

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Newberry County

Honorable J. Mark Hayes, Circuit Court Judge

\_\_\_\_\_  
TYLER ELKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002184

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

VICTOR R SEEGER  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JANELL GREGORY  
Assistant Attorney General  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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State of South Carolina ) In the Court of General Sessions  
 ) Eighth Judicial Circuit  
 County of Newberry ) 2015-GS-36-0505  
 ) 2015-GS-36-0507  
 ) 2015-GS-36-0508  
 ) 2015-GS-36-0509  
 ) 2015-GS-36-0510  
 ) 2015-GS-36-0514

State of South Carolina, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Transcript of Record  
 )  
 Tyler McKenzie Elkins, )  
 )  
 Defendant. )  
 )  
 )  
 )

October 31, 2016  
 Newberry, South Carolina

B E F O R E:

The Honorable L. Casey Manning, Judge

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

C. Dale Scott, Deputy Solicitor  
 Attorney for Plaintiff

A. Bea Hightower, Esquire  
 Attorney for Defendant

Maryann S. Nevers, CVR-M-CM  
 Circuit Court Reporter

I N D E X

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## TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 3:16 p.m.)

THE COURT: Yes, sir, Solicitor.

MR. SCOTT: Judge, this is Tyler Elkins. He's here to plead on one, two, three, four -- six indictments. I've got 15-GS-36-0507. That's for the murder of Ronnion Barron. He's pleading to a voluntary manslaughter. 15-GS-36-0508, that is the attempted murder of Jamarr Bates. 15-GS-36-0514, the burglary-first for the home at [REDACTED] [REDACTED]. 15-GS-36-0510, that's the armed robbery of Ronnion Barron. 15-GS-36-0509, possession of a weapon during the commission of a violent crime for the .38-caliber pistol he carried. 15-GS-36-0505, that's the attempted murder. It's of William Leaphart, but it essentially encapsulates the shooting into the car occupied by Mr. Leaphart and Mr. Omar Jackson.

MS. HIGHTOWER: Your Honor, if -- if I may interrupt for a second, that was ---

THE COURT: Go ahead.

MS. HIGHTOWER: --- what -- that's one thing that we were not pleading to the possession.

(Whereupon, Ms. Hightower and Mr. Scott conferred.)

MS. HIGHTOWER: I did not have the possession of an unlawful weapon during the commission of a violent crime as a -- as a -- as a charge that we were pleading to. My

1 understanding was that we were pleading to voluntary  
2 manslaughter ---

3 THE COURT: All right. Slow down. I only have five  
4 indictments.

5 MS. HIGHTOWER: Okay.

6 THE COURT: I don't have that one either.

7 MS. HIGHTOWER: Correct. That was -- you should have  
8 ---

9 THE COURT: What, now?

10 MS. HIGHTOWER: --- the five -- you should have the  
11 five that I'm understanding that we're pleading to. The  
12 possession is an extra one that we have not signed up,  
13 because that was not ---

14 MR. SCOTT: I'll get that. I thought they had that  
15 indictment.

16 THE COURT: I think she is trying to suggest that she  
17 hasn't had an opportunity to talk to her client about it;  
18 is that right?

19 MS. HIGHTOWER: Right. No. I didn't go over that  
20 with him either.

21 THE COURT: Do you need time to talk to him about it?

22 MS. HIGHTOWER: I -- I -- I believe ---

23 THE COURT: Because ---

24 MS. HIGHTOWER: --- I would.

25 THE COURT: --- that carries five years. The other

1 one's a minimum ---

2 MS. HIGHTOWER: Uh-huh.

3 THE COURT: --- of ten. I mean, you can explain ---

4 MS. HIGHTOWER: Right.

5 THE COURT: --- it. It's not going to make any  
6 difference.

7 MS. HIGHTOWER: It's not a consecutive sentence, is  
8 it, on that?

9 MR. SCOTT: No, no. It would ---

10 THE COURT: No, no. I think ---

11 MR. SCOTT: --- run concurrent ---

12 MS. HIGHTOWER: Right.

13 MR. SCOTT: --- with the other.

14 THE COURT: I think there's been no specific ---

15 MS. HIGHTOWER: Uh-huh.

16 THE COURT: --- recommendation, I think, but it's --  
17 they all been concurrent.

18 MS. HIGHTOWER: Right.

19 THE COURT: I would give him concurrent time also.

20 MS. HIGHTOWER: Awesome.

21 THE COURT: So as a practical matter, it's not going  
22 to make any difference. But for your benefit, you need to  
23 take time and talk to him and explain it.

24 MS. HIGHTOWER: A moment, please, Your Honor.

25 THE COURT: All right. Take your ---

1 MS. HIGHTOWER: Thank you.

2 THE COURT: --- time. Take your time.

3 MS. HIGHTOWER: Let's just -- let's just stand down

4 ---

5 THE COURT: Yeah. Just go ---

6 MS. HIGHTOWER: --- for a minute.

7 THE COURT: --- have a seat.

8 (Off the record from 3:18 p.m. until 3:28 p.m.)

9 THE COURT: Okay. We're on the record in *the State v.*  
10 *Tyler Elkins*. Ms. Hightower, there was some confusion.

11 There were six charges. I was passed up five indictments  
12 and sentencing sheets. And a sixth one was possession of a  
13 weapon during the commission of a violent crime. And I  
14 paused, stopped, took a timeout so you could have the  
15 opportunity to go over that charge with your client, Mr.  
16 Elkins.

17 Now, have you had a sufficient amount of time to do  
18 so?

19 MS. HIGHTOWER: I have, Your Honor. And thank you for  
20 the indulgence.

21 THE COURT: All right. That's -- that's -- that's  
22 fine. All right. Solicitor, are you ready?

23 MR. SCOTT: I am, Your Honor.

24 THE COURT: All right, sir.

25 MR. SCOTT: Well, let me just -- you want to me -- I'm

1 going to repeat the indictments.

2 THE COURT: That's fine.

3 MR. SCOTT: -507 is the voluntary manslaughter; -508  
4 is the attempted murder. There's a -505 attempted murder  
5 as well. -510 is the armed robbery; -514 is a burglary-  
6 first. And then, the questioned indictment earlier is -  
7 509. That's possession of a weapon during the violent --  
8 commission of a violent crime.

9 THE COURT: All right. That covers all six, right?

10 MS. HIGHTOWER: (Nodded head up and down.)

11 THE COURT: All right.

12 MS. HIGHTOWER: Yes, Your Honor.

13 THE COURT: All right. Ms. Hightower, you represent  
14 Tyler Elkins?

15 MS. HIGHTOWER: I do, sir.

16 THE COURT: Have you explained to Mr. Elkins the  
17 charges contained in these six indictments, the possible  
18 punishments, and his rights, including his constitutional  
19 right to a jury trial?

20 MS. HIGHTOWER: I have, sir.

21 THE COURT: In your opinion, does Mr. Elkins  
22 understand the charges, the punishments, and his rights?

23 MS. HIGHTOWER: He does, sir.

24 THE COURT: How does he indicate to you he wishes to  
25 plead ---

1 MS. HIGHTOWER: He ---

2 THE COURT: --- guilty or not guilty?

3 MS. HIGHTOWER: Guilty, Your Honor.

4 THE COURT: Do you agree with his decision to plead  
5 guilty?

6 MS. HIGHTOWER: I do, sir.

7 THE COURT: From your investigation of the facts and  
8 circumstances surrounding these cases, do you feel that the  
9 state could produce sufficient evidence to convince a jury  
10 here in Newberry County of Mr. Elkins' guilt beyond a  
11 reasonable doubt ---

12 MS. HIGHTOWER: I ---

13 THE COURT: --- if he were to stand trial on these  
14 charges, his convictions would be probable?

15 MS. HIGHTOWER: I do, sir.

16 THE COURT: Now, has Mr. Elkins been ordered to submit  
17 to a mental examination to determine his competency to  
18 stand trial?

19 MS. HIGHTOWER: No, Your Honor.

20 THE COURT: Any question in your mind, Ms. Hightower,  
21 that Mr. Elkins is, in fact, competent to enter this guilty  
22 plea?

23 MS. HIGHTOWER: No question in my mind whatsoever he's  
24 competent ---

25 THE COURT: All right.

1 MS. HIGHTOWER: --- to go forward.

2 THE COURT: You are Tyler Elkins; is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, Mr. Elkins, before I can accept your  
5 plea of guilty, it's necessary for me to make sure that  
6 you're making this plea freely and voluntarily. To do  
7 that, sir, I need to ask you a series of questions. At any  
8 point during my questioning of you, if you do not  
9 understand anything I say or any words that I use, please  
10 stop me. I'll be more than happy to repeat or explain  
11 anything I say, Mr. Elkins.

12 Additionally, I'll be more than happy to stop this  
13 plea and allow you as much time as you feel you may need to  
14 consult with your lawyer, Ms. Hightower. Do you understand  
15 that, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. How old are you, Mr. Elkins?

18 THE DEFENDANT: Just turned 23.

19 THE COURT: Twenty-three?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How -- how far did you go in school?

22 THE DEFENDANT: All the way to 12th grade.

23 THE COURT: All right. What kind of work have you  
24 done?

25 THE DEFENDANT: Landscaping, concrete ---

1 THE COURT: All right.

2 THE DEFENDANT: --- restaurants.

3 THE COURT: Mr. Elkins, have you ever been treated for  
4 the abuse of alcohol or drugs or for mental illness?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you taken any medications, drugs, or  
7 alcohol in the past 24 hours?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you today aware of any physical,  
10 nervous, or emotional problem that might keep you from  
11 understanding what you're doing?

12 THE DEFENDANT: No, sir.

13 THE COURT: You know what you're doing, Mr. Elkins; is  
14 that fair enough?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You agree, Ms. Hightower, that Mr. Elkins  
17 knows, understands, and appreciates what he's doing here  
18 this afternoon?

19 MS. HIGHTOWER: I agree.

20 THE COURT: All right. Now, Mr. Elkins, you heard  
21 your lawyer, Ms. Hightower, tell me that she has explained  
22 you the charges contained in these six indictments, the  
23 possible punishments, and your rights, including your  
24 constitutional right to jury trial. And you heard her tell  
25 me that, in her opinion, you understand these things. Is

1 that correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, Mr. Elkins, you are first before me  
4 on Indictment 2015-509, *the State v. Tyler Elkins*. This is  
5 an indictment for possession of a weapon during the  
6 commission of a violent crime. Do you understand this  
7 charge, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It means you had a gun or something. You  
10 understand that, don't you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: This indictment, Mr. Elkins, alleges that  
13 you did here in Newberry County, on or about July 29th of  
14 2015, possess a firearm or visibly display what appeared to  
15 be a firearm or visibly display a knife during the  
16 commission of a violent crime as defined by Section 16-1-60  
17 of the Code of Laws -- that is, armed robbery, attempted  
18 murder, burglary in the first degree, and/or murder, or any  
19 lesser-included violent crime.

20 Do you understand this allegation? You had a gun  
21 while there was a robbery, a shooting, and a breaking into  
22 ---

23 THE DEFENDANT: Yes, sir.

24 THE COURT: --- Mr. Barron's house, I think it was.  
25 You understand this?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you want to plead guilty to possession  
3 of the gun during the commission of all these things; is  
4 that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Speak up a little bit, Mr.  
7 Elkins.

8 THE DEFENDANT: Yeah.

9 THE COURT: All right. You realize that by doing so  
10 -- that is, by pleading guilty to possession of a weapon  
11 during the commission of a violent crime, Mr. Elkins, that  
12 you could go to jail for five years?

13 THE DEFENDANT: Yes, sir.

14 MS. HIGHTOWER: You need to speak up.

15 THE COURT: You understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You need to speak up.

18 Knowing then, sir, that you can go to prison for five  
19 years by pleading guilty to this charge, possession of a  
20 gun during the commission of a violent crime, do you still  
21 wish to plead guilty to it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Next, Mr. Elkins, I have  
24 before me Indictment No. 2015-508, *the State v. Tyler*  
25 *Elkins*. This is an indictment that says murder/attempted

1 murder. Is he pleading -- is it -- he's pleading guilty to  
2 murder or -- he's pleading guilty to voluntary  
3 manslaughter; is that correct?

4 MR. SCOTT: Yes, sir. Which indictment did you just  
5 reference?

6 THE COURT: 2015-508.

7 MR. SCOTT: Yes. That's an attempted murder. That  
8 would be ---

9 THE COURT: An attempted.

10 MR. SCOTT: Yes, sir.

11 THE COURT: Wait a minute. I have my little cheat  
12 sheet. -508 would be the attempted murder of Mr. Bates --  
13 Jamarr Bates.

14 MR. SCOTT: Yes, sir.

15 THE COURT: All right. You understand this charge of  
16 attempted murder -- shot at somebody, basically. You ---

17 THE DEFENDANT: Yes, sir.

18 THE COURT: --- understand that?

19 The indictment alleges, Mr. Elkins, that you did here  
20 in Newberry County, on or about July 29th of 2015,  
21 willfully and unlawfully, with intent to kill and with  
22 malice aforethought -- aforethought, attempted to kill  
23 Jamarr Bates. That means I think you shot at Mr. Bates.  
24 You understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Is that correct?

2 THE DEFENDANT: Yes.

3 THE COURT: And that's what you want to plead guilty  
4 to, in terms of pleading guilty to attempted murder:  
5 shooting at Mr. Bates; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Realize that by pleading guilty to  
8 attempted murder, Mr. Bates -- I mean, Mr. Elkins, that you  
9 could go to jail for 30 years?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Knowing then, sir, that you can go to jail  
12 for 30 years by pleading guilty to attempted murder, do you  
13 still wish to plead guilty to it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Next, Mr. Elkins, I have  
16 before me Indictment No. 2015-514 -- -514, *the State v.*  
17 *Tyler Elkins*. This is an indictment for burglary in the  
18 first degree. Do you understand this charge, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: This indictment, Mr. Elkins, -514, alleges  
21 that you did here in Newberry County, on or about July 29th  
22 of 2015, willfully and unlawfully enter a dwelling without  
23 consent and with the intent to commit a crime therein and  
24 when -- and effected entry while in immediate flight  
25 therefrom, you or another participant in the crime was

1 armed with a deadly weapon or explosive or caused physical  
2 injury to a person who was not a participant in the crime  
3 or used or threatened the use of a dangerous instrument or  
4 displayed what was or appeared to be a knife, pistol,  
5 revolver, rifle, shotgun, machine gun, or other firearm, or  
6 the entering or remaining occurred in the nighttime, and  
7 the dwelling belonged to Mr. Barron. You understand this  
8 allegation, do you not?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Y'all broke into his house?

11 And you want to plead guilty to burglary in the first  
12 degree; is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Realize that by pleading guilty to  
15 burglary in the first degree, Mr. Elkins, that you could go  
16 to jail for no less than 15 years and you could receive up  
17 to a life sentence? Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Knowing then, sir, that you could go to  
20 jail for life by pleading guilty to burglary in the first  
21 degree but, in any event, no less than 15 years, do you  
22 still wish to plead guilty to this charge?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Next, Mr. Elkins, I have  
25 before me Indictment No. 2015-505, *the State v. Tyler*

1 *Elkins*. This is once again an indictment for attempted  
2 murder. Do you understand this charge, once again, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: This indictment, Mr. Elkins, alleges that  
5 you did here in Newberry County, on or about July 29th of  
6 2015, willfully and unlawfully, with the intent to kill and  
7 with malice aforethought, attempted to kill William  
8 Leaphart -- shot at William Leaphart, I guess, is the best  
9 way to explain it. You understand that, do ---

10 THE DEFENDANT: Yes, sir.

11 THE COURT: --- you not, sir?

12 And you want to plead guilty to shooting at William  
13 Leaphart; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Realize that by pleading guilty to  
16 attempted murder, Mr. Elkins, once again, sir, that you  
17 could go to jail for 30 years?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Knowing then, Mr. Elkins, that you can go  
20 to prison for 30 years by pleading guilty to attempted  
21 murder, do you still wish to plead guilty to it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Now, next, Mr. Elkins, I have  
24 before me Indictment No. 2015-507, *the State v. Tyler*  
25 *Elkins*. This is an indictment for murder, but you're here

1 before me today to proffer a plea. And that is to actually  
2 plead guilty to voluntary manslaughter.

3 Now, do you understand the charge of voluntary  
4 manslaughter?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: This indictment, sir, alleges -- or should  
7 read, basically -- that you did here in Newberry County, on  
8 or about July 29th of 2015, willfully, feloniously, and  
9 without malice aforethought, in the heat of passion, that  
10 you did kill one Ronnion Barron by means of shooting and  
11 that Mr. Barron died here in Newberry County as a proximate  
12 result thereof, on or about July 29th of 2015.

13 And I think you're pleading under the theory that your  
14 lawyer has explained to you: the hand of one is the hand  
15 of them all. I don't think you were the trigger man, but  
16 you had a gun; you were there when Mr. Barron was shot. Is  
17 that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And under theory of "the hand of one/the  
20 hand of all," you want to plead guilty to voluntary  
21 manslaughter; is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Realize that by pleading guilty to  
24 voluntary manslaughter, Mr. Elkins, that you could go to  
25 jail for 30 years?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Knowing then, sir, that you can go to jail  
5 for 30 years by pleading guilty to voluntary manslaughter,  
6 do you still wish to plead guilty to it?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And voluntary manslaughter -- I think the  
9 mandatory minimum is 2 years, not that it makes that much  
10 difference, but I think it's -- it's no less than 2, no  
11 more than 30. You understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Next, Mr. Elkins, I have before me  
14 Indictment No. 2015-510, *the State v. Tyler Elkins*. Once  
15 again, this is an indictment for armed robbery. Do you  
16 understand this charge, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Oh. This is only one armed robbery on  
19 here, right?

20 MR. SCOTT: Yes, sir.

21 THE COURT: Just one armed robbery. All right. Armed  
22 robbery -- you understand the charge of armed robbery, Mr.  
23 Elkins ---

24 THE DEFENDANT: Yes, sir.

25 THE COURT: --- is that correct?

1           This indictment, sir, alleges that you did here in  
2 Newberry County, on or about July 29th of 2015, willfully  
3 and unlawfully while armed with a deadly weapon or while  
4 alleging, either by action or words that you were armed,  
5 using a representation of a deadly weapon, or any object  
6 which a person present during the commission of the robbery  
7 reasonably believed to be a deadly weapon, that you did  
8 feloniously take from the person or presence of Ronnion  
9 Barron by means of force or intimidation goods or monies  
10 described as United States currency and/or controlled  
11 substances with the intent to deprive the owner permanently  
12 of such property.

13           Do you understand this allegation?

14           THE DEFENDANT: Yes, sir.

15           THE COURT: You went in and robbed Mr. Barron of some  
16 money and drugs?

17           THE DEFENDANT: (No audible response.)

18           THE COURT: Do you realize -- and you will now -- do  
19 you realize, Mr. Elkins, that by pleading guilty to armed  
20 robbery, sir, that you can go to jail for up to 30 years?  
21 Do you understand that?

22           THE DEFENDANT: Yes, sir.

23           THE COURT: And in any event, Mr. Elkins, when you  
24 plead guilty to armed robbery, there's a mandatory-minimum  
25 10-year sentence that you must receive. Do you understand

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So you can receive no less than 10 and no  
4 more than 30. Knowing that, you still wish to plead to  
5 armed robbery; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, are you currently -- currently on  
8 probation or parole for any prior offenses, Mr. Elkins?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right, sir. The bottom line is this:  
11 You could receive up a life sentence by pleading guilty to  
12 burglary in the first degree. And that covers all the  
13 other sentences you can get combined, actually. But I need  
14 to tell you that.

15 I think the recommendation is like 30 years. You  
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Knowing then, sir, that you could get up  
19 to a life sentence, then, simply by pleading guilty to the  
20 burglary in the first degree, you still wish to continue  
21 and plead guilty ---

22 THE DEFENDANT: Yes, sir.

23 THE COURT: --- to all these other charges?

24 Now, Mr. Elkins, when you plead guilty, you have to  
25 give up certain basic rights. First of all, you have to

1 give up your right to remain silent. Now, this is your  
2 right against self-incrimination, Mr. Elkins, your right to  
3 say nothing at all. No one can compel you to come into  
4 court to provide evidence or to testify against yourself.  
5 Do you understand that, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Secondly, Mr. Elkins, when you  
8 plead guilty, you have to give up your right to a jury  
9 trial; that is, your right for a jury here in Newberry  
10 County to decide whether or not you're guilty of these six  
11 charges beyond a reasonable doubt. A jury would base its  
12 decision on whatever evidence the state would introduce at  
13 trial against you and also on whatever evidence you and  
14 your lawyer, Ms. Hightower, may wish to introduce. And,  
15 Mr. Elkins, I emphasize, may wish to introduce, sir,  
16 because in a trial, you'd be presumed innocent, would not  
17 have to prove anything, and you could not be convicted  
18 unless the state convinced all 12 jurors of your guilt  
19 beyond a reasonable doubt.

20 The jury's decision would have to be unanimous. All  
21 12 would have to agree that you're guilty of all six of  
22 these charges. Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Thirdly, Mr. Elkins, when you  
25 plead guilty, you give up your right to confront and to be

1 confronted by the witnesses against you. That is your  
2 right to see, hear, and cross-examine any witnesses the  
3 state may call to testify against you during a trial. And  
4 additionally, Mr. Elkins, by pleading guilty, you give up  
5 your right to subpoena and call witnesses on your own  
6 behalf; that is, someone may testify for you. Do you  
7 understand that, sir?

8 THE DEFENDANT: Yes, sir..

9 THE COURT: Now, do you understand these rights I just  
10 mentioned to you, Mr. Elkins?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand, sir, that when you  
13 plead guilty, you have to give up these constitutional  
14 rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, is that what you want to do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You want to give up your constitutional  
19 rights?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, you realize you will not  
22 receive a jury trial on any of these six charges by  
23 pleading guilty to them? You understand that, don't you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Once again, Mr. Elkins, you're pleading

1 guilty to voluntary manslaughter. That carries up to 30  
2 years in jail. You're pleading guilty to attempted murder.  
3 That carries up to 30 years in jail.

4 You're pleading guilty to burglary in the first  
5 degree. That carries a potential life sentence. You're  
6 pleading guilty to armed robbery. That carries up to 30  
7 years in jail.

8 You're pleading guilty to possession of a weapon  
9 during the commission of a violent crime. That carries up  
10 to 5 years in jail. And -- and also, you're pleading  
11 guilty to attempted murder -- two counts of attempted  
12 murder. And once again, attempted murder carries up to 30  
13 years in jail.

14 I've sort of explained by simplifying the fact that on  
15 the burglary in the first degree, you could get a life  
16 sentence. But I think the recommendation is 30 years here.  
17 So -- and it's going to be concurrent, I think, is the way  
18 we worked it all out so far.

19 Am I saying anything ---

20 MS. HIGHTOWER: You're ---

21 THE COURT: --- too much?

22 MS. HIGHTOWER: You're -- no. You're -- you're  
23 correct. I think that the negotiation is a 25-year cap.  
24 But -- but ---

25 THE COURT: Okay.

1 MS. HIGHTOWER: --- I -- I know ---

2 THE COURT: Twenty-five year.

3 MS. HIGHTOWER: --- that Mr. Scott was going to clear

4 ---

5 THE COURT: It doesn't ---

6 MS. HIGHTOWER: --- that up.

7 THE COURT: --- was it 25?

8 MR. SCOTT: Twenty-five ---

9 THE COURT: Okay.

10 MR. SCOTT: --- cap.

11 THE COURT: I'm sorry. I've been saying 30, but it's  
12 a recommendation of a cap of 25 years.

13 And I need to explain this to you. I'm not bound by a  
14 recommendation. I can actually give you a life sentence if  
15 I wanted to. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I'm not saying that I'm going to do that.  
18 But I need to explain to you that it could happen. You  
19 understand ---

20 THE DEFENDANT: Yes, sir.

21 THE COURT: --- all that?

22 But if I'm not going to go along with the  
23 recommendation, Mr. Elkins, I'll be fair to you and tell  
24 you I -- I won't accept this plea. I'll let you withdraw  
25 your plea. You understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If I don't go along with the  
3 recommendation of a cap of 25, I'll let you withdraw your  
4 plea. I haven't heard anything yet. I may not agree with  
5 that. If I don't, I'll say, "Okay. I'm not going to take  
6 you plea. You can go in front of somebody else." You  
7 understand all that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Understanding what I just  
10 said, do you still wish to continue to plead guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, you realize, Mr. Elkins, do you not,  
13 sir, that when you plead guilty, you admit the truth of the  
14 allegations contained in these indictments against you? Do  
15 you understand that? You're telling me what I just read to  
16 you is true and what I explained to you is true?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I tell you that, sir, because you may have  
19 some defenses to these charges, Mr. Elkins. I have no way  
20 of knowing that. But you need to realize that by pleading  
21 guilty here today, you give up any defenses you might have.  
22 Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Additionally, I tell you that, Mr. Elkins,  
25 because when you were arrested by the Newberry County

1 Sheriff's Department, you may have given some type of  
2 incriminating statement; that is, made some admission or  
3 confession about your guilt. You do realize that by  
4 pleading guilty here today, you waived your right to later  
5 on challenge or contest, if you gave any statements,  
6 whether or not they were taken or obtained from you freely  
7 and voluntarily in accordance with your constitutional  
8 rights. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, Mr. Elkins, I'll ask you once again:  
11 Did you commit these offenses?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So once again, you're telling me you're  
14 pleading guilty to Indictment 2015-507, voluntary  
15 manslaughter, because you did, in fact, here in Newberry  
16 County, on or about July 29th of 2015, that under -- at  
17 least under the theory of the hand of one and hand of them  
18 all -- and I think you were armed with a gun -- that you  
19 and one of your codefendants shot and Mr. Ronnion Barron  
20 was killed back on July 29th of 2015. You're pleading  
21 guilty to voluntary manslaughter because you are guilty of  
22 voluntary manslaughter under the rule of law that the hand  
23 of one is the hand of them all. Is that fair enough?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And once again, Mr. Elkins, in

1 connection with Indictment 2015-510, armed robbery, back on  
2 July 29th of 2015, while armed with a gun, y'all robbed Mr.  
3 Barron?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Pleading guilty because you are guilty of  
8 armed robbery?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Now, once again, Mr. Elkins,  
11 in connection with Indictment 2015-505, attempted murder,  
12 back on July 29th, 2015, once again, you or your  
13 codefendant shot at one William Leaphart ---

14 THE DEFENDANT: Yes, sir.

15 THE COURT: --- shot him.

16 And once again, Mr. Elkins, in connection with  
17 Indictment No. 2015-514, burglary first-degree, once again,  
18 back on July 29th, 2015, you and your codefendants broke  
19 into Ronnion Barron's house; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And once again, Mr. Elkins, in  
22 connection with Indictment No. 2015-509, possession of a  
23 weapon during the commission of a violent crime, when the  
24 attempted murder, burglary first-degree, and robbery --  
25 armed robbery, you were armed with a gun at the time all

1 this happened?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. And finally, once again, Mr.  
4 Elkins, in connection with Indictment No. 2015-508,  
5 attempted murder, back on July 29th of 2015, y'all shot at  
6 Jamarr Bates; is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Pleading guilty to all six of these  
9 indictments or charges, are you not, Mr. Elkins, because  
10 you are guilty of all six of these charges; is ---

11 THE DEFENDANT: Yes, sir.

12 THE COURT: --- that fair enough?

13 All right. All right. And I think the recommendation  
14 is the cap of 25 years.

15 MR. SCOTT: Yes, sir.

16 THE COURT: Just to be specific, are there any other  
17 charges that are being *nolle-prossed* or dropped in exchange  
18 for this plea?

19 MR. SCOTT: Your Honor, general conspiracy or common  
20 law conspiracy. There were four counts of armed robbery  
21 initially. I think he's pleading to one. Two counts of  
22 kidnapping, those are ---

23 THE COURT: All right.

24 MR. SCOTT: --- being *nolle-prossed*. And initially,  
25 there were three counts of attempted murder.

1 THE COURT: All right. Parenthetically, Mr. -- Mr.  
2 Solicitor ---

3 MR. SCOTT: Yes, sir.

4 THE COURT: --- I don't think the first plea I took in  
5 this case this morning we listed specifically the counts  
6 that were being dropped, if I remember correctly. We might  
7 need to revisit that. I think he's still in the holding  
8 cell.

9 MR. SCOTT: The Satterwhite?

10 THE COURT: Yeah, I think it was. I don't think we  
11 mentioned those. We can double-check it.

12 MR. SCOTT: Okay.

13 THE COURT: I don't think we did.

14 MR. SCOTT: All right.

15 THE COURT: But just a matter of housecleaning,  
16 parenthetically, we -- we might should do that before he's  
17 taken on.

18 MR. SCOTT: He's gone.

19 THE COURT: Oh, he's already gone?

20 MR. SCOTT: But he is the only one of these inmates  
21 who's being housed in Newberry. So we can bring him  
22 tomorrow ---

23 THE COURT: Okay.

24 MR. SCOTT: --- morning.

25 THE COURT: Just -- just ---

1 MR. SCOTT: That's ---

2 THE COURT: We don't want to see a PCR show back up on  
3 it.

4 MR. SCOTT: Yes, sir. That's a good thought.

5 THE COURT: All right.

6 MS. HIGHTOWER: Absolutely.

7 THE COURT: I'm sorry about that. But it -- we ---

8 MS. HIGHTOWER: No, I understand.

9 THE COURT: --- needed that housecleaning ---

10 MS. HIGHTOWER: No, I ---

11 THE COURT: --- matter.

12 MS. HIGHTOWER: --- understand.

13 THE COURT: --- taken care of.

14 MS. HIGHTOWER: I -- I was flipping through my notes,  
15 Your Honor. I don't believe ---

16 THE COURT: Okay.

17 MS. HIGHTOWER: --- that we did ---

18 THE COURT: I don't ---

19 MS. HIGHTOWER: --- list it ---

20 THE COURT: --- think we did.

21 MS. HIGHTOWER: --- this morning.

22 THE COURT: So the recommendation, once again, is a  
23 cap of 25 years in this case. And he's listed the other  
24 charges that are being *nolle-prossed*. Does that cover  
25 everything, Ms. Hightower?

1 MS. HIGHTOWER: It does, sir.

2 THE COURT: All right.

3 MS. HIGHTOWER: Thank you.

4 THE COURT: You understand all this, Mr. Elkins?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you still wish to continue and plead  
7 guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, sir, are you fully satisfied with the  
10 manner in which your lawyer here, Ms. Hightower, the way  
11 she has advised and represented you on these charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you talked with her for as long and  
14 for as often as you feel it necessary for her to properly  
15 represent you?

16 THE DEFENDANT: Yes, sir.

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

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you understood your talks with her?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Elkins, has Ms. Hightower done  
22 everything for you, you feel that she should do or could do  
23 on your behalf in advising and representing you on these  
24 charges?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has she done anything you feel she should  
2 not have done?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you completely satisfied with her  
5 services?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any complaints against Sheriff  
8 Foster or anybody here in the Newberry County Sheriff's  
9 Office? Is that Sheriff Foster that just walked in?

10 SHERIFF FOSTER: Yes, sir.

11 THE COURT: See? Any complaints against the Newberry  
12 County Sheriff's Office?

13 THE DEFENDANT: No, sir.

14 THE COURT: Any complaints against anyone working here  
15 in the solicitor's office?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you understood my questions, Mr.  
18 Elkins?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is there anything you want to ask me about  
21 what I just discussed with you, anything at all?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Elkins, you realize that you have a  
24 right to appeal this guilty plea and whatever sentence I  
25 may impose upon you, but if you're going to appeal, you

1 need to file a notice of intent to appeal within ten days  
2 of today's date. Do you understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Additionally, Mr. Foster, [sic] it may not  
5 mean much to you now, but it could later on. Once you're  
6 in the Department of Corrections, if you rethink or feel or  
7 find that you have some complaints against your lawyer,  
8 against the solicitor's office, or anybody from the  
9 Newberry County Sheriff's Department, you need to make  
10 those complaints known by filing a postconviction-relief  
11 application within one year of today's date. Do you  
12 understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Very well, Solicitor. Be happy to hear  
15 about it.

16 MR. SCOTT: Judge, the most culpable in this whole  
17 situation is Keon Kelly. He's ---

18 THE COURT: --- the dead man ---

19 MR. SCOTT: He's dead.

20 THE COURT: --- the one that took his own life. Yeah.

21 MR. SCOTT: He's the trigger man. But if I have to  
22 assign culpability, I think Tyler Elkins comes in ---

23 THE COURT: Second?

24 MR. SCOTT: --- the No. 2 slot. After -- he's got the  
25 -- from what I can tell, the -- he and Kelly go back some

1 time, that they -- they were acquaintances some time before  
2 this.

3 It appears that they all kind of staged at the Elkins  
4 home right before they came up to Little Mountain. That's  
5 where Elkins, Satterwhite, and Kelly all get together to  
6 come up here. We know Tyler Elkins had a .38 revolver with  
7 him and it was loaded. And we know that he approached the  
8 door with that weapon.

9 And again, it's -- it's uncontradicted. It was Kelly  
10 that fired the -- the fatal shot. But upon hearing noise  
11 within the house, that being -- and by the way, if he -- if  
12 he wants to apologize as many times -- Jamarr Bates is the  
13 man with the glasses right here who he fired at.

14 THE COURT: Uh-huh. And ---

15 MR. SCOTT: Upon hearing Mr. Bates scampering through,  
16 Elkins takes his gun and fires it towards the -- the noise.  
17 And just by the grace of God, he missed.

18 We also know -- and here -- here's Junior Leaphart  
19 over here on the far-left and Omar Jackson, sitting just  
20 beside Mr. Bates over here. They were the two in the car  
21 that upon arriving on the scene, Mr. Elkins saw fit to fire  
22 three shots into the back of their car.

23 So it -- it might be an argument for Mez D. or  
24 Satterwhite that they didn't know maybe what was possibly  
25 going to happen at the scene. But Elkins has a more

1 difficult time, because he showed his intent and his frame  
2 of mind and what he was capable of by just freely  
3 discharging his weapon multiple times and then having that  
4 history with Kelly.

5 Uncontradicted that he goes in the house and fires the  
6 shots. And -- and, Judge, you know, having said that,  
7 though, once they get with Mez D. and they identify these  
8 -- these codefendants, they -- they list "Opie" as the --  
9 the name they give Elkins. They pick him up at his place  
10 of work. And while at first he was uncooperative,  
11 eventually he kind of spills the beans with law  
12 enforcement.

13 He identifies his role. He freely admits to basically  
14 everything I just told you. He admits to firing the weapon  
15 inside the home, going inside the home. He admits to being  
16 armed. He admits to firing into the car occupied by  
17 Leaphart and Jackson.

18 Furthermore, officers search his home. They were  
19 unable to find the weapon, that .38 caliber I talked about.  
20 And we think his girlfriend had hidden it. But when  
21 officers told him they couldn't find the gun, he assured  
22 them it is in there. So he was able to get that weapon  
23 into the hands of law enforcement.

24 So that -- that is -- you know, his cooperation is  
25 being taken into account, his -- his confessing to it, his

1 role in it, and helping ID Satterwhite. Because without  
2 really his help or Mez D. 's help, I don't see how we  
3 would've ever really identified Decarlos Satterwhite. And  
4 that kind of helped bring all these people to justice..

5 Prior history, all I see is a 2012 DUI and a 2014  
6 simple possession of marijuana a driving under suspension.  
7 I agreed to cap it at 25 in order to facilitate a plea  
8 today and wrap the whole thing up in front of the family.

9 I would ask that Your Honor -- we're looking to cap it  
10 at 25. But we are asking for all 25 of that ---

11 THE COURT: I understand.

12 MR. SCOTT: --- for Mr. Elkins.

13 THE COURT: I understand.

14 MR. SCOTT: Those are the facts, Your Honor.

15 THE COURT: Now, Mr. Elkins, you heard the  
16 presentation by the solicitor's office. Is that pretty  
17 much how it happened? Is that substantially accurate and  
18 correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you agree, Ms. Hightower?

21 MS. HIGHTOWER: I do, Your Honor.

22 THE COURT: Very well, sir. I find that there is a  
23 substantial factual basis for your plea, Mr. Elkins. I  
24 further find your decision to plead guilty to be freely,  
25 voluntarily, knowingly, and intelligently made; that you've

1 had the advice of competent counsel, whom you indicate to  
2 me you're completely satisfied with. Therefore, I'll  
3 accept this plea.

4 Ms. Hightower, I'll be happy to hear from you, ma'am.

5 MS. HIGHTOWER: Thank you, Your Honor. If it please  
6 the Court, as -- as Tyler told you, he is -- he just turned  
7 23 years old. He, Satterwhite, and the shooter, Mr. Keon  
8 Kelly, they're all the same age. Certainly, I tell you, he  
9 did -- and let you know, he graduates from high school. He  
10 graduated from Irmo High. With him right here is Kim  
11 Elkins, and this is his mother, Your Honor.

12 THE COURT: And she was with you this morning when I  
13 walked in. Y'all walked in together, if I remember  
14 correctly.

15 MS. HIGHTOWER: Yes, Your Honor.

16 THE COURT: Yeah.

17 MS. HIGHTOWER: That's correct. Yes.

18 THE COURT: I know.

19 MS. HIGHTOWER: We -- we -- we came together.

20 Certainly, Tyler's father would've been here this -- this  
21 afternoon or today as well, except unfortunately, Tyler's  
22 father's been in significantly poor health for at least the  
23 last twelve years with heart problems and then  
24 complications with Alzheimer's for the last six years.

25 Tyler has been a caregiver to his father. He -- I

1 know that when we were working on the bond motions and  
2 hearings on those issues, that -- that we had people that  
3 testified that he was a compassionate caregiver and  
4 certainly very bonded to his father. And I -- and I know  
5 Ms. Elkins would -- would've liked for her husband to be  
6 here with her, but just also taking in concern his  
7 significant medical history, he's not here.

8 I will tell you, Your Honor, at the time of the  
9 arrest, Tyler had just started a job that his mother helped  
10 him secure with the Department of Mental Health.

11 THE COURT: Let me ask you this: How long has he been  
12 in since -- what was his date of arrest?

13 MS. HIGHTOWER: His date of arrest was on August the  
14 -- August the 6th of 2015 ---

15 THE COURT: Okay. August ---

16 MS. HIGHTOWER: --- Your Honor.

17 THE COURT: --- 6th?

18 MS. HIGHTOWER: Yes, Your Honor.

19 THE COURT: All right. I'm sorry. Go ahead.

20 MS. HIGHTOWER: No, no. That's fine, Your Honor.

21 He -- he -- I -- I -- I bring up the Department of  
22 Mental Health just simply because he obviously cleared a --  
23 had a work clearance and was able to -- to go to work  
24 there. He did tell you that his prior work was in  
25 landscaping, concrete work, and those kind of things. But

1 the majority of what he did was take care of his father.

2 You've heard about Mr. Kelly, the actual shooter in  
3 the case. You've heard about -- I will take -- I will take  
4 hesitation with what the solicitor indicated that it was my  
5 client and Mr. Kelly that had been lifelong friends. Our  
6 investigation indicated that certainly the closer bond was  
7 between Satterwhite and Keon Kelly.

8 THE COURT: All right.

9 MS. HIGHTOWER: My client lives near the shooter. He  
10 lives in the neighborhood. They've gone to school  
11 together. But -- but certainly, he -- there wasn't --  
12 there wasn't that type of relationship -- or at least that  
13 would've been -- been our part of -- of the case.

14 The third codefendant, the juvenile, Your Honor,  
15 certainly, as you've heard in the earlier pleas, that that  
16 is who set it up. That's who brought everybody back  
17 together -- brought everybody together to here. He was the  
18 one who knew the plan -- knew of the place in Little  
19 Mountain. He's the one who planned the -- the robbery.  
20 The juvenile says this in his statements: that they were  
21 doing it to get drugs and to -- and to -- and to obtain  
22 money. And, of course, all were located there, according  
23 to what the juvenile could bring them to them.

24 The solicitor indicated that my client -- they staged  
25 at my client's house. I'd -- I'd tell you that my client

1 was picked up by and -- by the car by Keon Kelly and Mr.  
2 Satterwhite. He was the third person picked up. Then they  
3 came forward and they picked up the juvenile here.

4 Certainly, going forward, after everything that  
5 happened and went down and they fled the -- fled the  
6 location, the -- the -- a confidential informant began  
7 talking about who was actually responsible. I believe the  
8 solicitor mentioned that Mez D. , the juvenile, he was  
9 -- he was identified by -- by the victims and that started  
10 off going down and -- and leading to my client. Also, my  
11 client, when he was -- I say all that to say when my client  
12 was arrested, both he and Mr. Keon Kelly and Satterwhite  
13 were nowhere -- nobody knew.

14 So they're commenting -- when my client is -- is -- is  
15 approached, he had gone to work that day. They came to my  
16 client's mother's house. She fully cooperated. They gave  
17 them the address of -- of -- of my client and where he  
18 works; went -- go and pick him up.

19 They indicated that they were looking for Keon Kelly;  
20 fully gave up, you know, where Keon Kelly was. In fact,  
21 gave them Keon Kelly's telephone number and gave over his  
22 phone to -- to -- to search for it. There was a photo  
23 lineup showed to them with Satterwhite's picture. And it  
24 says, "I -- he's -- that person's not in there."

25 They came back -- he didn't know who Satterwhite was.

1 Again, Satterwhite and Keon Kelly have the relationship,  
2 not my client and -- and Mr. Satterwhite.

3 But I say all that because he submitted to the DNA.  
4 When I first met with Investigator Womack, he indicated  
5 that he was fully -- fully cooperative.

6 And I will say this, Your Honor. My client only gave  
7 one statement. There were a number of other statements  
8 given by Mez D. and -- and in varying degrees of  
9 what actually happened. And it took my client and his  
10 corroboration that -- that certainly brought the case to --  
11 or, in my opinion, brought the case where it was ready to  
12 go forward and, certainly, they could -- they could make  
13 their case against all three.

14 I just -- certainly, my client is -- is -- is --  
15 significantly understands all that he did. And he -- he  
16 does stand ready to address the victims here today. He  
17 understands the -- the impact that he's -- he's taken a  
18 life here. He's taken what -- what -- what has happened.

19 He -- he understands all that he did. And he's  
20 standing here to plead guilty in front of you, in front of  
21 them. Our trial date wasn't scheduled until December. But  
22 we've talked about it. And that was not something that he  
23 wanted to drag out and certainly was -- was -- was  
24 something that he wanted to come forward.

25 I will say, you know, he just turned 23 last -- I

1 guess it was last week on the -- and he's a young man that  
2 certainly can't give back these people their sense of  
3 security or the life of -- of -- of -- of Mr. Barron. But  
4 I would -- I would ask Your Honor if you -- nobody knew --  
5 I -- I think one of the other attorneys said nobody knew  
6 Keon Kelly was going to take that life.

7 And certainly, knowing that even with whatever  
8 sentence he gets, he's going to have to do 85 percent of  
9 it, it's nonparolable. He's going to be -- be gone for a  
10 long time. And I just ask for the Court -- I certainly --  
11 I know you've been doing this for a number of years, Your  
12 Honor. And we just ask -- ask for your consideration for  
13 all of that.

14 THE COURT: All right.

15 MS. HIGHTOWER: Thank you ---

16 THE COURT: Thank ---

17 MS. HIGHTOWER: --- sir.

18 THE COURT: Thank you, ma'am. Mr. Elkins, anything  
19 you'd like to tell me, sir?

20 THE DEFENDANT: Yes, sir. First of all, I would like  
21 to apologize to the family and to the Court for my actions.  
22 And, Your Honor, I just want to let you know, you know, I'm  
23 not a violent person, like my case makes me out to be.

24 But that night I was just out for a ride. And we were  
25 just wrong decision at the wrong time. We didn't know Keon

1 was going to take his life, like, the way he did. He gave  
2 me the weapon that night.

3 You know, and I don't -- I didn't mean to -- wasn't  
4 trying to shoot anybody that night, sir. I was just scared  
5 because of the actions that took place. And, you know, I  
6 just wish -- you know, I ask the Court to show mercy on my  
7 behalf. And again, I apologize to the family and to the  
8 Court.

9 THE COURT: All right. Thank you, Mr. Elkins.  
10 Anything you want to say, ma'am?

11 MS. ELKINS: Well, I think it's pretty much covered.

12 THE COURT: I know. I -- you know, this is just --  
13 it's heartbreaking for everybody. Somebody is dead; don't  
14 need to be dead. And I get the impression nobody really  
15 believes you went -- nobody other than the shooter had any  
16 idea of what's going to happen.

17 And that's the sad thing about these cases. You know,  
18 they've lost somebody forever. And you're going to lose  
19 him for a long time. That's just -- that's just the way it  
20 goes. And it's just heartbreaking for everybody involved.

21 MS. ELKINS: Yes, sir.

22 THE COURT: I haven't said anything to the victim's  
23 family yet. This looks like the last plea. There's no --  
24 nothing I can say, no words that I can use, to ease the  
25 loss you've suffered. But you do have my sympathies and

1 understanding and best wishes and that sort of thing.

2 So on Indictment No. 2015-509, possession of a weapon  
3 during the commission of a violent crime, 5 years. On  
4 Indictments 2015-508, attempted murder; -514, burglary in  
5 the first degree; -505, attempted murder; -510, armed  
6 robbery; and -507, voluntary manslaughter; sentence, 25  
7 years, concurrent; credit for time served. Good luck to  
8 you, Mr. Elkins.

9 MS. HIGHTOWER: Thank you, Your Honor.

10 THE COURT: All right.

11 (Whereupon, the proceeding was concluded at 4:05 p.m.)

12 --- END OF TRANSCRIPT OF RECORD ---  
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**CERTIFICATE**

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED  
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,  
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL  
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY  
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND  
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE  
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT  
COURT FOR NEWBERRY COUNTY, SOUTH CAROLINA, ON THE 31ST  
DAY OF OCTOBER, 2016..

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



---

MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 10, 2017

FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Newberry )

Tyler McKenzie Elkins # 370294 )  
Full name and prison number (if any) of Applicant )

370294 )

v. )

State of South Carolina )

2017-CP-36-00122

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
NEWBERRY COUNTY  
2017 MAR 13 PM 12 21  
JACKIE S. BOGERS  
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution  
4460 Broad River Rd. Columbia, SC 29210
2. Name and location of Court which imposed sentence Newberry Court  
of General Sessions, Newberry, SC
3. Name(s) of co-defendant(s) (if any) 1) Jermaz Dreher, 2) Keon  
Kelly - deceased, 3) DeCarlos Satterwhite
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 15GS36-0509 ; 15GS36-0508
  - (b) 15GS36-0507 ; 15GS36-0514

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original on file in this office:  
MAR 14 2017  
Elizabeth P. Folk  
Clerk of Court

(c) 15 GS 36-0505 ; 15 GS 36-0510

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

(a) 10/31/16 — A Total of

(b) 25 years Violent, most serious 85%

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty x

(b) after a plea of not guilty \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

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

No

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

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

i. N/A

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

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

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

i. N/A

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

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

(c) the date of each such result:

i. N/A

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

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

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

i. N/A

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

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

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

(a) Attorney said we couldn't appeal, Trial

(b) Counsel failed to file notice of appeal.

(c) White vs. State 263 SC 110 208 SE 2d 35(1975).

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

(a) The plea was involuntary.

(b) Trial Counsel ineffective assistance due to ill advised

(c) for defendant to plea.

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

(a) Applicant reserved the rights to amend as pro se.

(b) White vs. State 263 SC 110 208 SE. 2d 35(1975).

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

12. Prior to this application have you filed with respect to this conviction: NO

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. N/A

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

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

iv. \_\_\_\_\_

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

i. N/A

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

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

iv. \_\_\_\_\_

(c) the disposition thereof:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

N/A

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) \_\_\_\_\_  
 (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? NA  
 (c) your sentencing? Yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
NA

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

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

- i. Aiken & Hightower  
A. Bea Hightower & Arthur Aiken  
 ii. 2231 Divine Street  
Columbia, SC 29205  
 iii. \_\_\_\_\_

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

- i. Arraignment, guilty plea & sentencing  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

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

To go back for a direct appeal,  
Order Vacating Conviction & sentence

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

No

STATE OF SOUTH CAROLINA )  
County of Newberry )

VERIFICATION

I, Tyler McKenzie Elkins, 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.

Tyler Elkins

SWORN to and subscribed before me this 1  
day of March, 2017.

[Signature] (L.S.)  
Notary Public

My Commission Expires: 2/16/2008

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

I, Tyler McKenzie Elkins, 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.

Tyler Elkins  
Applicant

SWORN or affirmed to and subscribed before me this

1 day of March, 2017.

[Signature]

Notary Public

My Commission Expires: 9/16/2020

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )  
 )  
 Tyler Elkins #370294, )  
 )  
                   Applicant, )  
 )  
                   v. )  
 )  
 State of South Carolina, )  
 )  
                   Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 OF THE EIGHTH JUDICIAL CIRCUIT  
 2017-CP-36-122

**RETURN**

In response to the application for post-conviction relief filed by Tyler Elkins (Applicant) on March 13, 2017, Respondent would show this Court:

I.

Applicant is confined with the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the October 2015 term of the Newberry County Grand Jury for attempted murder (2015-GS-36-505), murder (2015-GS-36-507), attempted murder (2015-GS-36-508), possession of a weapon during the commission of a violent crime (2015-GS-36-509), armed robbery (2015-GS-36-510), and first degree burglary (2015-GS-36-514). Applicant was represented by A. Bea Hightower, Esquire. On October 31, 2016, Applicant pled guilty before the Honorable L. Casey Manning. Applicant was sentenced to twenty-five years for both counts of attempted murder, twenty-five years for voluntary manslaughter as a lesser included offense of murder, five years for possession of a weapon during the commission of a violent crime, twenty-five years for armed robbery, and twenty-five years for first degree burglary.

Applicant did not appeal his plea or conviction.

## II.

Applicant alleges he was being held unlawfully for the following reasons:

1. "The plea was involuntary"
2. "Trial Counsel ineffective assistance due to ill-advised for defendant to plea."
3. "White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975)."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

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

## III.

Respondent submits plea counsel rendered effective assistance of counsel. 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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

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

#### IV.

Applicant further alleges that his plea was involuntary. Respondent construes this allegation to allege that Applicant's plea was not voluntarily made, and submits that this allegation is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable

probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Applicant claims that he was denied effective assistance of counsel because his plea attorney did not file a notice of appeal from his guilty plea. Respondent submits that plea counsel for Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-

conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Respondent submits that Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

## VI.

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

amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

## VII.

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

## VIII.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

By: *Megan Harrigan Jameson*  
ATTORNEYS FOR RESPONDENT *Be*

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

July 21, 2017.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )  
 )  
 TYLER ELKINS )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


2017-CP-36-122.

AFFIDAVIT OF SERVICE BY MAIL

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

**Ashley A. McMahan, Esquire**  
**Mac | Vance Attorneys, LLC**  
**Post Office Box 5501**  
**West Columbia, South Carolina 29169**

DATED this 21<sup>st</sup> day of July, 2017.

  
 Caroline Collins, Administrative Coordinator  
 For Respondent

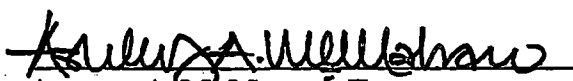
STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 <sup>th</sup> JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	Case No.: 2017-CP-36-00122
 Tyler McKenzie Elkins, #370294,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 13, 2017, to add the following allegations:

1. Ineffective Assistance of Counsel as to Arthur K. Aiken, Esquire and A. Bea Hightower, Esquire:
  - a. Ineffective assistance during plea bargain negotiations. See Williams v. Jones, 571 F3d 1086 (10<sup>th</sup> Circuit 2009).
  - b. Counsels never communicated to Applicant any plea offers.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application and this Amended Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

  
 ASHLEY A. MCMAHAN, ESQUIRE  
 MAC | VANCE ATTORNEYS, LLC  
 PO Box 5501  
 West Columbia, SC 29171  
 803-219-1110  
 ashley@macvance.com  
 SC Bar No. 71676  
 ATTORNEY FOR APPLICANT


September 27, 2017

**CERTIFICATE OF SERVICE**

I certify that I have served this document via US Mail to:

Justin J. Hunter  
Assistant Attorney General  
SC Attorney General's Office  
PO Box 11549  
Columbia, SC 29211-1549

This 27<sup>th</sup> Day of September, 2017.

  
ASHLEY A. McMAHAN, ESQUIRE  
Attorney for Applicant

State of South Carolina            )  
   ) Court of Common Pleas  
 County of Newberry                )  
   ) 2017-CP-36-00122

Tyler Elkins                         )  
                   vs.                    ) Transcript of Record  
   )  
   )  
 State of South Carolina            ) Post Conviction Relief  
   ) Defendant                            )

June 22, 2018  
 Laurens, South Carolina

B E F O R E:

Honorable Mark Hayes, Judge

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

Julie A. Coleman, Assistant Attorney General  
 Attorney for the State

Ashley A. McMahan, Esq.  
 Attorney for the Defendant

Joy E. Holston  
 Official Court Reporter

I N D E X   O F   W I T N E S S E S

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(IC) - Denotes In Camera  
(DW) - Denotes Defense Witness  
(SW) - Denotes State's Witness

(DW) Tyler Elkins

Direct examination by Ms. McMahan:	5
Cross-examination by Ms. Coleman:	14
Redirect examination by Ms. McMahan:	18

(SW) Bea Hightower

Direct examination by Ms. Coleman:	19
Cross-examination by Ms. McMahan:	34

(SW) Arthur Aiken

Direct examination by Ms. Coleman	38
Cross-examination by Ms. McMahan:	47

Certificate of Reporter	54
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EXHIBITS

(There were no exhibits introduced.)

- 1
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1 MS. COLEMAN: May it please the Court. This is Tyler  
2 Elkins versus the State of South Carolina, docket number  
3 2017-CP-36-122. Applicant is confined in the South  
4 Carolina Department of Corrections pursuant to orders of  
5 commitment of the Newberry County Clerk of Court.  
6 Applicant was indicted at the October 2015 term of the  
7 Newberry County Grand Jury for two counts of attempted  
8 murder, murder, possession of a weapon during the  
9 commission of a violent crime, armed robbery and first  
10 degree burglary. Applicant was represented by Bea  
11 Hightower, Esquire and Arthur Aiken, Esquire. On October  
12 31st, 2016 Applicant pled guilty before the Honorable L.  
13 Casey Manning. Applicant was sentenced to 25 years for  
14 both counts of attempted murder; 25 years for voluntary  
15 manslaughter as a lesser included offense of murder; five  
16 years for possession of a weapon during the commission of  
17 a violent crime; 25 years for armed robbery and 25 years  
18 for first degree burglary to run concurrently. Applicant  
19 did not appeal his plea or conviction. Applicant filed a  
20 timely application for Post-Conviction Relief on March 13,  
21 2017 alleging that he was being held in custody unlawfully  
22 based on the following allegations: Involuntary guilty  
23 plea, ineffective assistance of counsel and White versus  
24 State, belated appeal. The State filed its return on July  
25 21, 2017. Applicant filed an amended application on

1 September 27, 2017 and Applicant is present today and is  
2 represented by Ashley McMahan.

3 MS. MCMAHAN: Yes, Your Honor, the Applicant would  
4 call Mr. Elkins.

5 TYLER ELKINS, being  
6 first duly sworn, testified as follows:

7 THE COURT: Thank you. And just watch your step up  
8 as you're sitting in that chair.

9 DIRECT EXAMINATION

10 By Ms. McMahan:

11 Q Would you state your name?

12 A Tyler Elkins.

13 Q And did you file this PCR Application?

14 A Yes, ma'am.

15 Q Who were your attorneys?

16 A Arthur Aiken and Bea Hightower.

17 Q Now did you, were they appointed to represent you or  
18 did you retain them?

19 A Retain them.

20 Q Did you have a, an appointed attorney first or they  
21 were always your attorneys?

22 A They were my, oh, I had a public defender to begin  
23 with.

24 Q Okay. But the PD you only had for a really short  
25 time?

1 A Yes, ma'am.

2 Q And how many times did you meet with Bea and Art?

3 Excuse me, with Mr. Hightower and Mr., Ms. Hightower and  
4 Mr. Aiken?

5 A Between maybe eight times.

6 Q Where were you when you met with them?

7 A At Newberry County.

8 Q In the Court House? Were you in the, the Detention  
9 Center?

10 A Detention Center.

11 Q Did you ever make a bond?

12 A No, ma'am.

13 Q Was one ever set for you?

14 A No, ma'am.

15 Q So the bond was denied?

16 A Yes, ma'am.

17 Q Did you ever have a hearing to try to get a bond set  
18 after it was denied?

19 A Yes, ma'am.

20 Q And so some of your issues are that your plea was  
21 involuntary and that trial counsel was ineffective and  
22 that you wanted an appeal from your PCR. Is that correct?

23 A Yes, ma'am.

24 Q So tell me about what happened in your case as far as  
25 your plea goes.

1 A Well, they, I was never initially offered a plea in  
2 the county. And the day, the day I got sentenced was  
3 supposed to be my Co-Defendant's trial date. And I was  
4 subpoenaed to go there as a State's witness. And when I  
5 got there, my lawyer asked, not asked, but Bea, she came  
6 to me and said that they wanted to sentence all three of  
7 us and that they were offering me a 25 years plea. And  
8 she said, you know, if I didn't take that it would either  
9 go to trial. And she always painted a picture of trial as  
10 I would get life. So I just took the 25 off her  
11 assistance thinking that was the right thing to do.

12 Q So tell me about your Co-Defendants. Were there two  
13 or three Co-Defendants?

14 A It was four altogether. One died and two got  
15 sentenced with me.

16 Q So one of your Co-Defendants died prior to your  
17 trial?

18 A Yes, ma'am.

19 Q Or your guilty plea. How soon after you guys were  
20 arrested did he die?

21 A The same day I got arrested. August 6th.

22 Q And when you explained to Ms. Hightower and Mr. Aiken  
23 about your case, what did you tell them about what had  
24 happened?

25 A I just gave them the details as far as my, what I did

1 and what happened as far as what my Co-Defendants did.

2 Q And there was a shooting involved, wasn't there?

3 A Yes, ma'am.

4 Q And who was the shooter?

5 A Keon Kelly.

6 Q And he, is he the one that died?

7 A Yes, ma'am. The 6th.

8 Q And then there were two other people with you?

9 A Yes, ma'am.

10 Q So the day of the trial, what were you supposed to be  
11 doing for the trial?

12 A I was only there to be a State's witness.

13 Q Had a jury been picked yet, do you know?

14 A I'm not sure.

15 Q What, what did you and Ms. Hightower talk about that  
16 day?

17 A She just, she brought the 25-year plea to me that the  
18 State offered. And she was saying that because of the  
19 victim's family coming from all over, that they wanted to  
20 go ahead and get everybody taken care of that day. And  
21 she just basically told me that if I didn't take 25 years,  
22 it'll be a trial. And so that's pretty much what  
23 happened.

24 Q So did you indicate to her from the beginning, or Mr.  
25 Aiken that you wanted to try it, that you wanted a trial?

1 A No ma'am, not at first.

2 Q So at first you did not want a trial?

3 A No, ma'am.

4 Q What, what did you want at first?

5 A A decent plea offer.

6 Q Did you ever get any other plea offer besides the 25?

7 A No, ma'am.

8 Q And when you guys met, you said those eight times,  
9 what did y'all talk about?

10 A We went over the case, that's mostly it. We just  
11 went over the case because they would always tell me that  
12 it's too early in the case to really talk about anything  
13 else. So we would just go over the details of the case.

14 Q Okay. Did you go over your discovery and everything?

15 A Bits and pieces, yes ma'am.

16 Q Okay. And so, what were, were they talking with you  
17 about possible defenses or anything you could bring up?

18 A I mean, they, really the only thing that they would  
19 talk about is my record. I mean, me not having any  
20 felonies and completing school and having a job and things  
21 of that nature.

22 Q Okay. So you had never been to prison before?

23 A No, ma'am.

24 Q So you, so you said had no felonies, so you only had  
25 like some little things from Magistrate Court?

1 A Just misdemeanors. Yes ma'am.

2 Q And so, did they ever, did you ever ask them about if  
3 there were any plea offers or anything like that?

4 A I asked but they said again, it was too early in the  
5 case.

6 Q So when you would meet with them how long would you  
7 meet with them for?

8 A It be thirty minutes to an hour.

9 Q Were you in like a room at the Detention Center where  
10 there was nobody else?

11 A Yes, ma'am.

12 Q Did you ever talk to them on the phone?

13 A I think I might have one time.

14 Q So the morning that you're supposed to testify in  
15 your Co-Defendant's case, and which Co-Defendant was that?

16 A Decarlos Satterwhite.

17 Q Okay. Where were you at the Court House in Newberry  
18 when you guys were talking about the plea offer?

19 A I was in the holding cell and then we went into the  
20 office, the office room.

21 Q Okay. And so how soon after you got there did Ms.  
22 Hightower come in and tell you that there, this is what  
23 the Solicitor wanted to do?

24 A Almost immediately. I got in the holding cell. I  
25 waited for a little while and then she came and told me

1 that they wanted to sentence all three of us.

2 Q So if you didn't plead that day, do you know when  
3 your trial was going to be set?

4 A No, ma'am. But she told me that they would set a  
5 trial date.

6 Q Okay. Did you know if it was going to come up soon  
7 or not?

8 A I'm not sure.

9 Q So how long after you had been arrested did you  
10 finally end up at the Court House pleading guilty?

11 A Maybe eight months, maybe close to a year.

12 Q Okay. And what, who did you deal with more, Mr.  
13 Aiken or Ms. Hightower?

14 A Ms. Hightower.

15 Q Okay. So one of the issues is you put White v. State  
16 that you, so, I'm guessing you did not get an appeal from  
17 your plea. Is that correct?

18 A Yes, ma'am.

19 Q Did you want an appeal from that?

20 A Yes. Yes, ma'am.

21 Q Did you tell them that?

22 A Well, they said that we would just file a PCR.

23 Q Okay. Did the Judge tell you you could appeal?

24 A I'm not sure. I can't really remember.

25 Q Okay. But you initially asked them for an appeal,

1 but they said no, just file a PCR?

2 A (Witness nods head in the affirmative.)

3 Q Okay.

4 THE COURT: I'm sorry, I didn't hear the response.

5 A Yes. Yes, sir.

6 Q If you, would you want to go to trial if your PCR was  
7 overturned, I mean if you won on a PCR?

8 A Yes, ma'am. Knowing what I know now I would.

9 Q Okay. What do you know now that had changed your  
10 mind?

11 A The voluntary, well, the murder charge that was less  
12 than voluntary manslaughter, I didn't kill nobody.

13 Q Okay.

14 A The hands of one, the hands of all, that's what they  
15 said they were using. But I was the only Co-Defendant  
16 that was charged with murder outside the other two  
17 Co-Defendants.

18 Q What did they explain to you about the hands of one,  
19 hands of all?

20 A Just, my basic understanding is somebody kills  
21 somebody and you're with them you're guilty too.

22 Q Okay. So the other two, you guys were all together,  
23 but you were the only one of the four that was charged  
24 with murder?

25 A Yes, ma'am.

1 Q And the other two were not?

2 A No, ma'am.

3 Q So you felt, did you feel like that wasn't fair that

4 the other two didn't get also charged with that?

5 A Yes ma'am, I did.

6 Q Did you explain that to Ms. Hightower or Mr. Aiken?

7 A Yes, ma'am.

8 Q And what did they tell you about it?

9 A Just the hands of one, hands of all.

10 Q Did they kind of give you an explanation of hands of

11 one, hands of all or did they just keep using that phrase?

12 A I mean, the same thing, you know, if you're there

13 during a crime that's committed, you're just as guilty.

14 Q But they could never give you an explanation as to

15 why the other two weren't also charged the same?

16 A No, ma'am.

17 Q So what were you going to testify to as the State

18 witness?

19 A Well, I had the choice to either testify on my

20 Co-Defendant or pleading the fifth.

21 Q Okay. Did you make a decision on which one of those

22 you were going to do at that day?

23 A Yes, ma'am. I was going to plead the fifth.

24 Q Okay. What else do you want the Judge to know about

25 your case today?

1 A Just that I'm not saying that I'm not guilty, that I  
2 don't deserve to be in prison. I just would like to plead  
3 that was something close to what my Co-Defendants got. I  
4 don't feel that it was fair that I got a whole decade more  
5 than what they got. And we all, they're the same thing.

6 Q And did you feel that Mr. Hightower and Ms., I mean  
7 Ms. Hightower and Mr. Aiken explained that to you  
8 thoroughly?

9 A As in what?

10 Q As in why the Co-Defendants didn't get the same  
11 thing.

12 A No, ma'am.

13 Q All right. So now answer any questions that Ms.  
14 Coleman may have for you, okay.

15 A Okay.

16 CROSS-EXAMINATION

17 By Ms. Coleman:

18 Q Mr. Elkins you testified that you were going to plead  
19 the fifth at your Co-Defendant's trial. Is that right?

20 A Yes, ma'am.

21 Q But you had the opportunity to testify against him,  
22 right?

23 A Yes, ma'am.

24 Q And you didn't want to?

25 A No, ma'am.

1 Q Why not?

2 A Just, because it could put my life in danger in  
3 prison.

4 Q You stated that you didn't want a trial on this case.  
5 Is that right?

6 A In the beginning, no ma'am. No, I didn't.

7 Q When did you want one?

8 A After I got sentenced and went to prison and kind of  
9 got a little, little bit of understanding of charges and a  
10 little bit, not much.

11 Q Okay. So you want a trial today, is that what you're  
12 saying?

13 A Yes, ma'am.

14 Q Okay. You just said a moment ago that you, you just  
15 wanted a fair guilty plea, right, and a fair sentence?

16 A Yes, ma'am.

17 Q But do you want, I mean, if you win today on your  
18 PCR, you're going to face a new trial. Is that something  
19 you want? You might not necessarily get a new guilty plea  
20 or plea offer. Do you understand that?

21 A Yes, ma'am.

22 Q Okay. How involved were you in the crime?

23 A I mean, as far as what? I mean--

24 Q Well, was there evidence that the State was going to  
25 present that you shot into the house?

1 A Yes, ma'am. They said they had ballistics.

2 Q So they intended to show that at your trial, right?

3 A Yes, ma'am.

4 Q Did your other Co-Defendant shoot anybody?

5 A No, ma'am.

6 Q Okay.

7 A I didn't shoot nobody either.

8 Q Right. But you shot the gun into the house?

9 A Yes, ma'am.

10 Q All right. Before your guilty plea do you remember,  
11 did you discuss your constitutional rights with your  
12 attorney?

13 A No, ma'am.

14 Q Okay. They didn't explain to you the rights that you  
15 were, like your right to remain silent and your right to a  
16 jury trial?

17 A Yes, ma'am.

18 Q Okay. Do you remember the Judge telling you about  
19 these rights at, at the guilty plea?

20 A Yes, ma'am.

21 Q And you waived those rights. Is that right?

22 A I think so. Yes, ma'am.

23 Q Do you remember telling the Judge at the plea that  
24 you were satisfied with your attorney?

25 A Yes, ma'am.

1 Q And you didn't have any complaints at the time,  
2 right?

3 A No, ma'am. Not at the time.

4 Q What exactly are you alleging today that your  
5 attorney should have done differently?

6 A Just explain to me as far as the 25 years. I mean, I  
7 feel, I feel like they could explain to me that you know,  
8 I, we didn't have to take this today. You know, I feel  
9 like, I feel like I was forced into that plea. And I  
10 mean--

11 Q What do you feel forced you to take a plea?

12 A As far as they painted a picture to me as if I went  
13 to trial, I would get a life sentence. So when they  
14 brought 25 years to me, I felt like that was the only  
15 choice I had.

16 Q And you could have gotten a life sentence at trial,  
17 right?

18 A Possibly. Yes, ma'am.

19 Q And you, you testified you didn't get any other plea  
20 offers from the State?

21 A Yes, ma'am.

22 Q Okay. Do you remember agreeing with the facts at the  
23 guilty plea that the Solicitor presented and admitting  
24 that you were guilty of the crime?

25 A Yes, ma'am.

1 Q Okay. Nothing further. Thank you.

2 THE COURT: Any redirect on what she went into?

3 MS. MCMAHAN: Just briefly.

4 REDIRECT EXAMINATION

5 By Ms. McMahan:

6 Q Mr. Elkins, are you an attorney?

7 A No, ma'am.

8 Q Have you had any training in the legal world?

9 A No, ma'am.

10 Q So were you counting on Ms. Hightower and Mr. Aiken  
11 to sort of help you out?

12 A I was.

13 Q And do you feel like they did that?

14 A Not really.

15 Q Anything else you want anybody to know today?

16 A No, ma'am.

17 MS. MCMAHAN: Nothing further, Your Honor.

18 THE COURT: Thank you, sir. Watch your step as you  
19 are stepping down.

20 MS. MCMAHAN: Nothing further from the Applicant,  
21 Your Honor.

22 MS. COLEMAN: The State calls Bea Hightower.

23 BEA HIGHTOWER, being  
24 first duly sworn, testified as follows:

25 THE COURT: Watch your step up.

1 MS. HIGHTOWER: Yes, sir. Thank you.

2 DIRECT EXAMINATION

3 By Ms. Coleman:

4 Q Good morning, Ms. Hightower.

5 A Good morning.

6 Q How long have you been practicing law?

7 A Well, I graduated in '89. So from there, and I took  
8 a brief recess of nine years to raise two children or,  
9 well, begin to raise two children.

10 Q Were you retained in this case?

11 A Yes, I was.

12 Q Okay. Do you recall about how long you represented  
13 the Applicant before his plea?

14 A I would say certainly over a year.

15 Q Did the Applicant ever tell you he wanted a trial on  
16 these charges?

17 A No, he did not.

18 Q Okay. How many times did you meet with the Applicant  
19 before his guilty plea?

20 A As he testified, we met with him various times over,  
21 over the course of, of the investigation and working on  
22 the case. And to go back to your question about whether  
23 or not he ever wanted a trial. Certainly we went over the  
24 merits of the case in terms of what the, what the State  
25 had against him and what they were going to produce at

1 trial and certainly the difficulties throughout with the  
2 confession that he had with the statements from the  
3 juvenile. There were four, four people involved in the  
4 case all together. But the juvenile was the one who first  
5 came up with, in the investigation, a confidential  
6 informant had, had given the police information that the  
7 juvenile was talking about the crime. And when they  
8 interviewed the juvenile, they, he certainly led them to  
9 Mr. Elkins as well as to the most culpable person who  
10 actually, the actual shooter in the case. So certainly as  
11 we went through each defendant and each participant and  
12 the victim's statements and the course of what happened  
13 that night, we did not talk about, in terms of was there  
14 credible defenses that we could have, we could have won  
15 the case on. Our assessment, and I say our, it was Mr.  
16 Aiken and myself, and with Mr. Elkins, certainly the best  
17 course and the immediate course of trying to put together  
18 the best defense possible was a plea. A plea negotiation,  
19 trying to put forth or knock down some of the things that  
20 the Solicitor was saying about what made Mr. Elkins one of  
21 the more culpable of the four. And as Mr. Elkins just  
22 testified in terms of, you know, we were looking at his  
23 prior record, yes. I was hammering home on the fact that  
24 he has no violent past. He's a very young man. He's, he  
25 is a soft spoken, cooperative person. My biggest strength

1 in trying to work with the Solicitor and trying to get a  
2 plea negotiation, and he is absolutely right, there were  
3 no pleas given to us. We, Mr. Aiken and I met with the  
4 Solicitor early on in the case. We, his mother had  
5 indicated to me, Mr. Elkins indicated to me that the  
6 investigator on the case said if he cooperated in their  
7 investigation that they were going to take that into  
8 consideration and they were not going to charge him with  
9 the murder. Obviously, that was something that the  
10 Solicitor and the investigators reneged on. They fully  
11 went, went hard on Mr. Elkins after the shooter in the  
12 case, not only did he die before the action, Your Honor,  
13 he committed suicide when he was being arrested the, the  
14 day of the arrest. He committed suicide rather than  
15 facing these charges which left Mr. Elkins holding, in  
16 terms of the Solicitor's theory of the case, left Mr.  
17 Elkins being the most culpable case. We tried very hard  
18 to demonstrate to the Solicitor that certainly the person  
19 that was most culpable after the shooter who committed  
20 suicide rather than face what he did was the juvenile who  
21 is, he goes by the name, Mez, I forget his, Mez D.  
22 Anyway, he was the one who set up, the, the whole theory  
23 behind the case, Your Honor, was that they, they were  
24 going to a known drug dealer's house to rob the drug  
25 dealer. And the juvenile, Mez, was the person who knew

1 the drug dealer, who knew the shooter, put those, you  
2 know, put, and he was the one who started putting it  
3 together. When Tyler testified, when Mr. Elkins testified  
4 that he had been under the influence, he indicated to me  
5 and to Mr. Aiken that he had taken Xanax that day, that he  
6 had been drinking that day. He was friends with the man  
7 who committed suicide. But he didn't know the juvenile.  
8 And so, when, when he says he was picked up he wasn't  
9 exactly sure what all the plans were. But he went along  
10 because the actual shooter was somebody that he did know.  
11 But anyway, so in my conversation and my attempts to try  
12 to negotiate something that I thought was fair in some  
13 type of, and when he said it was a negotiated 25 year  
14 sentence, it was a cap. So we were trying to argue  
15 something lower. When we initially met with Investigator,  
16 I believe his name was Womack, and met with the Solicitor  
17 I was like look, Tyler Elkins was not the most culpable.  
18 Certainly the guy who did, did the shooting was most  
19 culpable. He's dead now so you know, they've, they've got  
20 to, from the Solicitor's standpoint, they think they've  
21 got a locked type case and they're pushing hard for  
22 everything they can get. I said all right, I take that  
23 position, I understand where you're coming from. But it's  
24 not Mr. Elkins who's most culpable, it's that juvenile.  
25 It's that juvenile who set it up. He's the one who took

1 them to Little Mountain. He's the one who showed them the  
2 house. He's the one that put it together. That fell on  
3 deaf ears ultimately because the third Co-Defendant, Your  
4 Honor, the Satterwhite man, Satterwhite never gave a  
5 confession which Mr. Elkins did which the juvenile had and  
6 again goes, the shooter had, had committed suicide. So  
7 the fourth Co-Defendant was somebody that didn't give a  
8 statement. My client did fully cooperate with Womack and  
9 with the Solicitor's Office. He was the one who  
10 identified the fourth guy. I pushed hard on time to say  
11 look at the, look at what he did to help. Look at how the  
12 case came together because my client was the one who  
13 cooperated. You told him if he cooperated you would help  
14 him. They smiled at me about that one. That, that never  
15 came to fruition. And so the day at trial was against  
16 Satterwhite. And Satterwhite's attorney tried, you know,  
17 was trying his best to represent his client. They  
18 weren't, and everybody was charged with murder. They  
19 reduced the charges for the Co-Defendants for the pleas as  
20 well. Anyway, that's a very long answer to whatever the  
21 initial question was but that's the situation.

22 Q Thank you. And that covered several of my questions,  
23 so I appreciate that.

24 A Okay.

25 Q You testified just a second ago all Co-Defendants

1 were charged with murder?

2 A That's my understanding. I believe Mr. Elkins does  
3 not think that they were charged with because they, they  
4 plead to lesser, they took the murder off for everybody in  
5 terms of the pleas.

6 Q And was this an accomplice liability case?

7 A Yes.

8 Q Okay.

9 A Yes, certainly. Present, aiding, abetting, second  
10 degree principle. I mean clearly, clearly. And also, a  
11 felony murder because the man died during the commission  
12 of a felony which was, you know, armed robbery to which  
13 they had, they had strong evidence.

14 Q Right. Can you go into a little more detail about  
15 the facts that the State was alleging? You said they,  
16 they had planned to, to rob a known drug dealer. Can you  
17 just tell us what happened during the robbery?

18 A What, what happened was, is that the juvenile set it  
19 up with the shooter. His name is Keon Kelly. Keon Kelly  
20 picks up my client, I believe at his house, I don't recall  
21 but I believe that's where it was. They go and pick up  
22 the juvenile and the juvenile and then, and I don't recall  
23 exactly when, when the fourth fella, Satterwhite. But at  
24 one, at, when they're heading to Little Mountain the  
25 juvenile and the shooter are, and the juvenile is telling

1 him where to go, they are going to Little Mountain, the  
2 juvenile knows the known drug dealer. And my client, Mr.  
3 Elkins and Mr. Satterwhite are in the backseat of the car.  
4 They pull, they pull up to the, to the drug dealer's home.  
5 There's a statement given by, again, the juvenile who  
6 indicates that the parties got out of the car, they put on  
7 masks, they put on vests, they, they took the guns. They  
8 approached the door of the known drug dealer, they knock  
9 on the door under the pretense that they're going to buy  
10 drugs, well, that they were going to buy drugs. Now, my  
11 client believed that they, it was a robbery. That's what,  
12 they were there, they were just going to rob him and then  
13 they were going to leave. During, when the person came to  
14 the door, the decedent came to the door, unbeknownst to  
15 Mr. Elkins, the shooter takes his gun and shoots him  
16 through the window in his face. That was not planned.  
17 That wasn't part of the deal. That was not, there, the  
18 way they were going to gain entry, they were all coming  
19 in, they were going to rob the place and then they were  
20 going to leave. But that, that's what happened. After  
21 they entered in the home, the statement from my client was  
22 is that they heard somebody else in the place. My client  
23 freely admitted that he shot but not into, not at somebody  
24 running down the hallway. Not at, you know, somebody, he  
25 was shooting so as to let whomever was in the house know

1 that they were there and that they had guns. Now, it was,  
2 in the plea itself the difficulty was is that the  
3 Solicitor took those facts and said, well, they are coming  
4 in guns a blazing. And it's a difficult argument to make  
5 to any, to any sitting Judge, to say, well, guns a  
6 blazing, and you know, four shots outside at no person is  
7 not, is not the intent that the Solicitor put forth in  
8 their theory. And in mitigation, you know, I tried my  
9 best. But, you know, and I can understand four shots  
10 versus guns a blazing, that was, I know that was difficult  
11 for both myself and my client and my client's mother to  
12 have to listen to because that's not, it's a difficult  
13 situation, it's a horrible situation, we have somebody  
14 who's deceased and right, I get it. But in terms of not,  
15 not excusing it, but just by way of explanation. What  
16 really happened. What really happened was they went in  
17 there, they wanted to rob them. The man who killed  
18 himself instead of facing what he did was the one who shot  
19 that, that other person through the door.

20 Q You testified you tried to explain this in mitigation  
21 at the plea. Is that right?

22 A I did. At least I, yes, I believe I did. I tried.

23 Q Yeah.

24 A I tried. And I also tried very hard in mitigation  
25 with the Solicitor in trying to, throughout the case,

1 Tyler's absolute, Mr. Elkins is absolutely right. He  
2 wanted to plea, we wanted to plea. We wanted the best  
3 negotiation possible. And again, trying to get the best  
4 negotiation possible was trying to get them to understand  
5 that my client, backseat, not the driver, not the planner,  
6 the backstreet, backseat participant. Now, of course,  
7 hand of one, hand of all, present, aiding and abetting,  
8 very difficult fact to have to deal with. Shooting at  
9 the, at the house even four times, very difficult fact to  
10 have to deal with. So anyway, I forgot the question.

11 Q What kind of plea offer were you hoping to negotiate  
12 for?

13 A Oh. The plea offer, trying to negotiate was a cap.  
14 A cap at, any way, at the, at any point in time, the cap  
15 we were trying to do was a 12 year cap. Given there were  
16 four Co-Defendants, he's not the shooter, lack of prior  
17 record, his young age, his strong family support, trying  
18 for that. That basically got laughed at. His cooperation  
19 didn't get anywhere there. The closest I got was a cap of  
20 20. All right. The problem with the negotiations at that  
21 point in time, is we still have the fourth Co-Defendant,  
22 Satterwhite, who's asserting his rights to trial, will not  
23 admit and he's charged with murder. So that is the trial  
24 that got scheduled in front of Judge Casey Manning that  
25 morning. And yes, they wanted my client's full

1 cooperation. They had pieces and parts against Mr.  
2 Satterwhite. But they need, they wanted, not that they  
3 needed, because again remember, the juvenile had already  
4 testified, not testified at trial but had already made  
5 various statements about Satterwhite's involvement, about  
6 Mr. Elkin's involvement, about Keon Kelly's, the deceased  
7 shooter's involvement. So it was just Satterwhite. They  
8 had, in the course of their case also, they had telephone  
9 data. But Mr. Satterwhite's phone, he turned it off.  
10 They lost Mr. Satterwhite and Mr. Satterwhite's phone  
11 data, when he turned his phone off back in, outside of  
12 Columbia. So anyway, Mr. Elkins, even though he  
13 cooperated fully and didn't get the credit that I believe  
14 he should have gotten, he cooperated fully with the  
15 investigator, he was truthful in his statements. But when  
16 it came time to try Satterwhite, right, he was like I'm  
17 not going to do it. He testified directly a moment ago  
18 that he feared for what's going to happen. He knew he was  
19 facing time. It was a matter of how much. And he was  
20 fearful about those types of repercussions. There were  
21 also a separate, separate issue that kept coming up and  
22 another bad fact to have to deal with is that Mr. Elkins  
23 and the deceased shooter are members of a gang. They, the  
24 Solicitor's Office and the police officers were hammering  
25 down hard on Mr. Elkins for being a member of the gang.

1 We tried very hard to demonstrate that his membership in  
2 any gang was not strong, was merely, if, you know, to use  
3 the military terms of soldier. I met with the gang task  
4 investigator in Richland County. I couldn't get anywhere  
5 with that. I couldn't get it, that that wasn't really  
6 that big of a problem. But it was a problem in terms of  
7 behind the walls in the Department of Corrections,  
8 whether, you know, whether you're truly a member of a gang  
9 or you're not truly a member of the gang, we all know how  
10 violent behind the wall is. And so when Mr. Elkins just  
11 testified earlier about what the repercussions of his  
12 testimony would be like for him for whatever time he got,  
13 I believe him one-hundred percent that he's concerned  
14 about that.

15 Q So he chose not to testify at the trial, or he was  
16 going to take, plead the fifth?

17 A Correct. He would not testify at the trial. He  
18 would not, he would, he would never indicate. And this  
19 was a difficult part of our representation is that I was  
20 trying very hard to just convince Mr. Elkins that he did  
21 not need to take that, he needed to continue to fully  
22 cooperate in order for the Solicitors to even begin to  
23 get, they would not give us a plea negotiation until after  
24 Satterwhite's case was over. They weren't going to, the  
25 only negotiation that they were willing to do for Mr.

1 Elkins, for Mr. Satterwhite and for the juvenile was to  
2 take the murder charge off the table. But in terms of how  
3 much time you were looking at and what they would be  
4 willing to recommend, whether or not I was going to get a  
5 cap or not, only was going to happen after Satterwhite was  
6 tried. If and I tried very hard to get Mr. Elkins to  
7 agree that he would take the stand and he would just  
8 simply say what he had said before. But he would not do  
9 it and I understand why he wouldn't do it. But  
10 unfortunately, I couldn't tell the Solicitor that my  
11 client was going to cooperate when he would not tell me  
12 that he would. And because he would not cooperate, by the  
13 time we got to court that Monday morning for Satterwhite's  
14 trial, Satterwhite's attorney over the weekend and that  
15 morning finally got Satterwhite to agree that even without  
16 Mr. Elkins' cooperation you still had the juvenile, who by  
17 the way, was fully, you know, he was, he had given  
18 everybody up and he was going all the way with giving  
19 everybody up. So the Solicitor looked at me and said,  
20 there's no need for you to try to negotiate on your,  
21 behalf of your client another moment. That ship had  
22 sailed, I needed to know last Friday. So the best, the  
23 best, the best I could do at that point in time was not a  
24 cap of 20, which was a cap of 25. Again, in front of  
25 Judge Casey Manning. And if we didn't take that cap of 25

1 at that time, then we were facing a murder trial three  
2 weeks from then in front of Judge Robert Hood, is what the  
3 Solicitor said their intention was. So, yes, we were, we  
4 were looking at the murder trial and we were looking at  
5 going in front of another Judge. So even if we had been  
6 able to stand down and do something differently than what  
7 we did then we would be facing murder in front of Judge,  
8 Judge Hood shortly thereafter.

9 Q What kind of sentence was the Applicant facing at  
10 trial?

11 A Life.

12 Q What were your discussions with the Applicant about  
13 this plea offer on the day of Satterwhite's trial?

14 A Again, that was a hugely difficult situation. It  
15 was, it was tense. The fact that I couldn't tell the  
16 Solicitor that he had his case the way he wanted it to,  
17 that Friday before Monday, because my client would not  
18 testify. The Solicitor, the only thing the Solicitor was  
19 willing to do, was in order to keep the murder off the  
20 table, in order to save his life, the only thing that I  
21 could do at that point in time with the Solicitor and the  
22 investigator was a cap of 25. And then when, we just need  
23 to try our very best in front of Judge Casey Manning to  
24 say, look at the culpability, look at where he was, he's a  
25 backseat, he's not the driver, he's not the organizer.

1 He's in the backseat under the influence, but yes, he did,  
2 he shot four times into the trailer. And he did, he did  
3 shoot towards the, there was, in addition to the shooting,  
4 Your Honor, where the decedent died, there was also  
5 kidnapping charges which resulted from, during the course  
6 of this trying to rob the drug dealer's house there were  
7 two other victims that drove up in a car. And that the  
8 shooter came down or when they came out of there they  
9 approached, the shooter approached them in the car, busted  
10 out the window, pistol whipped him upside the head as well  
11 as another guy, glass went everywhere. My client shot  
12 into the back of that car because he, he told me, Tyler  
13 Elkins told me that he wanted to make sure that they  
14 didn't reach for their weapons. The people in that car  
15 floored the car and were able to drive away and then they  
16 went to a neighbor's house and the 911 call started then.

17 Q Did the Applicant seem to understand your discussions  
18 with him about the plea offer on the day of the trial?

19 A Yes. Mr. Elkins, he's, he is an extremely  
20 intelligent young man. Unfortunate circumstances.  
21 Definitely we hear it all the time, wrong place, wrong  
22 time, hanging out with the wrong people. But he  
23 absolutely understood everything I said.

24 Q Whose decision was it to plead guilty?

25 A His. I mean I definitely, as his attorney,

1 recommended it because I definitely was fearful at that  
2 point in time that the Solicitor was confident in his case  
3 and what he was going to be able to get which was every  
4 day for day of that man's life.

5 Q Before the guilty plea did you review the Applicant's  
6 constitutional rights?

7 A I did.

8 Q Did he seem to understand that discussion?

9 A He did.

10 Q What would your defense had been at trial if you had  
11 gone to trial?

12 A Again, the idea that this case was going to go to  
13 trial was not something that was ever part of the  
14 negotiation. I know that certainly we had discussed  
15 trying to keep the, you know, keep his confession out, a  
16 Jackson v. Denno. And, you know, but they, I mean, there  
17 weren't any, there wasn't any credible, in my opinion as  
18 his lawyer, there wasn't anything credible to raise that  
19 we would win on. The defense in front of the jury would  
20 have been just some type of jury nullification argument  
21 that he didn't understand what was going on because he was  
22 intoxicated or he was inebriated. But certainly, as we  
23 all know, instructions on the law with that is  
24 intoxication is not a defense. What would our defense had  
25 been for a murder trial for Mr. Elkins. I don't know.

1 Q After the guilty plea, did the Applicant ever ask you  
2 to file a direct appeal?

3 A My husband, my husband is Art Aiken. We practice law  
4 together in addition to being married for 27 years.  
5 Anyway, he spoke to Mr. Elkins thereafter about the plea.  
6 Certainly the plea was, as indicated in your direct  
7 examination, was voluntary under, with advice. So  
8 certainly any problems with how things happened that day  
9 and how it all went down, certainly, a PCR was the more  
10 appropriate venue or vehicle for which to raise these  
11 issues which he has.

12 Q Did he explain that to him to your knowledge?

13 A I believe so. Yes.

14 Q Okay. But you weren't part of that conversation?

15 A I wasn't, I wasn't present for that conversation.

16 Q Okay. No further questions. Thank you.

17 A Thank you.

18 CROSS-EXAMINATION

19 By Ms. McMahan:

20 Q What was it like dealing with the Solicitor in  
21 Newberry?

22 A Frustrating. And certainly, part of the other thing  
23 that was frustrating too is just looking at the fact that  
24 the juvenile who was found through a confidential  
25 informant because the juvenile was out there on the

1 streets talking about it, gave not one, not two, but three  
2 different statements that were all over the place. He was  
3 never, never up front with the Solicitors from, I mean  
4 from the investigators. It was Mr. Elkins who was, who  
5 was the credible person that when he was approached, he  
6 told them what happened. And he believed them when they  
7 said we would help you. His mother indicated to me very  
8 strongly that she was part of those conversations and, you  
9 know, I understand the police can do what they can do.  
10 But when you tell somebody that you're going to help them  
11 out, I just really had hoped that they would. And I, by  
12 help them out, I just meant that in a negotiated plea that  
13 made sense to me given his culpability in the scheme of  
14 the fact that he wasn't the shooter, he didn't organize  
15 it, he didn't have a prior record. He wasn't a violent  
16 person and he was truthful with them and helped them all  
17 the way through.

18 Q What, so you said it was frustrating. Was, I mean,  
19 was it a pleasant experience? Was it--

20 A Well, I mean -

21 Q -- futile?

22 A It was a, thank you. That's a perfect word. It  
23 appeared futile, definitely. And, but when they, when  
24 they wanted and when they felt like to lock their case up  
25 against Satterwhite, remember, they still had the

1 juvenile's testimony. But to lock their case up against  
2 Satterwhite they really wanted Mr. Elkins' cooperation.  
3 And that was just not something I could give them because  
4 Mr. Elkins would never give me the authority to say he  
5 would cooperate, that he was going to take the fifth.  
6 That in and of itself was frustrating. It was, so they  
7 were frustrated about the fact that they couldn't lock  
8 their case down and certainly I was frustrated that they  
9 would not listen to the fact that he'd already cooperated  
10 fully. And I didn't think they were giving him enough  
11 credit for what he had done.

12 Q So the statement that Tyler gave to the police, what,  
13 did that pretty much help them seal up the case or how did  
14 that work?

15 A Yes. It pointed them directly in what happened with  
16 Keon Kelly, the deceased shooter, going off on his own  
17 with the gun through the window. And I can't recall  
18 exactly the three different statements from the juvenile.  
19 But the juvenile, there were varying degrees about he  
20 didn't know anything and he didn't have anything to do  
21 with it, so you know, anyway.

22 Q But really the juvenile was like the main one?

23 A In my assessment of the case, yes. The juvenile is  
24 the one that worked it out with the deceased shooter that  
25 they were going to go, they call it a lick, they were

1 going to go to somebody's house they knew sold drugs and  
2 they were going to steal the drugs and steal the money.

3 Q So, we keep calling him a juvenile. Do you remember  
4 what his age was?

5 A I don't. I -

6 Q Okay.

7 A I know he was charged as an adult, but he was -

8 Q And, and so did you ever like go through and see  
9 exactly what they were charged with, the other  
10 Co-Defendants?

11 A I apologize. In my review of the case I just looked  
12 at my, my case file with Mr. Elkins. If we could take a  
13 break if that's necessary. I have it on my, on my  
14 computer exactly what everybody else was charged with.  
15 But the best of my recollection is everybody, I mean,  
16 everybody's charged.

17 Q But that's something you would have gone over if you  
18 knew about it?

19 A Of course.

20 Q Okay.

21 A Yes.

22 Q And then the hand of one, the hand of all, how did  
23 you explain that to Mr. Elkins?

24 A Present, aiding and abetting. If you're there  
25 during, during the course of the incident and you provide

1 any type of assistance or abet in anyway, you're just as  
2 guilty as the deceased shooter. The fact that you didn't  
3 know that the guy was going to shoot through the window  
4 and kill the man, the drug dealer, is no defense.

5 Q Okay.

6 MS. MCMAHAN: Nothing further from the Applicant,  
7 Your Honor.

8 THE COURT: Any redirect limited to what she went  
9 into?

10 MS. COLEMAN: No redirect. Thank you.

11 THE COURT: Thank you, ma'am. You may step down.  
12 Watch your step.

13 MS. HIGHTOWER: Yes, sir. Thank you.

14 MS. COLEMAN: The State calls Art Aiken.

15 MR. AIKEN: Good morning, Judge.

16 THE COURT: Good morning.

17 ART AIKEN, being  
18 first duly sworn, testified as follows:

19 THE COURT: Thank you. Just watch your step for me.

20 MR. AIKEN: Yes, sir.

21 DIRECT EXAMINATION

22 By Ms. Coleman:

23 Q Good morning Mr. Aiken.

24 A How are you, Ms. Coleman?

25 Q Fine, thank you.

1 A Good.

2 Q How long have you been practicing law?

3 A Since November of 1989.

4 Q And did you assist Ms. Hightower with this?

5 A I did.

6 Q What was your involvement?

7 A I worked on reviewing the discovery and researching  
8 all the applicable law and sort of case development. I  
9 did have, I believe, three or four meetings with Mr.  
10 Elkins. I think one of which was in Newberry County when  
11 he was in the Detention Center there and I think the other  
12 three were in Lexington County, because he was  
13 transferred.

14 Q Were you and Ms. Hightower, were you ever preparing  
15 for a trial in this case?

16 A Well, any case that I have I sort of prepare for  
17 trial as I go through it because basically the way I  
18 handle a case is I confer with the client as soon as I am  
19 retained. Then I get the discovery. I review all of the  
20 discovery. I go and meet with my client. I go over the  
21 discovery with them. When I do that, I ask them if they  
22 think that there's any investigation that needs to be done  
23 on the case. Once I have all the discovery and all the  
24 investigation done and I've reviewed the applicable law  
25 then I'll have a meeting with the client and basically

1 tell them there's four ways you can get rid of a criminal  
2 case. It can be dismissed, you can get into some  
3 diversion program, you can try your case or you can plead  
4 guilty. Dismissal is not going to happen in this case.  
5 Diversion is not available. So the choices are plea or  
6 trial. And at some point, in the handling of a case the  
7 lawyer and the client get to a fork in the road and a  
8 decision has to be made about whether somebody's going to  
9 plead guilty or try their case. And what you need to do  
10 with a client who's at that fork in the road is explain to  
11 them the advantages and disadvantages of a trial. In  
12 other words, what would your defenses be, what's the  
13 likelihood you would succeed, any lesser included offenses  
14 you might be, have some access to. So the advantages and  
15 disadvantages of a trial and the advantages and  
16 disadvantages of a plea. And then it's the client's  
17 decision to make whether to plea or try their case.  
18 Basically I, I'm too old about, to worry about somebody  
19 making bad decisions. I'll try to prevent them from doing  
20 it, but I'm not going to force them to make a, the, what I  
21 think is the correct decision. But it's a decision they  
22 have to make. Now the difference between that typical  
23 mode that I use in handling a case is that I wasn't there  
24 when the fork in the road discussion was had with Mr.  
25 Elkins because that was handled by Ms. Hightower.

1       However, when I had my meetings with Mr. Elkins, I was  
2       alone explaining to him potential defenses that he had  
3       and, and how his case could be presented at trial. I was  
4       reviewing all the discovery with him. Now one thing about  
5       the discovery is we did not give him all of the discovery  
6       because all of the discovery was about three and a half  
7       bankers boxes. And the, the lion share of the discovery  
8       was a whole bunch of stuff about gangs. Okay. And I  
9       didn't think Mr. Elkins needed to see that and it was not  
10      practical for me to take two and half banker or it was  
11      either two and a half or three and a half banker boxes of  
12      information to the Lexington County Detention Center. I'm  
13      not even sure they would let me bring that in. But I did  
14      bring him sort of the guts of the file. I brought him all  
15      of my notes from my review of the discovery. I brought  
16      him copies of all the statutes under which he had been  
17      charged with a crime. And in my notes was an explanation  
18      of the elements of each one of those crimes. Now as far  
19      as defenses, I did discuss with Mr. Elkins two important  
20      possibilities in his case. And one was a Jackson v. Denno  
21      hearing because he, he and his mother said that the  
22      investigator promised Tyler that if he cooperated he would  
23      not be charged with murder and that they wouldn't proceed  
24      with an armed robbery prosecution. Obviously, in a  
25      Jackson v. Denno hearing one of the, one of the factors in

1 the totality of the circumstances test for voluntariness  
2 is were any promises made to the Defendant. So we did  
3 discuss that as a possibility for keeping his statement  
4 out. But I've done enough Jackson v. Denno hearings to  
5 know that you should never count on winning one of those.  
6 Usually what you need to do is say, well, what do I do  
7 when I lose the Jackson v. Denno hearing. And that's kind  
8 of the way I was thinking about that. But we did discuss  
9 that. The other thing has to do with historical cell  
10 phone location information. There's developing case law  
11 concerning whether the Government has to have a warrant to  
12 get historical cell phone location information. And they  
13 did have historical cell phone location information for  
14 Keon Kelly, Ghost, the shooter, for Mr. Elkins and for  
15 Mez D. who was the juvenile defendant. They had no  
16 historical cell phone information, location information on  
17 Mr. Satterwhite. According to the file, the Government  
18 did get an order from Judge Addy allowing them to access  
19 that, the cell, the cell tower information to establish  
20 those locations. Nevertheless, I think there was a  
21 possibility of raising the admissibility of that  
22 information at trial and we never got to that point. But  
23 I think the fact that there was an existing order allowing  
24 the Government to get that information, I think makes it  
25 very unlikely that we would be able to keep it out. Now

1 the problem we had was even if we keep out the confession,  
2 even if we keep out the historical, historical cell phone  
3 location information, they still have the testimony of  
4 the, of the juvenile who implicated Tyler in the, in the  
5 crime so they still have a witness. And you know, one of  
6 the, one of the real problems is I think the Judge has  
7 heard what he plead guilty to but he was actually indicted  
8 on four armed robberies, three attempted murders, one  
9 murder, one burglary first and one possession of a firearm  
10 during the commission of a violent crime. So he was  
11 actually indicted for a whole lot more than he actually  
12 pled to. And all of these arose out of the same incident  
13 so all of these would be tried together. And I think  
14 according to Ms. Hightower, we were looking at a trial in  
15 three to four weeks in front of Judge Hood.

16 Q Were those charges dismissed with his guilty plea?

17 A I believe so. I believe so. The ones, the ones that  
18 he did not plead guilty to I believe were dismissed. And  
19 of course, the problem, most problematic one of course is  
20 the murder because the maximum sentence is life and that's  
21 day for day. So if you get life, you get life without  
22 parole.

23 Q So these were discussions you had with the Applicant  
24 about his trial?

25 A Correct.

1 Q Okay. But you testified you were not present for the  
2 actual conversation when the plea was offered?

3 A Not, not when the decision was made to plead guilty  
4 or try his case, that was handled by Ms. Hightower. I had  
5 a conflict in my schedule and I couldn't be there.

6 Q Were you present at the guilty plea?

7 A No, I was not.

8 Q Okay. Did you meet with the Applicant after his  
9 guilty plea?

10 A You know I'm not entirely sure that I did meet with  
11 him. I don't remember exactly but I do know that I was in  
12 touch with his mother because I was discussing with, with  
13 Tyler through his mother because she, she was conversing  
14 with him at the, at the jail about an appeal. And his  
15 mother asked me whether he should appeal and I told her, I  
16 said you know, I have, I have presented appeals in guilty  
17 plea cases before, not because I wanted to, but my,  
18 because my client insisted. And, you know, just looking  
19 at the memorandum opinions of the Court of Appeals and the  
20 Supreme Court dismissing guilty plea appeals, I mean, the  
21 overwhelming majority of them get dismissed. As a matter  
22 of fact, when you file an appeal you have to have, you  
23 have to file along with that a statement of reason why  
24 there are appealable issues in the guilty plea case. And  
25 every time I have filed a guilty plea appeal, I have had

1 to file a statement of reasons which basically says there  
2 is no reason. Because my understanding of a guilty plea  
3 as far as appealability is, you've got two issues you can  
4 appeal. Voluntariness of the plea or subject-matter  
5 jurisdiction of the Court. Those are your, basically your  
6 guilty plea issues. Based on my conversations with Ms.  
7 Hightower, I didn't see any issues concerning  
8 voluntariness of the plea and certainly there was no  
9 subject-matter jurisdiction issue. So I didn't think  
10 there was any appealable issue and I explained to Ms.  
11 Elkins that if we filed a notice of appeal I would have to  
12 file that statement of reasons saying there was no  
13 appealable issue. Then Mr. Elkins would be notified that  
14 he would, I believe they give them 20 days to file their  
15 own reasons. And he would be given that, that  
16 opportunity. But I told her that filing a notice of  
17 appeal was, was not, number one it was pointless. And  
18 number two, it would delay the process of his Post  
19 Conviction Relief Application because with a pending  
20 appeal he couldn't have a Post Conviction Relief hearing.  
21 As a matter of fact, his, his PCR would probably had been  
22 dismissed without prejudice and he would have to bring it  
23 later after his appeal was over. And I explained to Ms.  
24 Elkins that it seemed to me, given the issues that Mr.  
25 Elkins and Ms. Elkins had with our representation of Mr.

1 Elkins that the logical thing to do would be not to file a  
2 notice of appeal and instead to file a Post Conviction  
3 Relief Application. As a matter of fact, I filled out the  
4 Post Conviction Relief Application with the exception of  
5 the grounds because I felt there was a conflict for me to  
6 fill out the grounds. But as far as the background  
7 information I filled out the Post Conviction Relief  
8 Application for him.

9 Q Did they, after this discussion, did she still want  
10 you to file an appeal or you just proceeded on the PCR?

11 A No. I was, the word I was given was that I was not  
12 to file an appeal.

13 Q Okay.

14 A That we, they wished to go forward with the Post  
15 Conviction Relief Application.

16 Q If they had told you that they wished to file an  
17 appeal would you have filed one?

18 A Absolutely. I've done it plenty of times.

19 Q Were you present in the courtroom for Ms. Hightower's  
20 testimony?

21 A Yes.

22 Q Okay. Do you agree with her, her testimony about  
23 your strategy, I guess, of the negotiated plea deal with  
24 the State?

25 A I do.

1 Q Okay. But was it your understanding that a plea  
2 might be the best route to take in this case?

3 A Yes. Given the severity of the charges, the number  
4 of charges and the quality of the Government's case.

5 Q And were there any other plea offers from the State  
6 before this cap negotiated or recommended cap of 25 years?

7 A Well, let me put it to you this way, I have no  
8 firsthand knowledge of any plea offer because as far as I  
9 know, no plea offer ever came in. The plea offer was made  
10 while Ms. Hightower and Mr. Elkins were in Newberry and I  
11 was not there.

12 Q Okay. Nothing further. Thank you.

13 A Thank you.

14 CROSS-EXAMINATION

15 By Ms. McMahan:

16 Q Did you have a conversation with Mr. Elkins himself  
17 though about an appeal?

18 A I'm not sure if I, if I actually did meet with him.  
19 I just, I don't have a clue, a recollection of whether I  
20 met with him or not. But I know I spoke with his mother  
21 about it.

22 Q And when you said you didn't give him most of the  
23 stuff from, well, a large quantity of the stuff from  
24 discovery because it was about gangs, like what kind of  
25 stuff, was it like encyclopedia type information?

1 A It was, it was a great deal of background information  
2 about gangs. It was information about Tyler Elkins'  
3 position in the gang. Well, I mean I'm sure you've done  
4 criminal defense and I'm sure, I'm sure you've seen  
5 discovery files where the overwhelming majority of it  
6 really doesn't make that much difference to the case. But  
7 I think, I would say I know when I, when I went out to the  
8 jail to take that material to Tyler I had it in a binder.  
9 I remember that because they wouldn't let me take the  
10 binder in to him, they made me take it out of the binder.  
11 So I think it was probably, I want to say it was maybe  
12 three or four inches thick.

13 Q Why was he in the Lexington jail?

14 A He was moved I think because his Co-Defendants were  
15 in the jail at, in Newberry. That's my recollection of  
16 why he was moved. We actually requested that.

17 Q Okay. Why did you request that?

18 A Like I said, I think, I think it was because his  
19 Co-Defendants were in, in Newberry. I think that's true  
20 but I'm not, I'm not sure.

21 Q And you said at this point you weren't in a trial  
22 posture when he was going up there about, with the  
23 Satterwhite thing?

24 A I'm not sure exactly what you mean by a trial  
25 posture.

1 Q Well you guys had not made a decision about whether  
2 or not you were going to try it at that point?

3 A No, no. Because no discussion had been had at that  
4 point about what I was talking about at the fork in the  
5 road. There had been no discussion because there had been  
6 no plea offer up to that point.

7 Q Had y'all asked the Solicitor for possibilities of  
8 plea offers?

9 A Yes.

10 Q Were those rebuffed or shot down?

11 A They, basically, well let me, let me say this. As  
12 Satterwhite's trial approached, the request for Mr.  
13 Elkins' cooperation became increasing more urgent from the  
14 Solicitor. And I know Ms. Hightower had multiple  
15 conversations with, with the Solicitor's Office. Then I  
16 had a couple of conversations with the Solicitor's Office  
17 and what they were telling me was unless he cooperates  
18 there will be no deal. That was the information I was  
19 being given. And you know, we had a big debate and you  
20 know, sometimes you confront moral and ethical issues. We  
21 had a big debate about whether to just you know, make it  
22 up and say yeah, he'll cooperate just so we could try to  
23 lock down a deal and hope Satterwhite ended up pleading  
24 guilty and they would never discover that he was not  
25 cooperating. But number one, that's morally wrong.

1 Number two, I think it's ethically wrong. And number  
2 three, if Satterwhite doesn't plea and you do that and  
3 your client takes the fifth on the stand then you've got  
4 a, then you've got a hornet's nest of a prosecutor's  
5 office that you've got to deal with down the road. So the  
6 real problem with getting a deal was as Satterwhite's  
7 trial approached, the word we got from the Solicitor's  
8 office was no cooperation, no deal.

9 Q Did Mr. Elkins budge on any of that?

10 A On whether to testify?

11 Q Yeah.

12 A Not, not as far as I could tell. And his mother was,  
13 was discussing it with him too. Now, to tell you the  
14 truth, when somebody tells me it's a safety issue about  
15 cooperation, I usually don't argue with them about that  
16 very much because I had a client that was executed that  
17 was cooperating with the Government. He got shot in the  
18 back of the head by his Co-Defendant. So when somebody  
19 says it's a safety issue, I don't really argue that much  
20 with them.

21 Q Anything else you need the Court to know today?

22 A Not that I'm aware of. No.

23 MS. MCMAHAN: The Court's indulgence, Your Honor.

24 Nothing further, Your Honor.

25 THE COURT: Any redirect?

1 MS. COLEMAN: No redirect. Thank you.

2 THE COURT: Thank you, sir. You may step down.  
3 Watch your step as you step down.

4 MR. AIKEN: Thank you, Your Honor.

5 THE COURT: You may need to check with Judge McMahan.  
6 He's emailed me whether you were here or not.

7 MR. AIKEN: Yes, sir. I will.

8 MS. COLEMAN: The State has no further witnesses but  
9 we're requesting a very brief closing argument if Your  
10 Honor would allow it.

11 THE COURT: Any reply witnesses?

12 MS. MCMAHAN: None, Your Honor.

13 THE COURT: Any objection to making closings?

14 MS. MCMAHAN: No, Your Honor.

15 MS. COLEMAN: Is there any objection to these  
16 witnesses being excused?

17 MS. MCMAHAN: No.

18 MS. COLEMAN: Thank you.

19 THE COURT: Witnesses may be excused. Thank you very  
20 much.

21 MR. AIKEN: Thank you, Your Honor.

22 MS. COLEMAN: Your Honor, this will be very brief.  
23 There is just a few issues in this case. I believe the  
24 testimony today shows that neither plea counsel, neither  
25 attorney was ineffective in any way. They both advocated

1 zealously on their client's behalf. They thoroughly  
2 investigated the case. They discussed all of their  
3 investigations and the discovery with their client. Both  
4 of them had discussions with him about the risks of a  
5 trial versus the benefits of taking a guilty plea, risks  
6 and benefits of a guilty plea. And I think it's clear  
7 from the testimony that it was the Applicant's decision to  
8 plead guilty given the choice between facing a life  
9 sentence at trial which was probably very likely,  
10 according to the evidence, and a cap of 25 years by  
11 pleading guilty. Although there was some testimony about  
12 some difficulties working with the Solicitor's Office, I  
13 would just point out that under the law, the Solicitor has  
14 very broad discretion in their plea negotiations and in  
15 their charging decisions on what offenses to charge with.  
16 And they have not alleged any allegations of prosecutorial  
17 misconduct or anything of that nature in the application  
18 today. So I think everything the Solicitor did was  
19 justified even if the attorneys didn't agree with that.  
20 But despite that, I think the attorneys tried their best  
21 to negotiate with them to try to get a plea offer, try to  
22 get a lesser deal. And they offered several things in  
23 mitigation at the guilty plea too, and explain their  
24 position to the Judge trying to get less than the 25 year  
25 cap. Finally, the White vs. State claim for a belated

1 direct appeal. The testimony today showed that the  
2 Applicant did not request an appeal, although there might  
3 of been a discussion about it. Mr. Aiken advised him that  
4 an appeal would probably not work out in his favor and I  
5 think he said would be a waste of time. And the Applicant  
6 must have agreed with that decision because the testimony  
7 shows they did, they did not request a belated appeal but  
8 a, or excuse me, a direct appeal but rather requested a  
9 PCR application be filed. So we would submit that all  
10 these allegations should be denied. Thank you.

11 MS. MCMAHAN: Your Honor, I believe Mr. Aiken's  
12 testimony was that he did not speak with Mr. Elkins about  
13 an appeal. So while there was a note given to Mr. Aiken  
14 about not appealing, that entire conversation occurred  
15 with the Applicant's mother and not with him directly. As  
16 to the rest of the remaining of Ms. Coleman's arguments, I  
17 believe the record shows that Ms. Hightower and Mr. Aiken  
18 were deficient in their performance when it came to  
19 securing and ultimately trying to get a plea deal for Mr.  
20 Elkins. And ultimately one only came about once he was  
21 forced into a trial situation against his Co-Defendant.

22 THE COURT: All right. Thank you very much. I'll  
23 let you know.

24 MS. COLEMAN: Thank you.

25 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

1 CERTIFICATE OF REPORTER  
2  
34 State of South Carolina )  
5 County of Newberry )  
6  
78 I, Joy E. Holston, Official Court Reporter for the  
9 Eighth Judicial Circuit of the State of South Carolina, do  
10 hereby certify that the foregoing is a true, accurate and  
11 complete transcript of record of the proceedings had and  
12 evidence introduced in the trial of the captioned case,  
13 relative to appeal, in the County of Newberry, South  
14 Carolina on the 22nd day of June, 2018.15 I do further certify that I am neither of kin,  
16 counsel nor interest to any party hereto.  
17  
18

19 February 25, 2019

20 *Joy Holston*  
21 \_\_\_\_\_

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026  
24  
25

STATE OF SOUTH CAROLINA )  
 COUNTY OF NEWBERRY )  
 Tyler Elkins, #370294, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT

2017-CP-36-122

**ORDER OF DISMISSAL**

FILED  
 2018 JUN 25 PM 1:02  
 CLERK OF COURT  
 NEWBERRY COUNTY

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 13, 2017. Respondent made its Return on July 21, 2017. An evidentiary hearing was convened on June 22, 2018, at the Laurens County Courthouse. Applicant was present at the hearing and was represented by Ashley McMahan, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from A. Bea Hightower, Esquire ("Plea Counsel") and Arthur K. Aiken, Esquire. This Court had before it the Newberry County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcript, and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

The records before this Court indicate Tyler Elkins ("Applicant") is presently confined with the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the October 2015 term of the Newberry County Grand Jury for attempted murder (2015-GS-36-505), murder (2015-GS-36-507), attempted murder (2015-GS-36-508), possession of a weapon during the commission of a violent crime

(2015-GS-36-509), armed robbery (2015-GS-36-510), and first-degree burglary (2015-GS-36-514). Applicant was represented by A. Bea Hightower, Esquire. On October 31, 2016, Applicant pled guilty before the Honorable L. Casey Manning. Judge Manning sentence Applicant to twenty-five years for both counts of attempted murder, twenty-five years for voluntary manslaughter as a lesser included offense of murder, five years for possession of a weapon during the commission of a violent crime, twenty-five years for armed robbery, and twenty-five years for first degree burglary, to run concurrently. Applicant did not appeal his plea or conviction.

## II. ALLEGATIONS

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

1. "The plea was involuntary"
2. "Trial Counsel ineffective assistance due to ill-advised for defendant to plea."
3. "White v. State, 263 S.C. 110, 208 S.E.2d 35 (1975)."

Applicant filed an amended application on September 27, 2017, adding the following allegations:

1. Ineffective Assistance of Counsel as to Arthur K. Aiken, Esquire and A. Bea Hightower, Esquire:
  - a. Ineffective assistance during plea bargain negotiations. See Williams v. Jones, 571 F3d 1086 (10<sup>th</sup> Circuit 2009).
  - b. Counsel never communicated to Applicant any plea offers.

## III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

### *Applicant's testimony*

At the evidentiary hearing, Applicant testified he was represented by a public defender for a short time before he retained Plea Counsel to represent him. He stated he met with Plea Counsel about eight times at Newberry County before his plea. He stated he was never initially given a plea offer, but he was subpoenaed as a witness in his co-defendant's trial to testify for the

State. He explained that Plea Counsel told him that he had to plead guilty that day, so he did. Applicant testified Plea Counsel told him about a twenty-five year plea offer on the day that he pled, and she told him that if he did not take the deal, he would get a trial. He stated that he did not want to go to trial, he just wanted a decent plea offer.

Applicant testified that he and Plea Counsel went over the details of the case during their meetings, and they went over bits and pieces of the discovery. He stated they did not discuss defenses, and they only talked about how he had no prior record. Applicant said he asked about plea offers, and his attorneys told him it was too early in the case to get a plea offer. He explained that he was represented by both Plea Counsel and attorney Arthur Aiken, but he dealt more with Plea Counsel. Applicant testified that his co-defendant, Satterwhite, was on trial, and when they appeared for Satterwhite's trial, Plea Counsel told him immediately that the solicitor wanted to sentence all three co-defendants that day.

Applicant testified that he wanted an appeal, and he asked his attorneys for an appeal, but they told him they would just file a PCR. Applicant testified he was the only one of the co-defendants charged with murder, and it was not fair that the other two co-defendants were not charged with murder. He stated that, if he had taken the stand at Satterwhite's trial, he was going to plead the Fifth. Applicant stated that he is not saying he is not guilty, but he wanted a fair plea and he got more time than his co-defendants did. He stated his attorney should have explained that he did not have to take the plea offer, and he only took it because he could have gotten a life sentence at trial.

*Plea Counsel's testimony*

At the evidentiary hearing, Plea Counsel testified Applicant became involved in the investigation of this murder when a juvenile co-defendant gave a statement to law enforcement and told them that Applicant was involved. Based on the evidence against Applicant, Plea Counsel believed trying to negotiate a plea deal was the best course of action for the case. She testified there were no plea offers given by the State at first, and she met with the solicitor very early. She testified the solicitor told her that if Applicant cooperated, they would not charge him with murder, but the solicitor reneged on this deal and charged him anyway. Plea Counsel testified that one of the co-defendants committed suicide, which left Applicant as the most culpable case out of the group. She stated they tried to argue that the juvenile in the group was actually the most culpable. She explained that the group of co-defendants went to a known drug dealer's house to rob them, and the juvenile put the plan together.

Plea Counsel testified that she met with an investigator to prepare the case. She testified the State also had his cell phone data. Plea Counsel testified Applicant was a gang member, and she met with a gang task investigator and could not get anywhere with it as a defense. She stated Satterwhite never gave a confession, but Applicant did give a statement, which directly implicated him in the crime. She stated Applicant cooperated with law enforcement and identified the fourth person involved. Plea Counsel testified that everyone was charged with murder, not just Applicant. She explained that Applicant knew they were going to commit a robbery, but he thought that was all they were doing—he did not plan to murder the victims, and the shooting was not planned. She stated Applicant admitted he shot into the house to warn the people inside, not to actually shoot anyone. Plea Counsel testified she tried to explain this in mitigation.

Plea Counsel testified they wanted the best plea offer possible, and they really wanted a cap of twelve years. She based this on the argument that there were four co-defendants, Applicant was not the shooter, he was young, and he had no record. She testified she was able to get a cap of twenty years, but they wanted Applicant to testify at Satterwhite's trial in exchange for the deal, and Applicant would not testify at trial. Plea Counsel stated that Applicant would never give her the authority to tell the solicitor that he would cooperate with them. She explained that the State would not negotiate until after Satterwhite's trial, and after Applicant refused to testify, they would not offer him a twenty year cap. She stated the State offered a cap of twenty-five years with Judge Manning. Plea Counsel testified that if he did not plead then with Judge Manning, he would face a murder trial in three weeks before Judge Hood and face a life sentence.

Plea Counsel stated that Applicant had shot into the victim's car at the house during the crime. She stated her trial strategy would have been to move to suppress his statement at a Jackson v. Denno hearing, but she had no credible defense that they could win on, because voluntary intoxication was not a valid defense. Plea Counsel testified she and Art Aiken discussed the plea offer with Applicant, and he decided to take the offer instead of facing life at trial. She testified that she believes Applicant's plea was voluntary. She stated they discussed filing an appeal, but she advised Applicant that PCR was a more appropriate action for him to challenge his plea.

*Arthur K. Aiken's testimony*

At the evidentiary hearing, Arthur K. Aiken testified that he helped Plea Counsel with Applicant's case. His involvement included helping with case development, reviewing discovery, researching case law, and preparing for trial. He testified he met with Applicant four

times before the plea. Aiken testified they were preparing for trial in this case. He stated he was not present for any discussions about the plea deal, but he did explain to Applicant the potential defenses they could use at trial. He testified he did not give Applicant all the discovery because it was three and a half bankers' boxes full of materials, mostly about gangs, and it was not necessary for him to see all of it. Aiken testified he showed Applicant the "guts" of the file, and all of his notes, laws, statutes, and the elements of the crimes.

Aiken testified they had two possible defense strategies to take if they had gone to trial. First, he stated they would move to suppress his statement at a Jackson v. Denno hearing based on the promises made to Applicant by law enforcement to give his statement. He stated he explained to Applicant that they should not count on winning this hearing. Second, he stated they would move to suppress the cell phone data based on the lack of a search warrant to obtain the records. He stated the State got an order from Judge Addy to get the records, and there was still a possibility of raising this issue at trial.

Aiken testified that Applicant had been indicted on other charges, as well, and they were dropped in exchange for his guilty plea. He stated that if he had not pled guilty, all of the charges would have been tried together. Aiken testified Applicant's mother had spoken to Applicant about an appeal, and she asked him if they should appeal. He stated he explained to her that it would probably be dismissed because he pled guilty, and he did not see any meritorious issues here to appeal. Aiken testified he provided Applicant with a PCR application, and he filled out the application for him except for the grounds. He testified he did not recall meeting with Applicant after the guilty plea.

#### IV. APPLICABLE LAW

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). 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 pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

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

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in her representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Plea Counsel credibly testified she fully discussed the case, the evidence, the discovery, and potential defenses with Applicant in preparation for trial. She stated she attempted to negotiate the best plea deal possible on his

behalf, but Applicant refused to cooperate with the State and testify at his co-defendant's trial, which was a mandatory condition of their plea offer. She testified Applicant would never authorize her to tell the State he would cooperate, which made plea negotiations difficult. Plea Counsel credibly testified that she discussed the plea offer with Applicant on the day he pled guilty, and she correctly advised him that if he did not accept the only plea offer he was given, his only other option was to go to trial in three week and face a life without parole sentence.

This Court finds Plea Counsel's representation conformed to reasonable professional norms and was not ineffective in any regard. Plea Counsel was given a tough situation in which to negotiate a plea, but she did all she could to get Applicant a favorable plea deal. Applicant has failed to prove anything Plea Counsel could have done differently to obtain a better outcome in his case. In fact, Applicant did get a twenty-five year sentence by accepting the plea deal where he likely would have received a life sentence at trial. As to Applicant's allegation that counsel was ineffective for failing to convey plea offers, the record shows there simply were no plea offers to convey until the day of Satterwhite's trial, which became the day Applicant pled guilty. This Court finds Applicant was fully advised of all plea offers and Plea Counsel did not fail to convey any offers.

This Court finds Plea Counsel's representation and counsel Art Aiken's representation and advice were reasonable under the circumstances and nothing they did was outside the scope of reasonable professional norms. Plea Counsel and Aiken thoroughly investigated the case and fully represented their client and advised him based on his best interests in light of the evidence against him, which was to plead guilty. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.



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INVOLUNTARY GUILTY PLEA

Applicant alleges his guilty plea was not given freely and voluntarily. This Court finds otherwise and concludes Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

The record and Plea Counsel's testimony clearly show Applicant was not threatened, forced, or coerced to plead guilty. This Court finds very credible Plea Counsel's testimony that she thoroughly discussed the evidence, Applicant's defenses and lack thereof, and his option to plead or go to trial with Applicant, and she was prepared to argue a defense if Applicant chose to proceed to trial, which he did not wish to do. It was clearly Applicant's decision to plead guilty based on the high likelihood he would receive a life sentence if convicted at trial in just three weeks.



Page 10 of 13

At the guilty plea, Applicant testified he had not taken any medications, drugs, or alcohol in the past twenty-four hours. Tr. 11, line 6-8. He testified he knew what he was doing, and he understood his charges, the possible punishments, and his constitutional rights. Tr. 11. He testified that he was fully satisfied with his attorney and did not need any more time with her. Tr. 32. Applicant agreed with the facts of the case as alleged in the indictments, and he admitted he was guilty of the crimes and wished to plead guilty. Applicant has failed to prove he was coerced into pleading guilty and would have gone to trial otherwise.

Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). This Court finds Applicant has not presented any credible evidence that he should be allowed to depart from the truth of the statements he presented to the plea court. Therefore, this Court finds the plea court correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed.

#### WHITE V. STATE CLAIM

Applicant's claim that he is entitled to White relief based on his attorney's failure to file a direct appeal on his behalf is meritless. Where an applicant can establish that he did not knowingly and voluntarily waive his right to a direct appeal of his conviction, the post-conviction relief court may grant him the opportunity to petition the Supreme Court for a belated review of his direct appeal issues. White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). In such

cases, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Here, however, the testimony presented at the evidentiary hearing shows counsel Aiken discussed with Applicant and Applicant's mother the right to file an appeal. Aiken credibly testified that he advised Applicant and his mother that a direct appeal would likely be dismissed because there were no meritorious issues to appeal, and he would have a better chance at success if he filed a PCR application instead. Aiken then provided Applicant with a PCR application and helped him fill out all parts except the grounds for relief. Applicant clearly waived his right to a direct appeal knowingly and voluntarily based on competent advice from counsel. Accordingly, he is not entitled to relief pursuant to White, and this allegation is denied and dismissed with prejudice.

## VI. 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.

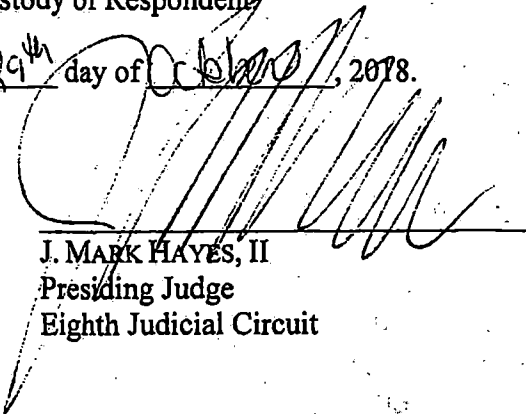
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an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

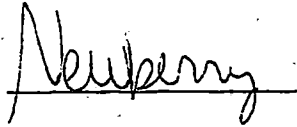
behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 29<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
J. MARK HAYES, II  
Presiding Judge  
Eighth Judicial Circuit

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

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**WITNESSES**

Matthew Womack  
Newberry County Sheriff

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**WARRANT NUMBER**

2015A3610100454

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**TRUE BILL**

*Phyllis Sankers*

Foreman of the Grand Jury

Date: *10-9-15*

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**VERDICT**

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Foreman

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**THE STATE OF SOUTH CAROLINA**

COUNTY OF NEWBERRY

---

**COURT OF GENERAL SESSIONS**

October Term, 2015

Indictment # 15GS36-0507

---

**THE STATE**

vs.

Tyler McKenzie Elkins

---

**INDICTMENT FOR**

Murder

§16-03-0010

CDR: 0116

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**THE STATE OF SOUTH CAROLINA**

**INDICTMENT FOR**


**COUNTY OF NEWBERRY**

**Murder  
§16-03-0010**

At a Court of General Sessions, convened on the 9<sup>th</sup> day of October, 2015, the Grand Jurors of Newberry County present upon their oath:

That Tyler McKenzie Elkins did, on or about July 29, 2015, in Newberry County, willfully, feloniously, and with malice aforethought kill one Ronnion Barron by means of shooting and that the said Ronnion Barron did die in Newberry County as a proximate result thereof on or about July 29, 2015, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

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



---

Taylor Daniel  
Assistant Solicitor

---

**WITNESSES**

Matthew Womack  
Newberry County Sheriff

---

**WARRANT NUMBER**

2015A3610100472

---

**TRUE BILL**

*Phyllis Sanders*

Foreman of the Grand Jury

Date: *10-9-15*

---

**VERDICT**

---

Foreman

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---

**THE STATE OF SOUTH CAROLINA**

**COUNTY OF NEWBERRY**

---

**COURT OF GENERAL SESSIONS**

October Term, 2015

Indictment # 15GS36-0508

---

**THE STATE**

vs.

Tyler McKenzie Elkins

---

**INDICTMENT FOR**

Murder / Attempted Murder

§16-03-0029

CDR: 3410

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THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

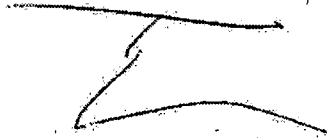
INDICTMENT FOR

Murder / Attempted Murder  
§16-03-0029

At a Court of General Sessions, convened on the 9<sup>th</sup> day of October, 2015, the Grand Jurors of Newberry County present upon their oath:

That Tyler McKenzie Elkins did, on or about July 29, 2015, in Newberry County, willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill Jamar Bates, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

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



---

Taylor Daniel  
Assistant Solicitor

---

**WITNESSES**

Matthew Womack  
Newberry County Sheriff

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**WARRANT NUMBER**

2015A3610100473

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**TRUE BILL**

*Phyllis Sanders*

Foreman of the Grand Jury

Date: 10-9-15

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**VERDICT**

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Foreman

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**THE STATE OF SOUTH CAROLINA**

**COUNTY OF NEWBERRY**

---

**COURT OF GENERAL SESSIONS**

October Term, 2015

Indictment # 15GS36-0509

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**THE STATE**

vs.

Tyler McKenzie Elkins

---

**INDICTMENT FOR**

Weapons/Poss Weapon During Violent Crime

§16-23-0490

CDR: 0549

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**THE STATE OF SOUTH CAROLINA**

**INDICTMENT FOR**


**COUNTY OF NEWBERRY**

**Weapons/Poss Weapon During Violent Crime  
§16-23-490**

At a Court of General Sessions, convened on the 9<sup>th</sup> day of October, 2015, the Grand Jurors of Newberry County present upon their oath:

That Tyler McKenzie Elkins did, on or about July 29, 2015, in Newberry County, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime as defined in Section 16-1-60, to wit: armed robbery, attempted murder, burglary in the first degree and/or murder or any lesser included violent crime, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

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

  
Taylor Daniel  
Assistant Solicitor

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**WITNESSES**

Matthew Womack  
Newberry County Sheriff

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**WARRANT NUMBER**

2015A3610100481

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**TRUE RIT**

*Phyllis Sanders*

Foreman of the Grand Jury

Date: 10-9-15

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**VERDICT**

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Foreman

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**THE STATE OF SOUTH CAROLINA**

**COUNTY OF NEWBERRY**

---

**COURT OF GENERAL SESSIONS**

October Term, 2015

Indictment # 15GS36-0510

---

**THE STATE**

vs.

Tyler McKenzie Elkins

---

**INDICTMENT FOR**

Robbery / Armed Robbery, robbery while armed or  
allegedly armed with a deadly weapon

§16-11-0330

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CDR: 0139

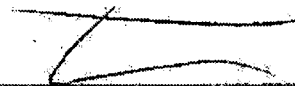
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**THE STATE OF SOUTH CAROLINA****INDICTMENT FOR****COUNTY OF NEWBERRY****Robbery / Armed Robbery, robbery while armed or  
allegedly armed with a deadly weapon  
§16-11-0330**

At a Court of General Sessions, convened on the 9<sup>th</sup> day of October, 2015, the Grand Jurors of Newberry County present upon their oath:

That Tyler McKenzie Elkins did, on or about July 29, 2015, in Newberry County, willfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Romion Barron by means of force or intimidation, goods or monies described as follows: U.S. currency and/or controlled substances, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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



Taylor Daniel  
Assistant Solicitor

---

**WITNESSES**

Matthew Womack  
Newberry County Sheriff

---

**WARRANT NUMBER**

2015A3610100470

---

**TRUE BILL**

*Phyllis Sanders*  
Foreman of the Grand Jury

Date: 10-9-15

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**VERDICT**

---

Foreman

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**THE STATE OF SOUTH CAROLINA**

**COUNTY OF NEWBERRY**

---

**COURT OF GENERAL SESSIONS**

October Term, 2015

Indictment # 15GS36-0514

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**THE STATE**

vs.

Tyler McKenzie Elkins

---

**INDICTMENT FOR**

Burglary (After June 20, 1985) - First degree

§16-11-0311

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CDR: 0079

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**THE STATE OF SOUTH CAROLINA****INDICTMENT FOR**

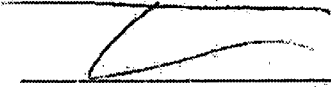
COUNTY OF NEWBERRY

**Burglary (After June 20, 1985) - First degree  
§16-11-0311**

At a Court of General Sessions, convened on the 9<sup>th</sup> day of October, 2015, the Grand Jurors of Newberry County present upon their oath:

That Tyler McKenzie Elkins did, on or about July 29, 2015, in Newberry County, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in immediate flight there from, he or another participant in the crime; was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Romion Barron, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

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

  
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Taylor Daniel  
Assistant Solicitor

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**WITNESSES**

Matthew Womack  
Newberry County Sheriff

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**WARRANT NUMBER**

2015A3610100480

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**TRUE BILL**

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*Phyllis Sanders*

Foreman of the Grand Jury

Date: 10-9-15

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**VERDICT**

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Foreman

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**THE STATE OF SOUTH CAROLINA**

**COUNTY OF NEWBERRY**

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**COURT OF GENERAL SESSIONS**

October Term, 2015

Indictment # 15GS36-0505

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**THE STATE**

vs.

Tyler McKenzie Elkins

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**INDICTMENT FOR**

Murder / Attempted Murder

§16-03-0029

CDR: 3410

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**THE STATE OF SOUTH CAROLINA**

**COUNTY OF NEWBERRY**

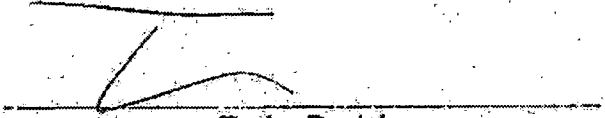
**INDICTMENT FOR**

**Murder / Attempted Murder  
§16-03-0029**

At a Court of General Sessions, convened on the 9<sup>th</sup> day of October, 2015, the Grand Jurors of Newberry County present upon their oath:

That Tyler McKenzie Elkins did, on or about July 29, 2015, in Newberry County, willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill William Leaphart, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

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

  
Taylor Daniel  
Assistant Solicitor