department of
24 Mental Health evaluation.

25 It's very clear to me based on Mr. Perego's

1 screening testing for memory impairment, the results of
2 a CT exam that were done in June of 2014, and physical
3 exam findings where he demonstrates primitive reflexes
4 that were typically found in people with dementia, that
5 he does have a dementing process and he does meet
6 definitional criteria for neurocognitive disorder. His
7 testing would put him at a moderate stage, and that
8 includes the CAT scan results from 2014. Although
9 those CAT scan results by three were mild generalized
10 cortical atrophy, it does not account for an
11 age-related process. That does indicate a dementia
12 process is active and part of what he's dealing with
13 and it is unable for him to fake atrophy of the brain
14 for purposes of getting a CAT scan done. That is
15 negative information. I have not requested another CAT
16 scan to be complete or an MRI because it would be done
17 at the expense of Anderson County and/or the State.
18 And I found that, in my opinion, what we had,
19 information thus far in conjunction with his test
20 results, were sufficient for making the diagnosis
21 neurocognitive disorder.

22 His functional capacity is higher than what one
23 would expect based on his testing. Some people may
24 question whether or not the test results had an
25 opportunity for him to fake symptoms because it has

1 been identified that he has exaggerated symptoms and
2 faked symptoms of memory impairment during the course
3 of these evaluations. I would bring to the Court's
4 attention that for him to take a test in December
5 during which he doesn't understand what I'm testing
6 for, whether I'm testing his ability to perform an
7 executive functioning, memory test, language
8 impairment, he would consistently impaired across tests
9 administered from December into February. He didn't
10 have a copy of the tests. He didn't have ability to
11 practice or study for it. And he was consistent in the
12 stability of his decline. On one test he made a 22.
13 Two months later he made a 20, and on the second test
14 which is called a Montreal Cognitive Assessment, it
15 allowed for us to discriminate someone who has higher
16 education a time line of determining what impairment of
17 dementia a person would have. He has a stable for at
18 16. So it's not like he was trying to fake or the
19 severity. The other issue on physical exam, it is
20 impossible for one to fake a reflex. It would be
21 similar to if we take a hammer and you hit someone's
22 patella tendon, you can observe the reflex and it's out
23 of the control of the individual. These are primitive
24 reflexes that you test on someone's face, and he
25 demonstrated reflexes consistent with someone with

1 dementia. So I feel very confident to find to a
2 reasonable degree of medical certainty that he does
3 meet criteria of neurocognitive disorder. He's at a
4 mild stage at this point. He does not have the extreme
5 impairments of his higher functional capacity that
6 would move him to a moderate stage. But what we would
7 expect is that over time he will have inability to find
8 his words, he will have difficulty maintaining healthy
9 relationships, he will perhaps develop psychosis or
10 paranoia, have behavioral problems that come from a
11 dementia process. If someone is in the severe stage,
12 it gets to a point where they can no longer care for
13 themselves, they cannot dress themselves, they cannot
14 feed themselves, and at the extreme stage, they cannot
15 toilet and a lot of people can't even swallow.

16 I predict that with his history, predominantly his
17 medical history, part of the vascular disease, not only
18 impacts his brain but also his heart directly, the
19 atrial fibrillation, as well as his ongoing sustained
20 high blood pressures, he has the vascular dementia
21 which means that any moment with these health problems
22 that are not well controlled, he could have a severe
23 decline in functional capacity because of the nature of
24 vascular dementia. He could have a stroke that all of
25 a sudden would take him from where he functions today

1 down to a moderate and/or severe stage on a moment's
2 notice. It is more helpful for him as a patient to
3 have adequate treatment to manage those symptoms, heart
4 disease and vascular problems, but in managing that, it
5 diminishes his risk of having the dementia progress as
6 rapidly as it would otherwise. He is currently through
7 the jail being prescribed Aricept he takes for memory
8 problems. I anticipate he's going to need other
9 medications to help protect his brain from further
10 damage in addition to the cardiac medicines that he
11 will need as well.

12 As this process that is irreversible and
13 progressive, I'm told it is unlikely that he will
14 continue to be able to live by himself or with family
15 support. It is unlikely that over the next several
16 years he will even be able to make decisions for
17 himself, and perhaps would need a guardianship-type
18 process instituted for him, and I would expect over the
19 next couple of years he would end up needing an
20 assisted living facility and eventually a nursing home
21 support system in place to help care for him.

22 I'm happy to answer any questions if the Court has
23 any for me.

24 THE COURT: I have no questions.

25 Any questions?

1 MR. CAMPBELL: I have a couple.

2 Q Dr. Salas, did you speak to Dr. Tross prior to
3 making your -- forming your findings?

4 A At which time?

5 Q Just recently, within the last week?

6 A When I made my findings on March 3rd, I had an
7 initial evaluation for the South Carolina Department of
8 Mental Health and I at that time opined that he was not
9 competent and he had no indication of feigning the
10 symptoms. Then Dr. Tross did a follow-up evaluation in
11 April. I received that report. In my opinion, after
12 receiving that report and reviewing other relative
13 materials including the health and calls that she had
14 received allowed me to come to the same conclusion that
15 she had that he did have evidence of exaggerated and
16 feigning symptoms that would lead one to diagnose the
17 malingering, but unlike Dr. Tross' conclusion, I still
18 hold the medical opinion that he does have
19 neurocognitive disorder and that this is not something
20 that's due to an anticipated decline due to age.

21 Q Well, let me ask you this. Did you listen to the
22 phone calls that were requested by Dr. Tross that were
23 dated April 6th, April 8th, April 9th, April 12th,
24 April 14th and April 17th that were made from
25 Mr. Perego to his ex-wife, Janice Perego?

1 A I listened to those phone calls, yes.

2 Q And based upon those phone calls, he was able to
3 formulate and speak out and tell her what he wanted to
4 do; is that right?

5 A He was able to articulate with her what his
6 thoughts were in a comprehensible and logical fashion,
7 yes.

8 Q In fact, in those phone calls he actually
9 mentioned faking when he was down seeing Dr. Tross
10 talking to her about he didn't know why he was there
11 and wanted to know where his little dogs were. Do you
12 recall that?

13 A Yes. I recall that she didn't use the word
14 "faking," but there was clear indication that he knew
15 he was exaggerating symptoms.

16 Q So that doesn't play -- I mean, when he does that,
17 he knows what he's doing, wouldn't you agree?

18 A Yes. When he does that, he does have
19 understanding of what he's doing.

20 Q Did you at any point speak to any of the jailers
21 that currently provide him care on a day-to-day basis?

22 A I did. I can't recall who it was by name, but I
23 did speak to some of the detention staff members while
24 I was down there, particularly when I was waiting for
25 him while they were escorting me to see him. And I

1 have information from them that they were very
2 frustrated with him and that they found him difficult
3 at times because he had a lot of demands that he would
4 make, and that they felt that he was exaggerating and
5 faking his symptoms.

6 Q In fact, I think in one of the reports they said
7 he milks the system?

8 A I can't remember which report that was in. I
9 wouldn't be surprised to hear they use some words like
10 that to describe him.

11 Q But his lack of cooperation with the Department of
12 Mental Health wouldn't be due to dementia, would it?

13 A For the purposes of competency to stand trial, no.

14 Q All right.

15 I have no further questions.

16 THE COURT: Anything further from the doctor?

17 MR. YOUNG: Nothing further from us from the
18 doctor.

19 Your Honor, at this time we would ask Ms. Janice
20 Perego --

21 DR. SALAS: I can't hear what's going on, but may
22 I ask if that was all that was needed of me and if I
23 can disconnect?

24 THE COURT: Any objection to the doctor being
25 excused?

1 MR. CAMPBELL: No.

2 MR. YOUNG. Thank you, Doctor..

3 THE COURT: Thank you, Doctor.

4 DR. SALAS: Thank you. I appreciate your time.

5 MS. PEREGO: Janice Perego, P-e-r-e-g-o.

6 THE COURT: Yes, ma'am.

7 MS. PEREGO: Good morning, your Honor. Edrick
8 Perego was my husband for 20 years, my friend, and a
9 father and grandfather of our children who have loved
10 and missed him very much in the past two years. What
11 happened at the lake, that was a tragedy. And we all
12 feel bad about it. And we may never know the full
13 truth behind it all. But I know Edrick was under a lot
14 of stress and being threatened by different people who
15 have succeeded in causing him to lose everything he
16 worked so hard for. I'm not saying he's totally
17 innocent, but he's not totally guilty, either. He has
18 also been a good person and always tries to help
19 everyone no matter what they have done in life. He's
20 always tried to see the good in people first. And,
21 yes, he's made mistakes and bad choices through life.
22 We all have at times. But that doesn't make us
23 monsters. He can't be all bad. He is a World War II
24 veteran with an honorable discharge who helped protect
25 this country. He's been through a lot in his life, but

1 I feel he deserves to live his last days in peace with
2 his family. It has been very hard on us as a family
3 these past two years trying to make it without him. So
4 we pray to our heavenly father and to this Court that
5 you will please let him come home so we can take care
6 of him like he has always taken care of us. We all
7 need to have more forgiveness so we all can live and
8 have peace in our lives.

9 THE COURT: Thank you, ma'am.

10 MS. HAMMETT: My name is Jessica Hammett,
11 H-a-m-m-e-t-t. Growing up, I've always had him to look
12 after me, make sure I always had everything I needed.
13 He -- he's never -- any time I ever had to go to him
14 for anything, you know, he always gave it to me whether
15 it had to do with my education or work or something,
16 you know, that I just needed in general. I've always
17 looked up to him. And he's always been motivation for
18 everything. He's, you know -- I've always went to him
19 if I had a problem and he would tell me exactly what to
20 do. I've -- he raised me to be a respectful and honest
21 young lady. But here lately I've kind of lost my
22 motivation. Since he's been incarcerated, I have
23 dropped out of school, I have went through many
24 different jobs because I can't stick with one. I cry
25 myself to sleep at night because I just want my papa to

1 come home, and I've had to go to therapy, and it just
2 makes me so depressed knowing he's in here. I can't go
3 to visit anymore because I can't stand to see him like
4 that. But I do love him very much and he is a really
5 good person who cares about others. And that I do
6 know. I may be young, but I'm not stupid. And I do
7 know that his actions do have consequences, but I don't
8 believe he's fully guilty so please just take into
9 consideration how we feel.

10 THE COURT: Thank you, ma'am.

11 MS. HAMMETT: Thank you.

12 THE DEFENDANT: Me? Do you think I should? Huh?

13 THE COURT: Anything you would like to tell me,
14 Mr. Perego?

15 (Off-record discussion between Mr. Young
16 and the defendant.)

17 THE DEFENDANT: From here? Your Honor, I guess
18 there is a lot going on here. I have some medical
19 problems, I don't know I will seek any medical help.
20 When I went to my heart doctor, he said I have worse
21 problems and that was Afib, and they put me on a blood
22 thinner. And I happened to be allergic to it. And it
23 done all kind of things to me. It knocks me out. I
24 pass out. Just black out. I don't know what I'm doing
25 sometimes for eight and ten hours. I've done it

1 constantly since they put me on this blood thinner.
2 It's made me spotty. It's turned my body black and
3 blue. And I have finally had to completely tell the
4 doctors that I couldn't take it anymore. It was
5 killing me. I told them at the detention center this
6 stuff was killing me, I can't take it. So they said,
7 "We can't take you off of it." I said, "You got to
8 take me off it. I can't take it anymore." So I just
9 refused to take it. I couldn't take it anymore. When
10 the doctor came to see me, she made me show her my
11 condition. I was black and blue from my foot to my
12 hip. She actually saw this. The doctor still said the
13 doctor over at the detention center said there's
14 nothing wrong with me. Well, there's been something
15 wrong with me all the time, and I've been trying to
16 tell him constantly. I've been on the kiosk and told
17 them a hundred times, but they have given me no help.
18 They did not check my Coumadin.

19 I've got a letter from the hospital to them in
20 medical that tells them that Coumadin has to be
21 monitored. Routinely. They have no machinery or no
22 equipment in the center over there to do that. It's
23 only three miles to Carolina Cardiologist from where
24 I'm incarcerated. And in two years I was sent there
25 one time. That would not be what you call monitoring

1 my problem, which is blood thinner. So I just finally
2 had to refuse the complete treatment. And they want to
3 put me on aspirin, and that also affected me and still
4 was. So the other day, I refused to take any more
5 aspirin. They don't know what they're doing. I need
6 some medical, real medical treatment. I'm a veteran.
7 Handicapped veteran under the ADA, and I'm supposed to
8 have protection, and they can lock me up but they're
9 supposed to take care of me. I've got VA benefits, I
10 can't get to them. Not when you're incarcerated there.
11 You don't get any help.

12 My condition caused -- at my age, I'm a
13 handicapped veteran, and I think I'm doing something to
14 take care of me when my time comes. I went to Germany
15 and I fought for everybody in this courtroom so you can
16 have freedom. I was a paratrooper under General James
17 Gaffey who jumped into Germany to the death camps to
18 the burning centers where they incarcerated all the
19 people and burned them and we liberated them. We were
20 able to come back home and give every one of the people
21 probably that's in this court the freedom to go to
22 school and get educations so they can go forward with
23 their lives in a free county.

24 But when I come back here after all of these
25 years, I'm not a criminal. I've helped this city and

1 I've helped this county. Within sight of this
2 courtroom on Murray Avenue I helped established the
3 farmers market. I helped to establish the large
4 building behind there for the arts center for children
5 to get healthy. I think I increased the tax base on
6 all of that. The city people asked me to help when the
7 city of Anderson was, 20 years ago when it was, you
8 know, if you have been around here that long, you know
9 the condition of it, and they asked us all to help out.
10 I bought a piece of property down from the railroad,
11 the Old Depo they call it. I brought investors in here
12 in different parts of the county. I set Mr. James
13 Chastain up in business on Murray Avenue and he's still
14 there in the antique business. The farmers market is
15 located on the same place that I purchased and helped
16 the city and the county.

17 I moved down the road when I finished that project
18 to another one down there, 81 to 29. Behind where the
19 Highway 29 and Highway 81 come together. They call
20 that Homeland Park. I purchased that there piece of
21 property. It included 92 acres down to a street called
22 Manley Street to help the tax base, to help the tax
23 base. We established 15 homes on Manley Street.

24 (Off-record discussion between Mr. Young
25 and the defendant.)

1 THE DEFENDANT: Judge, I try to be a law-abiding
2 citizen, and I don't think I'm going to be of any use
3 to anybody locked up and die in prison, in a cell in a
4 prison. And everybody within reason knows at my age,
5 any long sentence is nothing but a death sentence for
6 me. But I am still productive enough. My brain is not
7 working a hundred percent, but when it is clear, it is
8 clear. And I can use it very effectively. I'm an
9 engineer. I have two sons that are engineers,
10 graduates of Georgia Tech with the highest honors.
11 We're from an engineering background. And I'm
12 interested in helping handicapped veterans because they
13 need help. I can do that from home. And I can be
14 effective to help these people that need help because
15 they at least can come to my home where I could be
16 effective in doing some constructive work. I have
17 designed a house. Being an engineer, a design
18 engineer, there's no other house like it. But I have
19 the plan right down in the jail cell if you would like
20 to see them. I would just like the opportunity to take
21 these plans and put them together where they could be
22 of some use to somebody instead of all this
23 paraphernalia of people doing no good. I try to do
24 good for everybody.

25 May I make one example? May I?

1 THE COURT: Go ahead, Mr. Perego.

2 THE DEFENDANT: May I ask Mr. Flowers --

3 THE COURT: No, sir. You may not address the
4 victims.

5 THE DEFENDANT: All right. Well, anyhow.
6 Mr. Flowers is currently in a house that belongs to me
7 on this same property that all this happened because he
8 was my renter. And I have no ill feelings toward him.
9 I have never threatened him in any way. I never
10 threatened anyone. I don't threaten people. When I
11 was trained in the Army, I was trained very well. I
12 was a paratrooper and I also worked for the CIA. So I
13 knew what I was doing. All I'm asking for is something
14 fair. I can be productive part of the time and I'll
15 just have to lay it in your hands to try to give me a
16 helping hand if there's any way to put me in my home.
17 where I can look after children, which I always have.
18 I have never been on welfare. I don't take welfare. I
19 work. I've been productive.

20 THE COURT: All right. Thank you, Mr. Perego.

21 Anything further, Mr. Young?

22 MR. YOUNG: Your Honor, the only thing that we ask
23 is we ask the Court to consider constructing a sentence
24 in this case that would involve him participating in
25 the HIP program for however long that the Court deems

1 appropriate. If the Court believes that that is not an
2 appropriate sentence in this case, we'd ask the Court
3 to consider any sentence that is five years or less.
4 Given the fact that he is on the cusp of 90 years of
5 age, it is not likely that he would probably see any
6 sentence beyond a five-year sentence anyway.

7 THE COURT: Thank you, Mr. Young.

8 Mr. Campbell, anything in response briefly?

9 MR. CAMPBELL: Yes, sir. First of all, he didn't
10 even respond to addressing the Court regarding his
11 crime. The fact that he was a World War II vet.
12 Somewhere along the way apparently he lost his ways, he
13 lost his values because here he says he's not a danger
14 to the community, but yet he's on probation for
15 solicitation to commit a felony. Says he doesn't
16 threaten people. But that's different than what we
17 have heard from the witnesses. He claims he can't hear
18 or recall anything, but yet he's spitting out details
19 left and right. He's faking it. His actions show that
20 he is not a law-abiding citizen. If he's worried about
21 medical care, he can get all the care he needs in the
22 Department of Corrections. The fact that he had a
23 problem with Mr. Banister doesn't mean he should have
24 took it out on Ms. Lash and the other individuals that
25 were in that bar. They had nothing to do with him. He

1 controls himself. He controlled his actions. He chose
2 his own path. He chose to crank that trunk and drive
3 it through that bar where they were.

4 THE DEFENDANT: I didn't drive no truck through no
5 bar.

6 MR. CAMPBELL: Your Honor --

7 THE DEFENDANT: I did not do that, sir.

8 MR. CAMPBELL: Your Honor, he's here today because
9 he put himself here. He has been given more than one
10 chance and more than one opportunity. He has shown he
11 is not a good person. The community is a lot safer
12 with him behind bars. Therefore, we ask that you give
13 him the max, ten years, in this case.

14 THE COURT: All right.

15 If there's nothing further, I have heard from the
16 parties, I have reviewed the exhibits, looked at the
17 nature of the offenses and also looked at the
18 concession the State has made with the cap on the
19 offense in light of the nature of the offense.

20 All I can say, Mr. Young, I think you're
21 absolutely correct when you describe this as a horrific
22 factual situation. We're very fortunate that someone
23 wasn't killed in this situation. This is a difficult
24 case. This country holds its veterans dear, holds
25 especially our World War II veterans dear. It's a

1 tremendous thing what World War II veterans did.
2 However, the nature of this offense, a person's age or
3 his status as a veteran does not excuse this kind of
4 offense. This is a really serious thing again that
5 could have resulted in death.

6 So this will be the sentence of the Court: On
7 indictment 2014-GS-04-01835, defendant will be confined
8 to the Department of Corrections for a term of ten
9 years. He would get credit for 708 days time served.
10 On 1834, ten years, 708 days time served, concurrent.
11 And then 0722, the two arson counts, ten years
12 concurrent, 708 days time served.

13 Good luck to you, sir.

14 PROBATION OFFICER: Your Honor, may Agent Weber
15 address the probation matter?

16 THE COURT: How many years does he have over his
17 head on probation?

18 AGENT WEBER: He has ten years over his head.

19 THE COURT: Run that concurrent, ten years,
20 revoke. Run it concurrent.

21 PROBATION OFFICER: Yes, sir.

22 (WHEREUPON, proceedings adjourned at 1:29 p.m.)

23 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 4, 2016

Diane L. Marcengill
Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

The South Carolina Court of Appeals

The State, Respondent,

v.

Edrick Norris Perego, Appellant.

Appellate Case No. 2016-001108

RECEIVED *AKB*

DEC 1 2016

ATTORNEY GENERALS
OFFICE

The Honorable R. Scott Sprouse
Anderson County

Trial Court Case No. 2014GS0401598, 2014GS0401834,
2014GS0401835

ORDER

It appears that Edrick Norris Perego, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY

Jay A. Kibler
CLERK

Columbia, South Carolina

cc:

Edrick Norris Perego, 368192
John Benjamin Apin, Esquire
Alan McCrory Wilson, Esquire
Laura Ruth Baer, Esquire

FILED

December 15, 2016



RECEIVED

JAN - 4 2017

ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 03, 2017

The Honorable Richard A. Shirley
PO Box 8002
Anderson SC 29622-8002

REMITTITUR

Re: The State v. Edrick N. Perego
Lower Court Case No. 2014GS0401598, 2014GS0401834, 2014GS0401835
Appellate Case No. 2016-001108

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

Enclosure

cc: Edrick Norris Perego, 368192
John Benjamin Apelin, Esquire
Alan McCrory Wilson, Esquire
Laura Ruth Baer, Esquire

FORM 5



COPY

STATE OF SOUTH CAROLINA)

County of ANDERSON)EDRICK PEREGO)

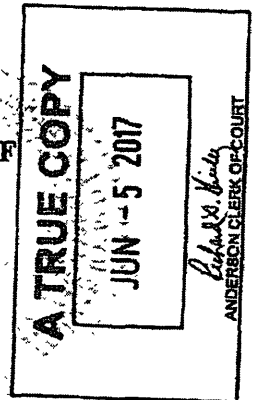
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-04-01175

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution
2. Name and location of Court which imposed sentence Anderson 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) 2014-6S-04-01598 (arson, third degree)
 - (b) 2014-6S-04-01834, - 01835 (ABHAW x2)

- (c) 2012-GS-04-00197, -00198 (assault + batt. 1°; Kidnapping)
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 13, 2016 - 10 YR x 5 concurrent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 15, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appellate Case No. 2016-001108
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) guilty plea not knowingly, intelligently + voluntarily entered
- (b) ineffective assistance of plea counsel
- (c) ineffective assistance of appellate counsel
- (d) unconstitutional sentence (violation of 8th Amdt)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) no factual basis for plea and did not understand sentencing
- (b) (1) failed to object to unconstitutional sentence; (2) failed to appeal from probation cases; (3) failure to investigate
- (c) advised to drop direct appeal
- (d) de facto life sentence violates prohibition against cruel and unusual punishment
12. Prior to this application have you filed with respect to this conviction: and is disproportionate;
- (a) any petition in a State Court under South Carolina Law? no failure to provide proper medical care
- (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) PCR claims, not preserved for direct appeal
 (b) _____
 (c) _____

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

(a) your arraignment and plea? yes
 (b) your trial, if any? no
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (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. Herveny Young, Esq. - public defender
SCCID, PO Box 11433, Columbia, SC 29211
 ii. Laura R. Baer, Esq. - appellate defender
SCCID, PO Box 11589, Columbia, SC 29211
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Guilty plea + sentencing
 ii. Direct appeal
 iii. _____

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

Withdrawal of guilty plea, and/or resentencing,
and/or belated direct appeal

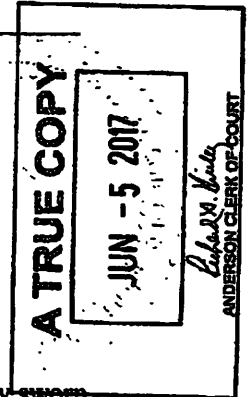
20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION



I, Edrick Norris Perego, 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.

Edrick Norris Perego

SWORN to and subscribed before me this 30th
 day of MAY, 2017.
Albert W. Carter (L.S.)
 Notary Public

My Commission Expires: Sept 1, 2021

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

I, Edrick Norris Perego, 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.

Edrick Norris Perego
Applicant

SWORN or affirmed to and subscribed before me this

30th day of MAY, 2017.

Albert W. Carter
Notary Public

My Commission Expires: Sept 11, 2021



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Edrick Perego,

Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

2017-CP-04-01175

MOTION FOR EXPEDITED
RETURN AND PCR HEARING **TRUE COPY**

JUN -5-2017

Anderson Clerk of Court

Comes now, Edrick Perego, the applicant in the above-captioned matter, and respectfully requests that this Court grant this motion, in which he requests that the State expedited the filing of its return and the scheduling of his PCR hearing. Applicant makes this motion on the following grounds:

1. Applicant is ninety (90) years old, having been born [REDACTED], 1926.
2. Applicant is currently serving five concurrent ten-year sentences for various offenses. The sentences were imposed on ~~XXXX~~ 2016. *May 13 2016*
3. Applicant suffers from various health problems, as evidenced in the attached record showing "movement" from medical care ~~■~~ ten times over the past year. *enr.*
4. Current SCDC data reflects a projected release date of July 11, 2023. Assuming Applicant survives to be released, he will be just shy of ninety-seven (97) years old.
5. Applicant challenges the constitutionality of his sentence in this post-conviction relief action, among other claims. If his application is not considered in an expedited manner, Applicant fears that his claim may be mooted by his death. Thus, applicant submits that his case presents an exceptional circumstance necessitating expedited review.

WHEREFORE, applicant requests that the State be required to file its Return within thirty (30) days of the ruling on this motion, and that the PCR hearing be held within ninety (90) days of the filing of the state's return.

Respectfully submitted,



Edrick Perego, Applicant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
Edrick Perego, #368192,	)	Case No.: 2017-CP-04-1175
	)	
Applicant,	)	
	)	RETURN AND PARTIAL MOTION
v.	)	TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on March 13, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted for two counts of arson, third degree, in September 2014 (2014-GS-04-1598) and in October 2014 for two counts of attempted murder (2014-GS-04-1834; -1835). Hervery Young, Esquire, represented Applicant. Assistant Solicitor Rame Lambert Campbell, Esquire, prosecuted the case.

On May 13, 2016, Applicant pleaded guilty as indicted to arson, third degree, before the Honorable R. Scott Sprouse. Applicant also pleaded guilty to two counts of assault and battery of a high and aggravated nature (ABHAN), as a lesser-included offense of attempted murder. Pursuant to the State's recommendation, Judge Sprouse sentenced Applicant to imprisonment for concurrent terms of ten years for each charge. At the time of conviction and sentencing for the 2014 charges, Applicant was serving a probationary sentence for solicitation to commit assault and battery and

solicitation to commit kidnapping.¹ Judge Sprouse revoked his probation in full.

Applicant filed a timely notice of appeal. Laura Baer, Esquire, of the Office of Appellate Defense, was appointed to represent Applicant on appeal. However, upon full understanding of all possible consequences and with agreement of counsel, Applicant withdrew his appeal. The South Carolina Court of Appeals issued an order on December 15, 2016, dismissing the matter. State v. Perego, Appellate Case No. 2016-001108 (S.C. Ct. App. filed December 15, 2016). The Remittitur was returned to the circuit court on January 3, 2017.

Attached to this Return and incorporated by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the application.

II.

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

1. Involuntary Guilty Plea
 - a. "Guilty plea not knowingly, intelligently, and voluntarily entered."
 - b. "No factual basis for plea and did not understand sentencing."
2. "Ineffective Assistance of Plea Counsel"
 - a. "Failed to object to unconstitutional sentence"
 - b. "Failed to appeal from probation on cases"
 - c. "Failure to investigate"
3. "Ineffective Assistance of Appellate Counsel"
 - a. "Advised to drop direct appeal"
4. "Unconstitutional sentence (violation of Eighth Amendment)"
 - a. "De facto life sentence violates prohibition against cruel and unusual punishment and is disproportionate"

¹On April 16, 2013, Applicant pleaded guilty as indicted to one count of solicitation to commit assault and battery (2012-GS-04-0197), and one count of solicitation to commit kidnapping (2012-GS-04-0198). Judge Macaulay sentenced Applicant to concurrent terms of ten years suspended to five years' probation.

b. "Failure to provide proper medical care"

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

III.

Any allegations regarding Applicant's guilty pleas and sentences stemming from the charges from 2012 should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations.

McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant was originally sentenced for these charges on April 16, 2013. The current application was not filed until June 5, 2017, which is well beyond the statutory filing period. Therefore, the Court should dismiss any allegations relating to his original sentences and convictions from his 2012 charges, as barred by the statute of limitations.

IV.

Applicant asserts his plea entered on May 13, 2016, was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted).

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice was not “within the competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, “[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant’s lawyer withstand retrospective examination in a post-conviction hearing.” McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, “whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel’s advice

to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” *Id.* at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Dalton*, at 137–38, 654 S.E.2d at 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” *Id.* at 138–39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. 466 U.S. at 688. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

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

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

VI.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). Applicant must show appellate counsel’s performance was deficient, and he was prejudiced by the deficiency. Thrift v. State, 302 S.C. 535, 537, 397 S.E.2d 523 (1990); Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine “whether appellate counsel failed to present significant and obvious issues on appeal.” Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends Applicant’s appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation. See Sharper v. State, 279 S.C.

264, 305 S.E.2d 247 (1983).

VII.

Applicant alleges his sentence was illegal. Respondent submits that this allegation is entirely without merit. Applicant's sentence was well within statutory limits. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). Further, the record of the guilty plea clearly indicates that the plea was knowingly, intelligently, and voluntarily entered within the mandates of Boykin v. Alabama, 395 U.S. 238 (1969). See LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978) (finding defendant's guilty plea to voluntary manslaughter and attempted housebreaking was voluntarily and intelligently given, inasmuch as record reflected defendant understood nature of crime with which he was charged and was fully advised of the sentence which he could receive). The record further reflects Applicant did not object to the court's sentence. Applicant's failure to object waived any challenge to the length of the sentence on appeal or collateral review absent an allegation of ineffective assistance of counsel. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). Applicant has not offered any reason to depart from the truth of his statements at the plea proceeding, and bare contradictions of these statements are not sufficient to overcome the finality of the conviction. Blackledge v. Allison, 431 U.S. 63 (1977); Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975).

However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VIII.

Applicant further alleges he is being held unlawfully due to “failure to provide proper medical care.” This allegation should be summarily dismissed for failure to state a claim cognizable in a PCR action because it alleges solely a non-collateral administrative matter, and such claims cannot be raised in a post-conviction relief proceeding. Post-conviction relief is a proper avenue of relief only when an applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Here, Applicant complains that the Department of Corrections (SCDC) has failed to provide him with appropriate medical care. When an inmate raises a claim implicating a protected liberty interest under the Fourteenth Amendment, the inmate is entitled to minimal due process to ensure the state-created right was not arbitrarily abrogated. Wolff v. McDonnell, 418 U.S. 539 (1974). Because SCDC’s grievance procedures are consistent with the standards delineated in Wolff, inmates may seek review of such claims under the Administrative Procedures Act (APA). Al-Shabazz, 338 S.C. 354, 527 S.E.2d 742.

Applicant’s allegation concerns matters which can only be raised through SCDC’s grievance procedure. See Furtick v. S.C. Dep’t of Prob., Parole, and Pardon Servs., 352 S.C. 594, 599, 576 S.E.2d 146, 149 (2003) (“In Al-Shabazz, the Court outlined the nature of the review available to inmates raising non-collateral issues that implicate liberty interests. . .”). If Applicant is dissatisfied with the decision rendered by SCDC, then he may seek review of the decision under the APA. Therefore, this claim is not proper for post-conviction relief, and this allegation should be summarily denied and dismissed.

IX.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of involuntary guilty plea, ineffective assistance of plea and appellate counsel, and illegal sentence. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws for failure to state a claim upon which relief can be granted and as barred by the statute of limitations.

X.

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

XI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of involuntary guilty plea, ineffective assistance of plea and appellate counsel, and illegal sentence.

{Signature on following page.}

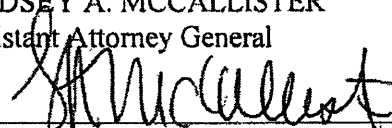
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
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Senior Assistant Deputy Attorney General

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Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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Telephone: (803) 734-3737

9/12, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	2017-CP-04-1175
	)	
EDRICK PEREGO, #368192	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
	)	

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

Susannah Conyers Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this the 12th day of September, 2017.



 Deonna Rogers, Legal Assistant
 For Respondent

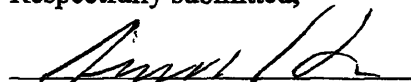
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
EDRICK PERIGO,	)	SUPPLEMENTAL APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2017-CP-04-1175

This matter comes before the Court by way of application of post conviction relief filed March 13, 2017, alleging ineffective assistance of trial counsel. A Return and Partial Motion to Dismiss was made on September 12, 2017. This application is intended to incorporate Mr. Peregog's application allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution and add the allegations of:

1) ineffective assistance of plea counsel for advising Mr. Perego to plead guilty, allowing victim testimony regarding unsubstantiated allegations of criminal acts by Mr. Perego after he was imprisoned, and failing to effectively use evidence of Mr. Perego's diagnosis of dementia as mitigation of his conduct.

2) Due Process violations due to the plea not being knowingly and voluntarily made, non-compliance with the ADA due to failure to accommodate Applicant's hearing loss and no factual basis for ABHAN in the record.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Anderson, South Carolina
This 13 day of February 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
_____)

IN THE COURT OF
COMMON PLEAS

EDRICK NORRIS PEREGO,)
 PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)
 DEFENDANT)
_____)

FEBRUARY 21, 2018
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE L. CORDELL MADDOX

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

SUSANNAH CONYERS ROSS, ESQUIRE
ATTORNEY FOR APPLICANT

KELLY OPPENHEIMER, ESQUIRE
ATTORNEY FOR DEFENDANT

VIVIAN CROSS,
CIRCUIT COURT REPORTER

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
EDRICK N. PEREGO				
BY MS. ROSS	7			
BY MS. OPPENHEIMER		16		
JANICE PEREGO				
BY MS. ROSS	20			
BY MS. OPPENHEIMER		24		
JESSICA FORD				
BY MS. ROSS	25			
BY MS. OPPENHEIMER		28		
HERVERY YOUNG				
BY MS. OPPENHEIMER	31		57	
BY MS. ROSS		42		59
APPLICANT'S EXHIBIT NO. 1				
DOCTOR'S REPORT				46

1 * * * FEBRUARY 21, 2108 * * *

2
3 **THE COURT:** Okay. Yes, ma'am.

4 **MS. OPPENHEIMER:** May it please the court. The
5 first matter is Edrick Perego vs. the State of South
6 Carolina, docket number 2017-CP-04-1175. The Applicant
7 was indicted during the January, 2012 term of the
8 Anderson County Grand Jury for one count of
9 solicitation to commit assault and battery, and one
10 count of solicitation to commit kidnapping. On April
11 16, 2013, Applicant appeared before the Honorable S.
12 MacCauley and pled guilty as indicted.

13 Judge Macauley sentenced Applicant to 10 years
14 in prisonment, suspended on the service of 34 days with
15 five years probation. While Applicant was on
16 probation, the Anderson County Grand Jury indicted him
17 two counts of arson in the 3rd degree during a
18 September 2014 term, and for two counts of attempted
19 murder during its October, 2014 term. Hervery Young
20 represented him on these charges.

21 On May 13, 2016, Applicant appeared before the
22 Honorable R. Scott Sprouse and pled guilty to two
23 counts of assault and battery of a high and aggravated
24 nature as a lesser included offense of attempted
25 murder, and pled guilty as indicted to two counts of

1 arson in the 3rd degree. Judge Sprouse sentenced
2 Applicant to ten years imprisonment for each charge.
3 Simultaneously, Judge Sprouse revoked Applicant's
4 probation in full requiring him to serve ten years
5 imprisonment for each solicitation charge. Also, all
6 sentences were to run concurrently.

7 Applicant filed a timely notice of appeal, and
8 appellant defender Laura R. Baer of the South Carolina
9 Commission on Indigent Defense Office of Appellant
10 Defense represented Applicant.

11 On December 15, 2016, the South Carolina Court
12 of Appeals issued an order indicating that Applicant's
13 full understanding of all possible consequences, and
14 with agreement of counsel, withdrew his appeal.
15 Through that order, the Court of Appeals dismissed
16 Applicant's appeal. The remitter was issued on January
17 3, 2017.

18 On June 5, 2017, the Applicant filed an
19 application for post conviction relief, alleging
20 involuntary guilty plea, ineffective assistance of plea
21 counsel, ineffective assistance of appellate counsel,
22 unconstitutional sentence in violation of his 8th
23 Amendment Right, and a claim of failure to provide
24 proper medical care.

25 On September 12, 2017, respondent made his

1 Return and Partial Motion to Dismiss, requesting all
2 allegations from Applicant's 2012 guilty plea be
3 summarily dismissed as time barred, and requesting
4 Applicant's allegation on failure to provide proper
5 medical care be summarily dismissed for failing to
6 state a causable claim under the Uniform Post
7 Conviction Procedure Act. Respondent requested an
8 evidentiary hearing on all other claims.

9 On February 13, 2018, through his counsel,
10 Applicant amended his application to include the
11 following claims: (1) ineffective assistance of plea
12 counsel for advising Mr. Perego to plead guilty;
13 allowing victim testimony regarding unsubstantiated
14 allegations of criminal acts by Mr. Perego after he was
15 in prison; and failing to effectively using evidence of
16 Mr. Perego's diagnosis of dementia as mitigation of his
17 conduct. And (2) due process violations due to the
18 plea not being knowingly, voluntarily made, not in
19 compliance with the ADA due to failure to accommodate
20 Applicant's hearing loss, and no factual basis for
21 ABHAN in the record. The Applicant is represented by
22 Susannah Ross, who both are present in the courtroom
23 today.

24 **THE COURT:** All right. Yes, ma'am.

25 **MS. ROSS:** Thank you, Your Honor. May it please

1 the court. As to the ABA claim, Mr. Perego is telling
2 me he cannot hear right now, but I discussed this with
3 him. He will waive any claims as far as this hearing
4 as far as his hearing. Because I'm not in a position
5 -- he doesn't read sign language --

6 **THE COURT:** Okay.

7 **MS. ROSS:** -- and I'm not in a position to address
8 that at this time. However, we would not waive that
9 claim as it goes to the plea. Those are the
10 allegations that his plea was not knowingly and
11 voluntarily made. The strongest one is due to his
12 dementia, which we've got some evidence, and evidence
13 was presented on the record as to that. Also the
14 record contains the DNH report. And if you need that,
15 I've got a copy of it.

16 **THE COURT:** Yeah, I've got it.

17 **MS. ROSS:** And that was made a part of the court
18 record along -- along with some photographic exhibits.

19 I'm going to present his testimony, but would
20 ask that the court allow the record -- the record to
21 remain open if you see fit to have his original doctor,
22 Sallis, who evaluated him, and she did not make a
23 finding that -- with dementia in it. It's common that
24 paranoia and delusions can develop with dementia, so
25 we just ask the record to remain open so we can add

E. PEREGO -- DIRECT

1 that, if necessary.

2 **THE COURT:** Yeah. And my -- we've had that
3 discussion off the record, but just for the record,
4 we've agreed to allow the record to remain open. You
5 are going to attempt to depose Dr. Sallis and then, I
6 guess, submit that to me if I feel like it's necessary?

7 **MS. ROSS:** Yes, Your Honor.

8 **THE COURT:** Okay. And the State agrees to that?

9 **MS. ROSS:** Yes, Your Honor.

10 **THE COURT:** Okay. All right. We're good. Yes,
11 ma'am.

12 **MS. ROSS:** Thank you. At this point, we'd call
13 Edrick Perego to the stand to testify.

14 **EDRICK N. PEREGO,** having
15 been first duly sworn, testified as follows:

16 **THE CLERK:** Thank you, sir. For the record, would
17 you state your name and spell your last name, please?

18 **THE WITNESS:** Edrick Norris Perego, P-e-r-e-g-o.

19 **THE COURT:** All right. Yes, ma'am.

20 **DIRECT EXAMINATION BY MS. ROSS:**

21 **Q.** All right. Mr. Perego, you've alleged
22 ineffective assistance of counsel in this PCR?

23 **A.** Wait a minute. I --

24 **Q.** In your post conviction relief hearing, which
25 is today?

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1 A. Yes.

2 Q. You've alleged ineffective assistance of
3 counsel and that your plea was not knowingly and
4 voluntarily made; can you explain why?

5 A. Well, my counsel advised me to just take a
6 plea bargain. And he said he had talked to -- I
7 believe the District Attorney -- or whoever it is that
8 you talk to in that department, and he said that he had
9 some kind of an agreement that if I would plead guilty
10 to this, I would be able to go home and wear a monitor
11 or something where you hold -- you wear around your
12 wrist or something. I believe I can verify that by my
13 wife because he talked to her about it also. And
14 that's not what happened.

15 When I -- when we got up to court, they didn't
16 give me a hearing date to hear what any of the
17 witnesses were saying because I could not distinguish
18 -- my hearing is bad, and I could not extinguish (ph)
19 and realize what even was going on.

20 Q. Mr. Perego, let me stop you there. Did Mr.
21 Young give you any kind of hearing aid?

22 A. He gave me one, but it was a just little old
23 thing you hold behind your ear, and it didn't work.

24 Q. So could you hear -- you couldn't hear --

25 A. I could hear two or three words in the

E. PEREGO -- DIRECT

1 beginning and then I didn't hear anything else.

2 Q. Do you understand what you pled guilty to?

3 A. Not really.

4 Q. Did you injure anyone as far as you know?

5 A. No, I didn't. I'm -- I'm -- I don't have
6 anything against anybody. I didn't plan to hurt
7 anybody or anything. I was given this medicine that
8 didn't agree with me, that makes me black out, and it's
9 continuing to do it to this date. I still have results
10 -- bad results of it even though I quit taking it
11 sometime ago, it is still having bad -- it makes me
12 pass out and I -- I can't control it. I don't know
13 anything, sometimes even ten hours at a time.

14 Q. Did -- do you know what that drug is for?

15 A. It is -- I have -- the doctor says I have
16 AFIB, and it was continual blood -- blood thinner. I
17 -- I -- I come home to find out that -- and I had read
18 up on it a lot since that time, that it has killed many
19 people, and it is a very dangerous drug if it is not
20 monitored right. And they did not monitor it. And I
21 have a paper from the hospital that dropped me from
22 their responsibility of the -- of the drug if it is not
23 monitored correctly.

24 THE COURT: Okay.

25 A. But I didn't have any monitoring at all. And

E. PEREGO -- DIRECT

1 then when this happened, and they -- and they put me in
2 jail, when the hospital sent me a letter, and I have it
3 with me --

4 MS. OPPENHEIMER: Your Honor --

5 A. -- I can find it in a minute.

6 THE COURT: Hold on.

7 A. If it needs to be --

8 THE COURT: Hold on. Sir, hold on just a second.
9 Yes, ma'am.

10 MS. OPPENHEIMER: We're going to object to
11 anything the hospital told him as hearsay.

12 THE COURT: Yeah. And I understand. I'll tell
13 you, given you the circumstances, I'll allow a little
14 bit of it.

15 BY MS. ROSS:

16 Q. Mr. Perego, I'm going to ask you to move on a
17 little bit from this. Do you recall this incident at
18 all? Do you know what we're here about?

19 A. No. I -- I was just -- in some kind of a
20 trance or a daze is all I know.

21 Q. Okay.

22 A. I didn't really know anything until I -- well,
23 they told me if anything happened to me, to try to get
24 to the doctor's office. And that's where I went
25 because some how my head hit the wall -- the door

E. PEREGO -- DIRECT

1 facing and I ended up at my doctor's office passed out.
2 And I had bad pains with my heart. And that's --
3 that's all I know.

4 Q. And that's where you were arrested; is that
5 right?

6 A. I was arrested at my doctor's within 20 feet
7 of his door, I fell out of my truck.

8 Q. Now, do you --

9 A. And that's the last thing that I remember.

10 Q. Okay.

11 A. Because I -- I told somebody -- it seems like
12 they asked me something, all I remember -- they asked
13 me something about, do I have heart trouble or
14 something. I said "my chest is hurting".

15 Q. Now, let me ask you this --

16 A. I had severe pains in my chest.

17 Q. Do you have any -- anything that reflects
18 that? Do you have a pacemaker now?

19 A. Yes, ma'am. They had to put a pacemaker in me
20 and it was bad. And they refused to take me to the --
21 the surgeon on my first visit, and that pacemaker went
22 bad. And they -- they had sometime later, it had me
23 down on where I was slap out. And sometimes I -- I
24 don't how much later it was, but they had to take me
25 back for another operation.

E. PEREGO -- DIRECT

1 Q. Okay. Let me ask you this: Do you know Ms.
2 Becky Lash who owned the bar?

3 A. I know her. I don't know her personally.

4 Q. Did you have any malice or ill will, or did
5 you feel any malice or anger towards her?

6 A. No. No. I have no ill will towards Mrs.
7 Lash. We didn't have any -- much communications or
8 practically no communication because she was running a
9 biker bar over there, and it had -- she had a lot of
10 biker traffic, motorcycles that made a lot of noise.
11 And one time she did call the dog catcher out there
12 because I had two little dogs. And they barked with
13 all this noise and blue smoke went on from turning
14 those loud popping motorcycles on. I think any dog
15 will bark at it. And Anderson County fined me \$200 for
16 having two little dogs in there. Nothing -- them
17 little dogs didn't do anything but bark.

18 Q. Now, did you allot -- do you recognize this?

19 A. Yes, ma'am.

20 Q. What is that?

21 A. That is the -- my Dodge Ram pickup truck.

22 Q. Now, did you lodge a stick in it to make it
23 ram into her bar?

24 A. No, I didn't. I was in my other truck.

25 Q. Okay.

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1 A. I -- at that time, that was before when this
2 happened, I was loading two grills -- we was going to
3 have a cook out, and I was loading two grills in the
4 back of my other pickup truck.

5 Q. All right.

6 A. And then something happened -- I don't know --
7 I hit the door facing and the next -- I ended up at my
8 doctor's office.

9 Q. Now, do you recall going to Columbia to the
10 Department of Mental Health and being evaluated?

11 A. Well, I -- I don't recall anything personal
12 about it, but I think Mr. Young made some arrangements
13 for me to go.

14 Q. And --

15 A. I didn't know -- who it was for or what it was
16 about really. And because my memory -- it goes and
17 comes.

18 Q. Okay.

19 A. And I can remember a few things. I remember
20 asking Ms. Strose (ph) if she had my little dogs.

21 Q. Okay. Now, do you remember making any phone
22 calls to your wife from the jail that the State wanted
23 to use against you?

24 A. I made a lot of phone calls from the jail to
25 my wife.

E. PEREGO -- DIRECT

1 Q. Okay.

2 A. I don't remember them. I don't recall
3 anything in particular.

4 Q. Now, I just wanted to ask you, when you were
5 talking to the Department of Mental Health, or when you
6 were talking to Ms. Sallis, Dr. Sallis, do you recall
7 her?

8 A. I wasn't talking -- she wasn't at the mental
9 health. She was -- she was not there. The -- they had
10 some kind of a lawyer there with her.

11 Q. Okay.

12 A. This was not a private -- what do you call it
13 -- a psychiatrist --

14 Q. A private examination?

15 A. Well, it was supposed to be. I thought a
16 psychiatrist, when you went to them, that you just talk
17 to them, that you don't start answering a bunch of
18 questions about your case.

19 Q. Okay.

20 A. And that's all I remember of it.

21 Q. Were you trying to fake it when you were
22 talking to them, so you could get out of these charges?

23 A. Well, I don't think faking would get me out of
24 it, I didn't -- I wasn't doing any such thing as that.

25 Q. Okay.

E. PEREGO -- DIRECT

1 **A.** They -- they asked me questions that I had to
2 talk to Mr. Young on the phone because I didn't think
3 that anyone except the psychiatrist was supposed to be
4 sitting at the table with me being questioned.

5 **Q.** And Mr. Young wasn't there with you when you
6 were questioned down in Columbia?

7 **A.** Who was that?

8 **Q.** Was Mr. Young, our attorney, with you?

9 **A.** No. No. He was not there.

10 **Q.** So that's why you didn't want to talk to them
11 about your case because you had an attorney; correct?

12 **A.** Yes --

13 **MS. OPPENHEIMER:** Objection, leading, Your Honor.

14 **THE COURT:** Yeah. I -- I -- I will allow it. I
15 mean, --

16 **MS. ROSS:** I'll --

17 **THE COURT:** If you will get to the point, then --
18 I don't mean that anyway. Do you understand what I'm
19 saying?

20 **MS. ROSS:** Yeah. I won't lead anymore, Judge.

21 **THE COURT:** I'll allow you to lead us to a point.

22 **MS. ROSS:** Okay.

23 **BY MS. ROSS:**

24 **Q.** Now, Mr. Young meet with you a lot and
25 prepared for -- were you prepared for trial?

E. PEREGO -- CROSS

1 **A.** No, ma'am.

2 **Q.** All right. Did you want a trial?

3 **A.** Yes, I did because I -- I saw -- the truth
4 didn't come out about the medicine they put me on. It
5 had bad effects on me that -- that knocked me out. It
6 -- I pass out. I didn't know what I was doing.

7 **Q.** Okay. I've got no further questions at this
8 time.

9 **THE COURT:** Okay. If you would, sir, she's going
10 to ask you some questions, answer her questions. Okay?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** Thank you.

13 **CROSS EXAMINATION BY MS. OPPENHEIMER:**

14 **Q.** How many times did you meet with Mr. Young
15 before you pled guilty?

16 **A.** How many times did I do what?

17 **Q.** Did you meet with Mr. Young before you pled
18 guilty?

19 **A.** How many times? I think two or three times.
20 I believe that's -- I don't -- I don't remember. It
21 could have been more or less.

22 **Q.** Okay.

23 **A.** I think at least maybe three times.

24 **Q.** And do you recall reviewing the discovery with
25 him?

E. PEREGO -- CROSS

1 A. Did I do what?

2 Q. Review the evidence that the State had against
3 you with him?

4 A. Did they use the evidence?

5 Q. Did you review it?

6 A. If you mean the pictures -- he brought some
7 pictures one time.

8 Q. Okay.

9 A. As far as --

10 Q. Then you went over --

11 A. As far as any real evidence, he didn't seem
12 like he was very interested in the case at all. And I
13 don't know why he was assigned to it, to me -- because
14 I never did feel that he had confidence that he was
15 going to help me.

16 Q. Did you discuss any possible defenses with
17 him?

18 A. Did what, ma'am?

19 Q. Did you discuss any possible defenses with
20 him?

21 A. Friendship?

22 Q. Defenses?

23 A. De -- I'm not understanding your question,
24 ma'am. I'm kind of sort of hard of hearing.

25 Q. That's okay.

E. PEREGO -- CROSS

1 **A.** Would you repeat it, please?

2 **Q.** Did you give -- did you discuss any possible
3 defenses with Mr. Young?

4 **A.** Second defenses?

5 **Q.** Any defenses to your case?

6 **A.** Well, I asked him to investigate this first --
7 this case, it has not been -- really investigated.
8 They just made some opinions and I got the bad end of
9 the deal. That's all I'm saying.

10 **Q.** Did you give him any leads to investigate.

11 **A.** I did.

12 **Q.** Okay. Did you discuss your version of the
13 facts with him?

14 **A.** Did I discuss the what?

15 **Q.** Your version of the facts?

16 **A.** Yes, I -- I -- I told him about it, and told
17 him I would like for him to check it out.

18 **Q.** Okay.

19 **A.** As far as I know, no contact was ever made
20 with anyone.

21 **Q.** Okay.

22 **A.** On my defense, not even one person.

23 **Q.** Okay. Do you remember going in front of the
24 judge and pleading guilty?

25 **A.** I went in front of the judge and pleaded

E. PEREGO -- CROSS

1 guilty?

2 Q. Yes. Do you remember that?

3 A. I don't think so. I don't think I remember
4 it. I -- I can't recall it in my mind at this time.

5 Q. Okay. Did you go over potential sentences
6 with the judge? Do you remember that?

7 A. Did what, ma'am?

8 Q. Did the judge go over your potential sentence
9 with you?

10 A. I can't remember. I can't remember. It's
11 possible. I -- I just don't remember.

12 MS. OPPENHEIMER: I beg the court's indulgence.

13 THE COURT: Okay.

14 BY MS. OPPENHEIMER:

15 Q. Did you want to go to trial?

16 A. Did I do what?

17 Q. Did you want to go to trial?

18 A. Did I want to go to trial? Yes, I did.

19 Q. Okay. And you --

20 A. And I told Mr. Young that I did. I told him
21 that I was not interested in pleading guilty.

22 Q. But you pled guilty anyways?

23 A. Yes.

24 MS. OPPENHEIMER: Okay. No further questions.

25 THE COURT: Okay. Anything on redirect?

J. PEREGO -- DIRECT

1 **MS. ROSS:** No, Your Honor.

2 **THE COURT:** Okay. Thank you, sir. You can pull
3 him back around there. Okay. You can call your next
4 witness.

5 **MS. ROSS:** Thank you, Your Honor. We call Janice
6 Perego.

7 JANICE PEREGO, having been
8 first duly sworn, testified as follows:

9 **THE CLERK:** If you'll take the witness stand,
10 please, ma'am, and state your name and spell your last
11 name for the reporter, please.

12 **THE WITNESS:** Okay. Janice Perego, P-e-r-e-g-o.

13 **DIRECT EXAMINATION BY MS. ROSS:**

14 **Q.** Hi, Ms. Perego, how are you related to Mr.
15 Perego over there?

16 **A.** We were married for about 18 years.

17 **Q.** All right. You're separated now, correct?

18 **A.** Divorced.

19 **Q.** Divorced. And were you separated at the time
20 of this incident?

21 **A.** Yes.

22 **Q.** Okay. How -- did you keep up with Mr. Perego
23 during this period of time?

24 **A.** We've always been friends.

25 **Q.** Do you keep up with him still?

J. PEREGO -- DIRECT

1 **A.** Yes.

2 **Q.** Now, this happened, I believe, back in June of
3 2014, did you keep up with Mr. Perego around then?

4 **A.** I spoke with him the day before, I believe,
5 all of that happened.

6 **Q.** All right. Do you recall him getting
7 arrested?

8 **A.** Yes.

9 **Q.** And you had spoken to him before that time?

10 **A.** Yes.

11 **Q.** Had you noticed anything about him that was
12 different?

13 **A.** Yes. For about six or eight months prior to
14 that, he -- I felt like he was in the beginning stages
15 of dementia. I had mentioned it to him and to family
16 members that I thought he was.

17 **Q.** And why did you think that?

18 **A.** Because he was repeating himself a lot and
19 stumbling around, and just different stuff like that.

20 **Q.** And was his normal behavior that you knew?

21 **A.** No.

22 **Q.** And did any investigators or anyone involved
23 in the investigation of this case mention anything to
24 you about that?

25 **A.** I spoke to the investigator about it.

J. PEREGO -- CROSS

1 Q. And what did you think they were going to do
2 with the investigation after you spoke to him?

3 A. I didn't really know. I thought -- I thought
4 that's what the attorney was taking care of.

5 Q. Did you think that the State questioned his --
6 whether he knew what he was doing at the time of this
7 incident?

8 A. I don't think so.

9 Q. And just to re-iterate, you weren't there,
10 were you, so you can't testify to that, but you had
11 noticed a difference?

12 A. Many times.

13 Q. And do you think it would be in Mr. Perego's
14 character to do this normally?

15 A. No.

16 MS. ROSS: All right. I've got nothing further.

17 THE COURT: Yes, ma'am.

18 CROSS EXAMINATION BY MS. OPPENHEIMER:

19 Q. Ms. Perego, do you have any medical training?

20 A. No, I don't.

21 Q. So you can't say with any degree of medical
22 certainty whether or not Mr. Perego's actually
23 suffering from dementia?

24 A. No, my mother has dementia.

25 Q. But that doesn't make you qualified to

J. PEREGO -- CROSS

1 diagnose her?

2 A. No.

3 Q. And you weren't there when this incident
4 occurred; right?

5 A. Right.

6 Q. You were living somewhere else at the time?

7 A. Yes.

8 Q. And you had a chance to speak at the guilty
9 plea?

10 A. His character, yes.

11 Q. And you didn't even mention that he was acting
12 strangely, did you?

13 A. No one asked me.

14 Q. Well, that was your opportunity to tell the
15 court what you thought; correct?

16 A. Well, I get real nervous when I have to get in
17 front of people.

18 Q. Okay.

19 A. I forget a lot of things that I need to say.

20 Q. But you didn't tell them that you thought he
21 was acting strangely?

22 A. I don't recall telling him; I had told the
23 attorneys.

24 MS. OPPENHEIMER: Okay. I have no further
25 questions.

1 **THE COURT:** Okay. Answer any questions she may
2 ask you.

3 **REDIRECT EXAMINATION BY MS. ROSS:**

4 **Q.** Just briefly, you said you told the attorney,
5 what had you told the attorney?

6 **A.** That I thought that he might have had some
7 dementia or this medicine was affecting him or
8 something was wrong.

9 **Q.** And did -- this attorney was Mr. Young who is
10 in the courtroom today?

11 **A.** Yes.

12 **Q.** Okay. And that's the person you talked to?

13 **A.** Yes.

14 **Q.** And would you have been willing to testify to
15 that if Mr. Perego had gone to trial?

16 **A.** Sure.

17 **MS. ROSS:** All right. Thank you.

18 **THE COURT:** Okay. Yes, ma'am.

19 **MS. OPPENHEIMER:** I don't have anything further.

20 **THE COURT:** Okay. Thank you, ma'am. You can step
21 down. Is she under a subpoena to be here?

22 **MS. ROSS:** No.

23 **THE COURT:** Okay. Ma'am, you're welcome to stay
24 or you're free to go if you'd like to.

25 **MS. ROSS:** I've got one more witness.

J. FORD -- DIRECT

1 **THE COURT:** All right.

2 **MS. ROSS:** Jessica Ford.

3 JESSICA FORD, having been
4 first duly sworn, testified as follows:

5 **THE CLERK:** If you'll take the witness stand,
6 please, and state your name and spell your last name
7 for the reporter, please.

8 **THE WITNESS:** Jessica Ford, F-o-r-d.

9 **DIRECT EXAMINATION BY MS. ROSS:**

10 **Q.** Hey, Ms. Ford. how are you related to Mr.
11 Perego?

12 **A.** I'm his granddaughter.

13 **Q.** And did you testify at the plea hearing or
14 give a statement at the plea hearing?

15 **A.** I gave a testament on his character, yes.

16 **Q.** Okay. And did that -- have you talked to Mr.
17 Young, his attorney, prior?

18 **A.** Yes.

19 **Q.** Now, had you been ever asked questions about
20 Mr. Perego's behavior prior to that?

21 **A.** No, I had not.

22 **Q.** Did you notice any changes in his behavior
23 around the time of June of 2014?

24 **A.** Yes. I was actually with him the night before
25 all this happened.

J. FORD -- DIRECT

1 Q. And where was that?

2 A. At his house.

3 Q. And what did you notice?

4 A. Well, a couple of nights before we -- me and
5 my little brother left -- I'm sorry -- I get emotional
6 over this.

7 THE COURT: Take your time and relax.

8 A. Okay. He had left to go get -- he was working
9 on his Dooley. And he had left to go get a part that
10 the guy who was working on it needed. And he never
11 came home that night. And one of his renters had came
12 down and got me and my little brother and he fed us.
13 And when Papa got back the next day, I asked him where
14 he was, and he said he couldn't find his way home. So,
15 I'm like that's weird.

16 Well, I asked him, "well, where did you go"?
17 And he said he went to Nana's and parked in the yard
18 and slept in the truck.

19 Q. Okay. Now, the Dooley that you're talking
20 about, was it the white truck?

21 A. No. It was -- it was a -- it was a Ford, like
22 one of those really big trucks.

23 Q. All right. And if you had been asked about
24 this prior to his plea, would you have testified to
25 this?

J. FORD -- DIRECT

1 **A.** Yes, but since I was 15 when it happened, I
2 really didn't understand.

3 **Q.** And you were 15 at the time of the plea?

4 **A.** I was -- no, I was 17 at the time of the plea
5 --

6 **Q.** Seventeen. But you were 15 at the time that
7 it happened?

8 **A.** Yes.

9 **Q.** Did any investigators question you or talk to
10 you about that?

11 **A.** No.

12 **Q.** And you were still staying right out there?

13 **A.** Yeah.

14 **Q.** Did you witness the incident?

15 **A.** I did not. Me and -- my grandma had came and
16 picked us up the night before.

17 **Q.** Now, if Mr. Perego had had a trial, would you
18 have been willing to testify?

19 **A.** I would.

20 **Q.** Now, as far as getting lost, was that Mr.
21 Perego's normal behavior?

22 **A.** No.

23 **Q.** Had you noticed any changes in his behavior?

24 **A.** Yeah, especially when he set a fire because he
25 was cold in the middle of the Spring time.

J. FORD -- CROSS

1 Q. Now, what's -- tell me about -- what are you
2 talking about there?

3 A. He had -- he had a wood burning stove in the
4 house. And he was bringing wood in and putting it in
5 the fire, wrapping up in blankets. It was crazy. I'm
6 like, "Papa, what are you doing?" He's like, "I'm
7 cold".

8 Q. And that was around the time of his arrest?

9 A. Yeah. About a month, yeah.

10 Q. Go ahead and finish. About a month...?

11 A. Oh, yeah, it was about a month before.

12 Q. Okay. Any other behavioral changes that you
13 noticed?

14 A. He was forgetful. He even -- sometimes he
15 calls me by my momma's name.

16 Q. Okay. I've got no further questions.

17 THE COURT: All right. Any other -- any
18 questions?

19 MS. OPPENHEIMER: Just briefly.

20 CROSS EXAMINATION BY MS. OPPENHEIMER:

21 Q. You testified at the plea hearing; right?

22 A. I did.

23 Q. And you didn't mention to the plea court that
24 he -- his behavior had changed?

25 A. No, I didn't -- you know, I didn't -- I wasn't

1 asked. I didn't know it was important.

2 Q. But that was your opportunity to tell the plea
3 court anything that would have helped your grandfather?

4 A. Yes, but I was asked to testify on his
5 character, so that -- I didn't mention it.

6 Q. Well, isn't that part of his character?

7 A. Well, not really. I didn't see it that way.

8 Q. So you didn't think it was important enough
9 then to mention?

10 A. No, I didn't.

11 Q. And do you have any medical training?

12 A. I do not.

13 THE CLERK: Okay. No further questions.

14 THE COURT: Anything on redirect?

15 MS. ROSS: No, Your Honor.

16 THE COURT: All right. Thank you, ma'am. You can
17 step down. And if you're not under subpoena, if you
18 want to stay, you can, or you're perfectly willing to
19 --

20 A. Thank you.

21 THE COURT: Okay. Anything else?

22 MS. ROSS: Judge, we can put this in through Mr.
23 Young when he testifies, or I can put it in. It is --
24 in our case -- but this is Ms. -- I mean, Dr. Sallis'
25 report.

1 **THE COURT:** Okay. Any objection to that being --
2 I can even make it a court's exhibit if you want.

3 (Pause. Attorneys talking.)

4 **MS. ROSS:** That will be fine, as long as you put
5 him up. I just don't want to waive it. Okay. Then
6 that's the Applicant's case.

7 **THE COURT:** Okay.

8 **MS. ROSS:** With the exception that we did prior to
9 the hearing.

10 **THE COURT:** With allowing the record to remain
11 open for either the taking of the deposition or any
12 other alternative you guys come up with. Like I said,
13 if you feel it's necessary, I'll be happy to reconvene
14 the hearing, but a deposition will be fine.

15 **MS. ROSS:** All right.

16 **THE COURT:** Okay. Yes, ma'am.

17 **MS. OPPENHEIMER:** The State would call Hervery
18 Young.

19 HERVERY YOUNG, having been
20 first duly sworn, testified as follows:

21 **THE CLERK:** If you would take the witness stand,
22 please, sir, and state your name and spell your last
23 name for the reporter, please.

24 **THE WITNESS:** Hervery Young, that's H-e-r-v-e-r-y.
25 Y-o-u-n-g.

H. YOUNG -- DIRECT

DIRECT EXAMINATION BY MS. OPPENHEIMER:

Q. Good morning, Mr. Young.

A. Good morning.

Q. How long have you been practicing law?

A. About 24 or 25 years.

Q. And where do you work?

A. I currently work at the South Carolina
Commission on Indigent Defense.

Q. And during the time of this case, where were
you working?

A. At the 13th Circuit -- I mean -- sorry, at the
10th Circuit Public Defender's Office.

Q. And what was your title there?

A. I was Circuit Defender.

Q. Okay. About how long did you work there?

A. About four years.

Q. And do you recall how you became involved in
this case?

A. It was assigned to me. We -- once a person
was arrested and screened for indigency, we assigned
the cases out to the attorney. And this case was
assigned to me.

Q. Okay. Do you recall the approximate date when
you were assigned?

A. It was sometime shortly after his arrest in

H. YOUNG -- DIRECT

1 2014.

2 Q. Okay. And how many times did you meet with
3 Mr. Perego prior to his plea?

4 A. I -- I can't remember the number. I mean, it
5 would have been -- gosh -- it would have been 20 or 25
6 times because it was like a -- roughly about two years
7 from the time he was arrested to the time that we went
8 to court.

9 Q. Okay. And did you file any Brady or Rule 5
10 Motions?

11 A. I did.

12 Q. And did you review the discovery material with
13 Mr. Perego?

14 A. I did.

15 Q. Do you recall when you reviewed that with him?

16 A. It would have been over a course of a number
17 of visits, primarily because -- early on, because of
18 his age, I figured that it was better to handle it bits
19 at a time, not to mention the fact that Mr. Perego was
20 very specific of his version of what happened. And we
21 constantly got stuck there before we could move on.

22 Q. And what did he say happened?

23 A. Pretty much what he testified to today, almost
24 word for word as to -- how he's always described what
25 happened is that, you know, he basically -- he was

H. YOUNG -- DIRECT

1 putting some grills on -- on his truck. He gave me
2 some information about -- he mentioned about hitting
3 his head on the door jam. He mentioned to me that
4 there was a scuffle between him and a gentleman who he
5 was allowing to reside at his -- in one of his cabins.
6 And that the person assaulted him and pushed him, you
7 know, out of the way that caused him to hit his head on
8 the door. That person, we believe, was the one who sat
9 the -- the area on fire -- the cabin on fire and then
10 fled the scene. He got into his truck and drove over.
11 And the next thing you know, he was in the parking lot
12 of his doctor's office.

13 Q. Okay. And did you review the victim's
14 statements with Mr. Perego?

15 A. I did.

16 Q. And what - or I guess what evidence was in
17 discovery at that time?

18 A. You mean the evidence that was against him
19 or...?

20 Q. Correct.

21 A. There were -- there were a large number of --
22 of photos. There were a couple of videos primarily
23 from that night of the -- night of the fire. There
24 were statements from various witnesses and victims that
25 were out at the scene.

H. YOUNG -- DIRECT

1 Q. Okay. And from this, did you feel that there
2 were any viable defenses?

3 A. Well, I -- I had Mr. Perego's version of what
4 happened. And from there, you know, I hired an
5 investigator in order to develop anything that can
6 support what he said happened to establish that he was
7 not the one who set these places on fire or caused this
8 truck to go into the -- the restaurant that was there,
9 so that's what we were trying to establish. From day
10 one, this -- this thing was going to be a jury trial
11 based on what he shared with us.

12 Q. And did you -- did your investigator produce
13 anything that would have been helpful to Mr. Perego?

14 A. No.

15 Q. Can you elaborate?

16 A. For instance, the gentleman who was staying --
17 who he was allowing to stay at his -- his residence, we
18 made attempts to try to track that person down. We
19 were not successful on doing that. This whole thing
20 supposedly was over a land dispute. We were not able
21 to obtain copies of the leases that were involved in
22 the property. We did receive -- and I think his wife
23 provided some of this information, but some of the
24 titles to the cabins that were out at this location.
25 And then every witness that he would mention to us

H. YOUNG -- DIRECT

1 about going to speak with, we would -- the investigator
2 went out to talk with them, talk with Ms. Perego in
3 order to try to support his version of what happened.

4 Q. Okay. At any point, did anyone mention that
5 Mr. Perego was acting strangely?

6 A. I think his wife and I had a conversation a
7 few times about that. It may have been a couple of
8 times when his wife -- I believe it was his daughter
9 and their son-in-law would come to visit me, that we
10 would have that conversation. But it was -- it -- I
11 was concerned about his mental condition early in the
12 game. Because, as I stated, whenever I would go to
13 visit him, he would -- his version of what happened is
14 what he wanted to talk about. He didn't want to go
15 into anything else. Often times, if I -- if I tried to
16 direct him into another direction to speak on another
17 subject, we either came back to this -- to this same
18 version of what happened, or we would get stuck on his
19 medical issues, or the issues that he was having with
20 the personnel at the jail.

21 Q. Okay. And as a result of your concern, did
22 you do -- did you have Mr. Perego evaluated?

23 A. Yes.

24 Q. And what were the findings with that
25 evaluation?

H. YOUNG -- DIRECT

1 A. Well, initially I had him evaluated through a
2 State evaluation at the Department of Mental Health.
3 And, of course, that was for the competency and
4 criminal responsibility. They came back and issued a
5 report stating that -- that he was competent and
6 criminally responsible.

7 I had concerns as to, you know, the validity of
8 that finding, so that's when I retained the services of
9 Dr. Sallis to get a second opinion on it.

10 Q. Okay. And did you present Dr. Sallis as a --
11 a -- I guess -- a witness in mitigation at his plea?

12 A. Yes.

13 Q. Okay. And did she ever indicate that he was
14 not competent?

15 A. She didn't go as far as saying he was not
16 competent, but she did share with me that he was in --
17 I believe she either referred to it as the early stages
18 of dementia, or she may have used a term "moderate"
19 stage of dementia.

20 Q. And did she ever indicate that that could have
21 been why he committed these crimes?

22 A. No.

23 Q. Okay. And did she -- did you ever have
24 concerns that Mr. Perego might have been malingering?

25 A. Initially, no. I thought given his age, given

H. YOUNG -- DIRECT

1 the fact that the doctor said that he had some
2 dementia. I honestly thought that it was -- that that
3 was the factor, that it was just -- he was, at that
4 time, he was 89 years old, about to turn 90, I just
5 assumed that he was, you know, part of that aging
6 process as to why he was having trouble comprehending
7 stuff, so that's the reason why -- both the review of
8 the discovery stuff, that's the reason I -- you know, I
9 took my time and explained things to him because I
10 thought that that was a big issue.

11 Q. Okay. And you said "initially", did something
12 change your mind at some point?

13 A. After -- yeah. As -- as -- as we started
14 progressing, we started coming to the point of either
15 getting ready for a jury trial or accepting the plea
16 offer from the Solicitor, that the State started
17 listening to the recorded telephone calls of Mr. Perego
18 from the jail. And then -- then they turned -- after
19 Dr. Sallis issued her findings, she then made contact
20 with the people at the Department of Mental Health in
21 order to see if they did the same test that she did, to
22 see if they would view the same information, basically
23 making sure it was apples and apples as far as the
24 reports and stuff.

25 As a result of the Department of Mental Health's

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1 offer to re-do the evaluation to include the same
2 things that she included in hers, the State sent over
3 recordings of his telephone calls and included that,
4 and asked the Department of Mental Health to review
5 that.

6 So when they issued their second report, it made
7 reference to these -- these calls. I was provided a
8 copy of them. And the context of those calls made me
9 feel as though he was pretty much trying to pull the
10 wool over my eyes.

11 Q. Okay. Did you explain to Mr. Perego the
12 consequences of his plea?

13 A. Yes.

14 Q. And did you explain that this was an agreed
15 cap of ten years?

16 A. Yes.

17 Q. And did he seem to understand that as best as
18 he could?

19 A. We -- we discussed the plea option over the
20 course of a few visits by the -- in relations to the
21 effect of the recorded telephone calls on what I
22 believe to be, you know, an attack on his credibility
23 had we went to trial, so -- so based on all of that,
24 yes, I believe, he understood what -- what the plea
25 offer was and the consequences of it.

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1 My -- my general practice is to discuss it with
2 the client, leave it with them so that they have an
3 opportunity to discuss it with -- with family members
4 and people who they may trust more than me. And then I
5 come back to them in order to answer any questions and
6 get their response. So I did give him the opportunity
7 to discuss it with his wife.

8 Q. Okay. And what did you do at the plea to
9 accommodate Mr. Perego's hearing loss?

10 A. I went to the Best Buy over on Clemson
11 Boulevard and purchased a hearing magnifying device in
12 order to -- so that it will magnify the sounds that he
13 would hear.

14 Q. Okay. And did you argue -- or what did you
15 argue to the court in mitigation of his plea in terms
16 of his sentence?

17 A. The -- our objective at sentencing, even
18 though we had a cap of ten years, our objective was to
19 try to convince the judge that the appropriate sentence
20 was to place Mr. Perego on the HIP program, or Home
21 Incarceration Program, primarily because -- you know,
22 my -- my argument to the court was basically it's a
23 worse sentence than sending him to prison in my
24 opinion, because you know, he would bear the costs of
25 the electronic monitoring, which was \$350 or \$400 a

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1 month. He would have to be responsible for his own
2 medical needs. He would have to do, you know -- if he
3 gave him a five year period of home incarceration, he
4 would have to do the entire thing on home
5 incarceration. So, we were -- we were basically
6 arguing to try to get a home incarceration sentence so
7 we were presenting, you know, the information about his
8 age. The -- the minimum criminal history that he had
9 and he had some -- he had done some things in the
10 community, through his business affairs and
11 investments, too, you know, help develop areas of the
12 Anderson area -- Anderson County, so we were presenting
13 all of that in order to try to get the judge to
14 understand that -- or try to convince the judge that
15 that would be a -- a harsher, but better sentence in
16 the long run.

17 Q. Okay. And whose decision was it to plead
18 guilty?

19 A. Ultimately it was Mr. Perego's.

20 Q. And were you prepared for a trial if he had
21 said that he wanted to go to trial?

22 A. Yes. We were -- we were at the point where he
23 would either go to trial -- we either accept that pleas
24 offer or we were going to be placed on the trial docket
25 in order to resolve the case.

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1 **MS. OPPENHEIMER:** May I have the court's
2 indulgence?

3 **THE COURT:** Okay.

4 BY MS. OPPENHEIMER:

5 **Q.** When did you have Mr. Perego evaluated by Dr.
6 Sallis?

7 **A.** I don't remember the exact date, but it would
8 have been after the evaluation performed by the
9 Department of Mental Health.

10 **Q.** Do you remember about how long after the
11 incident this would have been?

12 **A.** No, I don't.

13 **Q.** Okay.

14 **A.** It would have been sometime in two thousand
15 and -- 2015.

16 **Q.** So about a year after the incident, maybe
17 longer?

18 **A.** Correct.

19 **Q.** Okay. And did Dr. Sallis ultimately agree
20 with the evaluators at DMH that he was competent and
21 criminal and responsible?

22 **A.** Ultimately, yes.

23 **Q.** Okay. At the plea, did you ever believe that
24 Mr. Perego couldn't hear anything?

25 **A.** I think he was having a hard time hearing.

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1 Whether or not he couldn't hear anything, I would say,
2 nah, he -- he -- he could hear what he wanted to hear.

3 **MS. OPPENHEIMER:** I have no further questions.

4 Thank you.

5 **CROSS EXAMINATION BY MS. ROSS:**

6 **Q.** Okay. I -- I didn't object when that question
7 was asked, but clearly you don't know what he could
8 hear and what he couldn't hear?

9 **A.** Not at all.

10 **Q.** And you're not a medical doctor?

11 **A.** Not at all.

12 **Q.** And you haven't had an audiologist test his
13 hearing?

14 **A.** Not at all.

15 **Q.** And as far as getting the hearing aid from
16 Best Buy, that's because he reported that he couldn't
17 hear to you?

18 **A.** Because he reported it to me, and because at
19 his bond hearing, he -- he reported that he wasn't able
20 to -- to hear.

21 **Q.** Now, are you aware of whether that would be
22 compliant with the American -- with the disabilities
23 act to get a hearing aid like that in a court of law?

24 **A.** No. No.

25 **Q.** Now, I just want to remove these -- excuse me

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1 -- bifocals -- I can't see far and close at the same
2 time. But so -- I'm going to hand you the DNH report,
3 that's a part of the record of the transcript, isn't
4 that correct, that was put into evidence by the State
5 during Mr. Perego's plea?

6 A. I would think so.

7 Q. Okay. Do you recall in that -- well, going
8 back to -- Mr. Perego was not dishonorably discharged,
9 he was honorably discharged?

10 A. That's correct.

11 Q. And he had VA assistance available to him?

12 A. That's correct.

13 Q. Because he was honorably discharged?

14 A. That's correct.

15 Q. Now, in that report, they report that he was
16 dishonorably discharged; don't they?

17 A. That is correct.

18 Q. And also in that, they talk about the criminal
19 history going back sometime, but those were no
20 convictions, were they?

21 A. That's correct.

22 Q. The first conviction he had was the
23 threatening letter conviction?

24 A. The one that he was put on probation, I
25 believe.

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1 Q. And -- and he was 85 at the time of that
2 incident; is that correct?

3 A. That's correct.

4 Q. And that was the first criminal record he had
5 when he was 85?

6 A. I think that's correct.

7 Q. But does the DMH evaluation leave you with the
8 impression --

9 A. I --

10 Q. -- given the way they talk about his criminal
11 history?

12 A. Actually it does because they report what they
13 -- they report -- they report criminal arrests, but not
14 criminal convictions.

15 Q. Okay. Okay. And is it just the second report
16 or the first and second report that they talk about
17 malingering; do you recall?

18 A. I don't recall specifically. It may have been
19 some information in the first report, but I know it was
20 definitely in the second one because that's when they
21 had the -- the recordings from the telephone calls.
22 And -- and they may have been the ones who ask for some
23 of the telephone calls, also, in doing their report.

24 Now, that I'm recalling, I think that they may
25 have been concerned about his behavior at their

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1 location, so they asked for the jail to pull some of
2 his telephone calls in order to determine how he was
3 interacting with his wife or other people that he was
4 talking to that were not in the same environment as the
5 evaluations.

6 Q. Okay. Now -- and that's all in the plea
7 transcript. That's all that the State and the
8 Solicitor is talking about, about he's faking it, he's
9 faking it, based mostly on these phone calls?

10 A. Oh, yeah. That's -- that -- that was a nugget
11 for the State.

12 Q. Now -- and you're not an expert, but you saw
13 Mr. Perego testify today, he can answer questions and
14 speak; is that correct?

15 A. Yes.

16 Q. But do you now believe at this time he now has
17 dementia to stand --

18 MS. OPPENHEIMER: Objection, Your Honor. He just
19 testified that he --

20 MS. ROSS: I'll withdraw the question.

21 THE COURT: Yeah. That's withdrawn.

22 MS. ROSS: Okay.

23 BY MS. ROSS:

24 Q. I'm approaching Mr. Young, do you recognize
25 this letter?

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1 **A.** Yes, it looks familiar.

2 **Q.** Okay. And what is it?

3 **A.** It looks like a letter from Dr. Sallis with a
4 summary of her findings.

5 **Q.** All right.

6 **MS. ROSS:** I would ask this be marked -- I ask to
7 enter this as Applicant's Exhibit 1.

8 **THE COURT:** Any objections?

9 **MS. ROSS:** No, Your Honor.

10 **THE COURT:** All right. Without objections.

11 (Applicant's Exhibit No. 1 received.)

12 BY MS. ROSS:

13 **Q.** Now, as you recall, is this basically
14 consistent with what Dr. Sallis testified to during the
15 plea?

16 **A.** I would assume so, yes.

17 **Q.** And in that, she talks about Mr. Perego having
18 dementia; right?

19 **A.** That's correct.

20 **Q.** And she talks about that being based on a CT
21 Scan, which is a brain scan?

22 **A.** Correct.

23 **Q.** And as she testified to, the results of a
24 brain scan cannot be faked or --

25 **A.** Correct.

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1 Q. She also talked about reflexes, reflective
2 actions like the knee?

3 A. Uh-huh.

4 Q. And she reports that those also can be
5 indicative of brain damage or dementia?

6 A. Yes.

7 Q. And -- and those cannot be faked either under
8 her opinion?

9 A. Correct.

10 Q. Okay. And you brought out all that during the
11 plea -- during the phone conversation that happened
12 during Mr. Perego's guilty plea?

13 A. Correct.

14 Q. Now, did you ever ask her the question whether
15 dementia or moderate brain damage can cause behavioral
16 changes specifically?

17 A. I do not recall specifically asking that, no.

18 Q. Okay. And just going back to the DHR
19 evaluation, you didn't go to Columbia for that
20 evaluation to be with Mr. Perego during the actual
21 evaluation?

22 A. That is not my practice to attend those
23 evaluations. I also -- I always make myself available
24 in case a client needs to speak with me.

25 Q. And, in fact, did he -- did someone call you

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1 and say that he wanted to speak with you?

2 A. That's correct.

3 Q. And at that point, you did speak with him or
4 you accommodated --

5 A. I did, yes.

6 Q. Okay. Now, I just got a couple of questions
7 that came up on direct. Ms. Lash, whose bar and grill
8 the car went into, she as not specifically evicting Mr.
9 Perego, she didn't own the same land, did she?

10 A. No. I think she was only involved because her
11 -- her business was destroyed.

12 Q. Okay. And when you say "destroyed", there's
13 some pictures that have been -- that were entered into
14 the record, but they show that there's a front
15 courtyard that the truck went through that and hit a
16 cinder block wall that was sort of knocked over and
17 still partially standing; is that your recollection?

18 A. Yeah. I remember it going through -- the
19 picture should have shown -- there was like I guess a
20 patio on the front of the -- the restaurant. There was
21 a barrier around it. And I believe the truck went
22 through that barrier, across the patio, and into the
23 actual restaurant.

24 Q. Okay. And I -- I apologize, this is my only
25 picture. But again, there's pictures in the record, is

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1 that basically what it showed?

2 A. Yeah. I think this was after the truck was
3 removed.

4 Q. All right.

5 A. Yeah. There were some pictures that had the
6 actual truck, I think, closer in there.

7 Q. Okay.

8 A. Because there was a gentleman who was in the
9 restaurant, who actually pulled it out a little bit of
10 what he -- from the -- so that the people that were in
11 the restaurant, if I recall correctly, I think they
12 were trapped in, and when -- he moved the truck out in
13 order to allow them to get out.

14 Q. Okay. And my understanding of the facts is
15 that he moved the truck out and backed into Mr. Perego?

16 A. I believe he ran into Mr. Perego as they were
17 -- as he was backing out. It's my understanding that
18 according to their testimony, is that Mr. Perego was
19 driving out. And as this guy was moving the truck
20 back, that they collided into each other. I don't
21 think he was like backing it out into the -- the
22 building specifically to try to hit Mr. Perego.

23 Q. Okay. And I guess I wasn't trying to say
24 that. As far as the time come -- my understanding,
25 reading the guilty plea, is that the truck hit the

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1 building, and then -- I'm forgetting his name -- Mr.
2 Fisher or the man at the scene, jumped in the truck
3 while it was still running and backed it back up?

4 A. And backed it back out. And as he was backing
5 it out, the truck that supposedly Mr. Perego was in,
6 was like leaving --

7 Q. Leaving the scene?

8 A. -- the area and he ran into the truck.

9 Q. And before that time -- this all happened --
10 so the truck was not in the building for a very long
11 period of time?

12 A. I --

13 Q. Well, you weren't there. Never mind.

14 A. I don't know --

15 Q. From the facts --

16 A. Yeah.

17 Q. Now, they talk about how the truck, that
18 there's some testimony that a piece of board was placed
19 up on the gas pedal of the truck to keep it -- to put
20 it into motion to hit this bar, was that ever
21 recovered?

22 A. I've never -- I've never seen it.

23 Q. So that was never part of any evidence, a
24 board?

25 A. No.

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1 Q. And the man who said he hopped in the car --
2 the truck and backed it up, didn't mention a board
3 being there?

4 A. I don't recall him mentioning that he removed
5 a board in order to move the truck.

6 Q. So from your investigation, what we had was a
7 truck rolling down a hill, set in motion somehow, but
8 rolling down a hill and running into his place of
9 business?

10 A. Correct.

11 Q. Now -- and with that, you didn't plea him to
12 attempted murder, did you? That was the indictment?

13 A. That's correct.

14 Q. But you recognize for attempted murder, there
15 has to be specific intent to kill a particular person
16 or persons?

17 A. I always argued that, yes.

18 Q. All right. And under recent law, it's
19 actually required now that the statute has been
20 changed?

21 A. Correct.

22 Q. Now, going back to assault and battery, you
23 pled to assault and battery high and aggravated nature?

24 A. That's correct.

25 Q. Now, looking at the transcript of the plea,

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1 was there any injury that is mentioned in the facts
2 that are given of that -- during that transcript, do
3 you recall that?

4 A. I don't recall anyone saying that they
5 suffered any type of injuries.

6 Q. And -- and there was testimony by Ms. Lash and
7 other people who were there? I don't say "testimony",
8 they gave statements during the plea and had ample
9 opportunity to make mention of the damage that was done
10 to their property and that kind of thing?

11 A. Right.

12 MS. ROSS: I beg the court's indulgence.

13 THE COURT: Yes, ma'am.

14 BY MS. ROSS:

15 Q. Now, are you aware personally that dementia
16 can cause behavioral changes such as aggression and
17 paranoria; is that within your common knowledge?

18 A. I -- I -- I have heard that and I've known
19 people who suffer from dementia, and I have not seen
20 that in them. But I heard through, of course, my
21 profession that that is a -- a -- that is a reaction
22 that could occur.

23 Q. And did you discuss that with Dr. Sallis?

24 A. I don't recall.

25 Q. And -- and -- and if the record doesn't

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1 reflect that you asked her about that specifically,
2 would you agree that you might not have asked her about
3 that specifically?

4 A. I think it's safe to assume that I didn't.

5 Q. And did you specifically ask her about
6 "malingering"?

7 A. Yes, we had a conversation about that.

8 Q. Okay. And would the record reflect the extent
9 of that conversation, did you ask about that during her
10 testimony during the plea?

11 A. Yes. I think that was why she, you know,
12 testified about, you know, not being able to fake like
13 the CT Scan and things of that nature. I think that
14 was the reason why she addressed those issues in order
15 to state that the -- that the dementia was not an act
16 of him, you know, trying to -- you know --

17 Q. And that was her testimony that the test that
18 she gave could not have been faked?

19 A. Correct.

20 Q. Correct. And -- and then after her testimony,
21 did the -- the Solicitor go on to make comments about
22 how Mr. Perego was faking it and telling the judge that
23 during the plea colloquy?

24 A. I'm sure he did.

25 Q. And did you make any objection to that?

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1 **A.** No.

2 **Q.** And also on page 55 of the transcript, line 2,
3 the Solicitor argues that Mr. Perego, in his colloquy,
4 did not address the crime in his response to the court,
5 and argued that that showed his lack of remorse; do you
6 recall that?

7 **A.** I don't recall it, but I read it here.

8 **Q.** Okay. And he goes on to say that Mr. Perego
9 was citing details of his World War II service, shows
10 that he must be faking it in order to argue Mr. Perego
11 was faking it and didn't have dementia, and that's
12 through all of page 55?

13 **A.** Right.

14 **Q.** Now, did you ever make any objection to that
15 or state that you just provided mitigating testimony
16 that Mr. Perego had physical manifestations of brain
17 damage and dementia?

18 **A.** I did not because I -- I -- Judge Sprouse is a
19 very bright man. And I mean the Solicitor is making an
20 argument that someone is faking, I think a judge
21 hearing a doctor say that the person couldn't have
22 faked dementia, I would assume that the judge was able
23 to decipher that difference.

24 **Q.** All right. And she wasn't there in the
25 courtroom to speak up or reply to that at that point

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1 because she -- the telephone conversation was over?

2 A. Right. And I don't know if she -- if she was
3 present in the courtroom because she would have brought
4 it out and responded to it.

5 Q. Okay. So you can't say one way or the other,
6 but if she had been there, she might have been able to
7 hear it and -- and to reply to that?

8 A. Sure.

9 Q. Now, when you talked about the cap of ten
10 years, which was the recommendation, did you discuss
11 parole eligibility with Mr. Perego at all?

12 A. I would have -- I would have went -- given him
13 a copy of the projections according to these -- the
14 Department of Corrections. They have on their websites
15 the estimated calculators. I would have inserted the
16 numbers in that calculator and printed off a form to
17 show him what the projections were, but I would have
18 informed him that those are just estimates, and there
19 are other factors that can factor into whether or not
20 he ever gets any type of, you know, release on parole
21 or anything else.

22 Q. Okay. And in doing that, is that your regular
23 practice to do that?

24 A. Yes.

25 Q. Okay. And you testified a little bit earlier

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1 about sometimes when you would go and talk to him, it
2 was difficult to discuss the evidence because he would
3 stick to his story and continue talking about his
4 medical --

5 A. Correct.

6 Q. -- problems -- did you feel that he understood
7 anything that you were talking about with 85 percent,
8 did he seem lucid at the time you discussed that with
9 him?

10 A. Yes.

11 Q. Okay.

12 A. I wouldn't have took him before the judge if
13 he didn't understand what we were going -- what was
14 happening.

15 Q. Now, the -- going to the -- you appealed the
16 case after the plea; correct?

17 A. Correct.

18 Q. And you did not appeal the probation
19 revocation, did you?

20 A. I did not. That may have been an oversight on
21 my office because the probation case originated out of
22 another county that we probably didn't have -- I never
23 in my file -- there is like no paperwork regarding his
24 -- his probation case other than at best, I would have
25 had like his sentencing sheet.

1 **Q.** Okay. So --

2 **A.** Or could --

3 **Q.** Do you have any information to -- to mitigate
4 or address his probation violation at all because it
5 was in a different county?

6 **A.** I don't think I even addressed the probation
7 matter.

8 **MS. ROSS:** Beg the Court's indulgence.

9 **THE COURT:** All right.

10 **MS. ROSS:** I have no further questions.

11 **THE COURT:** Okay. Anything else from the State?

12 **MS. OPPENHEIMER:** Briefly, Your Honor.

13 **REDIRECT EXAMINATION BY MS. OPPENHEIMER:**

14 **Q.** At the plea, was Mr. Perego able to answer the
15 questions that the judge asked him?

16 **A.** Yes.

17 **Q.** And he said he understood those questions?

18 **A.** Yes.

19 **Q.** And as far as his military service, were you
20 able to put that on the record in mitigation?

21 **A.** I believe we did. That was one thing that Mr.
22 Perego was -- he was just very firm on the fact that
23 the report from DMH was wrong, and we hadn't corrected
24 -- I mean, we even tried to get the records from the VA
25 in order to -- to present to them to show that he

1 was honorably discharged. Now, I believe his wife
2 eventually provided us with something regarding that.

3 Q. Okay. And with regards to this letter from
4 Dr. Sallis, this would have been before she found out
5 about the malingering; correct?

6 A. I think it was.

7 Q. Okay. And after she found out about the
8 malingering, she kind of changed her tune a little bit?

9 A. A little, yes. And basically while she still
10 held fast to the findings from the CT Scans and the
11 tests that she performed, she also found that there may
12 have been some malingering behavior exhibited by him.

13 Q. Okay. And if y'all had gone to trial, what
14 potential sentence was Mr. Perego facing?

15 A. A couple of the charges had 30 years on them,
16 so he was probably looking at easily 120 years
17 minimum.

18 Q. And this was an agreement to a cap of ten
19 years?

20 A. That's correct.

21 Q. Okay. And did Mr. Perego ever ask you to
22 appeal the probation revocation?

23 A. His only request was for me to file an
24 appeal.

25 Q. Okay.

1 **A.** So I filed the appeal and -- to be honest with
2 you, I probably should have included the probation
3 warrant number on the appeal notice of -- it was like
4 under the radar because it was another county --

5 **Q.** Do you believe there is any appealable issue
6 from the probation revocation?

7 **A.** No. The conviction alone was a violation.

8 **MS. OPPENHEIMER:** No further questions.

9 **THE COURT:** Okay. Anything else on redirect(sic)?

10 **MS. ROSS:** Just one.

11 **REXCROSS EXAMINATION BY MS. ROSS:**

12 **Q.** Mr. Young, in reply to Mr. Perego following
13 what's going on in the plea, isn't it true somewhere in
14 this plea colloquy that he blurted out, "I didn't hit
15 anybody" or "I didn't hurt anybody" or something to
16 that effect? Do you recall that?

17 **A.** Yes. He did that and he -- he interrupted and
18 was often telling me things during the course of the
19 plea, which indicated to me that he was able to hear
20 some of the stuff that was going on that he's now
21 saying that he didn't hear.

22 **Q.** And did you ever make any effort to withdraw
23 the plea?

24 **A.** No.

25 **Q.** Okay.

1 **MS. ROSS:** I've got no further questions.

2 **THE COURT:** Okay. Thank you, sir. You can step
3 down. Are you on any others today?

4 **THE WITNESS:** No, sir, Your Honor.

5 **THE COURT:** Can he be released from any
6 subpoena?

7 **MS. OPPENHEIMER:** Yes, he can.

8 **THE COURT:** You are released and free. Thank you,
9 Your Honor. Good seeing you again.

10 **THE WITNESS:** Likewise. Have a good one.

11 **THE COURT:** You, too. Be safe. Other than what
12 we're leaving open, is there anything else from either
13 party?

14 **MS. ROSS:** I have something, just briefly. Just
15 going to the -- the plea being -- the facts being in
16 the case, I would just hand up Didier Van Sellner 787
17 SE 2nd 525, and it just shows there has to be a factual
18 basis for the plea. Here, there's no indication in the
19 plea colloquy of physical injury. While I understand
20 ABHAN is the lesser included of the attempted murder, I
21 would also argue that the attempted murder, especially
22 as it exist now, requires a specific intent to kill. A
23 person who, with intent to kill, attempts to kill
24 another person with malice aforethought.

25 Here, I would invite you to look at the pictures

1 of this bar and grill. It's not driven through the bar
2 and grill, it's just driven -- it's certainly -- not
3 driven, but rolled and hits a wall, but there is no
4 apparent specific intent to kill shown by that, or what
5 was stated in the plea colloquy as to what happened,
6 the facts of the case --

7 **THE COURT:** Was Van Sellner after this case?

8 **MS. ROSS:** I'm not sure. I just --

9 **THE COURT:** I mean, I can look at the dates. I
10 just figured it out --

11 **MS. ROSS:** That was June 2016, and this plea was
12 in May 2016, so that's afterwards. But there is some
13 -- obviously Pitman and all the guilty plea --

14 **THE COURT:** Yeah.

15 **MS. ROSS:** -- language goes to where there has to
16 be a factual basis for the plea, and the plea has to be
17 knowingly and voluntarily made.

18 As far as the assault and battery of a high and
19 aggravated nature, here if a person unlawfully injures
20 another and great bodily injury occurs or likely to
21 produce death, it is requiring an injury to ABHAN, and
22 there's no injury mentioned in the facts that were
23 presented to the court during the plea colloquy, so we
24 would argue that just to support that -- that specific
25 arguments. The others I think are clear from the

1 record.

2 **THE COURT:** Sure.

3 **MS. ROSS:** Thank you.

4 **MS. OPPENHEIMER:** Your Honor, we just ask to be
5 able to brief this issue. We haven't had time to
6 review Vanfelder --

7 **THE COURT:** Sure.

8 **MS. OPPENHEIMER:** In detail.

9 **THE COURT:** Yeah. Take -- I mean, obviously I
10 think you've going to have a little bit of difficulty
11 time-wise. I'm the worst in the State for under
12 advisements. It's just my fault. So take 30 days to
13 brief, and if you need more time to do Dr. Sallis, let
14 me know. Okay. Thank you.

15 **MS. ROSS:** Thank you. Just -- could I just ask
16 what -- do you feel that more testimony from Dr. Sallis
17 would help you in fact finding?

18 **THE COURT:** Not really. I mean, I -- I would --
19 no, to be honest with you, no.

20 **MS. ROSS:** All right. Thank you.

21 **THE COURT:** I mean, I think that my findings of
22 fact in the order might be somewhat less. But I can't
23 imagine anything. I would almost take judicial notice
24 that dementia might cause a lack of impulse control.

25 **MS. ROSS:** Okay. Thank you, judge.

1 **THE COURT:** Okay. Thank you.

2 (Whereupon, the hearing adjourned.)

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4 * * * END OF TRANSCRIPT * * *

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1 CERTIFICATE OF REPORTER

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3 I, SHARON D. JONES, CERTIFIED COURT REPORTER,
4 DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
5 ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
7 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
8 COMMON PLEAS FOR ANDERSON COUNTY ON THE 21ST DAY OF
9 2018.

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

12

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14 8/7/2018

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Sharon D. Jones

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SHARON D. JONES,
CERTIFIED COURT REPORTER
MY COMMISSION EXPIRES 9.22.2024

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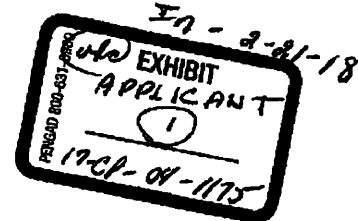
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Palmetto Center of Psychiatry

March 3, 2016

Mr. Hervery B. O. Young
Tenth Circuit Public Defender Office
Anderson County Office
301 Camson Road
Anderson, S.C. 29625

Re: Edrick Norris Perego



Dear Mr. Young,

Upon receipt of your request, I evaluated Edrick Perego at the Anderson County Detention Center on December 15, 2015 and on February 10, 2016 (a combined total of four hours) for purposes of rendering a professional opinion in regards to Mr. Perego's competency to stand trial. In addition to these forensic interviews, I have reviewed discovery materials pertinent to his current charges as well as available medical records from Anderson County Detention Center, AnMed Health, and Fair Play Family Medicine. Also, I reviewed reports from the SC Department of Mental Health (Competency to Stand Trial and Criminal Responsibility/Capacity to Conform Evaluations completed in March 2015).

It is clear that Mr. Perego manifests multiple symptoms of Neurocognitive Disorder (commonly known as dementia). His symptoms include memory and language problems, poor attention, and disturbances in his executive functioning. These impairments represent a decline from his previous level of functioning. Mr. Perego's performance on the Mini-Mental Status Examination (MMSE, a limited screening test for dementia) revealed a mild to moderate degree of cognitive impairment. Mr. Perego's performance on the Montreal Cognitive Assessment (MoCA, a more sensitive test of cognitive impairment) revealed moderate impairments with deficits consistent in multiple cognitive domains from the first to the second evaluation. The findings on these tests are supported by changes detected on a CT scan of his head from June 5, 2014 that shows generalized cortical atrophy and brain changes consistent with vascular disease (specifically arteriosclerotic small vessel disease). To my current knowledge, no proximal MRI or subsequent brain scans have been done. Also consistent with the above findings, neurological examination revealed a combination of primitive reflexes that are found with higher prevalence in patients with dementia compared to normal elderly people. There is no indication that Mr. Perego is feigning the symptoms found in this evaluation.

Based on the currently available information, it is my professional opinion, offered to a reasonable degree of medical certainty, that Mr. Perego currently meets diagnostic criteria for Neurocognitive Disorder. Medical history and neuroimaging suggest that his dementia is a derivative of vascular disease, but it is possible that his cognitive

impairments have a comorbid origin in Alzheimer's disease. As Mr. Perego's memory problems and cognitive impairments are moderate in severity and impair his memory, attention, and rational thinking abilities, it is my professional opinion, offered to a reasonable degree of medical certainty, that Mr. Perego is not competent to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981), and S.C. Code Ann. §43-23-410 (1976). Furthermore, given the irreversible and progressive nature of dementia, as well as limitation of reasonable treatment options, it is my professional opinion, again offered to a reasonable degree of medical certainty, that Mr. Perego will not become fit to stand trial in the foreseeable future.

Amanda B. Salas, MD

Amanda B. Salas, MD
Consulting Forensic Psychiatrist

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Edrick Perego, #368192,	)	Case No. 2017-CP-04-01175
Applicant,	)	
	)	
v.	)	RESPONDENT'S POST-HEARING
	)	MEMORANDUM
State of South Carolina,	)	
Respondent.	)	

ISSUE PRESENTED

Can Applicant's guilty plea be considered knowingly, voluntarily, and freely entered into when there was no factual basis presented for assault and battery of a high and aggravated nature presented at the plea but there was no prejudice to Applicant, as he substantially reduced his potential sentence exposure by pleading guilty?

FACTS PRESENTED AT THE PLEA

On June 5, 2014, Becky Lash was working inside the restaurant she owned, Tiger Cove Grill. Katie Pigeon and Joseph Brushwood were also working. Harold Flowers had just entered the restaurant as well. During that time, the Anderson County Sheriff's Office was evicting Applicant from his home across the street from the restaurant. Applicant was then seen setting some wood in the back of his truck on fire, starting the truck, and placing a stick of wood between the gas pedal and the seat, allowing the truck to move on its own. Applicant proceeded to let the truck drive into the restaurant while Ms. Lash, Ms. Pigeon, Mr. Brushwood, and Mr. Flowers were inside. Ms. Lash, who was in her office at the time, was unable to get out of the building. Mr. Flowers was then able to get into the truck, remove the stick of wood that Applicant placed between the gas pedal and the seat, and reversed the truck out of the restaurant. In doing so, Mr. Flowers ran the truck into Applicant, who was driving his other truck at the

time. Applicant was subsequently arrested, and the State charged him with two counts of attempted murder and two counts of arson third-degree. On May 13, 2016, Applicant appeared before the Honorable R. Scott Sprouse and pled guilty to two counts of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN) and as indicted to two counts of arson third-degree for an agreed cap of ten years imprisonment. Judge Sprouse sentenced Applicant to a term of imprisonment of ten years for each charge and simultaneously revoked Applicant's probation on two prior solicitation to commit a felony charges,¹ requiring Applicant to serve ten years imprisonment on both of those charges as well. All sentences were to run concurrently.

FACTS PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified he neither hurt anyone nor planned to hurt anyone. Applicant further testified he bears no ill-will against Ms. Lash. He also testified he did not place a stick in between the gas pedal and the seat of his truck, causing it to run into the Tiger Cove Grill. Rather, Applicant testified, he was in his other truck at the time, hit his head on the door of this truck, and woke up at his doctor's office, where he was arrested.

Hervy Young, Esquire, Applicant's plea counsel (hereinafter "Counsel"), also testified at the evidentiary hearing. He testified he does not recall whether or not any physical injury was mentioned at the plea proceeding. Counsel testified at the time of Applicant's plea, he gave him a version of the facts, which are similar to those to which Applicant testified at the evidentiary hearing. Counsel elaborated Applicant was adamant that he was working on his other truck at the time of this incident, hit his head on the doorjamb, got into a fight with one of his renters,

¹ In 2012, the Anderson County Grand Jury indicted Applicant for one count of solicitation to commit assault and battery and one count of solicitation to commit kidnapping. On April 16, 2013, Applicant appeared before the Honorable Alexander S. Macaulay and pled guilty as indicted. Judge Macaulay sentenced Applicant to ten years imprisonment suspended on the service of thirty-four days with five years' probation.

who pushed Applicant and started the fire, and got into his truck and woke up in the parking lot of his doctor's office. Counsel testified he hired an investigator to delve into Applicant's version of the facts, but that investigation was unsuccessful. He elaborated the investigation did not produce anything that would have been helpful to Applicant, and he could not locate Applicant's alleged renter.

Counsel testified had Applicant gone to trial, he was facing 120 years imprisonment. He further testified he explained the consequences of pleading guilty to Applicant and also explained the agreement with the State to a cap of ten years. He elaborated he had these conversations with Applicant over the course of a few visits with Applicant, especially as they were related to phone calls evidencing malingering on the part of Applicant. Counsel testified he also gave Applicant a copy of projected parole dates according to South Carolina Department of Corrections calculators, and it is his normal practice to do so. He expounded he explained to Applicant that these were merely projections and other factors could affect parole eligibility. He elaborated he believed Applicant understood the offer and the consequences thereto. He explained his practice is to discuss any plea offers with the client and then allow the client to have time to discuss with their family and ask any questions they may have. Counsel testified it was Applicant's decision to plead guilty, and he was prepared to proceed to trial if Applicant had indicated that was what he wanted to do. He further testified he would not have taken Applicant to a plea if Applicant did not understand what was happening.

ANALYSIS

It cannot be said that Applicant's guilty plea to ABHAN was not knowingly, voluntarily, and freely entered into based on the fact that there was a lack of physical injury, as Applicant significantly reduced his potential sentence exposure by pleading guilty to a lesser-included

offense of attempted murder. Before a guilty plea may be accepted, the court must be certain the defendant understands the charge and the consequences of the plea. *State v. Armstrong*, 263 S.C. 594, 211 S.E.2d 889 (1975). In addition, the record must indicate a factual basis for the plea. *Id.* However, “*Armstrong* does not mean that the state may not offer a defendant, charged with a greater offense, an opportunity to plead guilty to a lesser offense, notwithstanding the factual basis does not precisely comport with the lesser offense.” *Anderson v. State*, 342 S.C. 54, 57-58, 535 S.E.2d 649, 651 (2000). In fact, a plea to any lesser-included offense is sufficient as long as there is a sufficient factual basis to support the crime for which the defendant is indicted. *Id.* at 58, 535 S.E.2d at 651. Moreover, the decision to accept a guilty plea to a lesser-included offense despite the lack of a factual element to support that offense can be interpreted as a “tactical maneuver to avoid the very real possibility that the jury might come back with a verdict of [the indicted charge].” *Id.*

“A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.” S.C. Code Ann. § 16-3-600(B)(1). On the other hand, ABHAN occurs when there is an unlawful injury to another person and either great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury. S.C. Code Ann. § 16-3-600(B)(1). ABHAN is a lesser-included offense of attempted murder. S.C. Code Ann. § 16-3-600(B)(3).

Here, the Anderson County Grand Jury indicted Applicant for two counts of attempted murder, and he pled guilty to two counts of the lesser-included offense ABHAN. Had Applicant proceeded to a jury trial for the two counts of attempted murder, Applicant faced a term of imprisonment of up to 120 years. By pleading guilty, however, Applicant significantly reduced

his potential sentence exposure from up to 120 years imprisonment to an agreed cap of ten years imprisonment.

In addition, the State's evidence against Applicant was significant. Various eyewitnesses saw Applicant set the wood in the truck on fire and manipulate it so that it would drive into Tiger Cove Grill. Applicant, enraged from being evicted from his home, decided to take his aggression out on the property both that he occupied and that was conveniently situated across the street. Applicant not only set his own house on fire but also manipulated a burning truck so that it would ram into the restaurant across the street. From this, the jury could infer Applicant wanted to take his aggression out on the closest possible source, Tiger Cove Grill across the street, thereby inferring Applicant had the requisite intent to kill when he committed these acts. Moreover, it is from this very conduct, which shows a total disregard of the value of human life, from which a jury could have inferred malice. With the very real possibility of being convicted for attempted murder, Applicant's decision to plead guilty to the lesser-included offense of ABHAN can only be viewed as a tactical maneuver.

Applicant cites to *Van Sellner v. State*, 416 S.C. 606, 787 S.E.2d 525 (2016), in support of his argument. There, Van Sellner entered into a bank and approached the teller with a note requesting \$3,000 with no dye packs and indicating if she did not comply, he would shoot. *Id.* at 608, 787 S.E.2d at 526. Van Sellner neither had a weapon at the time nor made any physical indication that he had a weapon on his person. *Id.* at 609, 787 S.E.2d at 527. The State charged Van Sellner with armed robbery, and he subsequently pled guilty as indicted. *Id.* at 608-09, 787 S.E.2d at 526. The Supreme Court of South Carolina held "plea counsel's advice to Van Sellner that he could be convicted of armed robbery without proof of a physical representation of a deadly weapon rendered plea counsel's performance deficient." *Id.* at 612, 787 S.E.2d at 528.

Applicant's case can be distinguished from *Van Sellner*. There, Van Sellner was originally charged with a crime to which there was no factual basis. Here, however, Applicant was originally charged with attempted murder. As aforementioned, there was ample evidence from which a factual basis to attempted murder could be established. Therefore, Applicant's cite to *Van Sellner* in support of his argument that the lack of physical injury to the victims rendered his guilty plea involuntary is wholly without merit. As there was a factual basis for the charge for which Applicant was indicted, the plea to the lesser-included offense was sufficient.

CONCLUSION

Consequently, it is irrelevant that Applicant pled guilty to ABHAN when there was a lack of physical injury to the victims. By pleading guilty to ABHAN, Applicant got the benefit of the bargain and significantly reduced his potential sentence exposure. Furthermore, Applicant avoided the very likely possibility that he would be convicted of attempted murder. Given his age and health, Applicant's decision to plead guilty can only be considered a strategic maneuver to shorten his term of imprisonment as much as possible. Therefore, Applicant's guilty plea was knowingly, voluntarily, and freely given.

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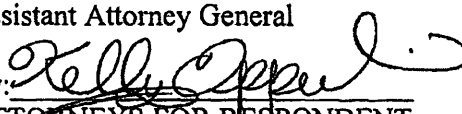
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 27, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
EDRICK PERIGO,	)	APPLICANT'S REPLY TO
	)	THE RESPONDENT'S POST-HEARING
v.	)	MEMORANDUM
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	CASE # 2017-CP-04-1175
	)	

This matter comes before the Court by way of application of post conviction relief filed March 13, 2017, alleging ineffective assistance of trial counsel and Due Process violations. A hearing was held February 21, 2018. The record was left open for the State to address the issue of whether the guilty plea was knowingly and voluntarily made when there was no factual basis for the charge of ABHAN presented in the facts of the case and whether plea counsel was ineffective for advising Mr. Perego to plead guilty when there was no factual basis for the plea.

On February 27, 2018, the State submitted a post hearing memorandum. Citing *Anderson v. State*, it argued that because Mr. Perego got the benefit of a bargain by pleading to a lesser-included offense of the attempted murder for which he was indicted, the plea was advised for strategic reasons and knowingly, voluntarily and freely given. *Anderson v. State*, 342 S.C. 54, 57-58, 535 S.E.2d 649, 651 (2000). However, *Anderson* recognizes there must at least be a sufficient factual basis for the indicted offense to support a plea to a lesser-included offense. *Id.* at 58 & 651.

Van Selner v. State is applicable in this matter because facts presented in Mr. Perego's plea do not include physical injury, attempt to kill with malice aforethought, or intent to kill, and do not form a sufficient factual basis for either the indicted charge of attempted murder or ABHAN. (See plea transcript pp 13-19) *Van Selner v. State*, 416 S.C. 606, 787 S.E.2d 525

(2016). Unlike purposely running a car into a person with intent to kill them, which may factually support attempted murder, setting a vehicle in motion toward a building does not. For comparison, shooting at a person with intent to kill may factually support attempted murder, but shooting at a building regularly occupied by persons does not. That act factually supports the class E felony of discharging firearms into dwellings which is codified under SC Code Sec. 16-23-440. The fact that Mr. Perego is nearly deaf and suffered from dementia as evidenced throughout the plea transcript further undermines the knowing and voluntary nature of the plea.

Plea counsel was ineffective for advising Mr. Perego to plea when the facts of the case did not amount to attempted murder. The strategic nature of the plea is brought into question because Mr. Perego did not benefit from pleading to ABHAN. If the case made it beyond directed verdict, it is highly unlikely a jury would convict a nearly deaf, octogenarian, World War II veteran with moderate dementia of attempted murder which requires both an attempt to kill with malice aforethought and specific intent to kill. The lack of physical injury to a person in this case would not support a jury charge for ABHAN under Sec. 16-3-600(B). This leaves the next lesser-included of assault and battery, first degree under Sec. 16-3-600(C) (1)(b)(i), a class E felony as a potential charge supported by the facts of the case. At best a guilty plea to assault and battery, first degree, could be argued to be a potentially strategic guilty plea option, not a plea to ABHAN.

Respectfully submitted,


 Susannah Ross
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

This 5 day of March 2018

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

EDRICK PEREGO,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)

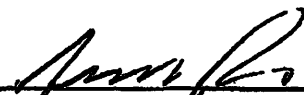
IN THE COURT OF COMMON PLEAS

2017-CP-04-1175

AFFIDAVIT OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Applicants Reply to Respondent's Post-hearing Memorandum on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211
Attn: Kelly Opppenheimer


Attorney for Defendant

This 5th day of March, 2018

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Edrick Perego, #368192,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2017-CP-04-01175

ORDER OF DISMISSAL APR - 2 2018

A TRUE COPY

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GENERAL SESSIONS
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed June 5, 2017. Respondent made its Return and Partial Motion to Dismiss on September 12, 2017, requesting all allegations arising from Applicant's 2012 guilty plea be summarily dismissed as time barred and requesting Applicant's allegation of improper medical care be summarily dismissed for failing to state a cognizable claim under the Uniform Post Conviction Procedure Act. Respondent requested an evidentiary hearing on all other claims. Thereafter, Applicant, through his counsel filed an amended application for post-conviction relief on February 15, 2018. An evidentiary hearing was convened on February 21, 2018, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Susannah C. Ross, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Anderson County Grand Jury indicted Applicant for two counts of third-degree arson during its September 2014 term (2014-GS-04-01598) and for two counts of

attempted murder during its October 2014 term (2014-GS-04-01834;-01835). Hervery Young, Esquire represented Applicant on these charges. On May 13, 2016, Applicant appeared before the Honorable R. Scott Sprouse, where he pled guilty as indicted to two counts of third-degree arson and to two counts of assault and battery of a high and aggravated nature as a lesser-included offense of attempted murder. Judge Sprouse sentenced Applicant to ten years imprisonment for each charge. At the time of this conviction and sentence, Applicant was serving a probationary sentence for solicitation to commit assault and battery and solicitation to commit kidnapping.¹ Consequently, Judge Sprouse revoked Applicant's probation in full, requiring him to serve ten years imprisonment for each Solicitation charge. All sentences were to run concurrently.

Applicant filed a timely notice of appeal, and Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense, Office of Appellate Defense represented Applicant. On December 15, 2016, the South Carolina Court of Appeals issued an Order indicating that Applicant, with full understanding of all possible consequences and with agreement of counsel, withdrew his appeal. The Remittitur was issued on January 3, 2017.

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

1. Guilty plea not knowingly, intelligently, and voluntarily entered;
 - a. No factual bases for plea;
 - b. Did not understand sentencing.
2. Ineffective assistance of plea counsel;
 - a. Failed to object to unconstitutional sentence;
 - b. Failed to appeal from probation cases;
 - c. Failure to investigate.
3. Ineffective assistance of appellate counsel; [and]

¹ On April 16, 2013, Applicant appeared before the Honorable Alexander S. Macaulay and pled guilty as indicted to one count of solicitation to commit assault and battery and one count of solicitation to commit kidnapping. Judge Macaulay sentenced Applicant to a term of imprisonment for ten years, suspended on the service of thirty-four days with five years' probation.

- a. Advised to drop direct appeal.
- 4. Unconstitutional sentence (violation of 8th Amdt).
 - a. De facto life sentence violates prohibition against cruel and unusual punishment and is disproportionate;
 - b. Failure to provide proper medical care.

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

- 1. Ineffective assistance of plea counsel for advising Mr. Perego to plead guilty, allowing victim testimony regarding unsubstantiated allegations of criminal acts by Mr. Perego after he was imprisoned, and failing to effectively use evidence of Mr. Perego's diagnosis of dementia as mitigation of his conduct; [and]
- 2. Due process violations due to the plea not being knowingly and voluntarily made, non-compliance with the ADA due to failure to accommodate Applicant's hearing loss, and no factual basis for ABHAN in the record.

At the hearing, Applicant proceeded forward on the claims in his amended application for post-conviction relief, as well as his allegations of ineffective assistance of counsel for failure to appeal from the probation cases and failure to investigate, which were raised in his original application.

STATEMENT OF FACTS ADDUCED AT THE PLEA

On June 5, 2014, Becky Lash was working inside the restaurant she owned, Tiger Cove Grill. Tr. 13. Katie Pigeon and Joseph Brushwood were also working. Tr. 14. Harold Flowers had just entered the restaurant as well. Tr. 14. During that time, the Anderson County Sheriff's Office was evicting Applicant from his home across the street from the restaurant. Tr. 13. Applicant was then seen setting some wood in the back of his truck on fire, starting the truck, and placing a stick of wood between the gas pedal and the seat, allowing the truck to move on its own. Tr. 14. Applicant proceeded to let the truck drive into the restaurant while Ms. Lash, Ms. Pigeon, Mr. Brushwood, and Mr. Flowers were inside. Tr. 14. Ms. Lash, who was in her office

at the time, was unable to get out of the building. Tr. 14. Mr. Flowers was then able to get into the truck, remove the stick of wood that Applicant placed between the gas pedal and the seat, and reversed the truck out of the restaurant. Tr. 14. In doing so, Mr. Flowers ran the truck into Applicant, who was driving his other truck at the time. Tr. 14. Applicant was subsequently arrested.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of Janice Perego and Jessica Ford. Respondent presented testimony from plea counsel, Hervery Young, Esquire (hereinafter "Counsel"). This Court also had before it a copy of Applicant's plea transcript, the records of the Anderson County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified Counsel advised him to plead because he had talked to the solicitor and arranged for Applicant to be sentenced to monitored house arrest if he pled. He testified he talked to his wife about this, but ultimately that was not what happened. Applicant also testified he did not know to what he pled, and he cannot recall his plea proceeding. He also testified he did not remember going over his potential sentence with the plea court. He testified he neither hurt anyone nor planned to hurt anyone. He testified he does not know Ms. Lash personally, and he bears no ill will towards her and has not communicated with her. He testified he did not place a stick in his car to rig it to drive into the bar. He testified he was in his other truck at the time, hit his head on the door, and woke up at his doctor's office in Fair Play, where he was arrested.

He testified he could not hear what the witnesses were saying at his plea, and he did not know what was happening. He elaborated Counsel gave him a hearing aid, but it was not

working. He further testified he could hear a few words at the beginning of the plea but nothing else.

Applicant also testified he was taking blood thinners for atrial fibrillation (AFIB), and they did not agree with him and would cause him to black out. He elaborated he still suffers from side effects today even though he stopped taking these medications. He further testified his medications make him pass out, and he will not know anything that happened for eight to ten hours at a time. He testified his medication can be dangerous if not monitored and his were not monitored properly. He further testified he has chest pains and has a pacemaker. He elaborated his first pacemaker failed, so he had to undergo another operation.

Applicant testified he does not recall his evaluation at the Department of Mental Health. He testified, however, Counsel made arrangements for him to be evaluated, but he did not know what the evaluations were regarding. He testified his memory comes and goes. He did testify that Dr. Salas was not at the Department of Mental Health, but she had a lawyer with her when she evaluated him. He testified he did not think he could answer questions about his case at the Department of Mental Health, so he called Counsel to discuss it with him and because he did not believe anyone other than the psychiatrist could be present at his evaluation. He testified Counsel was not present at his meeting with Dr. Salas. He further testified he did not believe that faking his symptoms would exonerate him.

Applicant also testified Counsel was not prepared for trial, but Applicant wanted to proceed to trial. He elaborated he wanted the truth about his medications to come out at trial. He testified he met with Counsel approximately two or three times, but it could have been greater or fewer. He testified that during these meetings, Counsel brought pictures to review with him one time. He testified Counsel did not seem interested in his case, and he did not feel

Counsel would help him. He testified he gave Counsel leads to investigate, but, as far as he was aware, Counsel did not contact anyone. He testified he told Counsel he wanted to go to trial, but Counsel told him to plead guilty instead. He elaborated that despite his desire to proceed to trial, he pled guilty.

Applicant next presented testimony from Janice Perego, who was his wife for eighteen years. She testified at the time of this incident, she and Applicant were separated, and she was living somewhere else at the time. She elaborated that she was not there when this incident occurred, but she spoke to Applicant the day before. She elaborated she believed Applicant was suffering from the beginning stages of dementia. She elaborated at the time, Applicant would repeat himself and would stumble, which was not normal for him. She testified she has no medical training and cannot diagnose Applicant. She also testified she made the investigator aware of Applicant's unusual behavior, and she also told Counsel she thought something was wrong with Applicant. She testified she spoke at Applicant's plea and did not mention that he was acting strangely at the time because she was nervous and forgot. She further testified she would have been willing to testify at trial.

Next, Applicant presented testimony from Jessica Ford, his granddaughter. She testified Counsel did not ask her any questions about Applicant's behavior. She further testified she was with Applicant the night before this incident; and on that night, Applicant left the house and could not find his way home, so he slept in his truck at her grandmother's house. She elaborated that getting lost was not normal behavior of Applicant, and she noticed some changes in him. She also testified Applicant was forgetful and would call her by the wrong name. She testified she did not have any medical training. She also testified that she was not a witness to this incident. She testified she spoke at Applicant's plea and did not mention to the plea court that

Applicant's behavior had changed because she did not think it was important enough to mention. She elaborated that no one asked her about changes in Applicant's behavior.

Following Applicant's case, Respondent presented testimony from Counsel. Counsel testified he has been practicing law for approximately twenty years. He testified he is currently employed with the South Carolina Commission on Indigent Defense, but during the time of Applicant's plea, he was the Circuit Public Defender for the Tenth Judicial Circuit Public Defender's Office. He testified he worked as the Circuit Public Defender for approximately four years. He testified he was assigned to Applicant's case after his indigency screening, which would have been shortly after Applicant's arrest. He testified he met with Applicant approximately twenty to twenty-five times between Applicant's arrest and plea, which was over the course of two years. He further testified he reviewed the discovery with Applicant over the course of several visits, and he reviewed small amounts of discovery at a time with Applicant due to his age. He elaborated the State had videos and photographs from the night of the incident, statements of witnesses, as well as statements from the victims. He testified he reviewed the various statements with Applicant. He testified Applicant was very specific as to his version of the facts: Applicant was working on his other truck, hit his head on the doorjamb, had a scuffle with a renter who pushed him and started the fire, got into his truck, and woke up in the parking lot of his doctor's office. He further testified he hired an investigator to develop any support for Applicant's version of the facts, but this investigation did not produce anything that would have been helpful. He elaborated he attempted to find Applicant's tenant, who Applicant alleged started the fire, but was unable to locate him. He further testified he investigated a possible land dispute in the surrounding area, but he could not find any leases for the property. He also testified Ms. Perego provided him with the titles to the cabins in the surrounding area.

He further testified his investigator tracked down all of the possible witnesses and spoke to them. He testified from day one, he was preparing to go to trial.

Counsel testified Ms. Lash was not evicting Applicant, but Applicant's truck hit her bar. He further testified Applicant's truck went through the patio wall on the front of the bar and into the bar, which was occupied at the time. He explained pictures of the scene were taken after Applicant's truck had been removed so that the occupants inside the bar could get out. He elaborated whoever removed the truck from the bar hit Applicant, who was in his other truck, when reversing the truck out of the bar. Counsel testified he does not recall if any injury was mentioned at the plea.

Counsel testified he spoke to Ms. Perego and some other family members regarding Applicant's strange behavior. He elaborated he had some concern about Applicant's mental health because during their visits, Applicant would harp on his version of the facts, without discussing anything else. As a result, Counsel testified he had Applicant evaluated at the Department of Mental Health ("DMH"). He testified it is not in his practice to go to DMH with the client, but he would be available by phone if the client needed him. He testified Applicant did call him while he was at DMH. He elaborated that after this evaluation, Applicant was found to be competent and criminally responsible. Counsel testified in that report, DMH listed Applicant's discharge from the military incorrectly—listing it as a dishonorable discharge rather than an honorable discharge. Counsel elaborated because of Applicant's honorable discharge, he was eligible for serves from Veterans' Affairs. Counsel testified Applicant's criminal history in the DMH report indicated his criminal history began with his 2012 solicitation charges, when he was eight-five years old, and also indicated there were no convictions before then but there were arrests. Counsel elaborated he was able to correct this information in the DMH report at the

hearing and was able to provide the plea court with some records. Counsel further testified, however, he was still concerned with Applicant's mental health, so he decided to get a second opinion from Dr. Amanda Salas. Counsel testified he had Applicant evaluated by Dr. Salas after DMH evaluated him, which would have been a year or more after this incident. He testified Dr. Salas indicated Applicant was competent, but he was in the early or moderate stages of dementia. Counsel elaborated Dr. Salas did not indicate that Applicant's dementia could be a cause as to why he committed these crimes, but he never asked her if dementia could have caused behavior changes. Counsel also testified he is not personally aware of behavior changes that are caused by dementia, but he is aware that it could occur. He testified he does not recall discussing this with Dr. Salas, but if it were not in the record, he probably did not specifically ask her about this side effect. He further testified Dr. Salas indicated Applicant's dementia from CT scans, and she indicated the results of the scan could not be faked, which he brought out during the plea.

Counsel testified initially he had no concerns that Applicant might be malingering and assumed he was acting the way he was due to his age. He explained that due to Applicant's advanced age, he spent extra time explaining everything with Applicant and reviewing the discovery in pieces with Applicant to ensure he understood everything. Counsel further testified he changed his mind about whether or not Applicant was malingering. He elaborated as the trial or plea date approached, the State listened to phone calls between Applicant and his wife from jail, and those phone calls indicated some deception on the part of Applicant. He testified he was unaware if the first DMH report indicated malingering, but he knew the second DMH report did indicate Applicant was malingering. He elaborated DMH had concerns about Applicant's behavior in the evaluation, so they asked the jail to pull phone calls to get an indication of Applicant's behavior in a different environment. Counsel testified he did discuss malingering

with Dr. Salas, which explained why Dr. Salas stated at the plea hearing that a CT scan could not be faked. He further testified that Dr. Salas's initial diagnosis of Applicant with dementia was before any evidence of Applicant's malingering was discovered, which caused Dr. Salas to hold to her finding as to the CT scans but also to find some evidence of malingering behavior on the part of Applicant. Counsel testified ultimately Dr. Salas agreed with DMH.

Counsel also testified he explained the consequences of pleading guilty and the agreement with the State to a cap of ten years over the course of a few visits with Applicant. He testified had they proceeded to trial, Applicant was facing 120 years. He further testified he had these discussions with Applicant especially as related to the risk of the phone calls from jail. He elaborated he believed Applicant understood the offer and the consequences thereto. He explained his practice is to discuss any plea offers with the client and then allow the client to have time to discuss with their family and ask any questions they may have. Counsel testified he gave Applicant a copy of projected parole dates according to South Carolina Department of Corrections calculators, and it is his normal practice to do so. He expounded he explained to Applicant these were merely projections and other factors could affect parole eligibility. Counsel testified it was Applicant's decision to plead guilty, and he was prepared to proceed to trial if Applicant had indicated that was what he wanted to do. He further testified he would not have taken Applicant to a plea if Applicant did not understand what was happening.

Counsel testified his objective at the mitigation stage of the plea was to argue for home incarceration ("HIP") due to Applicant's age. He elaborated HIP would have been more cumbersome on Applicant because he would be required to pay for the monitoring system, would be responsible for his own medications, and would not be subject to early release. He further testified he argued this to the plea court.

Counsel testified he did appeal from the plea but not from the probation revocation. He explained that although this might have been an oversight on his part, he did not have any involvement in the probation cases, as they arose from a different county and he had no involvement in those cases. He further explained Applicant did not ask him to appeal from the probation revocation, only from the guilty plea, which he did. Counsel testified he did not see any appealable issue from the probation revocation, as the conviction was a clear violation of his probation.

Counsel testified he did not have Applicant evaluated by an audiologist. Counsel testified Applicant said he could not hear and Applicant did have some hearing problems at the bond hearing; so, in order to accommodate Applicant's hearing loss, he purchased a hearing magnifying device. He further testified Applicant had a hard time hearing at the plea, but he could hear what he wanted to hear. He elaborated Applicant was able to answer and respond to questions at the hearing. Counsel further testified Applicant would interrupt during the plea and would tell Counsel things pertaining to the plea as it was ongoing, which indicated to Counsel that Applicant could hear.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

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

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

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

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

Counsel's alleged failure to investigate

Applicant alleges Counsel was ineffective for failing to investigate. Specifically, Applicant alleges Counsel failed to investigate his version of the facts. “[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.” *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003).

Here, Counsel testified he hired an investigator to develop any support for Applicant's version of the facts, but this investigation did not produce anything that would have been helpful. He elaborated he attempted to find Applicant's tenant, who Applicant alleged started the fire, but was unable to locate him. He further testified he investigated a possible land dispute in the surrounding area, but he could not find any leases for the property. He further testified his investigator tracked down all of the possible witnesses and spoke to them. Therefore, this Court finds Counsel conducted a reasonable investigation under the circumstances—he attempted to locate potential witnesses and spoke to all witnesses who could be located. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to file an appeal

Applicant also alleges Counsel was ineffective for failing to file an appeal from his probation revocation. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). Absent extraordinary circumstances, 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, 670 S.E.2d 373, 374 (2008). For example, "one extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." *Weathers v. State*, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). Moreover, in order to establish he was prejudiced by counsel's failure to file an appeal, Applicant must show he would have appealed absent counsel's deficient performance. *See Roe*, 528 U.S. at 484.

Here, Counsel appealed from Applicant's guilty plea but did not appeal from his probation revocation. Moreover, Applicant only asked Counsel to appeal his guilty plea, not his probation revocation. Because Counsel did indeed file an appeal from the guilty plea as requested by Applicant and because there was no indication from Applicant he wanted Counsel to appeal his probation revocation, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.

Furthermore, this Court finds Applicant has wholly failed to establish any resulting prejudice. There is no indication whatsoever Applicant would have appealed from his probation revocation. Furthermore, Counsel articulated he did not believe there were any appealable issues

arising from the probation revocation. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure for advising Applicant to plead guilty

Applicant alleges Counsel was ineffective for advising Applicant to plead guilty. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." *McMann v. Richardson*, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." *Id.* at 771. "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." *Dalton*, 376 S.C. at 138-39, 654 S.E.2d at 874 (citing *Wolfe v. State*, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

At the evidentiary hearing, Applicant testified Counsel advised him to plead because he had talked to the solicitor and arranged for Applicant to go home on a monitor if he pled. Applicant also testified he did not know to what he pled, and he cannot recall his plea proceeding. He testified he told Counsel he wanted to go to trial, but Counsel told him to plead guilty instead. He elaborated that despite this feeling, he pled guilty. Contrastingly, Counsel testified he explained the consequences of pleading guilty and the agreement with the State to a cap of ten years over the course of a few visits with Applicant. He testified had they proceeded to trial, Applicant was facing 120 years. He elaborated he believed Applicant understood the offer and the consequences thereto. He explained his practice is to discuss any plea offers with the client and then allow the client to have time to discuss with their family and ask any questions they may have. Counsel testified it was Applicant's decision to plead guilty, and he was prepared to proceed to trial if Applicant had indicated that was how he wanted to proceed. He further testified he would not have taken Applicant to a plea if Applicant did not understand what was happening. This Court finds Counsel's testimony regarding his advice to Applicant to plead guilty very credible while Applicant's testimony is not credible. Because Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, the State's evidence, possible defenses and courses of action, answered all of Applicant's questions, and explained the plea offer from the State, this Court finds Counsel's conduct was reasonable under professional norms.

Furthermore, Applicant cannot establish any resulting prejudice from this alleged deficiency. Had Applicant proceeded to a jury trial, he was facing a term of imprisonment of 120 years. By pleading guilty, however, he faced a cap of a term of imprisonment of ten years, thereby significantly reducing his sentence exposure. At the evidentiary hearing, Applicant

merely stated he wanted “the truth about his medications” to come out, but did not state with any specificity he would have insisted on going to trial. Therefore, this Court finds Applicant has failed to establish his burden, as there is no indication that despite this alleged deficiency Applicant would not have pled guilty but rather insisted on going to trial. Moreover, by pleading guilty, Applicant was able to get the benefit of the bargain and significantly reduce his potential sentence. This Court finds this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure for allowing victim testimony regarding
unsubstantiated allegations of criminal acts by Applicant after he
was imprisoned*

Applicant alleges that Counsel was ineffective for allowing Ms. Lash to testify at the plea regarding unsubstantiated allegations of criminal acts by Applicant after he was imprisoned. Specifically, Applicant alleges counsel was ineffective for allowing Ms. Lash to testify she had received phone calls from an unknown individual on behalf of Applicant that he “would take care of [her] and [her] family and make sure that [they] were taken care of the bad way” if he was ever released from prison. Tr. 27-28. Applicant wholly failed to present any testimony or argument regarding this claim at the evidentiary hearing, consequently abandoning this allegation. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to effectively use evidence of Applicant's
diagnosis of dementia as mitigation of his conduct*

Applicant alleges Counsel was ineffective for failing to effectively present evidence of Applicant's dementia diagnosis as mitigation of his conduct. Defense counsel is not required to investigate “every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing.” *Wiggins v. Smith*, 539 U.S. 510, 533 (2003).

Furthermore, defense counsel is not required to present mitigating evidence at sentencing in every case. *Id.*

During mitigation, however, Counsel presented the testimony of Dr. Amanda B. Salas who diagnosed Applicant as having the beginning stages of dementia. Tr. 38. Dr. Salas met with Applicant twice, once in December of 2015 and once in February of 2016, for a total of approximately four hours. Tr. 39. She also reviewed medical records from the detention center, Applicant's family practice doctor, and Anderson AnMed Health Hospital, as well as the evaluation prepared by DMH. Tr. 39. Based on screening testing of Applicant for memory impairment, the results of a CT exam, which was performed in June of 2014, and physical exam findings, Dr. Salas indicated Applicant suffered from a dementing process and definitional criteria for neurocognitive disorder. Tr. 39-40. She described his dementia at a moderate stage. Tr. 40. She further indicated the CT scan showed mild generalized cortical atrophy. Tr. 40. Applicant's functional capacity, however, was higher than expected for a person with this atrophy but was consistent in the stability of his decline. Tr. 40-41. Additionally, Applicant demonstrated facial reflexes consistent with an individual suffering from dementia. Tr. 41-42. Dr. Salas testified to a reasonable degree of medical certainty that Applicant did meet the criteria of neurocognitive disorder, mild stage. Tr. 42. She further opined Applicant's vascular disease would impact not only his brain but also his heart, which would require adequate treatment to manage his symptoms, heart disease, and vascular problems, which would diminish the risk of a rapid decline as far as dementia was concerned. Tr. 42-43. Dr. Salas also testified it would be unlikely Applicant could continue to live alone or make decisions for himself. Tr. 43. Given Dr. Salas's extensive presentation of Applicant's dementia at the plea, this Court finds Counsel's performance was reasonable under prevailing professional norms.

This Court further finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Dr. Salas's testimony at sentencing concerning Applicant's diagnosis of dementia was extensive, and the plea court was able to hear exactly how Applicant's diagnosis currently affected him and how it could affect him in the future. Consequently, it is unlikely that the result of the proceeding would have been different had Counsel presented more evidence of Applicant's neurocognitive disorder. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant further alleges his guilty plea was not voluntarily made. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be

allowed to depart from the truth of his statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving that his guilty plea was involuntarily made. This Court further finds Applicant’s plea was entered into freely and voluntarily. The record before this Court reflects that the plea court thoroughly reviewed all of Applicant’s constitutional rights with him, including his right to a jury trial. Upon explanation of each constitutional right, Applicant indicated he understood. Applicant further indicated he was pleading guilty of his own free will. Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant’s plea was freely, voluntarily, and intelligently made. Consequently, this allegation must be denied and dismissed with prejudice.

Factual basis for ABHAN

Applicant further alleges his guilty plea was not knowingly and voluntarily entered into, as there was no factual basis for ABHAN on the record. Specifically, Applicant alleges because he did not physically injure anyone, there was no factual basis for ABHAN. Before a guilty plea may be accepted, the court must be certain the defendant understands the charge and the consequences of the plea. *State v. Armstrong*, 263 S.C. 594, 211 S.E.2d 889 (1975). In addition, the record must indicate a factual basis for the plea. *Id.* However, “*Armstrong* does not mean that the state may not offer a defendant, charged with a greater offense, an opportunity to plead guilty to a lesser offense, notwithstanding the factual basis does not precisely comport with the lesser offense.” *Anderson v. State*, 342 S.C. 54, 57-58, 535 S.E.2d 649, 651 (2000). In fact, a plea to any lesser-included offense is sufficient as long as there is a sufficient factual basis to

support the crime for which the defendant is indicted. *Id.* at 58, 535 S.E.2d at 651. Moreover, the decision to accept a guilty plea to a lesser-included offense despite the lack of a factual element to support that offense can be interpreted as a "tactical maneuver to avoid the very real possibility that the jury might come back with a verdict of [the indicted charge]." *Id.*

"A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-600(B)(1). On the other hand, ABHAN occurs when there is an unlawful injury to another person and either great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury. S.C. Code Ann. § 16-3-600(B)(1). ABHAN is a lesser-included offense of attempted murder. S.C. Code Ann. § 16-3-600(B)(3).

Here, the Anderson County Grand Jury indicted Applicant for two counts of attempted murder, and he pled guilty to two counts of the lesser-included offense ABHAN. Had Applicant proceeded to a jury trial for the two counts of attempted murder, Applicant faced a term of imprisonment of up to 120 years. By pleading guilty, however, Applicant significantly reduced his potential sentence exposure from up to 120 years imprisonment to an agreed cap of ten years imprisonment.

In addition, the State's evidence against Applicant was significant. Various eyewitnesses saw Applicant set the wood in the truck on fire and manipulate it so that it would drive into Tiger Cove Grill. Applicant, enraged from being evicted from his home, decided to take his aggression out on the property both that he occupied and that was conveniently situated across the street. Applicant not only set his own house on fire but also manipulated a burning truck so that it would ram into the restaurant across the street. From this, the jury could infer Applicant wanted to take his aggression out on the closest possible source, Tiger Cove Grill across the street,

thereby inferring Applicant had the requisite intent to kill when he committed these acts. Moreover, it is from this very conduct, which shows a total disregard of the value of human life, from which a jury could have inferred malice. Therefore, this Court finds there was a factual basis at the plea to support the indicted charge. Furthermore, with the very real possibility of being convicted for attempted murder, this Court finds Applicant's decision to plead guilty to the lesser-included offense of ABHAN was a tactical maneuver. Therefore, this allegation must be denied and dismissed with prejudice.

Due Process

Applicant alleges a due process violation in that the plea did not comply with the requirements of the American Disabilities Act due to a failure to accommodate Applicant's hearing loss. "No state shall . . . deprive any person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1, S.C. Const. Art I, § 3. Specifically, substantive due process protects against the arbitrary infringement of "fundamental rights that are so 'implicit in the concept of ordered liberty' that 'neither liberty nor justice would exist if they were sacrificed.'" *State v. Dykes*, 398 S.C. 351, 357, 728 S.E.2d 455, 458 (2012) (quoting *Doe v. Moore*, 410 F.3d 1337, 1343 (11th Cir. 2005) (internal citations omitted)). Applicant testified he could not hear what the witnesses were saying at his plea and he did not know what was happening. He elaborated Counsel gave him a hearing aid, but it was not working. He further testified he could hear a few words at the beginning but nothing else. In order to accommodate Applicant's hearing loss, however, Counsel purchased a hearing magnifying device. He further testified Applicant was able to answer and respond to questions at the hearing. Counsel elaborated Applicant would interrupt during the plea and would tell Counsel things pertaining to the plea as it was ongoing, which indicated to Counsel that Applicant could hear. This Court

finds Counsel's testimony regarding this allegation very credible, whereas Applicant's testimony is not credible. Because Counsel provided Applicant with a hearing magnifying device and because Applicant was clearly and unequivocally able to respond to questions from the plea court during his plea, this Court finds there was no Due Process violation. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

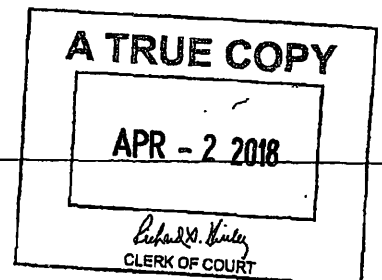
1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 30 day of March, 2018


J. CORDELE MADDOX, JR.
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

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COMMON PLEAS AND
GENERAL SESSIONS



CASE # 2017-CP-04-1175

The Order of Dismissal finds that plea Counsel's failure to file an appeal of the Applicant's probation violation (VOP) that was triggered by the guilty plea which counsel did appeal was not ineffective and no prejudice was shown. (Order of Dismissal p. 14). However, court records show that the appeal was withdrawn and the case sent straight to PCR because the failure to include the VOP in the Notice of Appeal negated any benefit of a reversal on appeal because the Applicant would still be serving ten years on the VOP. Therefore, the Applicant submits that it was ineffective to not include the VOP with the appeal of the plea that triggered it, and the prejudice was the loss of any benefit of a reversal on appeal.

In addressing the Applicants argument of ineffective assistance of trial counsel for failure to object to victim testimony regarding unsubstantiated allegations of criminal acts by the Applicant, the Order of Dismissal states that the Applicant failed to present any testimony or argument and abandoned the issue. However, the record supports the argument that there was no objection to the State's reading of Robert Gary Bannister's statement made through his attorney, Lee Cole, referencing unproven hearsay, accusations of relatives and friends committing crimes which were unproven, as well as statements to the plea judge that the victim, Ms. Lash, was hysterical after two threatening phone calls that day when jail records showed the Applicant did not access phone or visitation. (Order of Dismissal p. 17).

Finally, citing *Anderson v. State* the Order of Dismissal finds that there was a factual basis for the indicted charge of attempted murder such that the plea to ABHAN even though there was no injury was a tactical maneuver. (Order of Dismissal p. 12) *Anderson v. State*, 342 S.C. 54, 57-58, 535 S.E.2d 649, 651 (2000). The Applicant argued that the lack of injury in the factual basis of the plea as both a due process violation bringing into question the knowing and voluntary nature of the plea and an ineffective assistance of counsel claim for advising a plea to ABHAN when there was no alleged injury or evidence of intent to kill to support the indicted charge of attempted murder.

Anderson recognizes there must at least be a sufficient factual basis for the indicted offense to support a plea to a lesser-included offense. *Id.* at 58 & 651. Here, *Van Selner v. State* is applicable because facts presented in Mr. Perego's plea do not include physical injury, attempt to kill with malice aforethought, or intent to kill, and do not form a sufficient factual basis for either the indicted charge of attempted murder or ABHAN. (See plea transcript pp 13-19) *Van Selner v. State*, 416 S.C. 606, 787 S.E.2d 525 (2016). This especially so because Mr. Perego is a

nearly deaf, octogenarian, World War II veteran with moderate dementia and attempted murder requires both an attempt to kill with malice aforethought and specific intent to kill.

For the foregoing reasons, the Applicant requests this Court to alter or amend its Order of Dismissal.

Respectfully submitted,



Susannah Ross
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330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

This 11 day of April, 2018

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

EDRICK PEREGO,

Applicant,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2017-CP-04-1175

AFFIDAVIT OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion to Alter or Amend on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Attn: Kelly Opppenheimer


Attorney for Defendant

This 11 day of April, 2018

FILED-CLERK'S OFFICE
 STATE OF SOUTH CAROLINA ANDERSON SC
 COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
 2018 MAY - 3) AM 11:00

Edrick Perego, #368192,

Applicant, COMMON PLEAS AND
 GENERAL SESSIONS

Case No. 2017-CP-04-1175

**ORDER DENYING APPLICANT'S
 "MOTION TO ALTER OR AMEND
 THE JUDGEMENT"**

v.

State of South Carolina,
 Respondent.

A TRUE COPY

MAY - 9 2018

Richard M. Kelly
 CLERK OF COURT

This matter comes before this Court by way of Applicant's "Motion to Alter or Amend the Judgement," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Anderson County Grand Jury indicted Applicant for two counts of third-degree arson during its September 2014 term (2014-GS-04-01598) and for two counts of attempted murder during its October 2014 term (2014-GS-04-01834;-01835). Hervery Young, Esquire represented Applicant on these charges. On May 13, 2016, Applicant appeared before the Honorable R. Scott Sprouse, where he pled guilty as indicted to two counts of third-degree arson and to two counts of assault and battery of a high and aggravated nature as a lesser-included offense of attempted murder. Judge Sprouse sentenced Applicant to ten years imprisonment for each charge. At the time of this conviction and sentence, Applicant was serving a probationary sentence for solicitation to commit assault and battery and solicitation to commit kidnapping.¹

¹On April 16, 2013, Applicant appeared before the Honorable Alexander S. Macaulay and pled guilty as indicted to one count of

Consequently, Judge Sprouse revoked Applicant's probation in full, requiring him to serve ten years imprisonment for each Solicitation charge. All sentences were to run concurrently.

Applicant filed a timely notice of appeal, and Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense, Office of Appellate Defense represented Applicant. On December 15, 2016, the South Carolina Court of Appeals issued an Order indicating that Applicant, with full understanding of all possible consequences and with agreement of counsel, withdrew his appeal. The Remittitur was issued on January 3, 2017.

II.

Applicant filed his *pro se* application for post-conviction relief on June 5, 2017, in which he alleged he was being held in custody unlawfully based on allegations of:

1. Guilty plea not knowingly, intelligently, and voluntarily entered;
 - a. No factual bases for plea;
 - b. Did not understand sentencing.
2. Ineffective assistance of plea counsel;
 - a. Failed to object to unconstitutional sentence;
 - b. Failed to appeal from probation cases;
 - c. Failure to investigate.
3. Ineffective assistance of appellate counsel; [and]
 - a. Advised to drop direct appeal.
4. Unconstitutional sentence (violation of 8th Amdt.).
 - a. De facto life sentence violates prohibition against cruel and unusual punishment and is disproportionate;
 - b. Failure to provide proper medical care.

Respondent made its Return and Partial Motion to Dismiss on September 12, 2017, requesting all allegations arising from Applicant's 2012 guilty plea be summarily dismissed as time barred and requesting Applicant's allegation of improper medical care be summarily dismissed for failing to state a cognizable claim under the Uniform Post Conviction Procedure Act. Respondent requested an evidentiary hearing on

solicitation to commit assault and battery and one count of solicitation to commit kidnapping. Judge Macaulay sentenced Applicant to a term of imprisonment for ten years, suspended on the service of thirty-four days with five years' probation.

all other claims. Thereafter, Applicant, through his counsel filed an amended application for post-conviction relief on February 15, 2018, alleging:

1. Ineffective assistance of plea counsel for advising Mr. Perego to plead guilty, allowing victim testimony regarding unsubstantiated allegations of criminal acts by Mr. Perego after he was imprisoned, and failing to effectively use evidence of Mr. Perego's diagnosis of dementia as mitigation of his conduct; [and]
2. Due process violations due to the plea not being knowingly and voluntarily made, non-compliance with the ADA due to failure to accommodate Applicant's hearing loss, and no factual basis for ABHAN in the record.

An evidentiary hearing was convened on February 21, 2018, at the Anderson County Courthouse before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and was represented by Susannah C. Ross, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office. Testifying at the hearing were Applicant, Applicant's ex-wife, Janice Perego, Applicant's granddaughter, Jessica Ford, and plea counsel Hervery Young, Esquire.

Following this Court's review of the testimony and evidence presented at the hearing, this Court found there were no constitutional deprivations or other errors entitling Applicant to relief and denied and dismissed the application with prejudice by formal order signed March 30, 2018, and filed April 2, 2018. Applicant received the filed Order on April 6, 2018.

On April 11, 2018, Applicant served a copy of his "Motion to Alter or Amend the Judgement" on Respondent and this Court. Respondent filed its Return to this motion on April 27, 2018.

III.

This Court's find that its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this

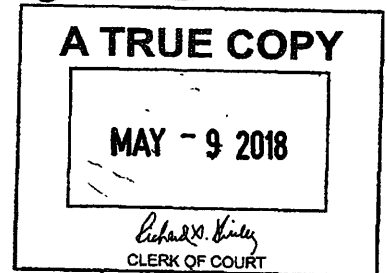
Court finds there is no basis for altering or amending its prior ruling.² Therefore, this Court hereby denies Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes if Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 17 day of May, 2018.


J. CORDELL MADDOX, JR.
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina



FILED-CLERK'S OFFICE
ANDERSON SC
2018 MAY - 9 AM 11: 04
COMMON PLEAS AND
GENERAL SESSIONS

² The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

DOCKET NO. 2012GS04 00197

WITNESSES

Wayne Mills, Anderson County Sheriff's Dept.

The State of South Carolina**County of Anderson****COURT OF GENERAL SESSIONS****JAN 24 2012****Term****ARREST WARRANT NUMBER**

J893963

THE STATE**vs.****Edrick Norris Perego**

RLC

Indictment for**Solicitation / Solicitation to commit Assault and
Battery**SC Code: C/L, 17-25-0030
CDR Code: 0795**ACTION OF GRAND JURY****JAN 24 2012**

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

A TRUE COPY**JUN -5 2017**Anderson X. B. B. B.
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

JAN 24 2012

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

Solicitation / Solicitation to Commit Assault and Battery

That Edrick Norris Perego did in Anderson County, on or about October 6, 2011, solicit
the agency of another to commit the act of assault and battery in order to injure, resulting in
either death or great bodily injury, the targeted person, for the commission of a felony. This is in
violation of the Common Law of South Carolina Code of Laws.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Anderson

VS.

Edrick Norris Perego

INDICTMENT/CASE#:

2012-6504-1917

A/W#: J893963

Date of Offense: 10/6/2011

S.C. Code § : 17-25-0030

CDR Code #: 0795

AKA: *

Race: W Sex: M Age: 85

DOB: SS#:

Address:

City, State, Zip: Anderson, SC 29624

DL#: SID#: SC01481280

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

In disposition of the said indictment comes now the Defendant who was

TO: Solicitation / Solicitation to commit assault & battery 1st degree, a Felony

☐ CONVICTED OF or ☒ PLEADS

SENTENCE SHEET

in violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0795

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: James Lambert 13981 Edrick Norris Perego 8895
Campbell, Rame Lambert SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 34 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

Section	Amount	Total
§ 14-1-206 (Assessment)	\$7.50	
§ 14-1-211(A)(1) (Court Surcharges)	\$100	\$100.00
§ 14-1-211(A)(2) (Drug Surcharges)	\$100	
§ 56-5-2995 (DUI Assessment)	\$12	
§ 56-1-286 (DUI Breath Test)	\$25	
Proviso 47.9 (Public Def/P Prob)	\$500	
§ 14-1-212 (Law Enforcement Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharges)	\$150	
§ 50-21-114 (BUI Breath Test Fee)	\$50	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	
Proviso 90.5 (SCCA Surcharges)	\$5	\$5.00
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 623Sentence Date: 4/16/13

Clerk of Court/ Deputy Clerk

Court Reporter: R. T. Smith

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

County of ANDERSON

STATE VS.

EDRICK NORRIS PEREGO

AKA: _____

Race: White Sex: Male

DOB: _____

SSN: _____

SID#: 01481280

IN THE COURT OF GENERAL SESSIONS

Document Number: _____

2012 - GS - 04 - 00197

Probation C/W#s: C-04-16-0328Name of Original Offense: Sol. to commit A&B 1st DegreeOriginal AWW#: J893963Date of Original Offense: 10/06/2011Conviction S.C. Code §: 17-25-0030Conviction CDR Code #: 0 / 7 / 9 / 5Original Sentence: 10 Yrs susp 34 days, 5 years Probation

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 04/16/2013 in the Court of General Sessions of ANDERSON County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 05/13/2016, as set forth in the attached warrant(s) or citation(s) dated 05/13/2016. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 6 and 10

Therefore, IT IS ORDERED that:

☒ the suspended sentence be revoked and the above named defendant be required to serve 10 months/years, the remainder of the original sentence, and/or pay \$ _____.

☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.

☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.

☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

☒ Financial Obligations: Order satisfies: ☒ Department fees (arrearage) Civil judgment: ☐ Department fees
☐ Fines and other fees (arrearage / balance) ☐ Fines and other fees
☐ Restitution (and 20%) (arrearage / balance) ☐ Restitution (and 20%)

☒ Additional Conditions ordered by the Court:

Revoke in full. Run concurrent with indictment number 2014-65-04-01834. Terminate probation.

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 34 days months/years on this sentence.
 (split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 13 day of May, 2016
Anderson, SC

R. Scott Sprouse
 Presiding Judge
 10th

Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed. This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____

Witnessed by _____

Signed this 13 day of May, 2016 at Anderson, SC

DOCKET NO. 2012GS04 00198

WITNESSES

Wayne Mills, Anderson County Sheriff's Dept.

**The State of South Carolina
County of Anderson****COURT OF GENERAL SESSIONS****JAN 24 2012****Term****ARREST WARRANT NUMBER**

J893962

THE STATE**vs.****Edrick Norris Perego****ACTION OF GRAND JURY****TRUE BILL**

JAN 24 2012

Foreperson of Grand Jury

Date:

VERDICT

RLC

Indictment for**Solicitation / Solicitation to commit Kidnapping**SC Code: C/L, 17-25-0030
CDR Code: 0795

Foreperson of Petit Jury

Date:

A TRUE COPY**JUN -5 2017**Richard W. Harty
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on JAN 24 2012, the Grand Jurors of Anderson County present upon their oath:

Solicitation / Solicitation to commit Kidnapping

That Edrick Norris Perego did in Anderson County, on or about October 6, 2011, solicit the agency of another to commit the act of unlawfully seizing, confining, inveigling, decoying, kidnapping or abducting another person for the commission of a felony. This is in violation of the Common Law of South Carolina Code of Laws.

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

Rare L Campbell

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Anderson

VS.

Edrick Norris Perego

INDICTMENT/CASE#: 2012-65-04-198

A/W#: J893962

Date of Offense: 10/6/2011

S.C. Code § : 17-25-0030

CDR Code #: 0795

AKA:

Race: W Sex: M Age: 85

DOB: SS#:

Address:

City, State, Zip: Anderson, SC 29624

DL#: SID#: SC01481280

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

In disposition of the said indictment comes now the Defendant who was

TO: Solicitation / Solicitation to commit Kidnapping, a Felony

☐ CONVICTED OF or ☒ PLEADS

in violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0795

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Rame Lambert 13991 Edrick Norris Perego 8895
Campbell, Rame Lambert SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 34 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 34 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP after 2 years
_____ days/hours Public Service Employment

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

Payment Terms: _____

☐ Set by SCDPPPS _____Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def Prob)

§ 14-1-212 (Law Enforcement Training)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$	100.00
\$	100
\$	12
\$	25
\$	500
\$	25
\$	150
\$	50
\$	40/ea
\$	5.00
\$	3.90
\$	1133.90

A TRUE COPY

Clerk of Court/Deputy Clerk

Court Reporter: R. T. DORSEY

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 63Sentence Date: 4/16/13

WITNESSES

Stan Ashley, Anderson Co. Fire Dept.

DOCKET NO. 2014GS04 01598

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

SEP 09 2014
Term

ARREST WARRANT NUMBER

2014A0410100722, 2014A0410100723

THE STATE

vs.

Edrick Norris Perego

COMMITMENT

5-13-16/1012

ACTION OF GRAND JURY

TRUE BILL

SEP 09 2014

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

RLC

Indictment for

Counts One and Two
Arson/Arson- Third degree

SC Code: 16-11-0110(C)
CDR Code: 3435

A TRUE COPY

JUN -5 2017

Richard M. Kintner
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on SEP 09 2011, the Grand Jurors of Anderson County present upon their oath:

Arson/Arson- Third degree

Count One: That Edrick Norris Perego did in Anderson County, on or about June 5, 2014, willfully and maliciously cause an explosion and/or set fire to and/or burn and/or cause to be burned and/or aids, counsels, or procures a burning that results in damage to a building, or any other property whether the property of himself or another, which resulted in damage to a building belonging to Robert Bannister located at [REDACTED] in Anderson, South Carolina. This is in violation of 16-11-110 of the *South Carolina Code of Laws (1976)*, as amended.

Count Two: And the Grand jurors of Anderson County, South Carolina, do further present upon their oath that That Edrick Norris Perego did in Anderson County, on or about June 5, 2014, willfully and maliciously cause an explosion and/or set fire to and/or burn and/or cause to be burned and/or aids, counsels, or procures a burning that results in damage to a building, or any other property whether the property of himself or another, which resulted in damage to a building belonging to Robert Bannister located at [REDACTED] in Anderson, South Carolina. This is in violation of 16-11-110 of the *South Carolina Code of Laws (1976)*, as amended.

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

Rome Campbell
 ASSISTANT SOLICITOR

DOCKET NO. 2014GS04 01834

WITNESSES

W B Simpson, Anderson Co. Sheriff's Office

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

OCT 14 2014
Term

ARREST WARRANT NUMBER

2014A0410100721

THE STATE

vs.

Edrick Norris Perego

COMMITMENT
5.13.16/ NAR

ACTION OF GRAND JURY

TRUE BILL

OCT 14 2014

[Signature]

Foreperson of Grand Jury

Date:

RLC

Indictment for

VERDICT

Murder/Attempted Murder

SC Code: 16-03-0029

CDR Code: 3410

A TRUE COPY
JUN -5 2017
Richard X. Hunter
ANDERSON CLERK OF COURT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on OCT 14 2014, the Grand Jurors of Anderson County present upon their oath:

Murder/Attempted Murder

That Edrick Norris Perego did in Anderson County, on or about June 5, 2014, unlawfully with malice aforethought and with the intent to kill, attempt to kill Becky Lash. This is in violation of 16-3-29 of the *South Carolina Code of Laws (1976)*, as amended.

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

Ramel Campbell

ASSISTANT SOLICITOR

COUNTY OF ANDERSON
STATE VS.

EDRICK NORRIS PEREGO

AKA: _____
Race: White Sex: M Age: 82
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Anderson, SC 29626
DL# _____ SID# SC01481280INDICTMENT/CASE#: 2014GS0401834
A/W: 2014A0410100721
Date of Offense: 06/05/2014
S.C. Code §: 16-03-0600(B)(1)
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

☐ CONVICTED OF or☒ PLEADSTO: Assault & Battery Of A High And Aggravated NatureIn violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State. CAP

ATTEST:

Carol Campbell 13981
Rame L. Campbell, Deputy Solicitor SC Bar #Edrick Norris Prego 7013
Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the: ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 708 Days TS☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

A TRUE COPY

MAY 13 2016

Richard S. Huley
ANDERSON CLERK OF COURT☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: _____

Judge Code: #7702May 13, 2016Clerk of Court/Deputy Clerk: Richard S. Huley
Court Reporter: D. Montgill
SCCA/217 (03/2011)

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>183.90</u>

DOCKET NO. 2014GS04 01835

WITNESSES

W B Simpson, Anderson Co. Sheriff's Office

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

OCT 14 2014

Term

ARREST WARRANT NUMBER

2014A0410100718

THE STATE

vs.

Edrick Norris Perego

COMMITMENT
5.13.16 / *RLC*

ACTION OF GRAND JURY

TRUE BILL

OCT 14 2014

Foreperson of Grand Jury

Date: Foreperson

VERDICT

RLC

Indictment for

Murder/Attempted Murder

SC Code: 16-03-0029

CDR Code: 3410

A TRUE COPY

JUN -5 2017

Richard X. Kintley
ANDERSON CLERK OF COURT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

OCT 14 2014

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

Murder/Attempted Murder

That Edrick Norris Perego did in Anderson County, on or about June 5, 2014, unlawfully with malice aforethought and with the intent to kill, attempt to kill Harold Flowers. This is in violation of 16-3-29 of the *South Carolina Code of Laws (1976)*, as amended.

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

Rame L Campbell
ASSISTANT SOLICITOR

COUNTY OF ANDERSON

STATE VS.

EDRICK NORRIS PEREGO

AKA: _____

Race: White Sex: M Age: 82

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Anderson, SC 29626DL# _____ SID# SC01481280*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADSTO: Assault & Battery Of A High And Aggravated Nature (10-20)In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State. 10 years

ATTEST:

Panel L Campbell 13981
Rame L. Campbell, Deputy Solicitor SC Bar #Edrick Norris Pereg Henry B. O. Spring 7013
Defendant Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 708 Days TV☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Recipient: _____

*Fine: _____ \$ _____

§14-1-20 (Assessment 10/20%) \$ _____

§14-1-21 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-21 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-295 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 4.2 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§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 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90

Clerk of Court/Deputy Clerk: _____

Court Reporter: D. Martingill

SCCA/217 (03/2011)

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: _____

Judge Code: #2702May 13, 2010

SENTENCE SHEET

