

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 12 2019

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

JAMES D. WHITE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001997

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON CASE NO. 2017-GS-10-0028

STATE OF SOUTH)
CAROLINA)
 PLAINTIFF,) TRANSCRIPT OF RECORD
 vs.)
)
)
JAMES D. WHITE,) APRIL 6, 2017
) CHARLESTON, SC
 DEFENDANT.)

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JUDGE.

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

CULVER KIDD, ESQUIRE
Attorney for the State

CHARLES COCHRAN, ESQUIRE
Attorney for the Defendant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

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(The following proceedings were held April 6, 2017, Charleston County, South Carolina, @ 2:10 p.m.)

MR. KIDD: State calls James White.

THE COURT: Mr. White, you are standing with your lawyer. Has he explained to you the nature of the charge contained in indictment 2017-28?

THE DEFENDANT: Yes, sir.

THE COURT: It charges you with armed robbery. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And he has explained to you that the charge carries a potential sentence of not less than ten years and no more than 30 years?

THE DEFENDANT: Yes, sir.

THE COURT: He has also apparently negotiated a sentence on your behalf; is that right?

THE DEFENDANT: Yes, sir.

THE COURT: And you want me to accept that negotiated sentence?

THE DEFENDANT: Yes, sir.

THE COURT: What are the terms, Mr. Kidd?

1 MR. KIDD: Just straight ten year
2 sentence, Your Honor.

3 THE COURT: Is that your understanding
4 as well, Mr. Cochran?

5 MR. COCHRAN: Yes, Your Honor.

6 THE COURT: Mr. White, you understand
7 that if I -- my options are to accept or reject it,
8 I can't modify it in any fashion? You realize
9 that, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So understanding if I
12 accept it I would impose a ten year sentence, give
13 you credit for any time that you have served, how
14 do you plead?

15 THE DEFENDANT: I plead guilty, sir.

16 THE COURT: You have also been told
17 that that's a most serious offense?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You understand the
20 significance of that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Furthermore, it's a
23 non-parolable offense. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That means that you will

1 serve eight and-a-half years minimum; you realize
2 that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And if you are released
5 after eight and-a-half years you will have to
6 successfully complete a community supervision
7 program; do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you could be returned
10 if you are not successful up to one year at a time
11 until the balance of your sentence is exhausted; do
12 you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is it still your desire
15 that I accept your negotiated sentence?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Totally satisfied with your
18 lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Cochran, you have
21 discussed this matter with your client?

22 MR. COCHRAN: Yes, Your Honor.

23 THE COURT: He has been advised of his
24 rights and the consequences of his plea?

25 MR. COCHRAN: Yes, Your Honor.

1 THE COURT: Do you concur with his
2 decision to enter the plea based on your
3 investigation?

4 MR. COCHRAN: I do.

5 THE COURT: And based on the
6 investigation do you believe the negotiated
7 sentence to be in your client's best interest?

8 MR. COCHRAN: Yes, Your Honor.

9 THE COURT: Is that true, Mr. White?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you understand and
12 realize if I accept your plea you will not have a
13 jury trial, you will not confront the witnesses
14 against you and you give up the right to remain
15 silent?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Anybody threaten you in any
18 way to get you to plead guilty, sir?

19 THE DEFENDANT: No, sir.

20 THE COURT: Any promises been made to
21 you other than the promise contained in the
22 negotiated sentence that is for the minimum
23 sentence?

24 THE DEFENDANT: No, sir.

25 THE COURT: Solicitor, tell me the

1 facts, please.

2 MR. KIDD: May it please the Court,
3 this occurred on April 21st of 2016 approximately
4 9:40 p.m. at the Kohl's department store located at
5 2245 Ashley Crossing Drive in West Ashley. The
6 Defendant entered that department store, went
7 straight to the electronics section, grabbed two 55
8 inch Samsung TV's and went out the emergency exit
9 in the back. The loss prevention officer, Andrew
10 Gerten who is in the courtroom today, chased him
11 out the emergency exit. When he got outside the
12 Defendant was placing the TV's in the back of a
13 gray Chevy Tahoe. The Defendant jumped in the
14 passenger seat and started to leave, but he didn't
15 close the tailgate. Mr. Gerten grabbed the TV's as
16 the car was pulling away. The Defendant then got
17 out of the passenger side of the vehicle, opened
18 the back door, retrieved an object from under the
19 seat, held it into his waistband. The victim can't
20 tell you it's a gun, but he does say he believed it
21 was a gun, the Defendant acted like it was a gun,
22 held his hand on his waistband and said what now,
23 what now. The victim backed away. The Defendant
24 then retrieved the TV's again, placed them back in
25 the car and left.

1 It started out as a shoplifting, Judge,
2 and I indicted it as robbery based on my meetings
3 with the victim which is a large part of the reason
4 we came to the negotiation of the ten year
5 sentence. His record is substantial. I'm not sure
6 if you want me to go through it or not, Your Honor.
7 I don't believe the victim wishes to speak.

8 THE COURT: Very well. But you're
9 comfortable with the ten years given all the
10 circumstances in this case?

11 MR. KIDD: Yes, sir, we are.

12 THE COURT: Are those facts correct,
13 Mr. White?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you under the influence
16 of any alcohol or any medication here today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you consumed any
19 alcohol or taken any type of medication in the last
20 24 hours?

21 THE DEFENDANT: No, sir.

22 THE COURT: I find the plea to be
23 freely, voluntarily, knowingly and intelligently
24 made. There is certainly a factual basis to
25 support it and Mr. White has indicated he's totally

1 satisfied with his lawyer. I will be happy to hear
2 from you now, Mr. Cochran.

3 MR. COCHRAN: Thank you, Your Honor.
4 May it please the Court, we ask that you give Mr.
5 White credit for a total of 268 days. And for the
6 record for purposes of the Department of
7 Corrections, that's three separate stints in county
8 with this warrant pending. So we would ask that
9 they calculate all those together.

10 THE COURT: Anything else, Mr. White?

11 THE DEFENDANT: No, sir.

12 THE COURT: The sentence of the Court
13 is ten years. I will give you credit for 268 days.
14 Good luck to you.

15 (These proceedings were concluded at
16 2:24 p.m., April 6, 2017, Charleston County, South
17 Carolina.)

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CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomate Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

Witness my hand, I have hereunto affixed my official seal this 5th day of July, 2017 at Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese
Registered Diplomate
Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of Charleston)

2017-CP-10-3199
IN THE COURT OF COMMON PLEAS

James D. White #232496)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2017 JUN 22 PM 4:23
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Evans Correctional Institution
610 Hwy 9 West Bennettsville, S.C. 29512
2. Name and location of Court which imposed sentence Charleston County Court
100 Broad St. Suite 106, Charleston, S.C. 29401-2258
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2017-GS-10-00028 - 2016A1020100978

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 06, 2017 / 10 years violent / most serious

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO direct appeal by Counsel

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

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

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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

(a) Counsel did not file on my behalf

- (b) _____
- (c) _____

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

- (a) in-effective assistant of Counsel
- (b) Not having the rights to less offense
- (c) Violation of Due process

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

- (a) Counsel did not assist me to the full extent
- (b) The state did not give me the right to the less.
- (c) Charge was upgraded to high offense, but no new warrant.

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

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

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

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

iv. _____
(c) the disposition thereof:

i. _____
ii. _____
iii. N/A
iv. _____

(d) the date of each such disposition:

i. _____
ii. _____
iii. N/A
iv. _____

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

i. _____
ii. _____
iii. N/A
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?

_____ N/A _____

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

(a) which grounds have been presented:

i. _____
ii. _____
iii. N/A

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

i. _____
ii. N/A
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) Counsel did not file appeals
 (b) Counsel allowed my rights to lesser offense to be violated
 (c) Counsel allowed Due process to be violated.

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

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

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

- (a) the name and address of each attorney who represented you:
 i. Charles W. Cochren, Charleston county public Defender Office, 101 Meeting St. 5th floor
 ii. Charleston, S.C. 29401-2214
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. plea hearing
 ii. sentencing
 iii. _____

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

Sentence reduction or lesser offense

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

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, James D. White, 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.

James White

SWORN to and subscribed before me this 20 day of June, 2017.

S. Sullow (L.S.)
Notary Public

My Commission Expires: 2/17/24

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

I, James D. White, 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.

James White
Applicant

SWORN or affirmed to and subscribed before me this
20 day of June, 2017.

S. Ouel
Notary Public

My Commission Expires: 2/17/24

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 James D. White, #232496,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2017-CP-10-3199

**RETURN, PARTIAL MOTION
 TO DISMISS, AND MOTION FOR A
 MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief filed on June 22, 2017, would respectfully show this Court:

I.

James D. White (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its January 2017 term of court, the Charleston County Grand Jury indicted Applicant for armed robbery (2017-GS-10-0028). Charles W. Cochran, Esquire, represented Applicant. Assistant Solicitor Culver Kidd, Esquire, prosecuted the case. On April 6, 2017, Applicant appeared before the Honorable R. Markley Dennis, Jr. and pled guilty as indicted. At the guilty plea proceeding, Applicant agreed with the following recitation of the facts giving rise to the armed robbery charge:

[T]his occurred on April 21st of 2016 approximately 9:40 p.m. at the Kohl's department store located at 2245 Ashley Crossing Drive in West Ashley. The Defendant entered that department store, went straight to the electronics section, grabbed two 55 inch Samsung TV's and went out the emergency exit in the back. The loss prevention officer, Andrew Gerten who is in the courtroom today, chased him out the emergency exit. When he got outside the Defendant was placing the TV's in the back of a gray Chevy Tahoe. The Defendant jumped in the passenger seat and started to leave, but he didn't close the tailgate. Mr. Gerten grabbed the TV's as the car was pulling away.

The Defendant then got out of the passenger side of the vehicle, opened the back door, retrieved an object from under the seat, held it into his waistband. The victim can't tell you it's a gun, but he does say he believed it was a gun, the Defendant acted like it was a gun, held his hand on his waistband and said what now, what now. The victim backed away. The Defendant then retrieved the TV's again, placed them back in the car and left.

(Plea Tr. p. 6-7). The prosecutor informed the plea court, "It started out as a shoplifting, Judge, and I indicted it as robbery based on my meetings with the victim which is a large part of the reason we came to the negotiation of the ten year sentence. [Applicant's] record is substantial. (Plea Tr. p. 7).

Pursuant to negotiations between Applicant and the State, Judge Dennis sentenced Applicant to the mandatory minimum sentence of ten years' imprisonment. Applicant did not appeal his conviction or sentence.

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

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel did not assist me to the full extent"
2. "Not having the rights to less offense"
 - a. "The State did not give me the right to the less."
3. "Violation of Due Process"
 - a. "Charge was upgraded to high offense, but no new warrant."

III.

In his application, Applicant has alleged counsel was ineffective for failing to fully assist him. However, Applicant has failed to set forth with any particularity what else he wished counsel did to assist him in his defense. Therefore, Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove that "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. 668. First, the applicant must prove that 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). The 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 the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he or she would not have pled 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, particularly in light of Applicant's complete failure to list any facts to support his general allegation. On the record during his plea proceeding, Applicant informed the court he was totally satisfied with the services of his attorney. (Plea Tr. p. 4). However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent requests that the claim of “not having the rights to less offense” be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

“Not having the rights to less offense” is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence, but rather seeks to submit a claim best suited for direct appeal. Applicant’s contention that such a ground is impliedly created by S.C. Code Ann. § 17-27-90 is meritless, as that section does not pertain to *what* may be raised, but *how* valid grounds must be raised.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

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

V.

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

VI.

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), SCRPC. 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, SCRPC. 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.

VII.

Respondent also hereby moves for a more definite statement in regards to his allegation of ineffective assistance of counsel. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VIII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

IX.

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

X.

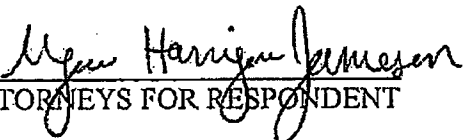
WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

8/22/17, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JAMES WHITE, #232496)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS


2017-CP-10-3199

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney Duane Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

DATED this the 22nd day of August, 2017.



 Jennifer Jennison, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	2017-CP-10-03199
JAMES D. WHITE,)	
Applicant,)	Transcript of Record
vs.)	
STATE OF SOUTH CAROLINA,)	October 3, 2018
Respondent.)	

B E F O R E:

Honorable Michael G. Nettles
Horry County Courthouse
Conway, South Carolina

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

Rodney D. Davis, Esquire
Attorney for Applicant

Kelly Oppenheimer, Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

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21

22 (No exhibits were marked or admitted.)

23

24

25

1 OCTOBER 3, 2018 - 10:18 A.M.

2 BY THE COURT:

3 THE COURT: Ms. Oppenheimer, you're recognized.

4 MS. OPPENHEIMER: May it please the Court, Your Honor?

5 This is James White versus the State of South Carolina, docket
6 number 2017-CP-10-3189. During its 2017 term, the Charleston
7 County Grand Jury indicted Applicant for armed robbery.
8 Charles W. Cochran represented him on this charge. Assistant
9 Solicitor Culver Kidd of the Ninth Circuit Solicitor's Office
10 prosecuted the case.

11 On April 6th, 2017, affiant appeared before The Honorable
12 R. Markley Dennis, Jr. and pled guilty as indicted. Pursuant
13 to a negotiated sentence, Judge Dennis sentenced Applicant to
14 a term of imprisonment of 10 years. He did not appeal his
15 plea or sentence.

16 On June 22nd, 2017, Applicant filed an application for
17 post-conviction relief alleging ineffective assistance of
18 counsel and that counsel did not assist me to the full extent,
19 not having the rights to less offense, the state did not give
20 me the rights to the less and violation of due process charge
21 was upgraded to a high offense, but no new warrant.

22 On August 22nd, 2017, Respondent made its return and
23 partial motion to dismiss and motion for a more definite
24 statement requesting an evidentiary hearing be held on the
25 allegation of ineffective assistance of counsel and requesting

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BY THE COURT

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1 Applicant's allegation regarding not having the rights to less
2 offense be dismissed for failing to state a cognizable claim
3 and applicant's due process claim be dismissed for failing to
4 specifically set forth the grounds upon which the application
5 was based.

6 Applicant is present today and represented by Rodney
7 Davis.

8 THE COURT: Mr. Davis, you're recognized. If you could,
9 set forth your grounds for which you're pursuing here today.

10 MR. DAVIS: Judge, yes, sir. It is basically an
11 ineffectiveness claim. We will -- the last issue that was
12 filed originally, just so the Court will know, his original
13 warrant is for shoplifting. The state ultimately directly
14 indicted for an armed robbery. We're not challenging the
15 state's authority to do that. We'll be challenging that in
16 the context of how that was explained or not explained to him
17 by his defense counsel.

18 So, Judge, the general nature of this is ineffectiveness
19 in explaining and leading towards the guilty plea and the flip
20 side of that is ineffectiveness in being prepared for and
21 offering to be prepared for a trial. It's the flipside of the
22 same -- it's a general ineffectiveness claim. And, Judge,
23 with that unique situation, I have advised my client
24 previously and again this morning, I was able to speak with
25 him briefly, about the risks and benefits of PCR. And so,

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BY THE COURT

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1 I've done the worst case scenario in indicating that if we
2 were successful and you granted his application, that since he
3 was indicted on armed robbery and received the mandatory
4 minimum, by going forward, he brings in the possibility of a
5 future conviction of armed robbery and potentially more time.
6 I feel confident he understands that and wants to go forward,
7 but if you can briefly question him about that on the record.
8 But it's my understanding he wishes to proceed, Your Honor.

9 THE COURT: Mr. White, are you satisfied with your
10 lawyer?

11 MR. WHITE: Yes, sir.

12 THE COURT: You understood all your conversations with
13 him?

14 MR. WHITE: Yes, sir.

15 THE COURT: Has anybody put any pressure on you to pursue
16 this particular post-conviction relief action?

17 MR. WHITE: No, sir.

18 THE COURT: It's been your decision to do so?

19 MR. WHITE: Yes, sir.

20 THE COURT: You understand that if you're successful, you
21 might end up with significantly more time?

22 MR. WHITE: Yes, sir.

23 THE COURT: All right. And you want to go forward?

24 MR. WHITE: Yes, sir.

25 THE COURT: And that's your decision?

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BY THE COURT

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1 MR. WHITE: My decision, sir?

2 THE COURT: All right. You may have a seat.

3 MR. DAVIS: Thank you very much, Your Honor.

4 THE COURT: You may call your first witness.

5 MR. DAVIS: And Mr. White would be our first witness.

6 THE COURT: Mr. White, please come forward, and I'm gonna
7 ask you to place your left hand on the Bible and raise your
8 right hand as the Clerk administers the oath.

9 CLERK: Place your left hand on the Bible and raise your
10 right hand. Raise your right hand. Your other hand.

11 THE COURT: The other right hand?

12 MR. JAMES WHITE, HAVING BEEN DULY
13 SWORN TESTIFIES AS FOLLOWS:

14 CLERK: Okay. You can have a seat and for the record, if
15 you could state your name and spell your last name please and
16 just scoot up to the microphone.

17 THE COURT: Get up real close to that microphone.

18 MR. WHITE: Yes, sir.

19 THE COURT: I want you to speak loudly, clearly and
20 slowly in order that we can hear everything that you have to
21 say. And once again, let's start with the full name.

22 MR. WHITE: My name is James White, and last name is
23 spelled W-H-I-T-E.

24 THE COURT: Good.

25 MR. DAVIS: Thank you, Your Honor.

1 DIRECT EXAMINATION OF JAMES WHITE BY MR. DAVIS:

2 Q: Mr. White, can you tell the Judge where you were born and
3 raised?

4 A: I was born and raised in Charleston, South Carolina.

5 Q: And how far did you go in school?

6 A: Tenth grade.

7 Q: Where was that?

8 A: North Charleston High School.

9 Q: Did you graduate?

10 A: No, sir.

11 Q: Did you ever get your GED or your diploma?

12 A: Yes, sir.

13 Q: Which one?

14 A: I got the GED at the Department of Corrections.

15 Q: Okay. So, you're able to read and write okay?

16 A: Yes, sir.

17 Q: Okay. What kind of employment did you have over the
18 years?

19 A: Plumbing.

20 Q: Okay. Now, on this particular charge, the armed robbery
21 that's got you serving time now, who was your attorney on that
22 case?

23 A: Charles Cochran.

24 Q: Okay. Do you see him in the courtroom today?

25 A: Yes, sir.

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JAMES WHITE - DIRECT BY DAVIS

8

- 1 Q: Okay. I want to talk to you about the discussions you had
2 with him. Okay?
- 3 A: Yes, sir.
- 4 Q: Can you tell Judge Nettles how many times you recall
5 meeting with your attorney?
- 6 A: I say -- I say at least three times.
- 7 Q: Okay. Now, so the Judge will understand, what were you
8 originally arrested for?
- 9 A: Property crime enhancement.
- 10 Q: Okay. Shoplifting, but because of your record, it was a
11 property crime enhancement?
- 12 A: Yes, sir.
- 13 Q: Okay. Were you able to make bond and get out of jail or
14 did you stay in jail up until you went to Court?
- 15 A: I was able to bond out.
- 16 Q: Okay. So, now these few meetings that you had with Mr.
17 Cochran, would those have been in person or on video or both?
- 18 A: Video.
- 19 Q: Okay. Now, the video would've been while you were in the
20 jail, right?
- 21 A: While I was in jail.
- 22 Q: Okay. So, did you ever meet with him in person?
- 23 A: No, sir.
- 24 Q: Did he ever come to the jail and meet with you in person?
- 25 A: No, sir.

1 Q: I'm sorry?

2 A: Just on the video ---

3 Q: Okay. And did you ever come to the Charleston County
4 Public Defender's Office and meet with Mr. Cochran in person?

5 A: No, sir.

6 Q: Did he ever send you a letter asking you to do that?

7 A: No, sir.

8 Q: Okay. Listen to me now, other than when you met him to do
9 the plea here at the courthouse, did you ever meet him any
10 other times here at the courthouse?

11 A: No, sir.

12 Q: I'm sorry?

13 A: No, sir.

14 Q: Okay. Now, those few times that you met with your
15 attorney, can you tell Judge Nettles about how long those
16 meetings would last when he did meet with you?

17 A: Well, twice, the first two months, I guess he had a
18 certain time limit and, and, and we didn't never really got a
19 chance to really got a good glance because the TV screen was
20 turned off like twice. I guess he had another client before
21 me and I guess he ran up the time, so we didn't really had a
22 chance to really got -- to reach the issues that we was trying
23 to discuss.

24 Q: Okay. How long do you think you did have before it cut
25 off?

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- 1 A: I'd say we probably been there more like 10 minutes.
- 2 Q: Okay. Each time you think?
- 3 A: Uh-huh, (affirmative response).
- 4 Q: Okay. Was that a yes?
- 5 A: Yes, sir.
- 6 Q: Okay. Now, the Judge may understand this, but if we can
7 put this on the record, when you do the video conference,
8 you're called to a booth and you're were at the Charleston
9 County Jail; is that right?
- 10 A: Yes, sir.
- 11 Q: You got a telephone hookup so you can hear and talk to
12 him, right?
- 13 A: Yes, sir.
- 14 Q: And then the screen in front of you?
- 15 A: Yes, sir.
- 16 Q: Do you turn that on or does it just turn on?
- 17 A: The jail turns it on.
- 18 Q: You don't?
- 19 A: No, I don't.
- 20 Q: Can you shut it off or does it shut off by itself?
- 21 A: It shuts off by itself.
- 22 Q: Okay. So, you don't arrange it, you're just told to go to
23 the room and your attorney is in there to talk to you, right?
- 24 A: Yes, sir.
- 25 Q: Okay. So, do you know who decides how long that's gonna

1 last; do you have any idea who decides that?

2 A: No, sir.

3 Q: Okay. And so, now you're telling Judge Nettles that the
4 only time you met with him face to face was here at this
5 courthouse; is that right?

6 A: Yes, sir.

7 Q: The day of your guilty plea?

8 A: Yes, sir.

9 Q: And that was April 6th, 2017?

10 A: Yes, sir.

11 Q: Okay. During these meetings with your attorney, let's
12 start with what you were arrested for. Did he ever go over
13 the elements of either shoplifting or property offense
14 enhancement with you during these meetings?

15 A: No, sir.

16 Q: Did he ever tell you what the state would have to prove to
17 convict you of shoplifting?

18 A: No, sir.

19 Q: What about the property offense enhancement; did he ever
20 tell you what the state would have to prove to a jury to
21 convict you of that?

22 A: No, sir.

23 Q: Now, at some point, does he tell you about the higher
24 charge that the state was gonna try to go after you for?

25 A: Yes, sir.

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1 Q: Can you tell the Judge how you found out about that?

2 A: During -- during the time that he was coming to see me, he
3 was telling me about the solicitor was, was, was trying to
4 enhance it, but he was also telling me that because I already
5 had one armed robbery, he was trying, trying to get me to
6 plead on that and tell me that if I don't plead to that, that
7 the solicitor was gonna enhance to property crime enhancement
8 to armed robbery. He was trying to use a tactic to try to get
9 me to plea to the first armed robbery by saying if I don't
10 take that sentence, that he's gonna enhance to property crime
11 enhancement to armed robbery. So, I, I didn't believe him.
12 So, nine months later, he enhanced it.

13 Q: And when you say he, you mean the solicitor?

14 A: The solicitor.

15 Q: I'm gonna kind of put you on the spot. Are you able to
16 tell Judge Nettles today how it is that it went from a
17 property crime enhancement to an armed robbery; do you know
18 how that happened?

19 A: No, sir.

20 Q: Did your attorney ever explain that to you?

21 A: No, sir.

22 Q: But ultimately, you knew that you were -- on this case,
23 you knew you were facing armed robbery, right?

24 A: Yes, sir.

25 Q: Did your attorney ever talk to you about what the elements

1 of armed robbery are?

2 A: No, sir.

3 Q: Did he ever tell you what the state would have to prove to
4 a jury to convict you of armed robbery?

5 A: No, sir.

6 Q: Now, you and I, of course, have talked leading up to this
7 -- this hearing, so don't let me get ahead of you here, but in
8 the discussions about -- you were talking about, hey, if you
9 don't plead, they're gonna try to enhance all that, was there
10 a time that your attorney was talking to you about an offer on
11 this case?

12 A: You talking about the property crime enhancement? No.

13 Q: Say that again?

14 A: You talking about property crime enhancement changed to
15 armed robbery?

16 Q: On this case, whether it was before it got upgraded or
17 not, was there a discussion ---

18 A: No.

19 Q: With your attorney about pleading?

20 A: The only time that came was August, the day of court, the
21 day I took the sentence. Prior to that, no. He was talking
22 about the first armed robbery prior to, to the charge being
23 enhanced.

24 Q: And just so we can clean that up and I know that's not
25 what we're here for today, but what happened on that other

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1 one?

2 A: With the first one?

3 Q: Yes, sir.

4 A: How you mean, what happened?

5 Q: What happened to that case?

6 A: Oh, I guess it was thrown out, I guess.

7 Q: Did you ever go to trial on it

8 A: No.

9 Q: Did you ever plead guilty to that other case?

10 A: No.

11 Q: During these meetings with your attorney, did he ever talk
12 to you about what the possible punishment or the sentence
13 range for, let's start out with the shoplifting, the property
14 offense enhancement; did he ever talk about you could get
15 sentenced to if you were convicted of that?

16 A: Yes, sir.

17 Q: What did he tell you?

18 A: He tell me zero to 10 years.

19 Q: Did he ever talk -- excuse me. Did he ever talk to you
20 about what the sentence range was or the possible punishment
21 was for armed robbery?

22 A: No, sir.

23 Q: Okay. So, did you know that if you pled to armed robbery,
24 that any judge has to sentence to someone to a mandatory
25 minimum 10 years in prison; did you know that?

1 A: Well, he told me that the day of the sentencing, but prior
2 to that, he never told me nothing about that.

3 Q: Okay. So, he told you about that. Did he also tell you
4 the maximum was 30 years?

5 A: Yes, sir.

6 Q: But the only time you heard about that was on April 6th,
7 2017?

8 A: April 6th, yes, sir.

9 Q: Okay. All right. So, prior to April the 6th, 2017, when
10 you met him there at the courthouse, had he ever talked to you
11 about any possible defenses for this case?

12 A: No, sir.

13 Q: Did you ask him about how to defend against them upgrading
14 it to an armed robbery?

15 A: Yes, I did, sir.

16 Q: And what did he tell you about that; do you remember the
17 conversation?

18 A: I did ask him. I asked him -- I asked him how -- how was
19 they able to do that, and he told me that the solicitor could
20 -- in fact, he told me the solicitor could do what he want to
21 do. Not saying it like that but, in so many words, that's
22 what he tried to put across to me that. Because I was
23 wondering how he can enhance my charge to property crime
24 enhancement without even having proof of any weapon or
25 anything and he put it to me like that, like the solicitor can

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1 do anything. I'm not saying -- not saying -- like the way I
2 remember it, like so many words, you know, he made it seem
3 like, you know, that it can be done.

4 Q: Okay. Even before April 6th, when he told you about the
5 10 to 30, you knew armed robbery was a more serious charge
6 than the property offense, right?

7 A: Yes, sir.

8 Q: Did you have a sense about whether it was violent or non-
9 violent?

10 A: Yeah.

11 Q: And what did you think?

12 A: I mean, I was thinking that the solicitor could make it
13 either or, you know.

14 Q: Okay. So, you think the solicitor had a choice in making
15 robbery violent or not, right?

16 A: Yes, sir.

17 Q: Did you ask your attorney about that?

18 A: Yeah, I asked him about it.

19 Q: Can you tell Judge Nettles what -- what he responded on
20 that?

21 A: He told me it was 85 percent. The day -- the day of
22 August the 6th when I went to court, he told me it was 85.

23 Q: Okay. So, the day of, he warned you that it's 10 to 30,
24 mandatory minimum 10, and it's 85 percent, right?

25 A: Uh-huh, (affirmative response)

1 Q: Any discussion about that prior to that?

2 A: Uh-huh, (negative response).

3 Q: Is that a no?

4 A: No, sir.

5 Q: Thank you. Tell me about the violent, non-violent, also
6 was there ever any discussion about some lower charge or
7 lesser included offense of armed robbery?

8 A: No, sir.

9 Q: What about the property offense versus shoplifting; was
10 there any discussion about that?

11 A: No, sir.

12 Q: In these meetings with your attorney, did he ever talk to
13 you about your constitutional right to go to trial?

14 A: August, I mean just the date -- the day of the sentence.

15 Q: Did he ever talk to you about the process, how you go to
16 trial in the State Court of South Carolina?

17 A: No, sir.

18 Q: Have you ever been to trial in General Sessions Court in
19 South Carolina?

20 A: No, sir.

21 Q: Do you ever remember him talking about -- well, first of
22 all, can you tell Judge Nettles whether the state was trying
23 to use some statement or some words you said against you; do
24 you recall?

25 A: No, I don't understand what you're trying ---

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1 Q: Was there any statement or any words you said to law
2 enforcement the state was trying to use against you?

3 A: No.

4 Q: You don't recall that?

5 A: No.

6 Q: Do you recall your attorney ever talking about a hearing
7 to try to block any statement you may've made?

8 A: No, sir.

9 Q: Did he ever discuss with you any strategy about, now,
10 look, if you want to go to trial, here's what we can -- here's
11 how we can try to defend it; was there any discussion about
12 that?

13 A: No, sir.

14 Q: Now, you and I have talked. Tell Judge Nettles, you had
15 talked to me about -- you were concerned about your attorney's
16 focus on your armed robbery?

17 A: Yeah.

18 Q: You thought he was maybe distracted about some other
19 stuff. Can you tell Judge Nettles what that was you were
20 concerned about?

21 A: Well, my first armed robbery was, was, was dealt with
22 somebody off the street, and that's what the first armed
23 robbery that they was initially coming at me with and that's
24 the only time that I thought I was going to trial on, but
25 somehow, when I got down later on -- later on, when I got down

1 to the court, it wasn't even that charge I did that I was
2 going to trial for. It was that property crime enhancement
3 that then they had enhanced to armed robbery. So, they kind
4 of like tricked me, making me believe I'm going to court for
5 the first armed robbery, but it was never that.

6 Q: Now, when you tell the judge it was handled off the
7 street, what do you mean by that?

8 A: I mean, it was an individual off the street instead of the
9 store situation.

10 Q: Instead of what?

11 A: Instead of the store like.

12 Q: The store?

13 A: Yes.

14 Q: This case was about a store, I gotcha.

15 A: Yeah.

16 Q: Okay.

17 A: So, I -- when I got down there, because he did tell me
18 about the first armed robbery, he said, well, you facing up to
19 10, and I turned it down. And he came back with 10, I turned
20 that down, because I had a statement from, from, from the
21 victim saying that I ain't robbed them.

22 Q: Okay. Let's just stay on this case. Fair enough, I
23 appreciate that, but let's stay on this case.

24 A: All right.

25 Q: Was there ever any discussion from your attorney, did he

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1 ever confide in you about other cases he was working on or
2 anything at the same time as this?

3 A: No.

4 Q: Okay. Did he ever talk to you about the right at trial,
5 if you go to trial, that you could remain silent and that you
6 didn't have to testify; did he ever tell you about that?

7 A: No.

8 Q: On the flip side, did he ever tell you that if you wanted
9 a trial, you could tell your story about what happened or what
10 didn't happen to the jury; did he talk to you about that?

11 A: No, sir.

12 Q: So, did you know that you could have a trial and you could
13 explain to the jury what really happened?

14 A: No, sir.

15 Q: Now, we all know, and you've testified about, that it
16 started out of property offenses, so you have a little bit of
17 record before this, right?

18 A: Yes, sir.

19 Q: Did your attorney have any opinions or did he talk to you
20 about your prior record and how it affects things?

21 A: No, sir.

22 Q: Did he ever talk about if you went to trial, the jury
23 might hear some about your prior record?

24 A: No, sir.

25 Q: Okay. It's a two-parter. Did he ever talk to you about

1 what's called a most serious offense; did you ever hear that
2 phrase from him?

3 A: No, sir.

4 Q: Either before or at the time he was talking to you about
5 doing a guilty plea, did he ever use that term?

6 A: No, sir.

7 Q: How about strikes; do you remember him talking about
8 strikes against you?

9 A: No, sir.

10 Q: How about the possibility of life without parole?

11 A: No, sir.

12 Q: Or sometimes we lawyers call it the LWOP, did he ever use
13 that term with you?

14 A: No.

15 Q: Now, one final thing on that. Did he talk to you about 85
16 percent or no parole?

17 A: Yeah, he told me about that.

18 Q: Okay. And remind the Judge, when was it that you heard
19 about that?

20 A: The day -- the day I took the guilty plea.

21 Q: Not before that?

22 A: No, sir.

23 Q: Okay. Did you have any indication that Mr. Cochran asked
24 for a non-violent or a lower charge?

25 A: No, sir.

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22

1 Q: Did Mr. Cochran ever show you anything or tell you
2 anything to give you an indication that he was in any way
3 preparing for a trial?

4 A: No, sir.

5 Q: Real quick on that. Did he ever send you a pack of
6 paperwork, a Rule 5 or discovery, did he send that to you?

7 A: Yes, sir.

8 Q: Okay. And on any of these meetings with you, did he
9 review that with you?

10 A: No, sir.

11 Q: You had a chance to read over it though, right?

12 A: Yes, sir.

13 Q: Did Mr. Cochran give you any indication that he had met
14 with or attempted to meet with any of the witnesses in your
15 case?

16 A: No, sir.

17 Q: Did y'all have any discussions about what he believed
18 their testimony to be?

19 A: No, sir.

20 Q: Now, we've talked about your original charge and we've
21 talked about you showing up for the court date for the guilty
22 plea. But now, there were some back and forth about trying to
23 work this out; is that fair enough?

24 A: Yes. Yes, sir.

25 Q: Okay. Let's go through that for Judge Nettles. What do

1 you remember -- the first time there was an offer being
2 brought to you, do you remember what that originally was?

3 A: Well, not for this charge, it was the first armed robbery.

4 Q: Okay.

5 A: It was 10 -- it was 10/85.

6 Q: Okay. And so, just to be clear, you're being told to
7 plead to this other armed robbery for 10/85 and what would
8 happen to this case?

9 A: Well, at the time, he, he, he -- well, he told me -- but
10 the first time he didn't told me anything about the other
11 charge. It was the second time when he came to Darlington, he
12 was telling me about the property crime happening then.

13 Q: Okay.

14 A: Saying if I don't take it -- take it now, that he gonna
15 enhance the property crime enhancement.

16 Q: So, the conversation was to take 10 on the first armed
17 robbery ---

18 A: Uh-huh, (affirmative response).

19 Q: --- or this case is gonna get bigger?

20 A: No, not on the first one, not on the first offer.

21 Q: Okay. Forgive me, I apologize. Why don't you just begin
22 it this way, tell the Judge what the first offer was?

23 A: The first offer was 10/85.

24 Q: On what, on which case?

25 A: On the first armed robbery.

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24

1 Q: All right. And what was gonna happen to this case?

2 A: He never -- he never mentioned it.

3 Q: You didn't know?

4 A: Yeah, he didn't mention nothing about it.

5 Q: Fair enough. Second, and so what was your response to
6 that; did you want it or not want it?

7 A: I turned it down.

8 Q: Okay. So, then what was the second conversation y'all
9 had?

10 A: The second one was the 10 nonviolent. And if I didn't
11 take that, he was gonna enhance the property crime enhancement
12 to armed robbery.

13 Q: Okay. And what did you indicate to that?

14 A: I turned that down and told him no, I wasn't taking it.

15 Q: And then was there a third time?

16 A: No. No, sir. He told me that the solicitor was gonna put
17 me up for trial and that was the deal August the 6th -- I
18 mean, the day of my court date.

19 Q: Okay. Now; I'm gonna hopefully help you recall some of
20 it.

21 A: All right.

22 Q: You -- you already told the Judge you bonded out, right?

23 A: Yes, I did, sir.

24 Q: Now, this is not what we're complaining about today, but
25 was there a -- an arrest for possession of stolen vehicle

- 1 while you were out on bond?
- 2 A: Oh yeah, yes, sir.
- 3 Q: And after that arrest, were you brought to court?
- 4 A: Yes, sir.
- 5 Q: But not for that possession of a stolen vehicle?
- 6 A: No, sir.
- 7 Q: What were you being brought to court for?
- 8 A: Property crime enhancement.
- 9 Q: This case, right?
- 10 A: This case.
- 11 Q: To plea or go to trial? Do you remember?
- 12 A: Well, they said they had me on the trial docket for April
- 13 the 10th, but they brought me in like a couple of days before
- 14 that and tried to get me to plead to the property crime
- 15 enhancement -- I mean, plead to the armed robbery.
- 16 Q: Now, you had gotten paperwork, was that while you were at
- 17 the jail did you get the paperwork from him or was that at
- 18 home that he mailed it to you?
- 19 A: About the court case?
- 20 Q: The discovery, the paperwork, the evidence?
- 21 A: I didn't got anything.
- 22 Q: Okay. You already told Judge Nettles earlier that he sent
- 23 you the police reports and all that stuff, he just never
- 24 reviewed it with you; is that right or wrong?
- 25 A: No, I never got anything like that. I mean, I still had

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- 1 the old property crime enhancement warrants. I never -- I
2 never got the new warrant for the armed robbery or nothing.
3 Q: Not talking about a warrant, we're talking about police
4 reports or witness statements; did he send that stuff to you
5 or not?
6 A: No, he didn't.
7 Q: Okay. So, earlier, were you confused when I was asking
8 you earlier about whether he sent you the Rule 5 or not
9 because that's what I meant to ask you?
10 A: I did get the Rule 5 for the first armed robbery.
11 Q: Okay. But what about this one?
12 A: I had the Rule 5 for the property crime enhancement.
13 Q: Okay. So, you did have it?
14 A: Yeah, I did.
15 Q: You got the paperwork, police reports, right?
16 A: Oh, yeah -- yeah, I did, yes, sir.
17 Q: Now, when you came in here in April because of that new
18 arrest, did you then find out about a camera?
19 A: Yeah.
20 Q: Surveillance?
21 A: Yeah, he told me about it, yeah.
22 Q: Had you heard about that before at all?
23 A: No, sir.
24 Q: Had you seen that at all?
25 A: No, sir.

1 Q: Had he played that for you on the video when he met with
2 you at all?

3 A: No, sir.

4 Q: Okay. What was he showing you then about the camera
5 footage?

6 A: He didn't show me nothing. He came and visited me and
7 told me that he was bringing me down here to see it. When I
8 got down here, he told me that there was a misunderstanding
9 that it -- there was no video.

10 Q: Okay.

11 A: That's when he tried to ---

12 Q: And that was a few days before you pled -- a couple of
13 days before you pled guilty?

14 A: Yeah. I came down here twice. I came down here I think
15 on the 4th and I came back on the 6th.

16 Q: And it's the 4th where you were being brought down, you
17 were on the trial docket and he tells you about a camera, but
18 doesn't show it to you?

19 A: He doesn't show it to me.

20 Q: Did you try to have Mr. Cochran taken off your case that
21 day?

22 A: Yes, sir.

23 Q: Did the Judge hear you about that or not or did you make
24 it in the courtroom?

25 A: I was in the courtroom and he told me if you decide to

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1 fire Cochran, you will have to have attorney by Monday because
2 that was supposed to been my scheduled trial -- start my trial
3 date.

4 Q: Your trial was on top you, right?

5 A: Yeah.

6 Q: Okay. And that's on the 6th when you then came back to
7 court?

8 A: Yeah.

9 Q: And you didn't go to trial?

10 A: I didn't go to trial.

11 Q: What did you do?

12 A: I took the plea.

13 Q: What was Mr. Cochran's advice about whether you should go
14 to trial or plead guilty?

15 A: He was telling me that he don't see that I should go to
16 trial because he say something about even though you --
17 because I was trying to ask him, you know, that maybe if I go
18 to trial, maybe they might just find me guilty for the
19 shoplifting.

20 Q: And what did he say about that?

21 A: He was saying, due to my record, you know, that the jury
22 might find me guilty due to my record and I might, you know,
23 get time for the armed robbery.

24 Q: Okay. So, he was worried about your prior record?

25 A: Yeah.

1 Q: Did he go over that with you?

2 A: No, sir.

3 Q: Did he ever tell you what the jury might hear about if you
4 went to trial?

5 A: No, sir.

6 Q: Did he ever tell you he could try to block the jury from
7 hearing about any of your prior record?

8 A: No, sir.

9 Q: Did he ever tell you that if you went to trial, he could
10 ask the Judge to give the jury the option of a smaller charge?

11 A: No, sir.

12 Q: A lesser included charge?

13 A: No, sir.

14 Q: Strong armed robbery rather than armed robbery?

15 A: No, sir.

16 Q: This may be obvious, but on April the 4th when you asked
17 that he be relieved, was he relieved or did he stay on as your
18 attorney?

19 A: He stayed as my attorney because the Judge told me that if
20 I fire him that I would have to have my attorney by Monday and
21 there was no possibility that I was able to do that. So, I
22 went along and I kept him.

23 Q: Were you ready for trial two days later?

24 A: No, sir.

25 Q: Do you feel Mr. Cochran was ready for trial two days

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1 later?

2 A: No, sir.

3 Q: Did he ask for a continuance?

4 A: No, he didn't, sir.

5 Q: On the 6th, did you think you had a legitimate option of
6 going to trial or plead guilty; did you think there was an
7 option?

8 A: No, sir.

9 Q: If you had felt your attorney was prepared to go to trial
10 on the 6th, would you have gone to trial or would you have
11 pled guilty?

12 A: I would've went to trial.

13 Q: Now, the Judge would've decided, but if your attorney
14 would have asked for more time for a trial, would you have
15 pled guilty or had gone to trial?

16 A: I would've went to trial.

17 Q: If you knew that he could try to block some of or maybe
18 all of what the jury would hear about your prior record, would
19 you have pled guilty or gone to trial?

20 A: I'd have went to trial.

21 Q: If you'd have been told that an attorney could ask for,
22 again it's the Judge's decision, but an attorney could ask for
23 the jury to have an option of a lower charge or a lesser
24 offense at the end of the trial, would you have risked it and
25 gone to trial or would you have pled guilty?

1 A: I would've went to trial.

2 Q: Now, you know you would've been going to trial on armed
3 robbery, right; that's what the state indicted you for, right?

4 A: Yes, sir.

5 Q: And you knew on the day you pled that it was 10 to 30,
6 right, mandatory minimum 10?

7 A: Yes, sir.

8 Q: Up to 30, right, and 85 percent, right?

9 A: Yes, sir.

10 Q: You're telling Judge Nettles you would not have taken this
11 deal and you would have gone to trial?

12 A: I would've went to trial.

13 Q: Thank you, Mr. White, no more questions. The Attorney
14 General may have some questions for you.

15 THE COURT: Ms. Oppenheimer?

16 CROSS EXAMINATION OF JAMES WHITE BY MS. OPPENHEIMER:

17 Q: You had a pretty lengthy criminal record before this,
18 correct?

19 A: Yes, ma'am.

20 Q: So, you were fully aware of the criminal process, right?

21 A: Slightly.

22 Q: Well, how many charges did you have on your record when
23 you picked up this charge?

24 A: You talking about the same identical charge or ---

25 Q: Just any charge?

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- 1 A: Quite a lot.
- 2 Q: Quite a lot; can you ballpark a number?
- 3 A: I'd say probably over 30.
- 4 Q: So, you were charged with crimes over 30 times and had
5 gone through the criminal judicial process for each of those
6 charges, correct?
- 7 A: I don't understand what you mean by that.
- 8 Q: Well, you were charged with 30 different crimes, correct?
- 9 A: Yes, ma'am.
- 10 Q: And you would've had to deal with those in some way either
11 a guilty plea or a trial on those, correct?
- 12 A: Yes, ma'am.
- 13 Q: And do you recall the day of your plea?
- 14 A: Yeah, April -- April the 6th.
- 15 Q: You do?
- 16 A: Yes, ma'am.
- 17 Q: And you recall telling the Judge that Mr. Cochran had
18 explained the nature of the charge and the indictment to you,
19 right?
- 20 A: Yes, ma'am. -
- 21 Q: And you told the Judge that Mr. Cochran had explained to
22 you that the potential sentence was 10 to 30 years, correct?
- 23 A: Yes, ma'am.
- 24 Q: And you also told the Judge that Mr. Cochran had
25 negotiated a sentence on your behalf, correct?

1 A: Yes, ma'am.

2 Q: And you wanted the Judge to accept the negotiated
3 sentence, correct?

4 A: Well, to be honest, before I went in front of the Judge,
5 he already had tell practically some of the things to go ahead
6 and, you understand, you know, tell the Judge, you know, you
7 agree to this, you agree to that. So, I went ahead along with
8 that just on his behalf, not on mine.

9 Q: But you did tell the Court that you wanted him to accept
10 this negotiated sentence, correct?

11 A: Yeah, that's -- yes, ma'am.

12 Q: And you also told the Court that you been explained what a
13 most serious offense was, correct?

14 A: Yes, ma'am.

15 Q: And you told him that you understood the significance of
16 that, right?

17 A: Yes, ma'am.

18 Q: And you also understood what a no-parole offense was,
19 correct?

20 A: No, ma'am, I don't ---

21 Q: Do you recall telling the Judge that you understood what
22 that meant?

23 A: Yes, ma'am.

24 Q: And you -- the Judge explained to you what community
25 supervision was, correct?

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1 A: Yes, ma'am.

2 Q: And you understood all that?

3 A: Yes, ma'am.

4 Q: And you also told the Court that you were completely
5 satisfied with Mr. Cochran, correct?

6 A: Yes, ma'am.

7 Q: And do you recall Judge Dennis asking you if it was your
8 decision to plea and you told him it was?

9 A: Yes, ma'am.

10 Q: And you also told him that no one had promised you
11 anything or forced you to plead guilty, correct?

12 A: Yes, ma'am.

13 Q: And Judge Dennis also explained each of your rights at
14 trial to you, correct?

15 A: Yes, ma'am.

16 Q: And you understood you were giving up those rights by
17 pleading guilty, right?

18 A: Yes, ma'am.

19 Q: Do you recall the state going over the facts of this case?

20 A: No, I don't remember that.

21 Q: Would looking at the transcript of your plea refresh your
22 recollection?

23 A: I mean, I can't recall, I mean ---

24 Q: Well, if you looked at a copy of the transcript, would
25 that refresh your memory, would you remember what the state

1 said about the facts?

2 A: Probably so.

3 MR. OPPENHEIMER: Your Honor, may I approach the witness?

4 THE COURT: I think the -- you can ask him if you'd like,
5 but the record is -- the transcript is a part of the record.

6 I'll concede that he agreed with the facts.

7 MS. OPPENHEIMER: I will move on then, Your Honor. I beg
8 the Court's indulgence.

9 BY MS. OPPENHEIMER:

10 Q: And you testified earlier that you had several meetings
11 with Mr. Cochran prior to your plea?

12 A: I mean, not to all this -- this charge, toward my first
13 armed robbery. This charge was just enhanced like two months,
14 like a months before I got initially arrested.

15 Q: Did you ever give Mr. Cochran any leads or witnesses to
16 investigate?

17 A: No, ma'am.

18 MS. OPPENHEIMER: Your Honor, I have no further
19 questions.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION OF JAMES WHITE BY MR. DAVIS:

22 Q: I think I asked him this on direct but -- have ever gone
23 to trial on any of your prior arrests?

24 A: No, sir.

25 Q: You've told this Judge about the two, this one and one

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1 prior armed robberies that were pending. Other than those,
2 what's the worst thing before, other than that, that you got
3 arrested for?

4 A: What do you mean by worst, I mean, you mean by anything --

5 Q: A most serious case?

6 A: Most serious, like ---

7 Q: Nothing as serious as the two armed robberies, right?

8 A: Hu-huh, (negative response).

9 Q: Yes or no?

10 A: No.

11 Q: Okay. I'm going to put you on the spot again. You're not
12 a lawyer, right?

13 A: No, I ain't.

14 Q: Can you tell Judge Nettles what most serious offense
15 means?

16 A: I mean, my term, to me it's most serious than the next
17 charge, I guess, if I put it in my term.

18 Q: You know what affect it has on people that have more than
19 one most serious offense; do you know what that can do to
20 them?

21 A: No, sir.

22 Q: If I ask you to define to Judge Nettles a no-parole
23 offense, what does that mean?

24 A: To me, I guess you ain't able to go home, I guess. I mean

25 ---

1 Q: You're never gonna get parole?
2 A: Yeah.
3 Q: When, when was it that you found out that your first armed
4 robbery that we've talked about, when did you find out that
5 that got dismissed?
6 A: I think when I took the plea on the second armed robbery.
7 Q: Okay. So, Mr. Cochran told you about that?
8 A: I mean, he told it was a negotiation deal or something
9 like that, that if I took this 10/85 that they were gonna get
10 rid of that.
11 Q: All right. Thank you, sir, no other questions.
12 THE COURT: You may step down.
13 You may call your next witness.
14 MR. DAVIS: If I can have just a moment with my client,
15 Your Honor.
16 Judge, thank you so much. That would be Applicant's
17 presentation.
18 THE COURT: All right. Ms. Oppenheimer, you're
19 recognized.
20 MS. OPPENHEIMER: The state calls Charles Cochran.
21 THE COURT: Mr. Cochran, please come forward. Place your
22 left hand on the Bible and raise your right hand as the clerk
23 administers the oath.
24 CHARLES COCHRAN, HAVING BEEN DULY
25 SWORN TESTIFIES AS FOLLOWS:

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1 CLERK: Okay. Have a seat and, for the record, state
2 your name and spell your last name please.

3 MR. COCHRAN: Charles Cochran, C-O-C-H-R-A-N.

4 THE COURT: Ms. Oppenheimer?

5 DIRECT EXAMINATION OF CHARLES COCHRAN BY MS. OPPENHEIMER:

6 Q: Good morning, Mr. Cochran.

7 A: Good morning.

8 Q: How long have you been practicing law?

9 A: It'll be 10 years next month.

10 Q: And where are you employed?

11 A: At the federal public defender's office.

12 Q: And prior to that where were you working?

13 A: Charleston County Public Defender's Office.

14 Q: Is it fair to say that most of your practice has been in
15 criminal law?

16 A: It -- all of it has, yes.

17 Q: Were you appointed or retained in this case?

18 A: Appointed.

19 Q: Do you recall when?

20 A: I looked at -- it would've been soon after Mr. White was
21 originally arrested, which I believe was November 25th, 2015,
22 so probably within a week after that, a week or so.

23 Q: How many times did you meet with him prior to his plea?

24 A: I had been unable to get -- to go look at the computer
25 system because of a change in the computer system at my office

1 and I did not look at the physical file. So, for jail visits,
2 I don't have my records for that. I have phone contact logs.
3 I spoke with Mr. White on the telephone on December 29th of
4 2015, which was about a month after he was arrested and then
5 again the next month or actually about a week later, January
6 7th, 2016, and then again on February 23rd, 2016, and then
7 again on March 29th, 2016, then again on June 21st, 2016, and
8 then again on July 28th, 2016. Those were all phone
9 conversations that I recorded. I didn't record the content of
10 the conversation, but recorded the conversation having taken
11 place. And then it would be my practice to see a client
12 within the first week or 10 days after their arrest in person.
13 And I know that there was some issue about having seen Mr.
14 White over the video. It's possible that I saw him over the
15 video conference a few times. The jail would've logged that.
16 And then my in person visits with Mr. White, I couldn't tell
17 you exactly how many I had. I could tell you that I certainly
18 did meet with him, I remember meeting with him. I mean, I
19 still to this day recognize him. I'm very familiar with Mr.
20 White. I've represented him for a while, and him and I had
21 what I would describe as frequent exchanges. We talked on the
22 phone every month for a period of time. And then my practice
23 would be to see him or to see any client, like I said, within
24 the first 10 days of their arrest and then every 60 days at
25 least afterwards, and that could be by video or it could be in

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1 person, but I do have specific recollections of seeing Mr.
2 White in person and reviewing the discovery in this case and
3 going over it repeatedly.

4 Q: All right. So, you obviously filed Brady and Rule 5
5 motions?

6 A: Yes.

7 Q: And do you recall materially what you would have gone over
8 with Mr. White?

9 A: From what I remember in his case, so he got -- I was
10 assigned to the case because of his original charges of an
11 armed robbery and, admittedly, I think that one was maybe a
12 little bit more of a weak armed robbery charge in terms of the
13 state's evidence against him. He was arrested in November of
14 2015. He was in jail for two or three months, and then got
15 out in February of 2016, and then that summer he was arrested
16 again for the property crime enhancement. And there had
17 always been some talk -- so, your question was what I would've
18 reviewed with him would have been initially that armed robbery
19 discovery, which would've amounted to witness statements --
20 victim statements. And then for the second case, it would've
21 been the police reports and witness statements and then
22 potentially the videos. I know he says he didn't see the
23 video and I -- I cannot say on the record that I showed him
24 the video.

25 Q: All right. Do you recall what the video showed?

1 A: From my recollection, he was at the back of the store
2 taking televisions or taking a television out, trying to get
3 out of the back of the store with a television, and he was
4 confronted by an employee. And then the point of contention
5 as to whether or not it was a shoplifting or strong armed
6 robbery or armed robbery took place in that exchange that he
7 had with the store employee while he was either loading a TV
8 into a truck or taking it out of the store or something.
9 Whether or not he flashed one or threatened the use of a
10 weapon or -- that would've been the issue at trial. And we
11 would've reviewed all of these potential witness statements,
12 what would they say at trial, what the cops would say at
13 trial, what the video would show and all that kind of stuff.

14 Q: All right. Did you discuss the elements of each charge?

15 A: Yes.

16 Q: And did you discuss potential sentences?

17 A: Yes.

18 Q: Did you review most serious offenses?

19 A: I don't know if -- I'd have to look back at his criminal
20 -- the only reason I would have, I mean, I -- the main reason,
21 not the only reason, the main reason I would've reviewed the
22 most serious and serious offenses is whether or not if he was
23 facing LWOP or life without parole in this instance, we
24 would've reviewed that. And I would have mentioned to him --
25 I can't affirm on the stand that I guarantee that I told him

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1 this was a most serious offense for the purpose of this going
2 on his record.

3 Q: Was he ever facing an LWOP sentence?

4 A: I don't think -- I don't think so. I don't think that was
5 threatened.

6 Q: Did you discuss community supervision and no parole
7 offenses?

8 A: I don't recall.

9 Q: Did you explain to Mr. White why his charge was enhanced
10 to an armed robbery?

11 A: Yes.

12 Q: And what did you explain to him?

13 A: I specifically remember going over this because this was
14 something that was always sort of a possibility because of the
15 original accusations of one of the witnesses. And that was
16 always a risk to basically -- that the state would basically
17 use that potential enhancement as a strong arm tactic to get
18 him to plead to the initial armed robbery, which was, like I
19 said, maybe a little bit more, of a weak case. From my
20 recollection, Mr. White and I were both very comfortable going
21 to trial on the first, the initial armed robbery that he was
22 arrested for. And when he picked up the property crime
23 enhancement, from my recollection, my efforts were trying to
24 get him into court and agree to some sort of a plea to the
25 property crime enhancement so that we would avoid an

1 enhancement to an armed robbery, and Mr. White did not want to
2 do that.

3 Q: Can you explain in details some of the offers that you
4 received on this case?

5 A: I have in my notes that he -- I spoke to the prosecutor
6 right before the hearing, and I did not remember this, but
7 apparently there was an offer for a plea to two strong armed
8 robberies and that was turned down. There may have been a
9 plea offer -- I don't know -- that may've been the only plea
10 offer. I don't know if he ever let -- I don't know if there
11 was an offer to just let him plea to one property crime
12 enhancement and no strong armed robbery or no armed robbery or
13 anything like that. He certainly could have at one point, I
14 think, pled to a property crime enhancement and then taken the
15 first initial armed robbery to trial, but we never -- never
16 got there. He had plea dates, and we would've met in person
17 and reviewed all this on his two plea dates, which were August
18 8th of 2016 and November 14th of 2016, where we would've met
19 in person or on video and talked about this beforehand. But
20 then on those dates as well, we would've discussed it down at
21 the holding cell to decide whether or not we were going to go
22 forward with whatever present plea offers there were, whatever
23 parameters of a plea there were, and he would've declined it
24 because we didn't obviously go forward with pleas on those
25 days.

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1 Q: Did you explain to Mr. White his constitutional rights to
2 -- to a trial and his rights at the trial?

3 A: Yes.

4 Q: Did you discuss any potential defenses?

5 A: Yes, I mean the -- I think, to the best of my
6 recollection, the best thing we were gonna be going for, was
7 arguing to a jury that this was a mere shoplifting and then
8 the government would be arguing some sort of, I guess,
9 asportation, use of a weapon or threat of a weapon while he
10 was trying to get away with the things he was stealing. I
11 think based on the video evidence and witness ID's -- I don't
12 think we were contesting that he was there taking the stuff,
13 from what I recall. But, yes, we would've discussed that.

14 Q: And would you have, in connection with that, discuss the
15 consequences of a plea if he decided to do that?

16 A: Yes. Mr. White was very aware that property crime
17 enhancement carried zero to 10, and the armed robbery carried
18 10 to 30, and a strong armed robbery is whatever potential
19 plea offer, he would've been aware that that was -- been aware
20 of the consequences of that as well.

21 Q: And ultimately, Mr. White did reject those previous offers
22 to lesser crimes, correct?

23 A: He did.

24 Q: Did you ever have the indication from Mr. White that he
25 did not understand anything you were telling him?

1 A: No, he understood.

2 Q: And did he ever indicate to you at this plea or beforehand
3 that he wanted to go to trial?

4 A: No, I mean, Mr. White was -- it's a common occurrence with
5 a client, we've got regular back and forth, talking on the
6 phone, he's getting arrested, re-arrested, I'm going to the
7 jail and visiting him in the jail, we talk over the phone when
8 he's not in jail. The whole time, it's just kind of waffling
9 back and forth, you know. He, he wants to work the case up,
10 but has not quite gotten that offer that he really wants. You
11 know, he hasn't gotten that assurance of a sentence that he
12 wants and when push came to shove, it was either go to trial
13 on armed robbery or agree to the mandatory minimum. And he, I
14 guess, felt he had to swallow that pill. That wasn't, I'm
15 sure, what his best case scenario was, that wasn't what we had
16 hoped for from the, you know outset of the case, but we got
17 corralled into that scenario because he was unable to plead
18 guilty to lesser offenses. And it doesn't -- the risk was
19 that we were gonna go in for an open plea on a property crime
20 enhancement and he would get 10 anyways. It would be a 65
21 percent ---

22 Q: And ultimately his decision was to plead guilty?

23 A: Yes.

24 Q: I beg the Court's indulgence?

25 Did you discuss with Mr. White his prior record and the

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1 possibility of that coming up at trial?

2 A: I don't remember what his prior record was. We would
3 certainly, if he were going to testify, we would talk about
4 that. I don't think I typically really go over those with
5 clients at the beginning of stages before the trial because a
6 lot of times, they don't testify anyways and it wouldn't come
7 in then and, you know, we kind of deal with that if they
8 decide they want to testify during the trial. His record, we
9 certainly would've discussed his record in terms of likelihood
10 of outcomes for pleas or outcomes if he were convicted at
11 trial of armed robbery and the likelihood that he would get
12 more than 10.

13 MS. OPPENHEIMER: No further questions, Your Honor.

14 THE COURT: Mr. Davis?

15 CROSS EXAMINATION OF CHARLES COCHRAN BY MR. DAVIS:

16 Q: You were -- I'm gonna kind of go in reverse order -- you
17 were just talking about your fear was that he might get the
18 maximum if convicted of the property offense enhancement ---

19 A: That's if -- that's if he was ever given the opportunity
20 to just plead to a POE. I can't remember whether or not he
21 was, though.

22 Q: Okay. Or if a jury would've been given that option to
23 convict him of that?

24 A: Right, yes, sir.

25 Q: And as you, I think, testified the 10 years maximum on

1 property offense enhancement is better than a minimum on an
2 armed robbery?

3 A: Yes, yeah.

4 Q: And then you also testified that it finally came down to
5 either trial on the armed robbery or the negotiated mandatory
6 minimum on the armed robbery, right?

7 A: Right.

8 Q: And that was because he wasn't that close on the trial
9 docket?

10 A: Right.

11 Q: And this solicitor's office's policy back then and I think
12 it still is now, that once you're placed on the trial docket,
13 with rare exception, they're not allowed to make offers at
14 that point?

15 A: Right. And, you know, the other thing is that armed
16 robbery in particular is a sticking point with reducing it.
17 So, you know, from what I remember in the months leading up
18 to, you know, my representation of Mr. White, the threat of
19 the indictment of an armed robbery was serious because if he
20 was indicted of an armed robbery, the solicitor's office, 99
21 times out of a 100, is not going to come off of an armed
22 robbery. They're going to take you to trial on it or -- or
23 you're going to plea to it, but they're not going to reduce
24 it. So, it's sort of like, you know, trying to get him into
25 court to plea to a POE if, if he could, to avoid that

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CHARLES COCHRAN - CROSS BY DAVIS

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1 enhancement.

2 Q: But I think you said, you don't recall the state ever
3 offering a straight up plea to the property offense
4 enhancement?

5 A: I mean, I -- he must've had the opportunity to do that, I
6 just think that he would've always been in a situation where
7 he would've had to plead straight up to the POE and leave the
8 armed robbery hanging out there. So, that, he didn't want to
9 do.

10 Q: And just to be clear, you're aware that that first armed
11 robbery was in fact dismissed?

12 A: Yes.

13 Q: Now, are you indicating that you recall specific
14 discussions about your ability to request lesser includeds to
15 the jury in that trial or not?

16 A: I don't remember talking about that specifically.

17 Q: You testified about ---

18 A: That would've been -- but that would've been like a
19 defense, so, that would've been at the heart of any
20 conversation that we had about the trial. Because I don't
21 think we were ever planning on saying he wasn't there or it
22 wasn't him.

23 Q: And I misspoke in my direct of my client; I said Denno
24 rather than Biggers. Do you ever -- do you remember
25 discussing your ability to try to block any identification of

1 him with a pretrial Biggers hearing.

2 A: I don't recall specifically. I mean, obviously, typically
3 in an eyewitness ID case, you would have that hearing prior to
4 trial and then you would discuss it with your client. I don't
5 recall specifically having that discussion with him.

6 Q: Was your view of this case -- I think you already
7 testified that your goal early on was to see if there was some
8 way you could get him to plead guilty to the property offense
9 to avoid this becoming armed robbery, right?

10 A: Right.

11 Q: And so, your stance or your view of this case given the --
12 given the issue was basically whether armed or not or whether
13 he threatened to arm or not, the issue wasn't about identity,
14 it was about what crime was actually committed; is that a fair
15 way to how you viewed this?

16 A: Correct.

17 Q: So, again, bluntly, as a public defender that handles a
18 bunch of cases, this is not a case -- this one was not a case
19 as opposed to the weaker first armed robbery that you really
20 anticipated was gonna be a trial?

21 A: Yeah, I don't know that I ever necessarily anticipated a
22 trial.

23 Q: So, unlike cases that are pretty clear there is gonna be
24 trials, you wouldn't have reviewed his record for testimony
25 purposes, because it probably wouldn't go there, right?

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CHARLES COCHRAN - REDIRECT BY OPPENHEIMER

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1 A: Well, I mean, once we got put on the trial docket, we
2 might -- it might've seemed like more of a likelihood. My
3 impressions from Mr. White throughout my representation was
4 that he had no interest in trial. He got backed into a plea
5 once he got indicted on the armed robbery and they wouldn't
6 come off of it.

7 Q: So, again, as compared to this case, his property offense
8 case, to other cases you would have had then and have now,
9 ones that are pretty obviously going to be a fight, gonna be a
10 this case would have been one you wouldn't have worked up
11 towards a trial like you would others; is that fair?

12 A: That's fair.

13 THE COURT: Any redirect, Ms. Oppenheimer?

14 MR. DAVIS: Thank you, Judge. I apologize.

15 MS. OPPENHEIMER: Very briefly.

16 REDIRECT EXAMINATION OF CHARLES COCHRAN BY MS. OPPENHEIMER:

17 Q: If Mr. White had indicated he wanted to go to trial, would
18 you have been prepared?

19 A: Yes.

20 MS. OPPENHEIMER: No further questions, Your Honor.

21 THE COURT: You may step down. Thank you, sir. And
22 you're free to leave if you would like.

23 MR. COCHRAN: Thank you.

24 THE COURT: Anymore witnesses from the state?

25 MS. OPPENHEIMER: Yes, Your Honor. The state would call

1 Assistant Solicitor Culver Kidd.

2 THE COURT: Place your left hand on the Bible and raise
3 your right hand as the Clerk administers the oath please, sir.

4 CULVER KIDD, HAVING BEEN DULY SWORN

5 TESTIFIES AS FOLLOWS:

6 CLERK: Have a seat and for the record state your name
7 and spell your last name, please.

8 MR. KIDD: My name is Culver Kidd, K-I-D-D.

9 THE COURT: Ms. Oppenheimer?

10 DIRECT EXAMINATION OF CULBERT KIDD BY MS. OPPENHEIMER:

11 Q: Good morning, Mr. Kidd. How long have you been practicing
12 law?

13 A: Since 2007.

14 Q: And where are you currently employed?

15 A: With the Ninth Circuit Solicitor's Office.

16 Q: And how long have you been there?

17 A: Ten years.

18 Q: Can you briefly describe the facts of this case?

19 A: The armed robbery he pled to?

20 Q: Yes.

21 A: It was, I believe it was a Kohl's, some sort of department
22 store, I believe it was a Kohl's. The video surveillance was
23 very good. The loss prevention officer actually was tracking
24 the defendant through the store. He had a surveillance system
25 that could follow him. He tracked the defendant through the

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CULVER KIDD - DIRECT BY OPPENHEIMER

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1 store to the back corner. He grabbed I believe two large like
2 60-inch televisions and went out the back emergency exit.
3 There was a -- all that part was on video and we had close-ups
4 of his face. It was dead to rights him inside the store.
5 When he started going out the back door, the loss prevention
6 officer chased after him, got to the point where he was
7 probably about 10 steps behind him as they exited the
8 emergency exit in the back of the store, where according to
9 the loss prevention officer, there was a vehicle waiting for
10 him that had the back hatch open. And so the defendant put
11 the TVs in the back hatch, ran around, jumped in the front
12 passenger seat while the loss prevention officer ran up to the
13 back of the door, grabbed the TVs as the car drive off. He
14 still had the merchandise. The car stopped, the defendant got
15 out of the front passenger seat of the vehicle and opened up
16 the back passenger door, retrieved what the loss prevention
17 officer at least believed to be a firearm from underneath the
18 seat and pointed at the loss prevention officer and said, what
19 are you going to do now? The loss prevention officer sat the
20 TVs down and backed up. The Defendant then approached, got
21 the TVs and put them back in the truck and they took off. I'm
22 not sure why he was charged as a property crime enhancement to
23 begin with, but I guess the officer didn't really think that
24 using a firearm to affect -- to escape or to get away was the
25 same as using it to actually taking the merchandise to begin

1 with, a situation with that officer that has been rectified.

2 Q: And have can you kind of explain the decision to enhance
3 this to an armed robbery charge?

4 A: Sure. Well, as Mr. Cochran testified earlier, he had
5 another pending armed robbery from November of 2015, in which
6 I had met with that victim and had been preparing for trial.
7 Now, I can't prove it, but that victim began to have a charge
8 of heart and my opinion was due to being ---

9 MR. DAVIS: Objection, Your Honor, calls for speculation.

10 THE COURT: Sustained.

11 A: That victim, was no longer, I guess, as onboard to
12 cooperate. And during the -- I had made a 10-year armed
13 robbery offer on that first armed robbery. He had a terrible
14 record. I knew the victim in that case had known the
15 defendant since they were children. As the case progressed, I
16 made a 10-year armed robbery offer on that case; he rejected
17 it. About a month after he rejected that offer, he got picked
18 up on a property crime enhancement. I then on October 24th of
19 2016, offered him to plead to two counts of strong armed
20 robbery for a negotiated 10-year sentence and in that -- in
21 the email that I pulled from my email today, I indicated to
22 Mr. Cochran that this is the offer. I'm going to place on the
23 November 14th plea docket. If he doesn't take this offer, I'm
24 gonna directly indict him for the armed robbery and the
25 property crime enhancement because, to me, it was clearly my

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CULVER KIDD - DIRECT BY OPPENHEIMER

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1 strongest case, and then that would be the first case we would
2 take to trial should he reject this offer and that it's the
3 best one that I can make to him, which was to plea to two
4 counts of strong armed robbery for a negotiated 10 years.

5 On November 14th of 2016, he rejected that offer. On
6 November 15th of 2016, I sent Mr. Cochran an email that says,
7 as discussed, here's a copy of the indictment that I'm sending
8 it to the grand jury because the original warrant number is
9 the same. I don't believe I have to have him served or re-
10 booked, et cetera, but this is the charge we'll be proceeding
11 on for trial at this point.

12 BY MS. OPPENHEIMER:

13 Q: All right. And after he was indicted on November 15th or
14 you sent the indictment to the grand jury for armed robbery,
15 did you make any other plea offers at that time?

16 A: I did not. To my knowledge, I believe it was just always
17 kind of gonna be he's gonna have to plea to armed robbery,
18 whatever it is. Now, obviously, when he pled, I made an
19 offer. I believe that was sort of contemporaneous in court
20 because it was on the eve of or immediately preceding trial
21 and that was that if he'd just plead to the armed robbery from
22 the shopping -- from the store, that in negotiations or in, in
23 -- that I would dismiss the other pending armed robbery and
24 weapons charge.

25 Q: And did you communicate that offer to Mr. Cochran?

1 A: I did, I just don't have that one in writing.

2 Q: I beg the Court's indulgence.

3 And just to clarify, the offer that you ultimately made
4 would have been prior to the guilty plea?

5 A: Yes.

6 Q: And that would've been a negotiated 10 years on armed
7 robbery?

8 A: Correct.

9 MS. OPPENHEIMER: No further questions, Your Honor.

10 THE COURT: Any cross examination?

11 MR. DAVIS: No, Your Honor. Thank you, Mr. Kidd.

12 THE COURT: You may step down; you're free to leave.

13 MR. KIDD: Thank you, Your Honor.

14 THE COURT: Anything further from the state?

15 MS. OPPENHEIMER: Nothing further, Your Honor.

16 THE COURT: Anything in reply from Mr. Davis?

17 MR. DAVIS: Your Honor, may I have one second?

18 Judge, yeah, I apologize. I need to call Mr. White for
19 one issue.

20 THE COURT: Mr. White, you're still under oath. Just
21 have a seat.

22 REPLY DIRECT EXAMINATION OF JAMES WHITE BY MR. DAVIS:

23 Q: Mr. White, you just heard the solicitor in your case
24 testify about an email he had of an offer in October of 2016
25 offering two counts of strong armed robbery for a negotiated

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JAMES WHITE - REPLY DIRECT BY DAVIS

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1 10-year sentence. Prior hearing that testimony, were you ever
2 told of that offer?

3 A: No, sir. I was told 10 years nonviolent for strong armed
4 robbery.

5 Q: Okay. I apologize. Can you tell Judge Nettles what offer
6 you ever recall having about strong armed robbery? Maybe I'm
7 confused here. Can you tell Judge Nettles what offer you've
8 ever received from Mr. Cochran?

9 A: It was 10/80 -- it was the armed robbery for 10 years and
10 then he came back with the 10 years for strong armed robbery
11 nonviolent, something like that.

12 Q: Okay.

13 A: That was for the first armed robbery; that didn't have
14 nothing to do with this one.

15 Q: Okay. And again, I just want to make it very clear, I
16 just asked you at the table here, I showed you what I wrote
17 down the notes for Mr. Kidd's testimony; two counts of strong
18 armed robbery and negotiated 10 years. And my understanding
19 in trying to whisper to you there, you were never told of that
20 and I thought you said you were never told about that. Were
21 you told about that?

22 A: I was never told about no two strong armed robberies. I
23 was told about the strong armed robbery for the first -- the
24 first armed robbery.

25 Q: For just one case but not to resolve both of them?

1 A: No, because the other case ain't never turned into an
2 armed robbery yet. That case was still showing property crime
3 enhancement.

4 Q: Okay. So, to be clear, were you ever told that this case,
5 this property offense enhancement, that was ultimately
6 indicted as an armed robbery, were you ever told that this one
7 could've been pled down ---

8 A: Uh-huh, (negative response).

9 Q: --- to strong armed robbery if you also pled to the first
10 one as a strong armed robbery?

11 A: No, sir. No, sir.

12 Q: Okay. I honestly don't know your answer to this question.
13 If you had been given the opportunity to plead to both as
14 strong armed robberies, 10 years not 85 percent, when given
15 that offer, would you have taken that?

16 A: Yes, sir, because I know I was guilty of shoplifting, so,
17 I would've took that. That would've been a lesser offense.

18 Q: Thank you, Mr. White; no other questions.

19 THE COURT: Ms. Oppenheimer, any cross examination?

20 MS. OPPENHEIMER: No cross examination, Your Honor.

21 THE COURT: You may be seated.

22 Anything in summary, Mr. Davis?

23 MR. DAVIS: Your Honor, it's -- I think out of an
24 abundance of caution, I would ask that the application be
25 amended to include that last part, Judge. Until the solicitor

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JAMES WHITE - REPLY DIRECT BY DAVIS

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1 testified about that, I'd reviewed Mr. Cochran's file, talked
2 to my client, talked to Mr. Cochran, that last line of
3 questioning was new to me so, if necessary, I'm not sure it is
4 necessary, but I'd ask the application be amended.

5 THE COURT: It will be so amended with regard to that
6 particular ---

7 MR. DAVIS: Thank you, Your Honor.

8 THE COURT: No question, but that he might be confused
9 about that now, but I heard the solicitor, his conversations,
10 the plea offers were documented. Those that weren't
11 documented, he remembered very clearly and I find that it was
12 indeed offered to him.

13 Anything further?

14 MR. DAVIS: Judge, our initial argument, I kind of gave
15 you the general outline of the testimony. I'd normally be
16 arguing that, you know, he was influenced into the plea
17 ineffectively and his attorney was not fully prepared for
18 trial so he was kind of in a bind there, and that would've
19 been my general argument. I rely on that as well. I've
20 handled many of these in front of you. I need to add in that
21 particular case that he also indicates that had he been given
22 that lower charge on both, that he would've taken -- that's
23 the second way that I think we can get over both hurdles is
24 showing that his attorney -- if his attorney had effectively
25 made that offer, that he would've taken it. Now, that was not

1 filed, I didn't expect to make that argument. I would add
2 that argument to it, but other than that, we'll rely on the
3 testimony.

4 THE COURT: Okay.

5 MR. DAVIS: Thank you, Judge.

6 RULING OF THE COURT:

7 THE COURT: And I specifically find that the -- the plea
8 was communicated to him. With regard to this offense, I'm
9 gonna ask the attorney general to prepare an order with
10 specific emphasis on the fact that he has a history with the
11 court, he has some 30 offenses prior to this offense. He's
12 familiar with the plea process and the criminal proceedings.
13 I think it's particularly important to look at the plea
14 transcript and it's dispositive as to most of these issues.
15 Clearly, he understood his constitutional rights. He
16 understood that it was a negotiated plea that was reviewed in
17 the transcript. It was clear in the plea sheet and in the
18 transcript that it was a most serious offense to the extent
19 that the trial counsel did not go over in great detail the
20 most serious offense, the two and the three-strike rule. It's
21 inconsequential because it wasn't really at stake here today
22 and there's no question but that a lawyer is not obligated to
23 go over all collateral consequences. And really, this did not
24 trigger a life without parole offense. So, therefore, it was
25 not entirely necessary.

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RULING OF THE COURT

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1 There was some discussion in the plea transcript about
2 community supervision. He indicates that he was satisfied
3 with his lawyer. I find that based on his testimony in the
4 plea transcript and the findings of Judge Dennis that the plea
5 was free -- freely and voluntarily and intelligently made. He
6 understood his jury trial rights, he gave up those rights.

7 And I specifically find, based on the testimony of Mr.
8 Cochran, that there was ample opportunity and ample
9 preparation. His file documents that his policy and his file
10 reflects that he's required to go see him a very short period
11 of time after he's appointed. He met with him on a number of
12 occasions in person. Of course, the defendant indicates that
13 it never took place in person other than in court, Mr. Cochran
14 says differently, and I believe his testimony. He said he met
15 with him a number of times in person, they went over the
16 discovery information, the Rule 5, Brady. He describes their
17 interaction as being frequent, they had frequent exchanges and
18 the policy of the Charleston Public Defender's Office is that
19 they have personal contact with him, either in person, video,
20 or telephone, every 60 days and his file reflects that.
21 Based on all of these things, I deny the application for post-
22 conviction relief. I wish you the best of luck.

23 MR. DAVIS: Thank you, Judge.

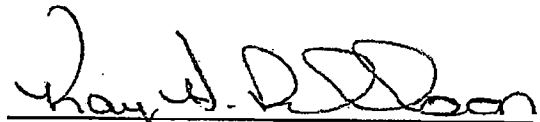
24 MS. OPPENHEIMER: Thank you, Your Honor.

25 ADJOURNED - 11:38 A.M.

C E R T I F I C A T E

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2
3 I, the undersigned, Kay H. Richardson, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete Transcript
6 of Record of the hearing held in the case of James D. White v.
7 State of South Carolina, held in the Court of Common Pleas for
8 Charleston County, Charleston County Courthouse, Charleston,
9 South Carolina, on October 3, 2018.

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

12
13
14
15 

16 Kay H. Richardson

17 Official Court Reporter

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19
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21 January 10, 2019.
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

James D. White, #232496,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-3199

ORDER OF DISMISSAL

FILED
2018 OCT 24 AM 11:29
JULIE H. HARRIS
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed June 22, 2017, by James D. White (Applicant). The State (Respondent) made its Return, Partial Motion to Dismiss, and Motion for a More Definite Statement on August 22, 2017, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel. An evidentiary hearing into the matter was convened on October 3, 2018, at the Charleston County Courthouse before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denied this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its January 2017 term, the Charleston County Grand Jury indicted

Applicant for armed robbery (2017-GS-10-00028)¹. Charles W. Cochran, Esquire, represented Applicant on this charge. Assistant Solicitor E. Culver Kidd, IV, of the Ninth Circuit Solicitor's Office, prosecuted the case. On April 6, 2017, Applicant appeared before the Honorable R. Markley Dennis, Jr. and pled guilty as indicted. Pursuant to a negotiated sentence, Judge Dennis sentenced Applicant to a term of imprisonment of ten years. Applicant did not appeal his plea or sentence.

CURRENT APPLICATION

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

1. In-effective assistant [sic] of counsel;
 - a. Counsel did not assist [Applicant] to the full extent.
2. Not having the rights to less offense; [and]
 - a. The state did not give [Applicant] the right to the less.
 - b. Charge was upgraded to high offense, but no new warrant.
3. Violation of due process.

At the evidentiary hearing, Applicant proceeded forward on allegations plea counsel was ineffective for failing to explain the charge of armed robbery, in that counsel failed to explain how the original charge was upgraded to armed robbery, for failing to prepare for trial, and failing to convey a plea offer. Applicant also proceeded on an allegation his plea was involuntarily made.

STATEMENT OF FACTS

On April 21, 2016, at approximately 9:40 at night, Applicant entered the Kohl's department store in West Ashley. Tr. 6. Applicant went straight to the electronics department and grabbed two fifty-five inch Samsung televisions. Tr. 6. He then proceeded out the

¹ Applicant was initially arrested for and charged with a property crime enhancement (shoplifting less than \$2,000), but the solicitor later sought and obtained an indictment on armed robbery after meeting with the victim. Tr. 7.

emergency exit located at the back of the store. Tr. 6. The loss prevention officer, Andrew Gerten (Victim), chased Applicant out of the emergency exit and observed Applicant placing the televisions in the back of a grey Chevrolet Tahoe. Tr. 6. Applicant then jumped in the car and started to leave. Tr. 6. The tailgate, however, was not closed; so, Victim grabbed the televisions as the car was pulling away. Tr. 6.

The car then stopped, and Applicant got out the passenger side, opened the backdoor, and retrieved an object from under the seat. Tr. 6. Applicant held the object in his waistband, acting as though the object were a gun. Tr. 6. He then looked at Victim and stated: "What now?" Tr. 6. Victim believed the object to be a gun and backed away. Tr. 6. Applicant retrieved the televisions, placed them back in the car, and left. Tr. 6.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Charles W. Cochran, Esquire (Counsel) and Assistant Solicitor Kidd. This Court also had before it a copy of Applicant's plea transcript, the records of the Charleston County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was originally arrested for shoplifting, and he was out on bond for that offense. He further testified he never met Counsel in person, he never went to the Public Defender's Office to meet with Counsel, and Counsel never sent him a letter. Applicant testified he was arrested while he was out on bond. He also testified he met with Counsel at least three times via video conference at the jail. He elaborated each of these meetings was for approximately ten minutes, and the

television would turn off automatically. He further elaborated he and Counsel did not have a chance to discuss his situation at the time of these video conferences. Applicant testified the jail is in charge of turning the television on and off for video conferences, and he did not know how long the meetings would last. He further testified the only time he met Counsel face-to-face was the day of his plea.

Applicant also testified he and Counsel never reviewed the elements of shoplifting or property crime enhancement nor reviewed what the State would be required to prove at trial. He testified Counsel did explain the ^{a higher} (hire) charge and explained the solicitor was attempting to enhance the charge. He elaborated at the time, he already had one armed robbery charge. He further elaborated Counsel told him if he did not plead to armed robbery, then the solicitor would enhance his property crime charge to an armed robbery. Applicant testified he did not believe Counsel when he told him this. He also testified he was unaware how the armed robbery charge happened, and Counsel did not explain it to him. He elaborated when he asked Counsel how his charge was upgraded to armed robbery, Counsel told him the solicitor can do what he wants to do. He further elaborated there was no proof of a weapon. He testified he knew he was facing armed robbery, but Counsel did not explain armed robbery to him. Applicant testified, however, he indicated to the plea court Counsel had explained the nature of the charged in the indictment.

He testified he and Counsel reviewed potential sentences for shoplifting, but they did not discuss the potential sentences for armed robbery. He explained he was aware shoplifting carried between zero and ten years. He further explained Counsel told him on the day of his guilty plea the potential sentence for armed robbery. He also testified he told the plea court Counsel had explained the potential sentence for armed robbery to him, and Counsel had

negotiated a plea on his behalf. He elaborated he informed the plea court he wanted the court to accept the negotiated sentence.

Applicant also testified he was aware armed robbery was more serious than the property crime enhancement prior to the plea. He testified he thought the solicitor could choose whether or not the crime was classified as violent or non-violent. He further testified he asked Counsel about the classification, and Counsel told him on the day of the plea he would serve eighty-five percent of his sentence. He explained Counsel did not inform him of this prior to the plea. Applicant also testified he and Counsel never discussed the possibility of a lesser-included offense to armed robbery or shoplifting. He elaborated he and Counsel did not discuss strong arm robbery.

Applicant testified he and Counsel did not discuss most serious offenses or strikes. He testified they also did not discuss life without the possibility of parole. He further testified on the day of the plea, they discussed the eighty-five percent rule and no parole offenses, but did not discuss it before. He testified, however, he informed the plea court most serious offenses had been explained to him, and he understood the significance of those offenses. He explained he did not understand the effect of a most serious offense. He further testified he informed the plea court he understood what a no parole offense was. He explained a no parole offense means he would not be going home and he would not get parole. Applicant also testified he recalled the plea court reviewing community supervision with him, and he understood what he was told.

He further testified he and Counsel did not discuss the plea until Applicant's court date. He testified on the day of his plea, he and Counsel discussed his right to a jury trial, but did not discuss the process. He elaborated Counsel did not discuss his right to remain silent nor his right

to testify with him. He further elaborated he was unaware he could explain his side of the story to the jury. Applicant also testified he and Counsel did not discuss any potential defenses. He further testified he and Counsel did not discuss any trial strategies. He testified they did not discuss his statement to law enforcement and did not discuss suppressing that statement. He explained he had never been to trial before. He testified he and Counsel never discussed his prior record and never discussed how the jury might be able to hear his record at trial. He elaborated he has a lengthy record, of approximately thirty prior offenses, so he was slightly aware of the criminal process. He further elaborated, however, he has never been to trial before on any of those prior offenses. He also testified none of his prior charges were as serious as armed robbery.

He also testified Counsel did not give the indication he was preparing for trial. He elaborated he obtained a copy of his discovery materials, but he and Counsel did not review it. He further elaborated he reviewed his discovery on his own. He explained he received the discovery on his first armed robbery charge and on the property crime enhancement. He testified he did not see the video from the surveillance camera at Kohl's prior to his guilty plea. Applicant also testified Counsel did not indicate he met with potential witnesses, and they did not discuss the testimony of any potential witnesses at trial. Applicant further testified, however, he did not give Counsel any leads or witnesses to investigate.

Applicant testified at the time of the plea, he was charged with another armed robbery that "dealt with someone up the street." He testified he was offered ten years in exchange for a plea to this armed robbery, which he turned down. He explained this offer was for ten years imprisonment with the service of eighty-five percent in exchange for a plea to armed robbery.

He further explained this offer was not in relation to the armed robbery at Kohl's, but rather the first armed robbery. He also testified he turned down another plea offer. He elaborated the second offer he receive was for a plea to the property crime enhancement. He further elaborated he rejected this offer. He further testified he received the third plea offer on the day of his plea.

He further testified Counsel told him he did not think Applicant should proceed to trial. He explained Counsel told him because of his prior record, the jury would think he was guilty of armed robbery. He further explained, however, he and Counsel did not review his prior record. He also testified he was brought to court on April 4, 2017, where he attempted to relieve Counsel. He elaborated he was told if he fired Counsel, he would need to hire a new attorney by Monday. He further elaborated he decided to keep Counsel, but Counsel was not ready for trial and did not ask for a continuance. Applicant further testified he was again brought to court on April 6, 2017, and he did not believe he had any other option but to plead guilty. He explained he would have gone to trial had he known everything, and he was aware he would be on trial for armed robbery. He recalled, however, the plea court reviewing each of his rights at trial with him, and he understood he was waiving those rights by pleading guilty. He testified he informed the plea court it was his decision to plead guilty, and no one had made him any promises or forced him in order to get him to plead guilty. Applicant also testified he was aware he faced between ten and thirty years imprisonment at the time of his guilty plea.

Following Applicant's testimony, Respondent presented the testimony of Counsel. Counsel testified he has been practicing law for ten years; and at the time of Applicant's case he was working at the Charleston County Public Defender's Office. He further testified he is

currently working at the Federal Public Defender's Office in Charleston. Counsel also testified his entire practice has involved criminal law.

Counsel testified he was appointed to represent Applicant shortly after Applicant's arrest on November 25, 2015. He testified he had no specific records from meetings with Applicant at the jail, but he had documentation from phone calls with Applicant. He explained he spoke with Applicant on the phone on December 29, 2015; January 7, 2016; February 23, 2016; March 29, 2016; June 21, 2016; and July 28, 2016. He further explained his normal practice is to visit a client in person within the first week of his or her arrest, then have routine visits every sixty days at least. Counsel also testified it is a possibility he would have met with a client via video conference a few times. He further testified he had a specific recollection of meeting with Applicant and was very familiar with Applicant. He explained he and Applicant had frequent exchanges.

He also testified he was assigned this case because he was assigned to Applicant's original armed robbery charge. He explained that initial armed robbery was a weaker case than the armed robbery in this case. He further explained Applicant was arrested in November 2015, and was in jail for two to three months before he was released on bond in February 2016. Counsel testified it was during the time Applicant was out on bond that he was arrested for this property crime enhancement.

Counsel further testified he filed *Brady*² and Rule 5, SCRCrimP, motions, and he reviewed the discovery with Applicant. He testified initially, he only had the discovery materials associated with the initial armed robbery charge, which included witness statements. Counsel also testified that initial armed robbery charge was ultimately dismissed. He further testified he

² *Brady v. Maryland*, 373 U.S. 83 (1963).

later got the discovery materials associated with this case. He explained in those materials there were law enforcement reports, video from the Kohl's department store, and witness statements. He further explained the video showed Applicant taking the televisions. Counsel also testified after Applicant was confronted by Victim, Applicant flashed or threatened the use of a weapon. Counsel testified they reviewed the witness statements, but he did not specifically remember showing Applicant the video.

He testified he reviewed the elements of the offenses with Applicant and also reviewed potential punishments. Counsel testified he reviewed the consequences of the plea with Applicant, and Applicant was very aware he was facing between zero and ten years imprisonment for the property crime enhancement and ten to thirty years for armed robbery. He further testified he and Applicant discussed potential defenses, specifically highlighting they would argue this was a mere shoplifting, which they were not contesting. Counsel did not specifically recall discussing lesser-included offenses with Applicant, but it would have been at the heart of any discussion about trial, as it would have been a defense. He also testified he did not recall specifically discussing a *Biggers*³ hearing, but he typically would when there was going to be an eyewitness identification.

He explained the reason to review most serious offenses would be if Applicant were facing life without the possibility of parole, which he was not. Counsel did not recall Applicant's record, but he testified he does not typically review prior criminal records with his clients. He explained most of the time, his clients do not testify at trial. He also testified he would have discussed Applicant's prior record with him in terms of the plea or conviction at trial. He further testified he never got the indication Applicant did not understand something.

³ *Neil v. Biggers*, 409 U.S. 188 (1972).

He also testified he explained the enhancement to Applicant. He testified he informed Applicant the enhancement was always a possibility because of the accusation of Victim. Counsel explained the threat of armed robbery was serious, and the solicitor would not come off of armed robbery once it was charged. He further testified he was comfortable with proceeding to trial on the initial armed robbery; however, he wanted to get Applicant into court to plead to the property crime enhancement in order to avoid the enhancement to armed robbery. Counsel testified, however, Applicant did not want to plead guilty at that time. He explained Applicant had an opportunity to plead straight up to the property enhancement crime in order to avoid armed robbery, but Applicant did not want to plead.

He testified the goal early on was for Applicant to plead guilty to the property enhancement crime, and he did not anticipate this case proceeding to trial, as Applicant had no interest in going to trial. Counsel also testified had Applicant indicated he wanted to proceed to trial, Counsel would have been prepared.

He testified he spoke with the solicitor, who offered a plea to two counts of strong arm robbery. He further testified Applicant rejected that offer. Counsel also testified he did not specifically recall if there was ever an offer to plead to the property enhancement crime. He testified Applicant was scheduled to appear in court for pleas on August 8, 2016, and November 14, 2016, and Counsel reviewed the offers with Applicant prior to those dates. He further testified on each of those dates, Applicant rejected the State's offers. He explained Applicant rejected offers to plead to lesser-included offenses. He explained the offers were not what they hoped for, and Applicant did not want to plead at that time. He further explained Applicant's rejection of the offers put him at risk for an open plea.

Counsel testified it was ultimately Applicant's decision to plead guilty, and he never indicated he wanted to proceed to trial. He explained Applicant exhibited the "regular back and forth." He further explained Applicant wanted to work everything out, but he was not receiving the offer he wanted. Counsel testified Applicant had to choose between proceeding to trial on an armed robbery charged or agreeing to the mandatory minimum.

Following Counsel's testimony, Assistant Solicitor Kidd testified. He testified he has been practicing law since 2007 and has been employed with the Ninth Circuit Solicitor's Office for ten years. He also testified the video from the Kohl's department store was, in his opinion, very good. He explained the video showed Victim tracking Applicant through the store and also showed Applicant grabbing two televisions and exiting out the back of the store. He further explained the video showed close-ups of Applicant's face. He further testified a vehicle was waiting for Applicant with the hatch open, and Applicant put the televisions in the back of the vehicle and got in the car. Assistant Solicitor Kidd testified, however, Victim was able to grab the televisions out the back, at which point Applicant got out of the car. He further testified Applicant then reached in the back door of the car, grabbed what was believed to be a gun, and stated: "what you going to do now?" He explained based on these facts, he was unsure why Applicant was charged with a property crime to begin with.

Assistant Solicitor Kidd also testified Applicant had a pending armed robbery from November 2015. He explained he met with the victim in that case, who had a change of heart and was no longer willing to cooperate. He further explained he offered Applicant ten years imprisonment on the first armed robbery, which Applicant rejected.

He also testified on October 24, 2016, he offered a negotiated plea of ten years imprisonment in exchange for a plea to two strong arm robberies. He testified he explained the case was set for the November 14, 2016, trial docket, and if Applicant did not accept that plea, then he would seek an indictment for armed robbery. He explained this case associated with the robbery at the Kohl's department store was his strongest case, and this offer was the best he could make. Assistant Solicitor Kidd testified Applicant rejected this offer on November 14, 2016. He further testified on November 15, 2016, he brought the indictment for armed robbery to the Grand Jury, and he did not believe a new warrant was necessary. He also testified he made no new offers at that time, but it was going to have to be a plea to armed robbery at that time. He testified prior to the guilty plea, communicated to Counsel that Applicant could plead to the armed robbery for the Kohl's and he would dismiss the other pending armed robbery charge and the weapons charge. He explained this offer was for a negotiated ten years imprisonment.

Following Respondent's case, Applicant again testified in reply. He testified Counsel never told him of the October 2016 plea offer from the State. He elaborated he was never told he could plead to two counts of strong arm robbery, and he was never told he could plead down to strong arm robbery. He further elaborated had he known about this offer, he would have taken it, as he was guilty of shoplifting.

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).

Applicant's allegations are two-fold: (1) ineffective assistance of counsel for failing to prepare for trial, failing to explain the new indictment for armed robbery, and failing to convey a plea offer and (2) involuntary guilty plea. On these claims, this Court finds Applicant has wholly failed to meet his burden.

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 "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 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 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. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds 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 prepare for trial

Applicant alleges Counsel was ineffective for failing to prepare for trial. In particular, Applicant alleges Counsel was ineffective for failing to advise Applicant of the elements of the offense, for failing to discuss potential defenses with Applicant, for failing to discuss the evidence with Applicant, for failing to explain his constitutional rights at trial, and for failing to meet with Applicant. “There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence that counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

Applicant testified he never met with Counsel in person, but rather met with him twice via video conference for approximately ten minutes each time. He further testified Counsel never reviewed the elements of the offenses with him, never reviewed discovery with him, and never reviewed his constitutional rights at trial with him. Applicant also testified although Counsel discussed the potential sentences with him, Counsel never explained the significance of a most serious offense. On the other hand, Counsel testified he had a specific recollection of numerous phone calls with Applicant. He further testified although he had no specific recollection of in person meetings with Applicant, his typical practice is to meet with his clients shortly after their arrest, with routine meetings with them approximately every sixty days. Moreover, Counsel testified he reviewed the elements of each offense with Applicant, potential sentences, possible defenses at trial, and Applicant's constitutional rights. Counsel also testified he reviewed the discovery for each case with Applicant. He testified Applicant never had any interest in proceeding to trial; but if Applicant had indicated he wished to exercise his right to a jury trial, Counsel would have been prepared. This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not credible.

Counsel had numerous exchanges with Applicant in which they would discuss various aspects of Applicant's case, particularly reviewing potential defenses and the discovery. Based on the foregoing, this Court finds Counsel exercised reasonable professional judgment in making all significant decision in Applicant's case. *Harris*, 377 S.C. at 75, 659 S.E.2d at 145. This Court, therefore, finds Applicant has failed to establish any deficiency on the part of Counsel.

This Court similarly finds Applicant has presented no evidence which would establish any prejudice on the part of Applicant. When an applicant fails to offer any evidence or

argument as to how counsel's lack of preparation for trial prejudiced him, "it is merely speculative that counsel's alleged deficient performance was prejudicial to [the applicant]." *Id.* Indeed, Applicant admitted he did not provide Counsel with any leads or witnesses to investigate. Here, Applicant has wholly failed to provide this Court with any evidence as to what benefit could have been realized from additional preparation by Counsel. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to explain to Applicant the new indictment for armed robbery

Applicant further contends Counsel was ineffective for failing to explain the new indictment for armed robbery and how the enhancement came about. Applicant testified Counsel never explained the circumstances around the new indictment for armed robbery, particularly stating Counsel never told him how the armed robbery happened. Applicant admitted, however, Counsel told him a new indictment for armed robbery was possible, but he did not believe Counsel when he told him. Applicant also testified when he asked Counsel how the property crime enhancement charge was upgraded to armed robbery, Counsel told him the solicitor could do whatever they wanted. Counsel, however, testified explained the enhancement to Applicant, specifically indicating a new indictment for armed robbery was always a possibility due to the accusations by Victim. Indeed, Assistant Solicitor Kidd testified he was unsure why Applicant was initially charged with a property crime enhancement, based on the fact Victim stated Applicant indicated he had a weapon at the time of the robbery. He further testified he informed Counsel should Applicant reject the plea offer to two counts of strong arm robbery, he would seek an indictment for armed robbery. This Court finds Counsel's testimony and Assistant Solicitor Kidd's testimony very credible, whereas Applicant's testimony is not credible. Based

on the foregoing, Counsel made Applicant very aware of the possibility of an indictment for armed robbery and also specifically explained the armed robbery charge to Applicant. Accordingly, this Court finds Applicant has failed to establish Counsel was deficient.

This Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. "In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision where or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978). Indeed, "one of the most fundamental powers of a prosecutor" is to "bring charges against a person the prosecutor believes has committed a crime." *State v. Needs*, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998). This decision, however, is subject to constitutional constraints, in that a prosecutor may not base his decision on unjustifiable standards nor baseless threats. *Id.* at 145-46, 508 S.E.2d at 863. Furthermore, "the Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion," nor may it "dismiss a properly drawn indictment issued by a properly constituted grand jury unless a statute grants that power to the court." *Id.* Here, Assistant Solicitor Kidd testified, in his legal opinion, the facts of this case did not constitute a property crime enhancement, but rather armed robbery. Specifically, Victim indicated Applicant grabbed an object out of the back passenger seat of the vehicle and acted as though the object were a weapon. Tr. 6. Indeed, Victim believed the object to be a gun. Tr. 6. Based on these facts, Assistant Solicitor Kidd testified he brought an indictment to the grand jury for armed robbery. Such a decision was solely within Assistant Solicitor Kidd's discretion as the prosecutor of this

case. Moreover, there is no indication this decision was based on any constitutionally impermissible biases. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to convey a plea offer

Applicant alleges Counsel was ineffective for failing to convey a plea offer. In particular, Applicant alleges Counsel never informed him of the State's October 2016 offer, through which Applicant could plead to two counts of strong arm robbery. In order to prevail on a claim counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) plea counsel's failure to communicate the State's initial plea offer constituted deficient performance and (2) the applicant was prejudiced by the deficient performance, in other words there was a reasonable probability that but for this deficient performance, the applicant would have accepted the original plea offer. *Davie v. State*, 381 S.C. 601, 675 S.E. 416 (2009).

Applicant testified he was unaware of the State's October 2016 plea offer, through which Applicant could plead to two counts of strong arm robbery. He testified had he known of such an offer, he would have accepted it. Counsel, however, testified he communicated this offer to Applicant, and Applicant rejected it. Indeed, Applicant rejected all offers that would have allowed him to plead to lesser-included offenses. Moreover, Assistant Solicitor Kidd testified he specifically communicated this offer to Counsel prior to the plea, indicating should Applicant reject this offer, he would seek an indictment for armed robbery. This Court finds Counsel's testimony and Assistant Solicitor Kidd's testimony very credible, whereas Applicant's testimony is not credible. It is apparent Counsel communicated all offers to Applicant. This Court, therefore, finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. Counsel testified Applicant did not accept any offers which would allow him to plead to a lesser-included offense because the offer was not for what Applicant was hoping. Specifically, Applicant indicated he wanted to plead but he was not getting the offers or the sentences he wanted. Based on the foregoing, there is no indication Applicant would have accepted the plea offer to two counts of strong arm robbery. Accordingly, 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). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *Id.* at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). 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.* However, the overarching concept remains "a guilty plea should only be accepted where the record evidences 'an affirmative showing that it was intelligent and voluntary.'" *Boykin v. Alabama*, 395 U.S. 238, 242 (1969) (internal quotation omitted); *Parke v. Raley*, 506 U.S. 20, 29 (1992). This is because "waivers of constitutional rights not only must be

voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970).

Key to the analysis in reviewing a plea for voluntariness is looking to "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Raley*, 506 U.S. at 29 (quoting *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). 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*, 395 U.S. at 244. 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, but not invariably, 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 finds Applicant's plea was entered into freely and voluntarily. The record before this Court reflects the plea court thoroughly reviewed all of Applicant's constitutional rights with him, including his right to a jury trial. Tr. 5. Applicant indicated he understood he waived those rights by pleading guilty. Tr. 5. Applicant further indicated no one had promised him anything or threatened him in order to get him to plead guilty. Tr. 5. Additionally, at the plea, Applicant indicated Counsel had

explained the nature of the charge contained in the indictment and had explained to him the potential sentences. Tr. 2. Applicant further indicated most serious offenses and its significance had been explained to him. Tr. 3. He also indicated he understood no parole offenses, understood he would serve at least eighty-five percent of his sentence, and understood the community supervision program. Tr. 3-4. Applicant also stated he was "totally satisfied" with Counsel. Tr. 4.

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.

CONCLUSION

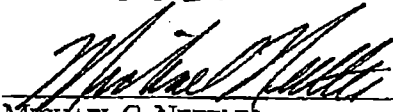
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

- 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 18 day of October, 2018.


 MICHAEL G. NETTLES
 Presiding Judge
 Ninth Judicial Circuit

J. Lawrence, South Carolina

ECK/0318679
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER
2016-06767

ARREST WARRANT NUMBER
2016A1020100978

DATE OF ARREST
06/13/2016

ACTION OF GRAND JURY
TRUE BILL

Francis S... JAN 10 2017
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-00028

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JANUARY TERM 2017

THE STATE

VS.

JAMES DEANGELO WHITE
B/M DOB: [REDACTED]

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

STATE OF SOUTH CAROLINA

INDICTMENT


COUNTY OF CHARLESTON

At a Court of General Sessions, convened January 2017, the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about April 21, 2016, in Charleston County, South Carolina, the Defendant, James Deangelo White, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Andrew Vardon with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) 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.



CULVER KIDD
ASSISTANT SOLICITOR