

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Horry County

Honorable Paul M. Burch, Circuit Court Judge

—————
JOHN E. SESSIONS, III

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001821

—————
APPENDIX
—————

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RECEIVED

JUN 17 2019

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2013-GS-26-3463

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,) **Transcript of Record**

vs.)
)
) March 5, 2014

JOHN E. SESSIONS,)
)
 Defendant.)

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

J. Scott Hucks, Esquire
Attorney for Plaintiff

William I. Diggs, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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March 5, 2014

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E X H I B I T S

No.

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(No exhibits were marked during hearing.)

State v. Sessions - 2013-GS-26-3463
BY THE COURT

1 (MARCH 5, 2014 - 4:03 P.M.)

2 JOHN EDWARD SESSIONS, HAVING BEEN

3 DULY SWORN, TESTIFIES AS FOLLOWS:

4 MR. HUCKS: Judge, before you now stands Mr. John
5 Sessions.

6 THE COURT: Sir.

7 MR. HUCKS: Mr. Sessions is here with his attorney of
8 record, Mr. Diggs. This case -- and the only reason we're
9 before you, Judge, it was scheduled for trial this week. We
10 -- at pretrial hearings, the Defendant agreed -- intended --
11 or my discussion with Mr. Diggs was that the Defendant may
12 wish to plead guilty off the trial roster. So, we scheduled
13 it today for a plea. There's trials that are going to catch
14 on the trial roster for the rest of this week. And it's our
15 intention to try him Monday morning. We're gonna have him
16 here Monday morning for trial. The case is ready for trial,
17 it's set for trial and I just want to be sure that he wishes
18 to turn down a twelve-year offer today so we can try him
19 Monday. He has wanted to plea and not wanted to plea about
20 three times now and it's ---

21 THE COURT: What's he charged with?

22 MR. HUCKS: Burglary in the first degree, armed robbery,
23 kidnapping, possession of a weapon during a violent crime and
24 criminal conspiracy.

25 THE COURT: Well, Mr. Diggs has an excellent reputation

State v. Sessions - 2013-GS-26-3463
BY THE COURT

4

1 as a criminal lawyer and it's well-deserved. I'm sure Mr.
2 Diggs has told him what could be the sentence if convicted.

3 Is that true, Mr. Diggs?

4 MR. DIGGS: Yes, sir.

5 THE COURT: Under the kidnapping, he could get life
6 imprisonment.

7 MR. DIGGS: Yes, sir.

8 THE COURT: Must get minimum mandatory fifteen years
9 under armed robbery; isn't that true?

10 MR. DIGGS: Yes, sir.

11 THE COURT: Mandatory ten years if convicted of burglary;
12 is that right?

13 MR. HUCKS: It's the other way around, Judge. It's
14 fifteen years on the burglary and ten on the armed robbery.

15 THE COURT: I'm sorry. Okay. Those are minimum
16 mandatories.

17 MR. DIGGS: Right; yes, sir.

18 THE COURT: I would have no discretion in that. What
19 else is he charged with?

20 MR. HUCKS: It's burglary first, which is fifteen to
21 life; armed robbery, which is ten to thirty; the kidnapping
22 charge, I believe, Your Honor, is zero to thirty; and
23 possession of a weapon during a violent crime, which is zero
24 to five years, Your Honor. And we are ready to proceed to
25 trial. Every witness is ready. We were ready to proceed to

State v. Sessions - 2013-GS-26-3463
BY THE COURT

5

1 trial this week.

2 THE COURT: Mr. Defendant, let me chat with you just a
3 moment. My interest is in this Court being fair to the
4 judicial process and equally fair to any defendant, such as
5 you, to come before me. You understand that?

6 MR. SESSIONS: Yes, sir.

7 THE COURT: Now, based on my experiences in the courtroom
8 for the last thirty years, some defendants have turned down a
9 negotiated plea real favorable to them thinking that at the
10 last minute they would give a lesser sentence or lesser deal.
11 That ain't gonna happen. And this Judge ain't gonna take it.
12 Once your lawyer has been working the whole weekend to prepare
13 your case and once they've subpoenaed all of these witnesses
14 and everybody is here ready to go on Monday morning, that's
15 exactly what's gonna happen and there will be no plea
16 negotiations except made by him or accepted by me. The reason
17 I want to be very careful that you understand that is that
18 there are minimum mandatories. In this courtroom, about three
19 months ago, they had offered a young man five years. It was a
20 third offense drug. The minimum mandatory was twenty-five
21 years. He rejected that and I had to give that young man
22 twenty-five years. Three weeks ago, in this courtroom, a
23 young man charged with murder was offered manslaughter and
24 offered ten years. His codefendant took it. He elected to go
25 to trial. Convicted within one hour. Under the law, I had to

State v. Sessions - 2013-GS-26-3463
BY THE COURT

6

1 give him thirty years. As he was walking out of the
2 courtroom, he said and I could've got out of this for ten.

3 I tell you that -- I'm not interested in you're not
4 having a jury trial, I want to give you a jury trial but for
5 your protection, I want the record to reflect that you were
6 offered twelve years, you knew it and you rejected it; is that
7 true?

8 MR. SESSIONS: Yes, sir.

9 THE COURT: The reason I want the record to reflect it is
10 that oftentimes when somebody is offered something and doesn't
11 take it and gets busted, on post-conviction relief they file
12 it against the lawyer and say well my lawyer never told me
13 that. Mr. Diggs, can you assert for me on the record that
14 this individual has turned down an offer of twelve years for
15 which kidnapping, armed robbery, burglary and the deadly
16 weapon, all of which would've been combined into one for
17 twelve years? Did you tell him that?

18 MR. DIGGS: Yes, sir. He understands.

19 THE COURT: Can you assert to me that he knowingly and
20 intelligently understands the magnitude of the charges against
21 him?

22 MR. DIGGS: He does.

23 THE COURT: I grant him his presumption of innocence, I
24 welcome the trial in the case but for his protection, I want
25 him to know that that offer will not be available Monday

State v. Sessions - 2013-GS-26-3463
BY THE COURT

1 morning to him.

2 When does that offer expire? At the end of the day?

3 MR. HUCKS: Right this second.

4 THE COURT: Sir?

5 MR. HUCKS: Right this second.

6 THE COURT: Well, I'll let Mr. Diggs ---

7 MR. HUCKS: Well, he turned down ten years already,
8 Judge, and today was twelve for purposes of what we were
9 doing.

10 THE COURT: Okay.

11 MR. HUCKS: And he don't want ten, he don't want twelve,
12 we are more than happy to give him his trial.

13 THE COURT: Mr. Diggs, would you like to talk to him a
14 few moments or not?

15 MR. DIGGS: Your Honor, I'll discuss it with him again.

16 THE COURT: Sir?

17 MR. DIGGS: I'll be happy to discuss it with him again.

18 THE COURT: Well, it's such a serious nature and you've
19 got so many years pending against him.

20 MR. DIGGS: Right.

21 THE COURT: I want to give you every opportunity to
22 explain it to him. I don't -- I'm not asking that he accept
23 the plea, you understand that?

24 MR. DIGGS: Yes, sir.

25 THE COURT: I just want the record to reflect so that he

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BY THE COURT

8

1 can't say that you never told him that.

2 MR. DIGGS: Right.

3 THE COURT: I will permit that offer to remain open until
4 this Court adjourns this afternoon.

5 MR. DIGGS: Thank you, Your Honor.

6 THE COURT: When I finish the pleas, that offer is over.
7 If he still wants to take it, I'll certainly consider it.

8 MR. DIGGS: Thank you, Your Honor.

9 MR. HUCKS: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 (RECESS - 4:11 P.M.)

12 *****OFF THE RECORD*****

13 (On the Record - 5:21 P.M.)

14 JOHN EDWARD SESSIONS, HAVING BEEN DULY
15 SWORN, TESTIFIES AS FOLLOWS:

16 MR. HUCKS: Your Honor, before you stands Mr. John Edward
17 Sessions. He stands before you charged under Indictments
18 2013-3462, '63, '64, '65 and '66. We brought him out here for
19 purposes of setting him for a trial next week earlier.

20 THE COURT: Uh-huh (affirmative response).

21 MR. HUCKS: The -- at the time, I told you that he'd
22 initially been arraigned on a ten-year offer for armed robbery
23 that he had subsequently turned that down and was scheduled
24 for trial this week. We moved it so he could plead today. He
25 subsequently decided he didn't want to plea. It's our

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BY THE COURT

9

1 understanding at this point in time, Your Honor, he does wish
2 to plead.

3 For purposes of negotiations that I've done with Mr.
4 Diggs, if he'll plea to the armed robbery today, which carries
5 from ten to thirty, the State's -- he was arraigned on ten, so
6 the State's position was that we were asking for twelve -- we
7 will dismiss the burglary first, a kidnapping, a possession of
8 a weapon during a violent crime and a criminal conspiracy
9 charge that's against him all on the same set of facts and
10 circumstances. The victim is here, wishes to address the
11 Court at the appropriate time.

12 THE COURT: Yeah, I remember my conversation with him
13 earlier today and I -- he wanted a trial by jury and we were
14 gonna give him one Monday. I had some concerns from his
15 perspective that if that jury found him guilty he was facing
16 some serious minimum-mandatory charges.

17 MR. HUCKS: Yes, sir.

18 THE COURT: That I couldn't change. Let me hear what the
19 victim says.

20 MR. HUCKS: And for purposes of -- to help the court
21 reporter, this is Ms. Heidemarie Young and spell your full
22 name. Spell your first name because I get it wrong every
23 time.

24 MS. YOUNG: Heide -- it's Heide ---

25 MR. HUCKS: Spell it, please.

State v. Sessions - 2013-GS-26-3463
BY THE COURT

10

1 MS. YOUNG: H-E-I-D-E-M-A-R-I-E, Heidemarie.

2 THE COURT: Thank you for being here.

3 MS. YOUNG: Okay.

4 THE COURT: What do you desire to tell me, please, ma'am?

5 MS. YOUNG: Okay. The case is -- Mr. Sessions came
6 uninvited in my home and before I knew it, he had me -- he
7 grabbed me and I looked in the barrel of a gun, what I thought
8 was a gun. And he led me around the house and the first thing
9 that came out of his mouth was I do not want to hurt you, I do
10 not want to hurt you. And this is how I recognized him. I
11 recognized him first even though he had a hood over his head,
12 I recognized that he was a white man and then he his voice, I
13 recognized his voice because he had work at my house about two
14 weeks prior. And so, he -- and he led me around the house and
15 wanted money, of course, and I could not give it to him and
16 the whole incident lasted about two minutes and somehow he let
17 go of me and went into a bedroom by himself and I took the
18 opportunity and ran away and that was the end of it. And so
19 nothing got taken, he did not take anything, I will say this
20 to his credit. I was not hurt except I felt I was going to
21 meet my creator. And I ran to the neighbors and this is how
22 it ended. And he ran after me, of course, and got away.

23 THE COURT: I thank you for being here.

24 Did he finally steal anything?

25 MR. HUCKS: Your Honor, what ended up happening was it

State v. Sessions - 2013-GS-26-3463
BY THE COURT

11

1 was after dark and when he came over and came into the house,
2 he -- Ms. Young could not find anything that he actually, that
3 he got. He -- what we do know is he made a full confession
4 later to the police that he went over there with the intent to
5 go into her house and steal her stuff which led to this. The
6 reason for the armed robbery as opposed to the burglary for
7 purposes of a plea is that the burglary carried a mandatory
8 fifteen-year mandatory minimum as opposed to the ten-year
9 mandatory minimum on the armed robbery which is how we got
10 here where we are today.

11 THE COURT: Well, that's fine. This is atrocious conduct
12 but at least he told the victim I'm not going to harm you.

13 MR. HUCKS: Yes, sir.

14 THE COURT: He must've been a yard man or something two
15 weeks earlier.

16 MR. HUCKS: Your Honor, he had worked several weeks
17 earlier for a flooring company. Ms. Young had had some
18 flooring done in her house and he worked there and she had
19 made him coffee and several things in the morning and had some
20 conversations with him. And while they had these
21 conversations, she recognized his voice from the conversations
22 that they had had. So, when he came over that night, even
23 though he had a hood on his face, she recognized his stature
24 because he's a pretty good size fellow and his voice.

25 THE COURT: Okay.

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BY THE COURT

12

1 MR. HUCKS: And subsequently, he confessed to it.

2 THE COURT: Mr. Diggs, you represent him?

3 MR. DIGGS: Yes, sir.

4 THE COURT: You would've discussed these issues with him
5 in detail and depth?

6 MR. DIGGS: Yes, sir.

7 THE COURT: You would've advised him of his
8 constitutional rights including the fact that his trial was
9 set for Monday and is still available to him?

10 MR. DIGGS: Yes, sir.

11 THE COURT: Solicitor tells me that he tenders a plea to
12 armed robbery under a negotiated sentence of twelve years.

13 MR. DIGGS: Your Honor, it's pretty much that way but I'm
14 gonna ask you for less than twelve.

15 THE COURT: No, sir, not gonna do that.

16 MR. DIGGS: But I think that ---

17 THE COURT: Mr. Diggs, I respectfully decline to do that.
18 If he wants the twelve years, fine. If not, I'm gonna try him
19 Monday morning.

20 MR. DIGGS: Well, just for Your Honor's information, I
21 did tell him I would ask you for ten.

22 THE COURT: Well, I don't mind you asking but I'm not
23 going to do it. They are dismissing a burglary first degree,
24 they are dismissing a kidnapping. These are serious, serious
25 charges.

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BY THE COURT

13

1 MR. DIGGS: Right.

2 THE COURT: In addition to that, there's a confession
3 available and that confession will be read to twelve jurors;
4 you understand?

5 MR. DIGGS: Yes, sir, Your Honor.

6 THE COURT: I think the State in my view has been
7 extremely lenient with him. And I don't mind being lenient
8 with him too by taking the twelve years but I'm not gonna do
9 ten. And if he thinks that's the basis for this plea, you
10 stand him aside.

11 MR. DIGGS: Your Honor, he understands and I think he's
12 in agreement with proceeding on today.

13 THE COURT: All right. Let me ask you this, Mr.
14 Defendant, how old are you?

15 MR. SESSIONS: Thirty-five.

16 THE COURT: How far did you go in school?

17 MR. SESSIONS: Seventh grade.

18 THE COURT: Apparently, you were at the victim's house a
19 couple of weeks earlier laying some floor or something?

20 MR. SESSIONS: Yes, sir.

21 THE COURT: What were you doing there earlier?

22 MR. SESSIONS: Putting in some hardwood floors.

23 THE COURT: Sir?

24 MR. SESSIONS: Laying hardwood floor.

25 THE COURT: Okay. You're gonna have to talk a little

State v. Sessions - 2013-GS-26-3463
BY THE COURT

14

1 louder. She apparently recognized your voice. Did you have
2 something over your face and all?

3 MR. SESSIONS: My shirt.

4 THE COURT: Your shirt.

5 MR. SESSIONS: It may sound silly, but ---

6 THE COURT: You are pleading guilty to attempting to rob
7 this lady, are you not?

8 MR. SESSIONS: Yes, sir.

9 THE COURT: And you did do that, didn't you?

10 MR. SESSIONS: Yes, sir.

11 THE COURT: You are pleading freely and voluntarily?

12 MR. SESSIONS: Yes, sir.

13 THE COURT: You're gonna have to talk a little louder so
14 my court reporter can take down what you say.

15 MR. SESSIONS: Yes, sir.

16 THE COURT: Now, I want it clear that obviously in this
17 matter, you would discuss it with your good lawyer and he is
18 an excellent lawyer, but the decision ultimately to plead
19 guilty is yours and yours alone, you understand that?

20 MR. SESSIONS: Yes, sir; that's correct.

21 THE COURT: You cannot later be heard to say that you
22 wanted a jury trial but your lawyer made you plead guilty; he
23 can't do that.

24 MR. SESSIONS: Understood.

25 THE COURT: Now, he has asked for me to reduce it to ten

State v. Sessions - 2013-GS-26-3463
BY THE COURT

15

1 years and I respectfully decline to do that. Let there be no
2 question about it, if I take this plea, and I'm prepared to
3 take it, I am going to sentence you to twelve years. Do you
4 understand that?

5 MR. SESSIONS: Yes, sir.

6 THE COURT: Now, having said that, even at this moment,
7 if you said I've changed my mind, I don't want to plead, I
8 would certainly honor that and I'll try you at 9:30 Monday
9 morning; do you understand that?

10 MR. SESSIONS: Yes, sir; I do.

11 THE COURT: Now, if at a trial, I would tell the jury
12 that you are presumed innocent, that you don't have to prove a
13 thing. At that trial, you would have a right to confront the
14 witnesses against you. Your confession, in all probability,
15 after I made an appropriate finding, would be given to the
16 jury for their consideration. You would have a right to
17 testify on your own behalf; you understand that?

18 MR. SESSIONS: Yes, sir.

19 THE COURT: If, at the trial, you elected you remain
20 silent, I would charge the jury that your silence could not be
21 used against you. You don't have to prove a thing; you're
22 presumed innocent. You understand that?

23 MR. SESSIONS: That's correct.

24 THE COURT: I would charge those twelve jurors that if
25 they found you guilty at all, among all or none of the charges

State v. Sessions - 2013-GS-26-3463
BY THE COURT

16

1 or some of them, it would have to be beyond a reasonable doubt
2 and unanimous; you understand that?

3 MR. SESSIONS: Yes, sir.

4 THE COURT: Now, let me ask you, this is a serious matter
5 and I understand that and -- do you have any questions about
6 what I'm saying to you?

7 MR. SESSIONS: No, sir; I do not.

8 THE COURT: None at all. You are represented by Mr.
9 Diggs, who's got a wonderful reputation as an excellent
10 defense counsel, are you satisfied with his services?

11 MR. SESSIONS: Yes, sir.

12 THE COURT: Mr. Diggs, I'm prepare to accept this
13 recommendation.

14 MR. DIGGS: Your Honor, I appreciate it. I won't belabor
15 the point. He certainly regrets having done this. He has a
16 lot of remorse. Your Honor, he was on heroin, he was a heroin
17 addict.

18 THE COURT: I was afraid of that.

19 MR. DIGGS: He's a different man. I've known him now for
20 quite some time. Now, he's clear headed and he's a different
21 person. He has seven children. I would ask Your Honor to do
22 what you feel is the best that you can under these
23 circumstances. And you've indicated to us what you're gonna
24 do. But it was based on those facts that I had asked for ten
25 years.

State v. Sessions - 2013-GS-26-3463
RULING OF THE COURT

17

1 THE COURT: I understand that but I -- I would not be
2 comfortable in doing that.

3 MR. HUCKS: Your Honor, I neglected to put on the record
4 previously that he doesn't have any prior criminal history
5 except for a couple of Magistrate level charges.

6 THE COURT: I understand. Well, when he decided to do
7 it, he went big time.

8 MR. HUCKS: He went all out; yes, sir.

9 RULING OF THE COURT:

10 THE COURT: All right. Let the record reflect that I
11 have examined this Defendant in detail and in depth and I find
12 beyond a reasonable doubt that his plea is freely, knowingly,
13 voluntarily made. The facts certainly substantiate the plea.
14 He's been represented by distinguished counsel with whose
15 services he says he satisfied. He understands fully that the
16 negotiated plea is twelve years and that that's the exact
17 sentence that I'm going to impose. And I do so at this time
18 that he be sentenced to the state penitentiary for a period of
19 twelve years, giving him credit for time served.

20 Thank you.

21 MR. HUCKS: Thank you, Your Honor.

22 (ADJOURNED - 5:32 P.M.)

23

24

25

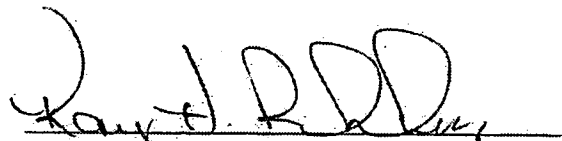
State v. Sessions - 2013-GS-26-3463
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus John E. Sessions, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on March 5, 2014.

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



Kay H. Richardson
Official Court Reporter

October 31, 2014.

STATE OF SOUTH CAROLINA)
County of Horry)

IN THE COURT OF COMMON PLEAS

14

5918

John E Sessions III)
Full name and prison number (if any) of Applicant)
SC DC # 359143)

v.)

State of South Carolina)
)
)
)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
Horry County
2014 SEP -5 AM 10:36
MELANIE HIGGINS-WARD
CLERK OF COURT

INSTRUCTIONS B 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 Broad River Correctional Wateree Unit 236
4460 Broad River Rd. Columbia SC. 29210
2. Name and location of Court which imposed sentence Horry County General
Sessions in Conway South Carolina
3. Name(s) of co-defendant(s) (if any) _____
Frank Sneed, Susan Hudson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013-65 26-0346 - Armed Robbery

- (b) _____
- (c) _____

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

- (a) March 5, 2014 for 12 years Non violent
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

No

8. If you answered Ayes@ to (7), list:

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

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

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

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

(c) the date of each such result:

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

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

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

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) _____

(b) _____

(c) _____

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

(a) Plaintiff was denied effective assistance of

(b) counsel. Also states failure to provide evidence

(c) in response to discovery Request (Brady vs Maryland) (confession)

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

(a) Plaintiff was promised a Non violent sentence as it reflects

(b) on sentence sheet by counsel. Involuntary guilty plea by

(c) counsel's failure to follow through with sentence agreed upon by state.

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 Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

- (a) In effective assistance of counsel
- (b) _____
- (c) _____

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

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

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

(a) the name and address of each attorney who represented you:

- i. William Diggs 1700 oak st Myrtle Beach
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Guilty plea
- ii. _____
- iii. _____

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

14

5918

That the state honor the agreed upon plea as reflected by the sentence sheet.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

I, John E Sessions III, 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.

[Signature]

SWORN to and subscribed before me this 2nd day of September, 2014.

[Signature] (L.S.)
Notary Public

My Commission Expires: March 5, 2018

My Commission Expires: _____

FILED
Horry County
2014 SEP -5 AM 10:36
MELANIE HUGGINS-WARD
CLERK OF COURT

14

5918

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

I, John E Sessions III, 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.

John E Sessions III
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of September, 2014.

Susan H. Frye
Notary Public

My Commission Expires
March 5, 2016

My Commission Expires: _____

FILED
HARRIS COUNTY
2014 SEP -5 AM 10:36
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

John E. Sessions III, #359143,

) Case No. 2014-CP-26-5918
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

)

HORRY COUNTY
2015 FEB -9 PM 1:48
MELANIE HARRIS
CLERK OF COURT

Respondent, making its Return to the Application for Post-Conviction Relief filed September 5, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In August 2013, the Horry County Grand Jury indicted Applicant for armed robbery (2005-GS-26-2615). William I. Diggs, Esquire, represented Applicant. On March 5, 2014, Applicant pled guilty as indicted. In exchange for the plea, the State dismissed related charges of first degree burglary, kidnapping, possession of a weapon during the commission of a violent crime, and conspiracy. The Honorable Edward B. Cottingham sentenced Applicant to twelve (12) years imprisonment. Applicant did not appeal his plea or sentence.

II.

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

1. "Plaintiff was denied effective assistance of counsel.

- a. "Plaintiff was promised a non violent sentence as it reflects on sentence sheet by counsel. In voluntary guilty plea by counsels failure to follow through with sentence agreed upon by state."
2. "Also states failure to provide evidence in response to discovery request (Brady v. Maryland) (confession)"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of plea counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v.

Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes plea counsel 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 in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of plea counsel probably raises questions of fact 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.

Applicant also alleges prosecutorial misconduct for failing to turn over evidence. Under the facts of this case, prosecutorial misconduct is not an issue for post-conviction relief. Rather, this

allegation was procedurally barred when Applicant waived any challenges to the evidence at this guilty plea. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (knowing and voluntary plea waives non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970))). Because Applicant admitted his guilt at the plea hearing, he cannot now challenge the sufficiency of the evidence against him. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” (citing Blackledge v. Allison, 431 U.S. 63 (1977))).

Regardless, it is applicant’s burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). Respondent submits Applicant cannot meet this burden because the record reflects Applicant was fully aware of the nature of the evidence against him. See Hyman v. State, 397 S.C. 35, 49, 723 S.E.2d 375, 382 (2012) (applicant failed to demonstrate possibility of different outcome had he personally received discovery where he “was fully aware of the inculpatory nature of the [evidence] throughout the negotiations and the guilty plea proceedings”).

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
~~ATTORNEYS FOR RESPONDENT~~

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

2/4, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 JOHN E. SESSIONS, III, #359143)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-26-5918

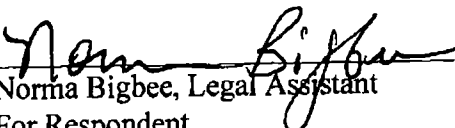
AFFIDAVIT OF SERVICE BY MAIL

2015 FEB -9 PM 1:42
 HORRY COUNTY
 CLERK OF COURT

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

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

DATED this 4TH day of February, 2015.


 Norma Bigbee, Legal Assistant
 For Respondent

1

2	State of South Carolina)	Court of Common Pleas
)	2014-CP-26-05918
3	County of Horry)	

4

5

6	John E. Sessions, III)	
)	
7	vs.)	Transcript of Record
)	
8	State of South Carolina)	

9

10

May 12th, 2016
 Conway, South Carolina

11

12 BEFORE:

13 Honorable Paul M. Burch, Judge.

14

15 APPEARANCES:

16

Steven W. Fowler, Esq.
 Attorney for the Applicant

17

Jessica E. Kinard, Esq.
 Attorney for the State

18

19

20

21

Teresa J. F. Bautz, RPR
 Official Court Reporter

22

23

24

25

		I N D E X			
	WITNESS	DIR	CROSS	RED	REC
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2	John E. Sessions, III				
3	Mr. Fowler	8	--	32	--
4	Ms. Kinard	--	27	--	--
5	William I. Diggs				
6	Ms. Kinard	34	--	--	--
7	Mr. Fowler	--	44	--	--
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14	No exhibits submitted.				
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1 (The hearing commenced at approximately 9:55 a.m.)

2 THE COURT: Good morning.

3 MS. KINARD: May it please the Court, John E.
4 Sessions, III, versus the State of South Carolina, Case
5 No. 2014-CP-26-5918. The Applicant is presently
6 confined in the South Carolina Department of
7 Corrections pursuant to orders of the Horry County
8 Clerk of the Court.

9 In August 2013 the Horry County Grand Jury
10 indicted the Applicant for armed robbery. He was
11 represented by William I. Diggs. On March 5th, 2014,
12 the Applicant pled guilty as indicted to that charge.
13 In exchange for the plea, the State dismissed the
14 related charges of first-degree burglary, kidnapping,
15 possession of a weapon during commission of a violent
16 crime and conspiracy. The Honorable Edward B.
17 Cottingham sentenced the Applicant to 12 years
18 imprisonment. Applicant did not appeal his plea or
19 sentence.

20 He later filed this application for post
21 conviction relief on September 5th, 2014. The State is
22 present and ready to proceed. Applicant is present and
23 represented by Steven Fowler.

24 THE COURT: Good morning. Mr. Sessions, I had
25 just a little bit of time yesterday to look over your

1 file. And I may be repeating what your attorney has
2 gone over with you, but what caught my attention about
3 your file, and many times in these cases I'll take a
4 few minutes to go over some of the pitfalls of these
5 post-conviction relief actions. Because there's a lot
6 of misinformation that passes around through the
7 Department of Corrections.

8 First of all, the relief that could be granted if
9 you were to prevail is fairly limited. Normally the
10 relief would be a possible new trial. We do not have
11 the authority to reduce a sentence. And that seems to
12 be a general misinformation that goes around about
13 these post-conviction relief actions.

14 What I noticed about your file, I think you had a
15 sentence of 12 years on this. And you had some fairly
16 serious charges here. And what I wanted to talk with
17 you about is if you were to prevail on this, you would
18 go back to ground zero and start over.

19 I'll give you an example of what happened several
20 years ago up in Darlington County. Judge Floyd, I
21 remember, was the presiding judge on the retrial.
22 There was a defendant who had gone to trial and was
23 convicted of voluntary manslaughter and received like a
24 20-year sentence. I may be off a year or two there.

25 And he filed a post-conviction relief action and

1 prevailed. He was brought back and was retried and was
2 sentenced to 30 years. So that's a potential pitfall
3 which was a disaster for him. And that has happened
4 many times. So you need to be aware of that. Plus,
5 you also got to factor in there that your jail time or
6 prison time credits could be in jeopardy too. So with
7 that said, your armed robbery you could carry up to 30
8 years on.

9 So you would, in effect, possibly could put
10 yourself in peril just like that defendant I told you
11 about that I specifically remember happening up in
12 Darlington County. Anyway, I don't want to influence
13 you what you should do; well, I may have some influence
14 on you. But I just wanted to let you know those
15 pitfalls, and you need to do some serious soul
16 searching. If you want to go forward, that would be
17 perfectly fine. Or if you want to think about this and
18 talk it over with counsel, that would be fine too.

19 Counsel, yes, sir.

20 MR. FOWLER: I think, Your Honor, also that he was
21 charged with kidnapping and could get life imprisonment
22 as well on that, at least that's what the transcript --

23 THE COURT: That's right, that's right. I was
24 looking at the wrong page here. Well, that even ups
25 the ante even more.

1 MR. FOWLER: Yes, sir.

2 THE COURT: So you could be talking --

3 MR. FOWLER: All or nothing.

4 THE COURT: You're talking about life plus
5 whatever, which really wouldn't mean anything if you're
6 in there for your entire life. Or you could be looking
7 at a combination of possible what, 30, 30 or whatever,
8 anything could happen with that.

9 But anyway, bottom line is you need to seriously
10 talk with your attorney about this and do some soul
11 searching and think about it because I've seen it
12 happen. That is one of the major pitfalls. And, you
13 know, it's unfortunate that there's so much
14 misinformation is passed around within the Department
15 of Corrections.

16 You know, out of the entire South Carolina Bar,
17 you have a very small percentage of the attorneys that
18 handle these post-conviction relief actions, so even a
19 lot of the attorneys are unaware of these possible
20 problems.

21 THE APPLICANT: Yes, sir.

22 MR. FOWLER: May I have a moment to speak with my
23 client in the back?

24 THE COURT: Yes, sir, feel free.

25 MR. FOWLER: Your Honor, can I speak with my

1 client for just a moment, please.

2 THE COURT: Yes, sir.

3 (Discussion off the record.)

4 MR. FOWLER: May we approach, Your Honor.

5 THE COURT: Sure.

6 (Discussion off the record.)

7 MR. FOWLER: Thank you, Your Honor.

8 THE COURT: Court stands at ease for a few
9 minutes.

10 (WHEREUPON, a brief recess was taken at
11 10:07 a.m.)

12 THE COURT: We're back on the record.

13 MR. FOWLER: Yes, sir, if I may address the Court,
14 as we're back on the record, I took the time after your
15 discussion with my client. We met in the back, we
16 discussed it again thoroughly. I've spoken with him by
17 phone, I've spoken with him in person before today's
18 trial.

19 Also in the courtroom today, Your Honor, is John
20 Sessions, Jr., who is my client's father, and we've had
21 a discussion with him privately. And I would like to
22 thank the court officers for facilitating that.

23 Based on those discussions and the totality of
24 them, my client has indicated to me that he would like
25 to go forward today and proceed with this hearing in

JOHN E. SESSIONS, III-DIRECT BY MR. FOWLER

8

1 this matter.

2 THE COURT: Okay.

3 MR. FOWLER: And at this time I would like to call
4 him as a witness, Your Honor.

5 THE COURT: All right. You can come around and be
6 sworn.

7 JOHN E. SESSIONS, III, after being duly sworn,
8 testified as follows:

9 THE CLERK: Have a seat. State your name for the
10 Court, please.

11 THE APPLICANT: Name is John Edward Sessions, III.

12 DIRECT EXAMINATION

13 BY MR. FOWLER:

14 Q Mr. Sessions, you were in the courtroom earlier
15 this morning when the judge discussed how the PCR
16 proceedings worked; correct?

17 A That's correct.

18 Q And you understand -- and please speak up so the
19 court reporter can hear you -- and you understand that
20 if you were victorious today that you would be charged
21 with the counts and their respective years -- potential
22 years in prison on this matter; correct?

23 A That's correct.

24 Q Okay. And we've had some discussions on that;
25 correct?

- 1 A Yes.
- 2 Q And we've discussed your case as well; right?
- 3 A Yes.
- 4 Q Okay. It's my understanding that you went to
5 court on March 5th, 2014 in this matter on these
6 charges previously; correct?
- 7 A That's correct.
- 8 Q Okay. And at that time your attorney was
9 Mr. William I. Diggs; correct?
- 10 A That's correct.
- 11 Q Okay. Now, you've expressed to me that you have
12 some serious concerns about his representation of you
13 in that March 2014 hearing; correct?
- 14 A That's very correct.
- 15 Q Okay. And in your application you mentioned that
16 you were denied effective assistance of counsel;
17 correct?
- 18 A Yes, sir.
- 19 Q Okay. And also that you felt like you did not
20 receive all the pertinent information to your case
21 before that March 5th, 2014 hearing; correct?
- 22 A Affirmative.
- 23 Q Okay. You and I have spoken previously about this
24 case; correct?
- 25 A Yes.

1 Q And you've indicated to me that there were several
2 issues that you have with his -- with Mr. Diggs'
3 representation of you; correct?

4 A Yes.

5 Q Okay. And you understand today is about the scope
6 of Mr. Diggs' representation of you; correct?

7 A Correct.

8 Q But for background for the Court, you've indicated
9 to me that there was no evidence of the substantial
10 nature of your involvement in these alleged crimes; is
11 that correct?

12 A That's correct.

13 Q Okay. Why do you state that; I mean, why do you
14 feel like, without going too much into detail or as
15 much as the judge would allow, why do you feel like
16 that you do not warrant the sentence that you pled to
17 or the sentences that you were potentially charged
18 with?

19 A Could you say that one more time.

20 Q Okay. Why do you feel like there was no evidence
21 against you in this matter?

22 A I never received or visually seen, or read for
23 that matter, I've never tangibly held any evidence
24 against me whatsoever. My motion for discovery, my
25 Brady motion, consisted of my charges, my warrants and

1 what was presented to me as a true bill indictment.

2 I've yet to receive or see any of these things.

3 Q Okay.

4 A There was a DVD not at the scene of the crime but
5 at the -- upon my arrest of an interview at a police
6 department where I was arrested. I've asked to see
7 this on several occasions. I've been denied that. I
8 would like to know why. I can't get an answer from
9 him.

10 I write Mr. Diggs, I get return to sender for
11 mail. I'm not understanding what's going on. I just
12 feel like -- I feel like I made very wrong decisions,
13 and I feel like I was used as a sacrifice for something
14 else.

15 Q So basically one of the primary points that you
16 have is that you were denied your proper discovery in
17 this case; correct?

18 A That would be my issue number one.

19 Q And you understand what -- and what's your
20 understanding of what the term discovery means in a
21 legal capacity?

22 A The term discovery in legal aspect, as I've
23 recently acquired because I don't have but a sixth
24 grade education, so since I've been in prison I've
25 tried to elevate my knowledge in court. A motion for

1 discovery is, to my understanding, is anything they are
2 going to use, the State's going to use, against you in
3 a courtroom to prosecute you, 100 percent you're
4 supposed to have access to and know everything that
5 they're going to use, if I'm not mistaken.

6 I tried to speak with Mr. Diggs on this -- on this
7 issue a couple times, and he just told me, don't worry
8 about it, everything's all right. I asked him to see
9 this DVD, and he told me that since I didn't have
10 access to a computer that I was just out of luck, I
11 guess.

12 Q And you've indicated that you read at a sixth
13 grade level; is that correct?

14 A Yes, that's correct.

15 Q So do you think it would take even more
16 communication between you and your attorney for you to
17 understand the written discovery that is against you in
18 this matter?

19 A It wasn't so much the written discovery as so much
20 the tangible evidence, where is this DVD. I've yet to
21 see it.

22 Q What was -- now, you pled on March 5th, 2014. Do
23 you know roughly when you were charged with these
24 crimes, what date you were charged?

25 A May 28th.

1 Q Of?

2 A '13.

3 Q Of 2013. And when did Mr. Diggs --

4 A Wait a minute.

5 Q -- start representing you in these matters,
6 roughly?

7 A He was my court-appointed attorney shortly after
8 that, after my...

9 Q So soon in the summer of 2013 you --

10 A Right after I got my charges, he was appointed my
11 attorney.

12 Q Okay.

13 A Now, I didn't speak with him until court time.

14 Q So you didn't -- so explain that. You didn't
15 speak with him from his appointment to March of 2014?

16 A That's correct.

17 Q Okay. So there were no telephone calls between
18 the two of you?

19 A No, sir, I couldn't call him from the J. Reuben
20 Long facility because he had -- he didn't have what's
21 called securest phone line.

22 Q Did he come and visit you at the jail?

23 A He came to the jail one time, said, hi, this is
24 who I am, this is what your motion looks like. We have
25 a DVD of a supposed confession. I asked him could I

1 see it, and he told me not at this time. And then he
2 asked me if I had access to a computer, I told him no.
3 And he told me, don't worry about it. And up until
4 court time I never spoke with him again.

5 Q All right. And when roughly was that visit; was
6 that in the summer of '13 roughly?

7 A I couldn't remember.

8 Q Okay, all right. So you've mentioned several
9 times this DVD. What exactly was this DVD that you're
10 discussing?

11 A That's what my inquiry is. I have absolutely no
12 idea what's on this DVD, but supposedly it's a
13 confession of what -- it's me saying yes, I confess to
14 the crimes that I was alleged.

15 Q Okay. And where was this video taken?

16 A If I'm not mistaken, in Surfside police
17 department.

18 Q Through the Surfside police department; correct?

19 A Correct.

20 Q Okay. Do you feel like having that DVD would have
21 impacted you in terms of how you pled on that
22 March 5th, 2014 date?

23 A Well, certainly. It would have told me whether or
24 not what I'm about to -- what I get to look at, it
25 would have made the determination whether or not I

1 would say these 12 people are going to -- it's how they
2 are going to view me or versus, you know, the outcome
3 of the trial, of course.

4 Q And there was no effort by Mr. Diggs to provide
5 you with a video -- a DVD player or anything like
6 that --

7 A No, sir.

8 Q -- for you to see it; correct?

9 A At the time I asked, his laptop was laying --
10 sitting on the table, and he was in too big of a hurry.

11 Q Did you inquire that it be seen on the laptop?

12 A Yes. Yes.

13 Q Okay. All right. What about any other discovery
14 that might have been done in this; I mean, did you --

15 A There was no other discovery, that was it.

16 Q What was it, the DVD was it?

17 A The DVD, yes, sir. There was never a fingerprint
18 taken, a picture of a crime scene, or there was never
19 -- you know, I hate to go into too much detail, but the
20 crime didn't happen.

21 Q Well, let me --

22 A That I was charged with.

23 Q If I may finish. This is a fairly big issue in my
24 opinion. We've touched on the DVD?

25 A Yes.

1 Q But you said there was no DNA evidence?

2 A No, negative.

3 Q Okay. There was no photos of the scene?

4 A No, sir.

5 Q Okay. And you said you wanted to go in detail if
6 it's acceptable with the Court. Give us some detail on
7 what discovery you would have expected in this matter
8 other than the DVD.

9 A Well, if I was to break into your home, per se,
10 would you have -- I would have had to touch your door
11 or your window or ever how I came in. So if I
12 burglarized you, there would be some sort of tangible
13 evidence to that fact, not just a person's statement.

14 Correct me if I'm wrong, same goes with a robbery,
15 you got me on an armed robbery. You know, at the
16 advice of my previous attorney I pled to an armed
17 robbery when I didn't take anything from anybody. I
18 wasn't armed with anything at that; you know what I'm
19 saying? I was at the wrong place at the wrong time,
20 this is granted.

21 You know, I probably had bad intentions as far as
22 what I would have done, but we can't say what I would
23 have done. Well, let's talk about the facts that what
24 was done, what really happened.

25 And on that day, if I'm not mistaken, even the --

1 even my victim's statement has changed a couple times.
2 Everybody -- there was no one else there. You know, I
3 knock on the door, the lady opened the door. We both
4 left the door.

5 MS. KINARD: Your Honor, I'm going to object.

6 THE APPLICANT: I went one direction, she went the
7 other, so...

8 MS. KINARD: He's gone into a lot of information
9 about what might have actually happened. And I believe
10 we've also gone into a lot about potential discovery,
11 which he waived the right to investigate and question
12 by pleading guilty.

13 THE APPLICANT: Okay.

14 THE COURT: All right, we're not going to retry
15 the case. So I don't believe as far as what happened,
16 we need to skip over that.

17 THE APPLICANT: Okay.

18 MR. FOWLER: All right.

19 Q Well, as far as Mr. Diggs, did he file any
20 motions?

21 A No, sir.

22 Q Well, let me rephrase that. To your knowledge,
23 did Mr. Diggs file any motions for discovery in this
24 matter?

25 A No, sir.

1 Q Did you see anything -- you didn't see the DVD;
2 correct?

3 A No, sir.

4 Q Okay. And you didn't see any other tangible
5 evidence; correct?

6 A No, sir.

7 Q All right. So you were in, was it county -- where
8 were you from May to -- where were you prior --

9 A J. Reuben Long.

10 Q So you were at J. Reuben Long before March 5th,
11 2014. What were your efforts to try to contact
12 Mr. Diggs to get this information?

13 A I tried by phone, I had my aunt, her name is Linda
14 Shelly, go by his office unsuccessfully, left notes for
15 him to contact one of my family members, unsuccessful.
16 And as I stated, I can't call from the jail which I
17 tried several times, you know, in hopes that maybe he
18 would have accessed the phone. Wasn't, you know...

19 Q Okay. So you feel like you made reasonable
20 attempts to try to contact him; right?

21 A Yes, sir.

22 Q And you feel like your attempts were denied by
23 him; correct?

24 A Yes.

25 Q All right. Well, let's get to -- let's get closer

1 to March of 2014 when you pled. Before the March 5th,
2 2014 hearing, how did you go about -- how did Mr. Diggs
3 contact you, or how did you find out that you had a
4 plea potentially or a court case on March 5th, roughly?

5 A He showed up a few days before. And as with all
6 pro bono cases or public defenders, they have a list of
7 people to come visit at the jail. My name was on it,
8 and that was our only -- he came to the jail, we spoke,
9 and then the next time I saw him was in that room right
10 back there through the courtroom.

11 Q Okay. But how did he indicate -- now, you
12 obviously pled on March 5th, 2014. How did you and he
13 discuss the years you were going to plead to, the
14 potential -- well, let me rephrase that. How did you
15 and him discuss your potential plea on March 5th, 2014?

16 A He walked in that room, laid that paper down and
17 said, this is what the State's offering, either take
18 this plea or we're going to trial. And if I'm not
19 mistaken, the judge even brought it to an exact date
20 and told me the following Monday, so it was on a
21 Thursday, if I'm not mistaken. So I went from Thursday
22 to we're going to go to trial on Monday if you don't
23 sign this paper.

24 So I read the paper, I looked at it very
25 carefully. And like I said, I don't have very much of

1 an education, but I examined the paper very carefully.
2 The paper says I'm pleading to 12 years nonviolent, a
3 negotiated plea, or -- yeah, if I'm not mistaken, it
4 was a negotiated plea, but -- so I signed the paper. I
5 take the 12 years nonviolent.

6 When I get to Kirkland in Columbia, they changed
7 my 12 years nonviolent to 12 years violent, which in
8 fact changes dramatically the amount of time that I do.

9 Q How does it change, in your words, dramatically
10 the amount of time you're going to do?

11 A People with nonviolent sentences are eligible for
12 parole. People with nonviolent sentences are eligible
13 for good time, work credits, education credits. People
14 without -- people on violent sentences don't get any of
15 that. The opportunities for --

16 Q Okay. So you feel like you were -- how do you --
17 were you explained the --

18 A I was tricked.

19 MS. KINARD: Your Honor, I'm going to object,
20 first to the classification of that statement as well
21 as the fact that this line of questioning is not a PCR
22 matter. It's an issue of classification that is not
23 appropriately before the Court at this time.

24 MR. FOWLER: And, Your Honor, our contention on
25 that is that this goes to the apparent lack of

1 communication between my client and his attorney on
2 this matter, and it goes to how he was sentenced and
3 what he was sentenced to.

4 THE COURT: I'll give you some leeway with it.

5 MS. KINARD: Thank you, Your Honor.

6 THE COURT: Make sure we're all clear, after all
7 of my years of experience, Department of Corrections
8 keys on the CDR code in the offense. And that line
9 across there where it says, violent, nonviolent,
10 serious, and all that means absolutely nothing to the
11 Department of Corrections. They go by the CDR code.

12 MR. FOWLER: Yes, sir.

13 THE COURT: Go ahead.

14 MR. FOWLER: Thank you.

15 Q So you heard what the judge said about CDR codes
16 and its relationship to SCDC. Was any of that
17 explained to you before you pled?

18 A Negative.

19 Q Do you feel like it should have been explained to
20 you?

21 A Most definitely. I would have thought that
22 those -- that series of words and where they place the
23 X on that paper would definitely make the sentence, you
24 know, serious, nonviolent -- or nonviolent and violent,
25 serious, most serious. Those are, you know, the

1 classification of your crime.

2 I understand the CDR code thing that they are
3 using. But who am I, I don't have that -- I'm not
4 privy to that knowledge. The CDR thing I'm not -- I'm
5 not up on that.

6 Q Okay.

7 A My attorney never once told me that, your CDR code
8 is going to determine whether or not you're -- he says,
9 this is what it is, it's a 12-year nonviolent sentence,
10 you want to take it.

11 Q Okay.

12 MR. FOWLER: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes, sir.

15 MR. FOWLER: Thank you.

16 Q Do you recognize this document?

17 A I sure do.

18 Q What is it?

19 A It's my sentencing sheet.

20 Q From your case?

21 A From my case. Case No. 2013-GS-26-03463.

22 Q Okay. And your signature is on there; correct?

23 A Correct. My signature as well as the judge's, my
24 attorney as well as Mr. Scott Hucks.

25 Q Okay. And also it's marked nonviolent; correct?

1 A That's affirmative.

2 Q And it's also marked, recommendation by the State;
3 correct?

4 A That's correct.

5 Q And just to reiterate one more time, your attorney
6 did not go over what those terms meant; correct?

7 A Well, he certainly never told me that those words
8 on the paper meant nothing.

9 Q Okay. And so therefore, he did not explain the
10 classification system of the South Carolina Department
11 of Corrections to you?

12 A No, sir, he did not.

13 Q Do you think if he did, that would have made a
14 difference in your plea?

15 A It would have made the decision for me as to
16 whether I would have took the plea.

17 Q Okay.

18 MR. FOWLER: May I approach, Your Honor, please?

19 THE COURT: Yes.

20 Q And do you recognize this document?

21 A It's a transcript that you showed me this morning.

22 Q Okay. And from what date?

23 A From March 5th, 2014.

24 Q Okay. And on page 17 --

25 A Page 17, the ruling of the Court, if I'm not

1 mistaken --

2 Q Wait, let me -- hold on a second. Line 16 through
3 17, can you read that. Excuse me, 15 through 17, can
4 you read that.

5 A Yes, sir. If I'm not mistaken it was said by the
6 judge. It says, he fully understands -- or he
7 understands fully that the negotiated plea is 12 years
8 and that that's the exact sentence I'm going to impose.

9 Q Okay. So that's the judge?

10 A That's the judge's words.

11 Q That's the judge making his ruling; correct?

12 A That's correct.

13 Q So, in summary, you're saying that your attorney
14 didn't go over these lines, nonviolent -- he didn't go
15 over nonviolent with you; did he, versus violent?

16 A Negative. And it's to my understanding that
17 serious and most serious crimes are supposed to be
18 discussed, if I'm not mistaken. You would want to tell
19 your client what's -- when he has -- if I'm not wrong,
20 the charge that I pled to is, under different
21 circumstances, would have been a serious charge.

22 Q Okay. And also, he didn't go over the difference
23 between a negotiated sentence versus recommendation by
24 the State?

25 A No, sir.

1 Q Okay. Now, with this -- finally, on -- you
2 mentioned something to me about true bill; is that
3 correct?

4 A Yes, sir. A true bill indictment, if I'm not
5 mistaken, also has a stamp, something similar to a
6 notary stamp. I've yet to see one of those, and I've
7 been incarcerated almost four years. I have never seen
8 where I was ever indicted for anything.

9 Q Is there anything -- we've touched on the
10 discovery, we've touched on the technical terms within
11 the Court and SCDC, we've touched on your true bill.
12 Are there any other issues that come to your mind about
13 Mr. Diggs' representation of you that you have concerns
14 about?

15 A He -- there was -- he knows there was a lot of --
16 he knows there was a drug -- he knows there was a drug
17 incident. There was drug use and things of that nature
18 going on throughout this case. Now, I can't certainly
19 say that this affected the way he treated me, but he
20 had just previously lost his son --

21 MS. KINARD: Objection. This is speculation.

22 THE APPLICANT: Okay. Well --

23 MR. FOWLER: Just asking him what his overall --

24 THE APPLICANT: Okay, I'll state a fact. He lost
25 his son through a drug overdose on the exact same drugs

1 that they had me -- I was using at that particular
2 time.

3 Q And how do you feel that's relevant to this case?

4 A I feel like it was kind of like -- like as if he
5 was looking at me like I was either with his son or may
6 have even gave him what he -- you know what I'm...

7 MS. KINARD: Objection. Again, speculation.

8 MR. FOWLER: Your Honor, I'm just saying that it
9 goes to my client's state of mind and his impression of
10 how his attorney represented him or did not.

11 THE APPLICANT: Yeah, it was just opinion.

12 THE COURT: All right.

13 Q Other than those issues that you mentioned about
14 your state of mind in terms of your attorney, what you
15 felt about your attorney, is there anything else
16 factually or that you feel like is relevant to this
17 case today?

18 A No, sir, not that wouldn't be objected, that need
19 to be spoke later.

20 Q How would you describe your attorney's performance
21 in your own words?

22 A Unsatisfactory.

23 Q Do you feel it was deficient?

24 A Very much so.

25 Q Okay. And do you feel like that's why you are in

1 the current state you're in?

2 A It's definitely why I'm in the current position.

3 Q So you feel his representation has caused you
4 damage?

5 A Yes, sir.

6 Q And damage how so?

7 A Damage not only in my character base but where I'm
8 at, my placement. Not only, you know, where I reside
9 but my placement as far as maybe if I would have sat
10 there a little longer myself or maybe if I would have
11 had a different attorney, things would have -- the
12 outcome would have been different.

13 MR. FOWLER: I have no further questions, Your
14 Honor.

15 MS. KINARD: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. KINARD:

18 Q Good morning, Mr. Sessions.

19 A Good morning.

20 Q This wasn't a very straightforward plea; was it?

21 A No, ma'am.

22 Q Meaning that you went in with a plea offer from
23 the State; is that correct?

24 A Um-hum.

25 Q But you were also set for trial in case that

1 didn't go through; is that correct?

2 A According to the judge, that if I didn't take that
3 plea that Thursday, that I would be going to trial
4 Monday.

5 Q And you'd already turned down a ten-year offer
6 already; hadn't you?

7 A Two days prior, two or three days prior.

8 Q Okay. So you went --

9 A With -- excuse me, I'm sorry. At the advice of
10 Mr. Diggs.

11 Q What was that advice?

12 A Not to take the ten.

13 Q Why?

14 A Apparently there was no evidence against me, and
15 he's telling me, this is your first plea. If you just
16 sit back, we might can do something a little better,
17 you know. That was in that little room back there.

18 Q And how many years were you facing?

19 A I'm unsure of the exact amount.

20 Q Over a life sentence; is that correct?

21 A Yes, ma'am.

22 Q Were you sworn in at the time of this plea offer?

23 A The ten-year plea offer?

24 Q At the time of the transcript.

25 A Yes, ma'am.

1 Q So you swore to tell the truth?

2 A Yes, ma'am.

3 Q And do you remember swearing that you did commit
4 this crime?

5 A Ma'am?

6 Q Do you remember testifying that you did commit
7 this crime?

8 A No, ma'am. I've never committed burglary or
9 robbery at all. I never said that I committed the
10 robbery.

11 Q You don't remember agreeing that you were guilty
12 of that crime?

13 A No, ma'am. I took a -- I signed that I was
14 guilty, I took a plea because I felt like at that
15 particular time that was what was in my best interest
16 was to take and say that I did this, so this part
17 doesn't effect me.

18 Q Did you describe some details of this crime?

19 A Ma'am?

20 Q Did you describe some details of this crime?

21 A Just as I did just a while ago.

22 Q Also in this plea, did you admit that the decision
23 to plead was ultimately yours and yours alone?

24 A Yes, ma'am. I stated that, but it was kind of a
25 under pressure type thing.

1 Q Do you remember the judge going over all the
2 constitutional rights that you were giving up by
3 pleading guilty?

4 A No, ma'am, I don't.

5 Q Do you remember him stating that you would have
6 the right to confront witnesses against you?

7 A He made that statement, but there was no witnesses
8 against me.

9 Q Do you remember him stating that you would be
10 presumed innocent and wouldn't have to prove anything?

11 A Nu-uh.

12 MS. KINARD: I would point the Court's attention
13 to page 15, lines 11 through 17 for the -- excuse me,
14 11 through 22 for most of the constitutional issues.

15 Q Did you remember the judge explaining that you had
16 the right to remain silent?

17 A Yes, ma'am.

18 Q Do you remember the judge explaining that all 12
19 jurors would have to be unanimous if you went to trial?

20 A No, ma'am, I don't.

21 Q Okay. That's page 16. Do you remember testifying
22 that you were satisfied with Mr. Diggs' representation
23 of you?

24 A Yes, ma'am. I remember making the statement upon
25 signature of a 12-year nonviolent plea, yes, ma'am, I

1 did.

2 Q Do you remember testifying to that in open court?

3 A Yes, ma'am.

4 Q Were the statements you gave then truthful?

5 A Which statements are you referring to?

6 Q Any of them, since you're saying you didn't --

7 A I don't recall making any statements. He did all
8 the talking.

9 Q Any of the testimony that you provided, was any of
10 it untruthful?

11 A No, ma'am.

12 Q So when you said you were guilty, that was the
13 truth?

14 A Guilty of?

15 Q Armed robbery, that was the charge.

16 A I never stated I was guilty of armed robbery.

17 Q Yes, sir, I believe you did.

18 MS. KINARD: If I may approach, Your Honor, it's
19 page 14, line 6 through about line 12.

20 Q Line 6, Court asks: Are you pleading guilty to
21 attempting to rob this lady; are you not? And you
22 said, yes, sir.

23 A Okay. You just said -- the words are different.
24 You said -- this paper right here says, you are
25 pleading guilty to attempting to rob this lady, okay.

1 And I said, yes. I did plead guilty to attempting to
2 rob somebody.

3 Q But were you aware of this charge, it was not
4 attempted armed robbery, it was armed robbery?

5 A That's word play between the -- what's actually
6 said and what I was charged with; isn't it?

7 Q It seems like that's what you're making it, sir,
8 that's why I'm asking.

9 MS. KINARD: No further questions at this time,
10 Your Honor.

11 MR. FOWLER: If I may, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. FOWLER:

14 Q Let's talk about what she just raised on page 14,
15 lines 6 through 8.

16 MR. FOWLER: If I may approach, Your Honor.

17 Q Just for clarification purposes, line 6, what does
18 it say here?

19 A You are pleading guilty to attempting to rob this
20 lady; are you not? Yes, sir.

21 Q Okay. So --

22 A So I did plead guilty to attempting to rob
23 someone. However, my charges were not attempted
24 robbery when I got -- when I left and got to SCDC. My
25 sentence was not 12 years nonviolent when I left and

1 got to SCDC, as signed. I mean, things changed from
2 the courtroom to Columbia. And I'm trying to figure
3 out why that is.

4 Q So you're saying that what you pled to on page 14
5 is different than what you thought that you were
6 pleading to?

7 A That's correct.

8 Q Is that correct?

9 A That's correct.

10 Q Okay. Also, I think it was said somewhere on
11 cross-exam that there was no evidence against me or
12 that you didn't commit this crime. Are you familiar
13 with the case of Alford versus North Carolina?

14 A Nu-uh.

15 Q Did your attorney go over anything about --

16 A Never heard of it.

17 Q Okay. So you're not familiar with an option to
18 plead basically no contest due to the evidence against
19 you; correct?

20 A No, sir.

21 Q All right. So the Alford option was not given to
22 you; correct?

23 A No.

24 MR. FOWLER: Okay. No further questions.

25 MS. KINARD: No recross, Your Honor.

1 THE COURT: You may step down, please.

2 (Witness excused.)

3 MR. FOWLER: Nothing further, Your Honor.

4 MS. KINARD: State calls William Diggs.

5 THE COURT: Come around and be sworn, please.

6 WILLIAM I. DIGGS, after being duly sworn,

7 testified as follows:

8 THE CLERK: You may be seated and state your name

9 for the Court, please.

10 THE WITNESS: My name is Williams Isaac Diggs.

11 DIRECT EXAMINATION

12 BY MS. KINARD:

13 Q Good morning, Mr. Diggs. Thank you for being
14 here.

15 A Good morning.

16 Q At the time you took this case, how long had you
17 been practicing law?

18 A 33 years.

19 Q Do you recall how you became involved in this
20 case?

21 A At some point shortly before I became involved in
22 the case we entered into a contract with the public
23 defender's office, so that we were taking some of the
24 cases that were conflicts. And I think that's how I
25 got this particular case.

1 Q Do you recall meeting with Mr. Sessions?

2 A Yes.

3 Q Do you recall how many times you met with him?

4 A It was a number of times. And I don't have my
5 file with me, but check the records at the jail. I
6 know that it was more times than what was just
7 testified to. Because we discussed the ten-year
8 sentence that had been offered by the State. And he
9 was waffling on that, he didn't know if he wanted to
10 take it. And so eventually it was withdrawn, and it
11 went up to the 12 years.

12 And so he made a decision at that time to take it.
13 But it was -- we discussed that point. And it was over
14 a long enough period of time that Scott Hucks just
15 became frustrated with the case and said, I'm not going
16 to offer, you know. So he went up two years to kind of
17 penalize us for not taking the deal. And so that's
18 when the decision was made to enter the plea of guilty,
19 take the 12 years.

20 Q We're going to come back to some of that real
21 quick, but let's go back to some basic questions. Did
22 you discuss the indictments and the elements of the
23 crimes that Mr. Sessions was facing?

24 A We always do that, and I'm sure I did that in this
25 case. Now, with respect to, you know, my detailed

1 discussion with him about the precise wording that was
2 used, I don't recall that. But I know that typically,
3 you know, I've practiced criminal law for over 30
4 years, and we always discuss that with every client,
5 including this one.

6 Q Did you review the possible punishments for each
7 charge?

8 A Yes.

9 Q And you discussed collateral consequences?

10 A Such as?

11 Q Such as classifications, parole eligibility,
12 anything like that?

13 A We did -- what my standard practice was was to
14 talk about what the sentence was going to be and
15 generally what parole eligibility would be available in
16 certain situations.

17 But I did not get into other collateral
18 consequences of what went on in the jail or in the
19 prison system itself usually, simply because it was --
20 in my mind, it was unpredictable. And so beyond that,
21 I didn't get into a lot of discussion about what would
22 happen in the prison system.

23 Q Did you explain to Mr. Sessions that his ultimate
24 sentence regarding the number of years would be up to
25 the judge?

1 A Yes.

2 Q Did you inform him of his constitutional rights,
3 whether they were if he proceeded to trial or taking
4 the plea?

5 A Yes.

6 Q And he understood what he was giving up by taking
7 this plea?

8 A Yes.

9 Q Did he also understand he was giving up the right
10 to challenge any evidence against him by taking this
11 plea?

12 A Yes.

13 Q Had you received a discovery packet in this
14 matter?

15 A Yes.

16 Q Did you file a Rule 5 or Brady motion?

17 A We filed -- typically in the cases that we got on
18 a contract basis, the motions would have been filed.
19 That might have been the case here, you know, before
20 the file came to me actually at my office the discovery
21 motions would have been filed. And if they were not,
22 usually I would automatically file those myself. And I
23 can't remember in this case which occurred. But we did
24 have discovery materials in this case.

25 Q Did you believe it was a complete discovery

1 package?

2 A Yes.

3 Q Did you review these items with the Applicant?

4 A Yes. Yes.

5 Q You felt he understood its contents?

6 A Yes.

7 Q So he had all the information needed to make an
8 informed plea decision in terms of --

9 A Absolutely. You know, he -- I understood where he
10 was coming from because he didn't go in and he didn't
11 shoot anybody, he didn't physically assault anyone.
12 You know, it was just basically, you know, he went in
13 the house, according to the homeowner victim, he went
14 in, threatened to do some things, you know.

15 And eventually after a while she was able to flee
16 out and get to safety. He felt like, I didn't really
17 do anything, you know, I didn't shoot her, I didn't
18 beat her up. And so he felt like the nature of the
19 charges were more serious than what he had actually
20 done.

21 Q That makes sense.

22 A Okay.

23 Q Regardless, he understood what he was facing?

24 A Yes.

25 Q And he understood that?

1 A Yes.

2 Q And he understood he was pleading to armed
3 robbery?

4 A Yes.

5 Q And the other charges were being dropped?

6 A Yes, he absolutely understood they were being
7 dismissed.

8 Q Now, in your preparation of the case, did you
9 learn of any fact witnesses that would be available to
10 testify on his behalf?

11 A To help him, no.

12 Q So there was no investigation you could do in
13 terms of other witnesses?

14 A Well, we did do an investigation, but no other
15 witnesses turned up that would indicate he was innocent
16 or that, you know, would have been helpful to the
17 defense.

18 Q Could you describe the investigation that was
19 performed.

20 A It would have started with -- what we did was
21 start with the review of the material and make our
22 assessment of what the evidence was in the case. And
23 at that point we would have followed up on any leads
24 which would have indicated that he was innocent of the
25 offense or the offenses.

1 The problem that we had in this case is that I
2 didn't get any information from Mr. Sessions that
3 indicated he was innocent, you know, that other
4 people -- I mean, there certainly was no alibi. There
5 was nothing to indicate that someone else had done it,
6 that they had the wrong defendant.

7 And so basically, you know, it's kind of a dead
8 end, you don't really have anywhere to go after that
9 point. Once you understand that there's no one
10 available that can supply information that would be
11 helpful to you, that kind of terminates the
12 investigation.

13 Q Did you ever discuss his chances at trial?

14 A I don't exactly recall discussing that, no.
15 Certainly he understood and we discussed the role that
16 the jury would play in the case and make an assessment
17 of credibility. And so, I mean, to that extent we did
18 discuss his chances at trial. And it was no doubt that
19 I believed he was in a lot more jeopardy going to trial
20 than he was entering a plea.

21 Q Did you start plea negotiations with the
22 solicitor's office, or did they --

23 A Yeah, as far as I know. That was basically the
24 nature of my practice, I would always seek to find out
25 where the State's office was on a particular case, what

1 the priority was for it, you know, in that office. And
2 typically I would go and initiate, okay, what do you
3 want to do to try to resolve the case short of having
4 to go to trial and face the ultimate charges that are
5 present in the case.

6 Q What did Mr. Sessions express to you about his
7 desire to plead versus his desire to go to trial?

8 A He didn't want to be in the position that he was
9 in. He understood that he had done wrong, but he never
10 would accept the fact that he did anything that would
11 justify the severity of the potential punishments that
12 were in the case, available in the case.

13 So he was -- you know, he was wavering. He just
14 wanted it to go away. And eventually he made a
15 decision to take a plea. But he resisted for some
16 time. He resisted long enough that the solicitor's
17 office just got fed up with the case and said, you
18 know, that's it, he takes it now or we're going to
19 trial.

20 Q So that's why we have the plea transcript that we
21 do --

22 A Yes.

23 Q -- that's kind of a back and forth?

24 A Yes.

25 Q Is it fair to say it kind of stalled in the

1 middle, and he couldn't decide whether to accept the
2 12-year offer?

3 A Yes, that's basically what his attitude had been
4 for some time.

5 Q Can you describe the ten-year plea briefly, when
6 that was offered, how it was rejected.

7 A It was rejected. That would have been done out at
8 the jail, okay. Because I would see Scott Hucks in the
9 hallway, and he would say, okay, what's happening with
10 this, we got to move. And I would go and see
11 Mr. Sessions about it, and he would reject it at that
12 point.

13 He couldn't come to grips with the fact that he
14 would have to do, you know, that much time potentially
15 for what he had done in the case. And he didn't -- he
16 was thinking about it, but he wouldn't make a decision,
17 he wouldn't decide to go ahead and proceed with it.

18 I didn't pressure him to do it. I certainly never
19 advised him not to take it given the potential, you
20 know, going to trial. I never advised him not to take
21 it.

22 Q Is it fair to say you thought his chances with the
23 plea were far better than at trial?

24 A Absolutely.

25 Q So to sum up a bit, Mr. Sessions knew the charges

1 he was facing?

2 A Yes.

3 Q He realized eventually that he was pleading to
4 armed robbery?

5 A Yes.

6 Q And the other charges would be dismissed because
7 of that?

8 A Yes.

9 Q Did you feel he understood the 12-year plea as it
10 was presented to him?

11 A Yeah, he certainly did. Because he understood the
12 ten-year plea. And he understood that there was going
13 to be two more years added on.

14 Q And he understood that the ultimate sentence was
15 up to the judge?

16 A Yes.

17 Q And, in fact, you took the step of asking for ten
18 years?

19 A Yeah, we did.

20 Q Yeah. At the plea?

21 A And I told him we would do that. I think that's
22 an example of the way I represented him and all of the
23 clients that I represented.

24 MS. KINARD: Your Honor, I --

25 THE WITNESS: I knew Judge Cottingham. I felt

1 like at worst he would say, no, I'm not going to give
2 him ten, but -- and that's why we made the decision to
3 at least request ten, even though the State was
4 recommending at that point 12.

5 MS. KINARD: And the conversation he's speaking of
6 is in the middle of page 12.

7 I have no further questions. Thank you.

8 CROSS-EXAMINATION

9 BY MR. FOWLER:

10 Q How many times did you meet with my client?

11 A I don't have the number in front of me, but I know
12 it was more than one. And I feel very confident to say
13 it was more than two. But --

14 Q Okay, so --

15 A Let me put it this way. Basically any time I
16 would go to the jail, I would see the clients that I
17 had there.

18 Q Well, but you don't have a record of how many
19 times you went specifically and met with him; correct?

20 A I don't have it in front of me. We probably did a
21 timesheet on the case.

22 Q And you don't have that timesheet with you today?

23 A No.

24 Q You knew about the hearing today; correct?

25 A I knew about the hearing, but I don't have the

1 timesheet with me. I didn't really see anything in the
2 application that would have asked me to produce it or
3 require me to produce it.

4 Q You mentioned that there was some frustration
5 between, was it you and Scott Hucks; is that correct?

6 A No. I felt like the State's office was frustrated
7 that we wouldn't make a decision or wouldn't take --
8 Scott Hucks thought it was a very good offer. He could
9 not understand given the nature of the evidence in the
10 case why we wouldn't jump on a ten-year sentence, which
11 I had wanted to do, okay.

12 And so he became -- Scott became frustrated
13 because we wouldn't take it, we wouldn't take it. And
14 so finally he said, okay, then, you know, it's off the
15 table and we're going to trial. That's where the
16 frustration was, it wasn't between me and Scott.

17 Q When did the State initially offer that ten-year
18 plea?

19 A It would have been well before. I think the
20 previous testimony was couple of days, and I think it
21 was well before that. It would have been probably
22 weeks if not months, okay. And I don't have the
23 timeframe in terms of when I became attorney of record
24 on the case.

25 But it was -- I can tell you it's at least weeks,

1 okay, weeks. Because there were a couple of times
2 where Scott Hucks and I interacted in the courthouse,
3 you know, about this case, and he was -- he would push
4 me about it. And, I mean, that's how I know it was
5 more than a couple of days. It would have been a few
6 weeks.

7 Q So do you have any kind of documentation between
8 you and Mr. Hucks of the rejection of the plea or the
9 actual plea of ten years itself? Did he give that
10 ten-year plea to you in writing?

11 A I don't recall.

12 Q Okay. Did you correspond to Mr. Hucks indicating
13 what your client's wishes were at that time?

14 A Yeah. I told him we didn't -- he didn't want to
15 take it. I felt it was in our interest to take it, and
16 I would express to Mr. Hucks, I'm going to continue to
17 work with him and see if we can come around to take
18 advantage of the offer.

19 I think it would have been catastrophic to go to
20 trial. He broke in the house, at minimum he broke in
21 the house, entered the house, confined the lady who
22 lived there and threatened -- she felt like he was
23 armed, okay, her statement was he was armed.

24 Q But the question was --

25 A So I felt -- I felt like I was answering the

1 question.

2 Q Well, I guess my question was there was no -- was
3 there any written correspondence between you and Hucks
4 on the plea offer?

5 A Not that I recall. But there were multiple
6 conversations about it.

7 Q But no written transcript?

8 A Not that I recall. I mean, it could turn up if I
9 say no, then you produce something, you know, that
10 could happen because I don't recall.

11 Q You say you discussed the potential ten-year plea
12 with my client?

13 A Yes.

14 Q Do you have a date of when you specifically
15 discussed that plea with him?

16 A I don't have a date, I don't have the file in
17 front of me.

18 Q So you don't know -- you don't have the four --

19 A Let me say this, okay. It was days or weeks, and
20 I feel comfortable in saying weeks before the actual
21 plea.

22 Q How did you provide that information to my client;
23 did you do it in writing?

24 A I don't recall.

25 Q Okay.

1 A I do recall advising him in person, okay. But I
2 don't recall providing written explanation to him from
3 my office to his office. And by the way, he is correct
4 about the phone calls. Because we had -- someone had
5 just at random out at the jail, had gotten my number
6 and was able to charge a lot of phone calls to my
7 number. And it was several -- almost up to a thousand
8 dollars, as I recall, and so I just stopped taking
9 calls from the jail.

10 Q Well, how did you communicate with my client at
11 the jail?

12 A I would go and look at him, sit down in one the
13 meeting rooms and discuss it with him.

14 Q Okay. And --

15 A If you think -- you know where and when you go in
16 jail and you're there at -- you're in the back, okay.
17 Once you get into the jail, you go back into the actual
18 holding area where there is a big counter. And you got
19 several deputies working there. Follow me?

20 To the left there is a series of rooms, and that's
21 where I would meet with him and discuss the case.

22 Q Okay. But you don't have any kind of record of
23 the number of times you went out there to meet with him
24 there; correct?

25 A I don't have it in front of me.

1 Q Okay. Let's talk about discovery. Did you file
2 any -- so on direct you said you don't remember if the
3 public defenders filed the discovery or you filed the
4 discovery; is that correct?

5 A Right. Right.

6 Q Did you provide my client any DNA evidence about
7 this crime?

8 A I don't believe any DNA evidence was available,
9 and I don't believe any DNA tests were ever done.

10 Q Okay. But you didn't ask the State for it; did
11 you?

12 A For DNA evidence?

13 Q Correct.

14 A No. And I'm not sure there's anything in the
15 factual pattern that would have --

16 Q But just answer the question, you --

17 A No. No.

18 Q Okay. You didn't ask for any kind of DNA
19 evidence; correct?

20 A I didn't ask.

21 Q All right.

22 A No, I didn't.

23 Q All right. On your discussions with my client,
24 did he ask you to file any kind of supplemental
25 discovery request?

1 A No.

2 Q And did you file a supplemental discovery request?

3 A I don't recall.

4 Q Okay. Talk to me about the DVD that was mentioned
5 prior. Are you familiar with a DVD that was taken of
6 my client at some point in this after his arrest?

7 A I don't recall specifically simply because I had a
8 number of cases where the DVDs were part of the
9 evidence. So we could have had a DVD, we might not
10 have. I can't speak to that specifically. But I'll
11 tell you this --

12 Q Well, you don't know if you have a DVD of my
13 client; correct?

14 A No.

15 Q And you didn't ask the State for a DVD
16 specifically --

17 A Well, I don't recall. I don't recall.

18 Q Well, I'm just asking point blank questions.

19 A All right.

20 Q I'm just saying...

21 MS. KINARD: And, Your Honor, I would ask that my
22 witness be allowed to explain his answers when
23 appropriate.

24 MR. FOWLER: And, Your Honor, with all due
25 respect, I'm asking a question and he's going off on

1 how the jail is organized. So I would like --

2 THE WITNESS: Well, you asked me --

3 MR. FOWLER: But that's just my -- I would just
4 like for him to get to the point and not explain how --
5 the J. Reuben Long layout.

6 THE WITNESS: Your Honor, could I respond?

7 THE COURT: Yes, sir.

8 THE WITNESS: You asked me, where did I meet with
9 him. And I was explaining to you where I met with him,
10 okay.

11 Q So do you have a lot of clients that have DVDs on
12 their charges? I mean, could it have gotten lost
13 somewhere?

14 A Sometimes DVDs are produced in cases and sometimes
15 they're not.

16 Q But it's --

17 A I've never seen one get lost.

18 Q But it's contingent upon the attorney to ask for
19 that DVD; correct?

20 A Typically, it's part of the discovery request.

21 Q Very good.

22 MR. FOWLER: May I have a moment with my client,
23 Your Honor?

24 THE COURT: Yes, sir.

25 (Discussion off the record.)

1 Q Was the ten-year plea offer the same week of his
2 plea?

3 A All right. No. I think that that had already
4 been withdrawn, and the 12-year deal had been in -- on
5 the table, so to speak, for some time, probably weeks,
6 couple of weeks.

7 Q Did you ask the State to hold that ten-year plea
8 open until the actual plea in court?

9 A I had asked -- certainly, you know, certainly.

10 Q Okay. Now, I have a couple more questions, and
11 that's it.

12 MR. FOWLER: If I may approach.

13 THE COURT: Yes, sir.

14 MR. FOWLER: May I?

15 THE COURT: Yes, sir.

16 Q On page 14 of the transcript it says here, could
17 you read lines 6 through 8.

18 A You're pleading guilty to attempting to rob this
19 lady; are you not? Yes, sir.

20 Q Okay. So was he pleading to attempted robbery
21 or -- some sort of attempted robbery, or was he
22 pleading to armed robbery?

23 A I think he was pleading to attempted robbery.

24 Q Okay. But he was sentenced to armed robbery?

25 A I think -- you know, I think that the sentence

1 would have been the same.

2 MR. FOWLER: If I may -- well...

3 THE WITNESS: I mean, if I could follow up on
4 that?

5 Q Yes.

6 A I think Mr. Hucks' intention to get -- have our
7 acceptance to a 12-year plea offer, whether he had
8 actually stolen an item or not, was not really
9 pertinent.

10 Q So is there a distinction between attempted
11 robbery and armed robbery?

12 A What kind of distinction?

13 Q Well, is there a legal distinction between it?

14 A There are different elements.

15 Q Okay. Did you go over those different elements
16 with my client?

17 A I'm sure that I did.

18 Q Did you do it in writing?

19 A Go over his charges in writing?

20 Q Yes.

21 A No.

22 Q Okay. And also, did you go over with my client
23 the distinction between a nonviolent and a violent
24 sentence?

25 A I never told him that he was going to get a

1 nonviolent sentence in his case. We had discussed
2 marking that because of the possibility of getting
3 whatever benefits might be available to him. But he
4 knew the sentence that was going to be imposed and what
5 the regulations were going to be, what the law was
6 going to be with respect to serving that under these
7 charges.

8 Q Okay. You read earlier -- help me out here on
9 this -- you read earlier that on page 14 of the
10 transcript he said he was pleading to attempted
11 robbery; is that correct?

12 A Yes. Yeah.

13 Q Is an attempted robbery classified as a violent or
14 a nonviolent crime with SCDC?

15 A The 139, I don't know, I don't have the material
16 in front of me.

17 Q But you said on the record you've been practicing
18 criminal law for 33 years?

19 A Yeah.

20 Q So you can't tell me today whether attempted --

21 A I don't think it's -- I don't think it's
22 nonviolent.

23 Q But you don't know?

24 A As I sit here right now with you, no.

25 Q Okay. But you said you've been practicing law for

1 33 years?

2 A Yes, sir.

3 MS. KINARD: Objection, Your Honor. This is asked
4 and answered.

5 MR. FOWLER: Okay.

6 Q Final question, did you go over the difference
7 between a negotiated sentence and a recommendation by
8 the State as classified on the sentencing sheet?

9 A I understand what you're asking. Did I go over it
10 with?

11 Q My client today, Mr. Sessions here.

12 A I think it was loose in everyone's understanding,
13 even the judge's. I mean, that's why I asked for a
14 ten-year sentence instead of 12. So did I go over --
15 yes, because we had discussed, Mr. Sessions and I had
16 discussed, what I would do with respect to the ten-year
17 sentence request. And when we got^b on the record, I had
18 made that request.

19 MR. FOWLER: No further questions, Your Honor.

20 MS. KINARD: No redirect. Also, we also have no
21 other witnesses to produce today.

22 THE COURT: You may step down. Thank you, sir.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 MR. FOWLER: May I make a closing statement?

1 THE COURT: Sure, yes, sir.

2 MR. FOWLER: Your Honor, I think that what this
3 comes down to in a lot of ways is a confusion based on
4 the testimony today. As the State has mentioned and
5 I've mentioned with Mr. Diggs here today, my client
6 thought he was apparently thinking -- well, the Court
7 mentioned to him on page 14, you're pleading guilty to
8 attempting to rob the lady. And that's what he pled
9 guilty to.

10 The sentence was armed robbery. Mr. Diggs did not
11 clarify on my cross-examination, but I believe there is
12 a difference between attempted robbery and armed
13 robbery as far as the classifications and what was said
14 in the transcript on his March 5th, 2014 plea.

15 Your Honor, also we certainly recognize that
16 attorneys' schedules are busy, but my client contends
17 that Mr. Diggs did not meet with him on a regular
18 basis. The State did not provide, Mr. Diggs on his
19 cross-examination or testimony did not give specific
20 dates of when he met with my client, Your Honor. And
21 also there were some issues with the discovery in terms
22 of a DVD that might have been helpful in this case.

23 So it appears based on my client's testimony
24 today, it's my opinion that he did not have a full
25 knowledge of what he was pleading to. SCDC and the

1 Court, I think there's some distinction in terms of
2 what he pled to and what he might have actually been
3 sentenced with, Your Honor.

4 And also those boxes on the sentencing sheet are
5 very important. And Mr. Diggs, I believe, indicated
6 that he did not go over the differences of violent
7 versus nonviolent and negotiated versus recommendation.

8 So, Your Honor, we asked -- we feel like we proved
9 the Strickland two-prong test, Your Honor, and we ask
10 for a judgment in our favor at this time, Your Honor.

11 THE COURT: Madam Attorney General.

12 MS. KINARD: Thank you, Your Honor, very briefly.
13 I think that there is absolutely no evidence to uphold
14 the Strickland standard and to meet that burden.
15 Mr. Diggs testified very credibly, very thoroughly,
16 even without the benefit of his file and the hindrance
17 of five years intervening that this case, it was
18 obvious that there were very serious charges against
19 Mr. Sessions, that he was facing very beneficial plea
20 offers, and that it was Mr. Sessions' actions himself
21 that stymied any progress.

22 He turned down a ten-year offer because he didn't
23 feel like he had done anything wrong or at least
24 nothing to a magnitude of what he was actually facing.
25 He had a tortured plea agreement that is reflected in

1 the record but ended up with 12 years.

2 The case law in this kind of situation is that
3 things such as the classifications just as you said,
4 they are not of ultimate importance to whether a plea
5 is voluntary or even what SCDC cares. They only look
6 at the CDR code. In terms of PCR law, a guilty plea is
7 not rendered involuntary due to counsel's failure to
8 inform a defendant of consequences of a violent crime
9 conviction. That's Smith v. State.

10 Additionally, because a judge is not bound to
11 accept negotiated plea offers, the plea is not
12 unknowing or involuntary simply because the trial judge
13 did not sentence in accordance with the terms of his
14 plea agreement. That didn't even happen here, it
15 didn't reach that level.

16 So certainly there is no deficient performance on
17 Mr. Diggs' part because he satisfied every prong and
18 every element of what needs to be done in order to
19 properly advise your client in a guilty plea. He
20 testified that the Defendant and the Applicant now saw
21 and understood the discovery packet, he knew he gave up
22 his rights to challenge any evidence. He did not
23 provide any witnesses that would be beneficial to him.
24 He had simply no way of bolstering his own case.

25 And Mr. Diggs testified that a plea was absolutely

1 in Mr. Sessions' best interest, and he got quite a good
2 one. Regardless -- excuse me -- the distinction
3 between attempted armed robbery and armed robbery, as
4 Mr. Diggs testified to, probably would not have made
5 much of a difference in this case because of the way
6 the plea was negotiated.

7 Additionally, he also testified that Mr. Sessions
8 saw his indictment, saw the discovery packet, and it's
9 in the record several times that he's pleading to armed
10 robbery. Whether the judge threw the word attempted in
11 there when he happened to be stating it one time,
12 because that is what Mr. Sessions was saying he did,
13 was attempted armed robbery, he still knew what he was
14 pleading to. And that's what counts when it comes to
15 indictments and to pleas.

16 Therefore, the State maintains that Mr. Diggs was
17 not deficient by any stretch. Because he was not
18 deficient, we don't have to reach the prejudice prong
19 of the Strickland test. But he absolutely was not
20 prejudicial in his representation of Mr. Sessions.

21 For these reasons, the State respectfully requests
22 that you would deny any relief Mr. Sessions is seeking
23 and dismiss this application with prejudice. Thank
24 you.

25 THE COURT: Thank y'all. I'm going to take a

1 couple of looks at some issues here that it's going to
2 take a little time. I'm going to put this one under
3 advisement so I can do that. Thank y'all.

4 MS. KINARD: Thank you.

5 (The hearing concluded at approximately

6 11:15 a.m.)

7 (End of Transcript of Record)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY)
 John E. Sessions, III,) Case No.: 2014-CP-26-05918
 S.C.D.C. No. 359143,)
 Applicant,)
) **ORDER OF DISMISSAL**
 v.)
 State of South Carolina,)
 Respondent.)

FILED
 HORRY COUNTY
 2016 SEP 21 PM 4:00

This matter comes before the Court by way of an application for post-conviction relief filed by John E. Sessions, III ("Applicant") on September 5, 2014. Respondent made its return on or about February 4, 2015. The Court convened an evidentiary hearing into the matter on Thursday, May 12, 2016, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Steven W. Fowler, Esq. Jessica E. Kinard, Esq., of the South Carolina Attorney General's Office, represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the August 2013 term of the Horry County Grand Jury for armed robbery (2013-GS-26-03463). William I. Diggs represented Applicant, and J. Scott Hucks, Esq., of the Fifteenth Circuit Solicitor's Office,

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prosecuted the case. On March 5, 2014, Applicant pled guilty as indicted. The Honorable Edward B. Cottingham sentenced Applicant to imprisonment for a term of 12 years. Applicant did not appeal his plea or sentence.

Present Application

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

1. "Plaintiff was denied effective assistance of counsel."
 - a. "Plaintiff was promised a nonviolent sentence as it reflects on sentence sheet by counsel. Involuntary guilty plea by counsels failure to follow through with sentence agreed upon by state."
2. "Also states failure to provide evidence in response to discovery request (*Brady v. Maryland*) (confession)."

At the evidentiary hearing, Applicant reframed his Brady allegation as one of ineffective assistance of counsel.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), 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, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334

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S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694). With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged

errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

1. Misadvice as to Violent/Non-Violent Status

Applicant alleges Counsel was ineffective by misadvising him that he was pleading in exchange for a sentence of 12 years, non-violent, when in fact he pled to a violent crime. Defendants need not be informed of collateral consequences of sentencing in order to knowingly, intelligently, and voluntarily enter a guilty plea. Randall v. State, 356 S.C. 639, 641, 591 S.E.2d 608, 609-10 (2004). Like parole eligibility, the violent/non-violent status of an offense is a collateral consequence. Smith v. State, 329 S.C. 280, 285, 494 S.E.2d 626, 629 (1997). However, if the defendant's attorney undertakes to advise the defendant about a collateral consequence and errs, then the plea may be collaterally attacked. Id. at 283, 494 S.E.2d at 628 (citing Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989)). Armed robbery is classified as a violent crime. S.C. Code Ann. § 16-1-60. As to sentencing sheet errors, "[a]n unambiguous sentencing pronouncement will control over an ambiguous sentence, whether oral or written, so long as giving effect to that pronouncement does not result in an illegal sentence or deprivation of a defendant's constitutional rights." Bordeaux v. State, 410 S.C. 495, 500, 765 S.E.2d 143, 145 (2014) (citing Boan v. State, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010)).

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There was no mention of the violent/non-violent categorization of armed robbery at the plea proceeding; "violent" only appears in the context of the charges dropped as part of the plea: burglary in the first degree, kidnapping, possession of a weapon during a *violent* crime, and criminal conspiracy. (Tr. 9, ll. 3-10). It is unclear if the agreement was a recommendation or negotiated sentence—the plea court freely used both terms and, although "recommendation" was marked on the sentencing sheet, Judge Cottingham made abundantly clear through his comments throughout the colloquy that he would not deviate from the 12 year sentence requested. (Tr. 12-13; Tr. 14-15; Tr. 16-17). The sentencing sheet was pre-marked "NON-VIOLENT"

At the evidentiary hearing, Applicant testified he closely examined the paper he signed, presumably referring to the sentencing sheet, and that it indicated he was pleading to 12 years non-violent. When he arrived at SCDC, he was classified as violent. Applicant expressed he felt he was tricked. This Court observed that SCDC pays no heed to the checkboxes on the sentencing sheet, but strictly adheres to the classifications associated with the CDR code. Applicant testified he believed the checkboxes were correct and meant the sentence had to be classified as such. Applicant claimed Counsel presented the sentencing sheet as an accurate reflection of the deal.

Counsel testified he never told Applicant he was going to get a nonviolent sentence. Rather, Counsel implied the error on the sentencing sheet was a purposeful effort to try and secure Applicant some benefit. Counsel affirmed Applicant knew what the sentence was going to be, and what the consequences of that sentence would be, and what the law had to say with respect to serving the sentence in light of the charges. Counsel also explained Applicant had never strongly committed to either taking the case to trial or taking a plea offer, but rather waffled as to what he wanted to do for so long that the solicitor grew frustrated. Applicant rejected an offer to plead guilty for a sentence of 10 years, so the solicitor replaced it with a 12

year offer. At that point, facing the impending reality of trial, Applicant decided to finally plead guilty. Counsel noted that Applicant understood the ultimate sentence was up to the plea judge.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. The Court finds credible Counsel's testimony that he never told Applicant he would get classified as a nonviolent offender. The Court is alarmed by the proposition of purposefully committing an error on court documents, and condemns it, but does not find the error on the sentencing sheet adequate to show that Applicant was affirmatively misadvised his sentencing classification, or that he was confused as to his sentencing classification. This Court had the opportunity to closely observe Applicant throughout the course of his testimony, and finds his testimony not credible. Additionally, the proposition that even a layperson could reasonably conclude that "armed robbery" is non-violent strains credulity. For these reasons, the Court finds Applicant has failed to meet his burden under either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

2. Failure to Discuss Evidence

At the evidentiary hearing, Applicant clarified his Brady allegation to mean that Counsel was ineffective in failing to discuss and share with him a supposed DVD video recording of him confessing to law enforcement. At the plea proceeding, the prosecution indicated Applicant made a full confession to law enforcement. (Tr. 10-11). The plea court, in rejecting Counsel's request for a 10 year sentence, noted the presence of a confession to Counsel, who confirmed it. (Tr. 13, ll. 2-5). The plea court again made note of the confession in explaining to Applicant his right to confront the witnesses and evidence against him. (Tr. 15, ll. 11-18).

At the evidentiary hearing, Applicant asserted there was a DVD which purportedly contained his confession, but that he had never seen it. Applicant immediately thereafter affirmed the video was taken at the Surfside Beach Police Department. Applicant recalled that

although Counsel had visited with him, he was in too great a hurry to stop and permit him to watch the DVD. Applicant claimed to have not seen any other tangible evidence, either. Applicant testified his efforts to contact Counsel while he was incarcerated were unsuccessful.

Counsel testified that a motion for discovery was filed before he was assigned the case, but that he did receive a discovery packet and believed it to be complete. Counsel testified he reviewed discovery with Applicant and understood its contents. Counsel couldn't specifically recall a DVD.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. As an initial matter, the Court must note the allegation is largely self-defeating: Applicant complains of not seeing his own confession. Applicant was present for his confession and, having been present, can be held to know and recall what he told to law enforcement. Applicant recalled where he confessed during the evidentiary hearing. Secondly, the Court finds credible Counsel's testimony that he received complete discovery and reviewed it with Applicant. Though Counsel could not specifically recall the particular use of a disc in this particular case, Counsel demonstrated a thorough command of the facts of the case from memory and articulated them in his testimony. Third, the DVD in question was never presented to this Court, so its details beyond that it was apparently a full-throated confession, are left to this Court's imagination. For all these reasons, Applicant has failed to meet his burden under either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

III. CONCLUSION


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

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5th day of September, 2018.



 PAUL M. BURCH
 Presiding Judge
 Fifteenth Judicial Circuit


 _____, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

101

COUNTY OF Horry
STATE VS.

INDICTMENT/CASE#: 2013GS2603463

John Edward Sessions III

A/W#: 2013A2620800111

KA: _____

Date of Offense: 5/24/2013

Race: WHITE Sex: M Age: 35

S.C. Code § : 16-11-0330(A)

DOB: _____

CDR Code #: 0139

Address: _____

City, S.C.: _____

DL#: _____

SENTENCE SHEET

127

CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
Armed Robbery 10-30y

CONVICTED OF or PLEADS

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45
w/minor 1st or Lewd Act)

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

ATTORNEYS: Hucks, J. Scott SCB76948 SC Bar# _____ Defendant _____ Attorney for Defendant 1689 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
or a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

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

PTUP _____
_____ days/hours Public Service Employment

Recipient: _____

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

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling

Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weeks/monthly
pmts. of \$ 25.00 beginning 9/5/2026
\$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/Deputy Clerk Melanie Huggins Ward
Court Reporter: Kan Richardson

Presiding Judge _____
Judge Code: 31511
Sentence Date: 315114

C

DOCKET NO. 2013-GS-26-03463

WITNESSES

Matthew Hoffer Surfside Beach Police Department

The State of South Carolina
County of Horry

J. Scott Hucks

13H02793

COURT OF GENERAL SESSIONS

August, 2013 TERM

ARREST WARRANT NUMBER

2013A2620800111

CDR: 0139 16-11-0330(A)

DOA: 5/28/2013

THE STATE

vs.

John Edward Sessions III
W/M



ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *[Signature]*

AUG 22 2013

VERDICT

ATTORNEY: Diggs, William I.

Indictment for
ARMED ROBBERY

ORIGINAL

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

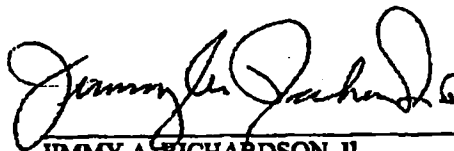
At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That John Edward Sessions III did in Horry County on or about May 24, 2013, while armed with a deadly weapon, or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away personal property of Heidemarie Young from or in the immediate presence of Heidemarie Young with intent to deprive Heidemarie Young of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR