

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Thomas A. Russo, Circuit Court Judge

JAVONTE ANTONIO WALLS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000565

APPENDIX

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S.C. SUPREME COURT

INDEX

INDEX	i
PRE-TRIAL HEARING TRANSCRIPT DATED JUNE 8, 2017	1
GUILTY PLEA TRANSCRIPT DATED JULY 24, 2017	8
APPLICATION FOR POST-CONVICTION RELIEF	35
RETURN.....	43
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 29, 2019	50
ORDER OF DISMISSAL.....	89
INDICTMENTS	99

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
2017-GS-46-2309, 2312

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
JA'VONTE ANTONIO WALLS)
_____)

JUNE 8, 2017
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE DANIEL HALL

APPEARANCES:

MATTHEW SHELTON, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEY FOR THE STATE

GEOFFREY DUNN, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES: DIRECT CROSS RE-DIRECT RE-CROSS

(NO TESTIMONY TAKEN)

E X I B I T SDESCRIPTION:ID.

EV.

NO EXHIBITS

1 MR. SHELTON - Ja'Vonte Walls.

2 THE COURT - All right, Solicitor.

3 MR. SHELTON - May it please the Court, Your
4 Honor.

5 This is Ja'Vonte Antonio Walls. He's represented
6 by Geoff Dunn of the York ---

7 THE COURT - I'm sorry, is this a plea?

8 MR. SHELTON - No, sir, it's not.

9 THE COURT - Okay, all right.

10 MR. SHELTON - --- represented by Geoff Dunn of
11 the York County Bar who's been appointed to represent Mr.
12 Walls in this matter. He is currently charged with armed
13 robbery, two counts of kidnapping and criminal conspiracy.
14 He was given a plea offer, an active youthful offender
15 sentence on a guilty plea to burglary second degree violent
16 in lieu of the armed robbery charge, and I was -- agreed to
17 dismiss the remainder of the charges per plea agreement.
18 That offer was set to expire the end of this term. He has
19 indicated through his attorney and to me he wishes to
20 reject that offer, and that being the case, the State would
21 be prepared to go forward with the trial as earlier as July
22 -- excuse me, as early as the June 19th term. If not
23 reached then, July 10th. If not then, July 24th. And I
24 would ask you to advise Mr. Walls of all that and also

1 advise him of his trial in absence warning should he fail
2 to appear for his trial.

3 THE COURT - All right, thank you.

4 Mr. Dunn, have you communicated all of that to
5 your client?

6 MR. DUNN - I have, Your Honor.

7 THE COURT - And he has rejected any offers and is
8 requesting a jury trial?

9 MR. DUNN - He has asked for a jury trial.

10 THE COURT - And does he understand that if he
11 does not show up for Court, that he can be tried in his
12 absence and, in fact, the solicitor can call his case for
13 trial on any term of Court after this week? He understands
14 ---

15 MR. DUNN - He understands that.

16 THE COURT - Anything you want to put on the
17 record?

18 MR. DUNN - I would ask for protection from June
19 the 19th and July 10th since I'm on vacation next week and
20 vacation July 10th.

21 THE COURT - I'm not -- obviously I'm not the
22 trial judge.

23 MR. DUNN - I will file the appropriate motions,
24 Your Honor.

1 THE COURT - You can address that to -- in a
2 motion or to Judge Hayes who's the ---

3 MR. DUNN - I'll do that, Your Honor.

4 THE COURT - --- chief admin judge. All right,
5 thank you.

6 MR. DUNN - Thank you, Your Honor.

7 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 6 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Ja'Vonté Antonio Walls, as taken by me in The Court of General Sessions for the Sixteenth Judicial Circuit on June 8, 2017, and provided by me this the 1st day of September, 2018.

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

/s/SHIRLEY G. BROOM

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

State of South Carolina.,) In the Sixteenth Circuit
) General Sessions Court of York
)
)
)
) Case No(s). 2017-GS-46-02309
 County of York.) 2017-GS-46-02312

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
) Plea with Deferred Sentence
)
 Ja'Vonte Antonio Wallis.,)
)
 Defendant.)

July 24, 2017
 September 21, 2017
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., judge.

Mr. Matthew W. Shelton
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Wanda S. Nelson, CVR-M
 Official Court Reporter
 To the Honorable John C. Hayes, III
 Sixteenth Judicial Circuit
 Union and York Counties

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

Plea P.4-13

Deferred Sentence. P.13-28

Court Reporter's Certificate Page. P.29

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I N D E XE X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Ct.1	Plea paperwork		P.26

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-4-

1 (COURT IN SESSION MONDAY, JULY 24, 2017 AT 03:50 PM.)

2 THE COURT: All right.

3 SOLICITOR SHELTON: May it please the Court, your
4 Honor.

5 THE COURT: Yes, sir.

6 SOLICITOR SHELTON: The first case this afternoon is
7 Ja'Vonte Antonio Walls. He is here this afternoon to enter
8 a guilty plea pursuant to a plea agreement. This is the
9 case we had up for trial in front of you beginning this
10 afternoon. We talked with you in chambers about where we
11 found ourselves in plea negotiations at the last minute and
12 why.

13 He's pleading guilty to the lesser included charge of
14 attempted armed robbery reduced from armed robbery per plea
15 agreement, as well as criminal conspiracy.

16 There were two counts of kidnaping associated with
17 this case. I elected some time ago to dismiss those rather
18 than call them to trial so he's not being required to plead
19 guilty to those as part of any plea agreement.

20 This comes to you as a negotiated range of six to
21 eight years. And the sentencing per our conversations
22 earlier today will be deferred until Monday August 21st at
23 9:30 a.m, and Mr. Dunn tells me that he's explained to his
24 client what all that entails and specifically that if he
25 fails to appear for sentencing, the negotiated range will

1 come off the table as it were, and Mr. Walls will be
2 exposed to the maximum sentence on these two charges if and
3 when he's picked up on a bench warrant.

4 THE COURT: How old are you, Mr. Walls?

5 MR. WALLS: How you doing?

6 THE COURT: What's your age?

7 MR. WALLS: Nineteen.

8 THE COURT: You represented by Mr. Dunn?

9 MR. WALLS: Yes, sir.

10 THE COURT: You satisfied with his services?

11 MR. WALLS: Yes, sir.

12 THE COURT: I have in front of me two indictments, one
13 for attempted armed robbery which carries up to twenty
14 years in jail. It is a violent offense and it is a serious
15 offense. A violent offense is the type of offense that
16 carries with it limitations for an individual who is
17 incarcerated as a violent offender. That individual, any
18 violent offender is not entitled to participate in programs
19 non-violent offenders may participate in.

20 Is this a no-parole offense?

21 SOLICITOR SHELTON: It is, your Honor.

22 THE COURT: This is also a no-parole offense. That
23 means you have to serve at least eighty-five percent of
24 whatever sentence you may receive before you'll be eligible
25 for earlier release, and if you were released early it

-6-

1 would be into a community supervision program similar to
2 probation. And violation of the conditions of that program
3 would land you back in jail for up to a year and that
4 pattern could continue until you had served your entire
5 sentence.

6 It's also a serious offense. A serious offense is the
7 type of offense which if in your life time you receive
8 three serious, or a combination of three serious and most
9 serious offenses, you'd be subject to being incarcerated
10 for life without parole. That is a true life sentence.

11 The attempted armed robbery carries from zero to
12 twenty-five years and it -- it's alleged that the armed
13 robbery that you attempted occurred on November 2nd, 2016
14 at the Catawba Express on Highway 5 in Catawba, when you
15 along with other, at lease one other individual, took from
16 the person or presence of Jessie Marie Harris and Nancy
17 Loraine Lauren Carter while in -- while armed with a deadly
18 weapon or displaying an individual -- displaying what an
19 individual would believe to be a deadly weapon; that you in
20 essence attempted to commit armed robbery at the Catawba
21 Express. How do you plead to that charge?

22 MR. WALLS: Guilty.

23 THE COURT: You're also charged in a second indictment
24 with on that -- on that date committing that offense in a
25 conspiracy with Ronald Anthony Brown and or Ralph Anthony

1 Cousar, C-o-u-s-a-r. That carries up to five years in
2 jail. Do you understand that charge and the potential
3 penalty?

4 MR. WALLS: Yes, sir.

5 THE COURT: How do you plead to that charge?

6 MR. WALLS: Guilty.

7 THE COURT: Other than the agreement that when you
8 appear for a sentencing later, well not later this month,
9 but August 21st, that will be August the 21st of next
10 month, that the State at that time will recommend a cap of
11 from six to -- a range from six to eight years as a
12 sentence. Other than that has anyone made any other
13 promise or threats to cause you to enter today your plea of
14 guilt to this charge.

15 MR. WALLS: No, sir.

16 THE COURT: To either one of these charges?

17 MR. WALLS: No, sir.

18 THE COURT: Do you understand that if you were for
19 some reason to fail to appear on that date, August 21st at
20 9:30 a.m., that the court would issue a bench warrant for
21 your arrest and you would be brought before the court,
22 after having been arrested and jailed, and that at that
23 time the State will have withdrawn, because of your failure
24 to appear, their recommendation of six to eight range for
25 sentencing and you'd be facing the full possible twenty

1 year imprisonment. Do you understand that?

2 MR. WALLS: Yes, sir.

3 THE COURT: How do you plead to attempted armed
4 robbery?

5 MR. WALLS: Guilty.

6 THE COURT: How do you plead to criminal conspiracy?

7 MR. WALLS: Guilty.

8 THE COURT: Are you today under the influence of
9 anything that would cause you to be intoxicated?

10 MR. WALLS: No, sir.

11 THE COURT: And no one has threatened you or promised
12 you anything other than what we've already talked about to
13 get you to plead guilty?

14 MR. WALLS: No, sir.

15 THE COURT: Are you entering your plea today to this
16 charge free -- these charges freely and voluntarily, Mr.
17 Walls?

18 MR. WALLS: Yes, sir.

19 THE COURT: Mr. Walls, you have a right to a trial by
20 a jury on this charge -- set of charges and you are
21 presumed innocent of these charges until such time as the
22 State is able to prove, if it can, your guilt beyond a
23 reasonable doubt. As to the charges you have the right to
24 remain silent, the right to confront the witnesses against
25 you, and you have the right to have your witnesses made to

1 come into court to testify for you. Do you understand you
2 have these rights?

3 MR. WALLS: Yes, sir.

4 THE COURT: Do you have any questions about them?

5 MR. WALLS: No, sir.

6 THE COURT: I advise you that by entering a plea of
7 guilt you're giving up these rights and you're also giving
8 up any defense to the charges. Do you understand that?

9 MR. WALLS: Yes, sir.

10 THE COURT: Knowing all those things I ask again, how
11 do you plead to this charge -- this indictment of attempted
12 armed robbery at the Catawba Express?

13 MR. WALLS: Guilty.

14 THE COURT: And how do you plead to having done that
15 with one or more other individuals; that is, conspiring to
16 commit this offense?

17 MR. WALLS: Guilty.

18 THE COURT: All right. I'm gonna listen to the facts
19 because what I will do today is determine whether to accept
20 your plea, and if I do, then we'll defer any comments from
21 your attorney, or you, and anyone on your behalf until a
22 later time. And while I'm thinking about it, I'm sorry to
23 hear about your grandmother's death.

24 MR. WALLS: Yes, sir. Thank you.

25 THE COURT: All right. Tell me the facts.

-10-

1 SOLICITOR SHELTON: May it please the court, Your
2 Honor. This happened on November 2nd, 2016 at approximately
3 ten o'clock p.m., in York County at the Catawba Express on
4 Highway 5. At that time Mr. Walls and his two co-
5 defendant's, Brown and Cousar, parked on a road through the
6 woods -- I'm trying to remember the name of the road, it's
7 just up from the Bowater facility -- walked through the
8 woods to this gas station with mask on and one of them
9 carrying a bag and one of 'em carrying a gun.

10 The man with the gun and the man with the bag are
11 Cousar and Brown respectively. They entered the store,
12 approached the two ladies working there; held them at gun
13 point, ushered them into the back of the building and
14 cleaned out the cash registers and stole a number of
15 cigarettes.

16 Mr. Walls was the look out, he stood at the door, and
17 one of the ladies heard him make a noise as if to indicate
18 it was time to go. After a period of time the three men
19 left together going back through the woods and then got
20 into Mr. Walls's vehicle and drove off.

21 Mr. Brown and Mr. Cousar both confessed to their
22 crimes, they implicated each other as well as Mr. Walls
23 independently. They would have testified in his trial
24 against him and they would have indicated that he was part
25 of this conspiracy and part of these crimes. He is an

1 accomplice in this case, and having not been the actual gun
2 man, but under the hand of one the hand of all theory of
3 accomplice liability he's just as guilty as all of them.

4 Your Honor, just at this point I want to let the Court
5 know I have complied with the *Victim's Rights Act*. One of
6 the victim witnesses' was scheduled to be here at 8:30
7 tomorrow. We had a number of people ready to go, lined up
8 to come in and testify. A jury is reporting as we speak so
9 we were prepared to try this case, but thankfully Mr. Dunn
10 was able to talk to his client and we were able to reach a
11 plea agreement that everybody can live with. I just hope
12 that on August 21st Mr. Walls appears and we can resolve
13 this in the manner in which we've negotiated.

14 THE COURT: All right. Do you agree, Mr. Walls, with
15 the facts as the Solicitor has stated them in regard to
16 what happened that night?

17 MR. WALLS: Yes, sir.

18 THE COURT: I accept your plea to both of these
19 charges. I find they are freely voluntarily knowingly and
20 intelligently entered. They're entered with the advice of
21 competent counsel with whom you are satisfied and I find
22 the facts support your pleas and you signed pleas of guilt.

23 At the time of your sentencing I'll hear from the
24 victim or victims if they wish. And I will hear from your
25 attorney and then from you and anyone on your behalf.

-12-

1 I'll be glad to hear from your attorney and you today,
2 but it would probably be more appropriate to defer -- Since
3 I will defer sentencing until the 21st of August of this
4 year, it would probably be more appropriate to wait until
5 that time.

6 Mr. Dunn, anything you want to say at this time?

7 MR. DUNN: I don't wish to speak to mitigation but I
8 did report it your Honor ask that I speak with his bondsman
9 to make sure they were comfortable with staying on the
10 bond.

11 THE COURT: Right.

12 MR. DUNN: I did contact his bondsman, his bondsman
13 is Lisa PIPPS. She's with Affordabail Bail Bonds out of
14 Lexington and she is okay with staying on the bond. She
15 didn't have any problems with him.

16 THE COURT: Okay.

17 MR. DUNN: And I'm pushing in light of this agreement
18 and I didn't want to cause him any more harm ---

19 THE COURT: All right.

20 MR. DUNN: --- you know, any more harm than he's
21 already facing.

22 THE COURT: So, Mr. Walls, again, if you do not show
23 up on the 21st of next month a bench warrant will be issued
24 and then you'll be sought by law enforcement, but also the
25 bondsman will probably be looking for you too. Do you

1 understand that?

2 MR. WALLS: Yes, sir.

3 THE COURT: Is there anything you want to say today or
4 do you want to wait until the 21st of August?

5 MR. WALLS: The 21st of August.

6 THE COURT: All right. Thank you.

7 MR. DUNN: Thank you, your Honor.

8 THE COURT: And the sentences are deferred on each of
9 these until that date at 9:30 a.m.

10 (COURT IN RECESS IN THE MATTER OF THE STATE VERSUS
11 JA'VONTE ANTONIO WALLS AT 04:00 P.M.)

12 (COURT BACK IN SESSION THURSDAY, SEPTEMBER 21, 2017 IN
13 THE MATTER OF THE STATE VERSUS JA'VONTE ANTONIO WALLS.)

14 SOLICITOR SHELTON: Can we have Ja'Vonte Walls from
15 the holding cell, please?

16 (DEFENDANT, JA'VONTE WALLS REENTERS COURTROOM.)

17 SOLICITOR SHELTON: May it please the Court, your
18 Honor.

19 THE COURT: Yes, sir.

20 SOLICITOR SHELTON: Your Honor, this is Ja'Vonte
21 Antonio Walls. He is here this morning with his appointed
22 counsel Mr. Geoff Dunn of the York County Bar.

23 I want to give you a little bit of history on this
24 case because we're here for a sentencing this morning. Mr.
25 Walls was scheduled for trial, I believe it was the July

-14-

1 24th term in front of your Honor. The week before that
2 trial, towards the end of the week, Mr. Dunn approached me
3 and Solicitor Brackett essentially begging us to put a plea
4 offer back on the table. Mr. Walls was up for attempted or
5 for armed robbery, criminal conspiracy, and two counts of
6 kidnaping the week of July 24th.

7 Mr. Dunn made a very compelling argument to Solicitor
8 Brackett and he convinced us to reduce the charge to
9 attempted armed robbery and criminal conspiracy; dismissing
10 the kidnaping charges, for a negotiated range of six to
11 eight years.

12 As further consideration we allowed him to plea --
13 agreed to defer sentencing to the August 21st term
14 specifically Monday morning August 21st at 9:30 a.m.,
15 because it was our understanding at the time that Mr.
16 Wall's grandmother had passed away, so we wanted to give
17 him an opportunity to be with his family and to grieve with
18 them before he had to be sentenced on a negotiated six to
19 eight range.

20 In that hearing it was made clear by your Honor to Mr.
21 Walls who indicated he understood that if he failed to
22 appear or failed to be sentenced that day that it would be
23 a open plea. He would be exposed to zero to twenty years.

24 Mr. Walls did show up on August 21st, and I've got
25 what's marked as Court's Exhibit Number 1. He signed his

1 paperwork for the sentencing, he turned it into the Clerk
2 of Court's Office and then it's my understanding there was
3 an argument with him and his attorney and he left.

4 I came to your Honor some time later after conferring
5 with Mr. Dunn that his client did not come back. We
6 requested a bench warrant, a bench warrant was issued. Mr.
7 Walls was picked up on that bench warrant last week and has
8 been in our Detention Center since.

9 So we are here today, your Honor, for Mr. Walls to be
10 sentenced on attempted armed robbery that he pled guilty to
11 July 24th and criminal conspiracy he pled guilty to the
12 same day. This is an open plea; he's facing zero to twenty
13 years and zero to five years respectfully.

14 THE COURT: All right. How long has Mr. Walls
15 actually served?

16 MR. DUNN: He was picked up sometime last week and
17 beyond that I don't think he's spent a whole lot of time in
18 jail. I think he bonded out pretty quickly after he was
19 arrested.

20 Correct?

21 MR. WALLS: Correct.

22 THE COURT: All right.

23 MR. DUNN: A day or two.

24 THE COURT: All right. Mr. Dunn, I'll be glad to hear
25 what you have to say and if anything in regard to

-16-

1 mitigation.

2 MR. DUNN: Briefly, your Honor. Mr. Walls he gave me
3 he was in jail for thirty-three days before he bonded out
4 and then whatever time he's had since he got picked up on
5 the bench warrant.

6 Your Honor, just briefly. I spoke with Mr. Walls this
7 morning, he has indicated to me that he wants a new lawyer
8 and I'm not entirely sure just from what he was telling me
9 if he wanted to hire a lawyer or if he wanted to have a
10 lawyer appointed to him. I told him that those are all
11 valid concerns that he could address the court and the
12 court, you know, may or may not grant him a lawyer.
13 There's nothing out there that says that he has to have
14 another court appointed lawyer, and so, I wanted to make
15 sure that he has an opportunity to be heard on that issue.

16 Otherwise, your Honor, as far as the sentencing, so
17 even before sentencing I'd like to address that issue from
18 him just to make sure. And I want this on the record, your
19 Honor. Once we go forward I will, if he wants to do it
20 himself that's certainly his right.

21 THE COURT: Mr. Walls, what's your situation with your
22 attorney?

23 MR. WALLS: I feel like I haven't been represented to
24 my best of interest.

25 THE COURT: All right. So you don't want Mr. Dunn to

1 represent you any more?

2 MR. WALLS: No, sir. I want appointed a paid lawyer.

3 THE COURT: Well we don't appoint a paid lawyer. We
4 appoint somebody from the public defender's office or
5 somebody from a list of appointment eligible attorneys.
6 And you had an opportunity from -- You were actually
7 charged with this crime almost a year ago, November of last
8 year. You've had plenty of time to obtain an attorney and
9 you've had --

10 What was the date he entered his plea?

11 SOLICITOR SHELTON: July 24th, 2017.

12 THE COURT: So you've had at least from that date to
13 go hire an attorney. Have you hired an attorney or talked
14 to one during that time?

15 MR. WALLS: Yes, sir.

16 THE COURT: All right. Well, where is he or her?

17 MR. WALLS: He's -- I talked ot him and I put a
18 request form in to --

19 THE COURT: What does that mean?

20 MR. WALLS: When I was in the block, in the cell block
21 I put a request form in to get a paid lawyer and it was
22 like leave to the judge. They was gonna leave it to the
23 judge and all that to come before the judge and you would
24 appoint me -- he would let me fire my lawyer and get
25 appointed or whatever, get a paid lawyer.

-18-

1 THE COURT: Well, I don't know who told you that but
2 they gave you bad information because that's not the way it
3 works. You had Mr. Dunn and you've already entered a plea
4 so we're here to sentence you today. Do you want Mr. Dunn
5 to represent you in regard to the sentencing or do you just
6 want to go on your own without an attorney? I suggest that
7 you'd be wise to keep Mr. Dunn to discuss what your
8 sentence ought to be because it's dangerous for you to it
9 on your own since you're not an attorney. And there would
10 be a benefit in having Mr. Dunn talk on your behalf at this
11 time. Do you want that to happen or do you want to just
12 cut him loose?

13 MR. WALLS: I want that to happen.

14 THE COURT: Okay. Mr. Dunn.

15 MR. DUNN: Yes, sir.

16 SOLICITOR SHELTON: Your Honor, can I give you the
17 facts of the case ---

18 THE COURT: Yes, sir. Yeah, okay.

19 SOLICITOR SHELTON: --- as a refresher. It's been a
20 couple of months since you've heard --

21 THE COURT: Well it has and I don't remember it quite
22 frankly.

23 SOLICITOR SHELTON: Your Honor, as you noted a minute
24 ago this happened on November 2nd, 2016. Ja'Vonte Walls
25 went into Catawba Express on Highway 5 in Catawba, York

1 County with two co-defendants Robert Brown and Ralph
2 Cousar. They went into the store with the intent of
3 robbing the store. There were two clerks working inside.
4 This was during the night time hours.

5 Mr. Cousar and Mr. Brown went in with mask over their
6 face. Mr. Walls stayed at the door with a mask over his
7 face. Mr. Cousar had a gun pointed in the direction of the
8 two female store clerks. Mr. Brown did not have a gun but
9 he participated basically in sweeping several packs of
10 cigarettes and cleaning out the cash register.
11 Approximately three hundred to four hundred dollars in cash
12 and they got about thirty packs of Newport Menthols from
13 the store.

14 Walls stayed at the door as a look out. It's very
15 clear from the in-store surveillance video that he's
16 looking out, he's there and he knows exactly what's going
17 on. He came in with them and he left with them through the
18 wood area after the robbery.

19 Mr. Cousar and Mr. Brown were both -- both confessed
20 and implicated Mr. Walls. Both were in a position to
21 testify against Mr. Walls at trial. Mr. Cousar is in
22 prison right now serving six years on attempted armed
23 robbery for his role. He was given that as a reduction for
24 early accepting -- early acceptance of responsibility and
25 because he cooperated fully and early with the police.

-20-

1 Robert Brown: His charges are still pending.

2 THE COURT: All right. Mr. Dunn.

3 MR. DUNN: May it please the Court, your Honor.

4 Your Honor, as has already been mentioned I have been
5 appointed to represent Mr. Walls. His grandmother and his
6 mother and his girlfriend are all in the courtroom. I
7 believe that his mother and grandmother would like to
8 address the court at the appropriate time.

9 THE COURT: This would be it.

10 MR. DUNN: Yes, sir. And so just as they are making
11 their way up.

12 THE COURT: All right.

13 MR. DUNN: Your Honor, at the time of this incident
14 when the store was robbed last year he was eighteen.

15 THE COURT: Okay. The ladies that want to talk come
16 on forward.

17 All right, go ahead.

18 MR. DUNN: Yes, your Honor. At the time of this
19 incident he was eighteen, he had just graduated from
20 Lewisville High School and he lives down in Chester County
21 where at the time he was living with his grandmother.

22 He is not married, he does not have any kids. He was
23 working. At the time of our last sentencing he was working
24 and I'm not sure if he's still working at this time.

25 Your Honor, as the Solicitor has mentioned Mr. Walls'

1 co-defendant received six years. Excuse me, Mr. Brown --
2 Mr. Cousar received six years, Mr. Walls has not been
3 sentenced yet. My understanding is , I mean, he cooperates
4 I'm assuming he's probably gonna get a similar sort of
5 deal. Of the three individuals my client was the one who
6 was not holding a gun. He was the one who did not go into
7 the store and its very clear from the video that he was the
8 look out man, the door man. The video shows clearly that
9 all three walked up to the door together but once they got
10 to the door the other two individuals walked in and are the
11 ones that dealt with the clerk and performed the actual
12 robbery.

13 Mr. Walls stayed outside at the door and then when the
14 other two individuals came out all three of them walked
15 off, they ran off together into the woods.

16 Your Honor, I would ask that that be taken into
17 account as well, in consideration as well. He does not
18 have a criminal record. Quite frankly I would categorize
19 Mr. Walls as someone who really hasn't had any dealings
20 with this system and is very naieve or either willingly or
21 intentionally or unintentionally is naieve about what's
22 gonna happen to him and what would happen to him.

23 Both co-defendant's had indicated they were gonna
24 testify against him. Both of 'em had spoken at -- had
25 given statements to the police and so there was never a

-22-

1 good case to try. And I did my best to work out a good
2 deal for Mr. Walls and in consideration of that we did put
3 it in the trial posture but as the Solicitor indicated we
4 did work it out at the end.

5 The only thing that the solicitor said that I would
6 disagree with would be I wouldn't say we had an argument
7 the morning of August 21st but he did walk off and I
8 haven't had any contact with him since that time. He told
9 me he was going out to get a pack of smokes and I told him
10 that was fine because we were waiting for court time and,
11 you know, we weren't really in a rush and he just never
12 came back, but he's never given me a reason why.

13 Your Honor, I would ask the court to reconsider the
14 six to eight in light of everything I've just said. Quite
15 frankly the morning of the plea I was gonna ask the Court
16 for six which would a been in line of what the co-defendant
17 got. And so I understand that there are consequences to
18 one's actions and when one leaves and doesn't take
19 responsibility of sentencing that that deal is gone and is
20 exposed to a full twenty. But I would ask the Court to
21 consider, you know, the upper end of that six to eight.
22 The Court feels they need to go higher than that I would
23 ask the Court to not punish him too much.

24 He is eighteen and has never been in the system and
25 just clearly he's made bad choices from the beginning. He

1 got involved with and was involved in and has turned down
2 offers that were reasonable in light of the nature of the
3 charges were. But as I said before I think some of that's
4 just either negativity or just not willing to take
5 responsibility for one's actions. I hate to see somebody
6 who's -- he's nineteen and I hate to see somebody who is
7 nineteen taking a double digit sentence on just because he
8 made even more poor choices of being involved in it, your
9 Honor.

10 THE COURT: Yes, ma'am, you want to come up a little
11 bit.

12 MR. DUNN: Make sure you state your name so she can
13 get it right.

14 A. Patricia Hemphill. That's my oldest grandson. And
15 he stayed with me for a while until I got a part-time job
16 and he went back home to his momma, so when he got there I
17 don't know the people he was hanging around with. And I
18 talked to him a couple of times and he always was
19 respectful with it but it, you know, you can't tell me what
20 to do. And I'm sorry all our family has had to go through
21 what they did. But I did what I had to do, you know, to
22 try to talk to him.

23 THE COURT: Thank you. Your name?

24 A. Alexis McCrorey. I've know Ja'Vonte my entire life.
25 We started off being boyfriend and girlfriend in Head Start

-24-

1 until the fifth grade. After the fifth grade we broke up
2 and he was still my best friend. I could tell him anything
3 and he could tell me anything. We decided to try a
4 relationship again in the eleventh grade and we been
5 together ever since then. Some say we're too young to
6 actually know what love is but being nineteen and going on
7 four years I can say I'm in love.

8 Ja'Vonte is the most sweetest guy you'll ever meet.
9 He'll give you the shirt off his back. At school the
10 teachers loved him. We went to a football game not too
11 long ago and he saw two former teachers and they told him
12 they both cried when they heard the situation he was in
13 because they know he's a good person. Not only is Ja'Vonte
14 is my boyfriend he's also my best friend.

15 (MS. MCCROREY CRYING.)

16 MS. MCCROREY: I could cry on his shoulder -- on his
17 shoulder when things wasn't going good. He would always
18 tell -- I could always tell him if something was going
19 wrong and he could tell if something was going wrong with
20 me even when my parents couldn't. He's the only person who
21 knows to make me smile -- knows how to make me smile from
22 ear to ear. In the past four years I've never gone a day
23 without him. We practically lived together. I went to
24 sleep to him and I woke up to him. He's the guy I want to
25 marry to start a family with. He gave me faith and . . .

1 (MS. MCCROREY CRYING.)

2 MS. MCCROREY: He gave me faith in looking forward to
3 the future and now all of that is being snatched away from
4 me. In the past week I've been crying my eyes out and
5 haven't been able to sleep because I can't picture what my
6 life would be like without him. Who am I going to express
7 my problems to? Who is going to actually show me -- Who is
8 going to actually show me they care? He's my backbone, my
9 everything. He gave me courage when I wanted to give up.

10 I'm sorry. I don't know what I'll do or how I would
11 survive if he's taken away from me. He always told me to
12 stay in school and that he had goals he wanted to
13 accomplish himself so we could live the life we always
14 dreamed of. He talked about going to barber school and
15 getting his barber's license.

16 Not only do I love Ja'Vonte my entire family does as
17 well. My two nephews are extremely crazy about him. Every
18 time he calls my phone my nephews takes it from me and have
19 a full conversation with him. My parents love him because
20 they know he's crazy about their daughter and would do
21 anything to make her happy. My brother and sister are
22 crazy about him as well. Sometimes I think they love him
23 more me. All I ask is that you please not take my
24 boyfriend, my sole mate, my heart away from -- away from
25 me.

1 THE COURT: Thank you. All right.

2 MR. DUNN: I have nothing further.

3 THE COURT: Okay. Mr. Walls, anything you want to
4 say?

5 MR. WALLS: No, sir.

6 THE COURT: All right. The sentence on the conspiracy
7 is five years. The sentence on the attempted armed robbery
8 is nine years. They are to run concurrent and I'm giving
9 you credit for any time you've already served. Thank you.

10 SOLICITOR SHELDON: Thank you, your Honor.

11 Judge, there is a bench warrant.

12 THE COURT: That will be lifted. All right, we'll do
13 one more and then we'll break for lunch.

14 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND
15 MARKED, RECEIVED INTO THE RECORD.)

16 (DEFENDANT, DE'VONTE WALLS, EXITS COURTROOM.)

17 (END OF TRANSCRIPT OF RECORD.)
18
19
20
21
22
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24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 24th day of July and the 21st day of September, 2017.

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

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: December 18 / 2017

FORM 5

2017 CP460 3357

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY

County of York 2017 NOV 15 PM 12:08 IN THE COURT OF COMMON PLEAS

Jawane Antonio (wus) 374056
 Full name and prison number (if any) of Applicant
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

v.

State of South Carolina

APPLICATION FOR
 POST-CONVICTION RELIEF

2017 NOV 13 PM 1:49

FILED-RECEIVED

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 Kershaw Corr Inst, 4848 Goldmine Hwy
Kershaw, ~~South Carolina~~ S.C. 29067
2. Name and location of Court which imposed sentence Moss Justice Center
York county detention center - York, SC
3. Name(s) of co-defendant(s) (if any) Ralph Cousar and Ronald Brown Jr.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Indictment numbers (redacted) Stated in C.
 - (b) Offenses; Attempted Robbery, Criminal conspiracy.
(armed)

(criminal conspiracy) 17-GS-4602309

(c) 17-GS-4602312, (Attempted Armed Robbery)

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

(a) September 21, 2017; 9 year open plea 0-20

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty YES.

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

no.

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

N/A

(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) Didn't know I could appeal until days after sentencing(b) Counsel told me It wouldn't be any good to appeal.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Asst. of counsel.
- (b) plea wasn't clearly stated and advised.
- (c) Involuntary Guilty plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Stated on the back of sheet.
- (b) Stated on the back of sheet.
- (c) Stated on the back of sheet.
12. Prior to this application have you filed with respect to this conviction: N/A
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. _____

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

a.) Involuntary Guilty Plea

b.) Didn't know my rights as of what I could do.

c.) counsel not explaining it well.

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO.

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

(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) First time ~~convicted~~ Challenging.
 (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? ~~Yes~~
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Law offices of Geoffrey M. Dunn, LLC
PO Box 1029, Rock Hill SC 29731
 ii. _____
 iii. _____

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

i. Plea and Arraignment
 ii. Sentencing
 iii. _____

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

vacation of sentence / conviction, new trial,
expungment of all record.

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

No.

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Monte Willis, 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.

Monte Willis

SWORN to and subscribed before me this 3rd
 day of November, 2017

Catherine A. Amerson (L.S.)
 Notary Public

My Commission Expires December 22, 2018
 My Commission Expires: _____

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

I, Javonte Waus, 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.

Javonte Waus
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of November, 2017.

Catherine A. Cress
Notary Public

My Commission Expires: My Commission Expires December 22, 2018.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
Javonte Antonio Walls,	)	2017-CP-46-3357
SCDC #374056,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on November 3, 2017, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently in the South Carolina Department of Corrections. Applicant was indicted at the June 2017 term of the York County Grand Jury for armed robbery (2017-GS-46-2309) and criminal conspiracy (2017-GS-46-2312). Geoffrey Dunn, Esquire, represented Applicant. Assistant Solicitor Matthew Shelton, Esquire, prosecuted the case. On July 24, 2017, Applicant appeared with his counsel before the Honorable John C. Hayes, III, and pled guilty to attempted armed robbery and criminal conspiracy. Sentencing was deferred to August 21, 2017 before Judge Hayes where the State agreed to allow Applicant to plead guilty to attempted armed robbery as a lesser included offense of armed robbery, dismissed two kidnapping charges, and agreed to a negotiated sentence of six to eight years imprisonment. Applicant left court prior to being sentenced and was picked up on a bench warrant the week of September 11, 2017. Applicant appeared with Mr. Dunn on September 31, 2017 to be sentenced on attempted armed robbery and criminal conspiracy, with no negotiated or recommended sentence from the State. Judge Hayes sentenced Applicant to imprisonment for five years for criminal conspiracy and

nine years for attempted armed robbery. Applicant did not appeal his guilty plea or sentence.

II. FACTUAL HISTORY

The following facts were presented at the plea hearing:

[O]n November 2nd, 2016 at approximately ten o'clock p.m. in York County at the Catawba Express on Highway 5. At that time Mr. Walls and his two co-defendant's, Brown and Cousar, parked on a road through the woods – I'm trying to remember the name of the road, it's just up from the Bowater facility – walked through the woods to this gas station with mask on and one of them carrying a bag and one of 'em carrying a gun.

The man with the gun and the man with the bag are Cousar and Brown respectively. They entered the store, approached the two ladies working there; held them at gun point, ushered them into the back of the building and cleaned out the cash registers and stole a number of cigarettes.

Mr. Walls was the look out, he stood at the door, and one of the ladies heard him make a noise as if to indicate it was time to go. After a period of time the three men left together going back through the woods and then got into Mr. Walls's vehicle and drove off.

Mr. Brown and Mr. Cousar both confessed to their crimes, they implicated each other as well as Mr. Walls independently. They would have testified in his trial against him and they would have indicated that he was part of this conspiracy and part of these crimes. He is an accomplice in this case, and having not been the actual gun man, but under the hand of one the hand of all theory of accomplice liability he's just as guilty as all of them.

Guilty Plea hearing transcript p. 10, l. 1 – 11, l. 3.

Applicant informed the plea court that he agreed with the facts presented by the assistant solicitor. Guilty Plea hearing transcript p. 11, ll. 14-17.

III. PCR APPLICATION

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

1. "Ineffective assistance of counsel"
2. "Plea wasn't clearly stated and advised."
 - a. "Didn't know my rights as of what I could do."
3. "Involuntary guilty plea"
 - a. "Counsel not explaining it well."

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject convictions and the transcript from Applicant's guilty plea. Respondent reserves the right to amend its return upon the receipt of other relevant records.

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

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

IV.

Applicant alleges ineffective assistance of counsel. These allegations are without merit.

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove 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. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have pleaded guilty, but would have insisted on going to trial. Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

V.

Applicant further alleges that his plea was not voluntarily made. Respondent 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 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th 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.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

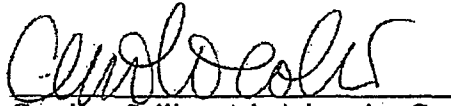
March 14, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2017-CP-46-3357
	)	
JAVONTE ANTONIO WALLS, #374056,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Nathan J. Sheldon, Esquire
The Law Office of Nathan J. Sheldon, LLC
Post Office Box 36682
Rock Hill, South Carolina 29732

DATED this the 14th day of March, 2018.



Caroline Collins, Administrative Coordinator
For Respondent

State of South Carolina.,	)	In the Common Pleas
	)	Court of York
County of York.	)	Case No. 2017-CP-46-03357

Javonte Antonio Walls.,	)	
Applicant.,	)	
-vs-	)	Transcript of Record
	)	Post Conviction Relief
State of South Carolina.,	)	
Respondent.	)	

January 29, 2019
York, South Carolina

B-E-F-O-R-E:

The Honorable Thomas A. Russo, judge.

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

Mr. Nathan James Sheldon
The Law Office of Nathan J. Sheldon, LLC
P.O. Box 36682
Rock Hill, South Carolina 29732
nathan@nathansheldonlaw.com
(803) 909-9343
Attorney for the Applicant

Ms. Janell H Gregory
S.C. Attorney General's Office
Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
jgregory@scag.gov
(803) 734-3737
Attorney for the Respondent

Wanda S. Nelson, CVR-M
Circuit Court Reporter
Sixteenth Judicial Circuit
Union and York Counties
To the Honorable Daniel D. Hall

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Javonte Walls	Mr. Sheldon	P.6-13
	Ms. Gregory	P.14-15
Patricia Memphill	Mr. Sheldon	P.16-18
	Ms. Gregory	P.18
Geoffry Dunn	Ms. Gregory	P.19-29
	Mr. Sheldon	P.29-35

Court Reporter's Certificate Page	P.39
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I-N-D-E-XE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

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1 (COURT IN SESSION IN THE MATTER OF JAVONTE ANTONIO
2 WALLS, TUESDAY, JANUARY 29, 2019 AT 10:07 A.M.)

3 THE COURT: Thank you, ladies and gentlemen. Please
4 have a seat.

5 (APPLICANT JAVONTE WALLS, BLACK MALE, ENTERS COURTROOM
6 AT 10:08 A.M.)

7 THE COURT: All right. Yes, ma'am.

8 MS. GREGORY: Good morning, your Honor. Before you is
9 Javonte Walls. Mr. Walls was indicted during the June 2017
10 Term of the York County Grand Jury for armed robbery and
11 criminal conspiracy.

12 On July 24th, 2017 Mr. Walls appeared before Judge
13 Hayes and pled guilty to armed robbery, criminal
14 conspiracy, and the State dismissed two kidnaping charges.
15 Sentencing was deferred until August 21st, 2017 and Mr.
16 Walls was told at that time if he failed to show up for
17 sentencing on that date the negotiated range would come off
18 the table. Mr. Walls came to court on August 21st, 2017
19 but left prior to being sentenced. A bench warrant was
20 issued at that time and Mr. Walls was later arrested.

21 The State withdrew their recommended six to eight-year
22 range and on September 21st, 2017 Mr. Walls was sentenced
23 to nine years on the attempted robbery and five years on
24 the conspiracy to run concurrent.

25 He filed a timely application for post conviction

1 relief on November 3rd, 2017 alleging ineffective
2 assistance of counsel because he didn't know his rights and
3 counsel didn't explain his plea to him and a voluntary
4 guilty plea. Mr. Walls is present today and represented by
5 Mr. Sheldon.

6 THE COURT: All right. Mr. Sheldon, I'll be happy to
7 hear from you.

8 MR. SHELDON: Thank you, your Honor, may it please the
9 Court. That's an accurate summation of where we are and
10 we're ready to proceed whenever the Court is ready.

11 THE COURT: All right. You may call your first
12 witness.

13 MR. SHELDON: Thank you. We call Javonte Walls, your
14 Honor.

15 THE COURT: All right. Mr. Walls, if you would come
16 around to be sworn, sir, and then take the witness stand.

17 MADAM CLERK: If you'll raise your right hand and
18 place your left on the Bible as best you can.

19 (WHEREUPON, JAVONTE WALLS,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 MADAM CLERK: Thank you. Please be seated. Watch
22 your step when you go up.

23 MR. SHELDON: May it please the Court?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

JAVONTE WALLS: BY MR. SHELDON

-6-

1 JAVONTE WALLS BY MR. SHELDON:

2 Q. Mr. Walls, please state your name for the record.

3 A. Javonte Walls.

4 Q. And speak up and make sure everybody can hear you,
5 okay? You heard essentially the Attorney General's
6 recitation of the procedural history of this case. Are you
7 currently incarcerated right now?

8 A. Yes, sir.

9 Q. Where are you incarcerated at?

10 A. Kershaw Correctional Center.

11 Q. And you got a nine-year sentence; is that right?

12 A. Yes, sir.

13 Q. And you understand today you're here for your PCR;
14 is that right?

15 A. Yes, sir.

16 Q. And you understand if you go forward on your PCR that
17 this Court can't do anything today by way of sentence
18 reduction or anything like that?

19 A. Yes, sir.

20 Q. The only remedy available to you today is essentially
21 to vacate all of the sentences, if you win, and start over
22 as if this never happened. You would still be charged with
23 the armed robbery; you would still be charged with the
24 kidnaping's and everything else. Do you understand that?

25 A. Yes, sir.

JAVONTE WALLS: DIRECT BY MR. SHELDON

-7-

1 Q. You understand that your sentence could potentially
2 get worse than the nine years you have?

3 A. Yes, sir.

4 Q. You still want to go forward with your PCR today?

5 A. Yes, sir.

6 Q. Okay. Who were you represented by during the course
7 of these proceedings?

8 A. Geoffrey Dunn.

9 Q. And when were you arrested?

10 A. November 22nd in 2016.

11 Q. And ultimately you end up entering at least into the
12 guilty plea portion of your sentence in July of the
13 following year; is that right?

14 A. Yes, sir.

15 Q. So about a eight-month gap between the time of arrest
16 and the time of actually being entering into a guilty plea?

17 A. Yes, sir.

18 Q. And then you were sentenced two months after that in
19 September?

20 A. Yes, sir.

21 Q. Okay. So, did Geoffrey Dunn represent you the entire
22 time?

23 A. Yes, sir.

24 Q. And describe your relationship with Mr. Dunn for the
25 Court.

JAVONTE WALLS: DIRECT BY MR. SHELDON

-8-

1 Q. I would describe me and Mr. Dunn we had an all right
2 relationship.

3 Q. Did Mr. Dunn go over all the discovery and things like
4 that with you?

5 A.. I got -- I got my Brady 5 and Brady 6 kind of late.

6 Q. Say that again.

7 A.. I said I had got my discovery kind of late, my Brady
8 5 and 6.

9 Q. Okay. You got that a little late you said?

10 A. Yes, sir.

11 Q. But did you have time to review it prior to deciding
12 whether or not to plead or not?

13 A. No, sir.

14 Q. Okay. So, do you end up in court in -- Let me back
15 up. Did you and Mr. Dunn discuss whether or not you wanted
16 to plead guilty or have a trial in this case?

17 A. Yes, sir, we discussed.

18 Q. Describe those discussions.

19 A. Well, Mr. Dunn -- at first Mr. Dunn was telling me it
20 wasn't a good idea to go to trial because I had two co-
21 defendant's and he was like they are willing to testify
22 against me. And he was like he can get me a three YOA so,
23 I ask him and I was like well I take the 3 YOA and then he
24 tell me that he can get a better offer.

25 Q. Okay. Hold on. So at some point Mr. Dunn tells you

1 that he can get you a three-year YOA; is that right?

2 A.. Yes, sir, I had to turn the offer down.

3 Q.. And you were given the opportunity to either accept
4 that offer or reject that offer?

5 A. Yes, sir.

6 Q.. Ultimately on June 8th you and Mr. Dunn reject that
7 offer on the record; is that right?

8 A. Yes, sir, we did.

9 Q. Tell me what conversations you had with him that led
10 you to reject that offer.

11 A. What led me to reject the offer he offered me, he said
12 he could get a better plea for a year on the YOA, Youthful
13 Offender Act.

14 Q. So it was your understanding that if you turn down
15 the three-year YOA that he could get you a year YOA?

16 A. Yes, sir.

17 Q. What was his explanation for that?

18 A. Because I committed the least -- the least crime. I
19 didn't go into the store and I wasn't actual -- the actual
20 gun man or the man carrying the bag. I was the look out
21 man.

22 Q. And so you rejected the plea based on believing that
23 you could get a lesser sentence if you did so?

24 A. Yes, sir.

25 Q. And you did so because Mr. Dunn told you that?

JAVONTE WALLS: DIRECT BY MR. SHELDON

-10-

1 A. Yes, sir.

2 Q. Ultimately it doesn't get any better than a three-year
3 YOA, right?

4 A. Right.

5 Q. So, a month later you're in court and end up pleading
6 guilty; is that right?

7 A. Yes, sir.

8 Q. What did you plead guilty to?

9 A. Attempted armed robbery and criminal conspiracy.

10 Q. By way of offer what did you plead guilty to?

11 A. Attempted armed robbery and criminal conspiracy.

12 Q. Was there any offer at the time that you plead guilty
13 to? Any sentence?

14 A. Any sentence? No, sir.

15 Q. So you were under the impression that you were
16 pleading guilty but that you didn't even know what
17 the outcome was gonna be?

18 A. Yes, sir.

19 Q. Did you have any discussions with Mr. Dunn about
20 that?

21 A. Not that I remember.

22 Q. So you walk in thinking you're pleading guilty but
23 don't know why?

24 A. Yes I know. I walked in knowing I was pleading guilty
25 but I didn't know the outcome of the sentence.

1 Q. What did Mr. Dunn say the potential outcomes could be?

2 A. Six to eight years.

3 Q. Six to eight years?

4 A. Uh-huh.

5 Q. So you ended up turning down three years to get a six
6 to eight-year sentence?

7 A. Yes, sir.

8 Q. Explain why that happened.

9 A. Because he tell me the solicitor, the solicitor took
10 the offer off the table.

11 Q. Which offer would that be?

12 A. The three year, three-year YOA.

13 Q. So essentially you -- but so in July you end up
14 pleading to a six to eight-year offer?

15 A. Yes, sir.

16 Q. Why did you end up with six to eight years?

17 A. Because I left court.

18 Q. So walk us through that. So the guilty plea is in
19 July; is that right?

20 A. Yes, sir.

21 Q. And this -- but you don't end up actually being
22 sentenced until September?

23 A. Yes, sir.

24 Q. Why weren't you sentenced in July?

25 A. Because my grandmother passed away.

JAVONTE WALLS: DIRECT BY MR. SHELDON

-12-

1 Q.. So your grandmother passed away in July.

2 A. Uh-huh.

3 Q. And so the judge essentially deferred sentencing;
4 is that right?

5 A. Yes, to August 21st.

6 Q. So what happens on August 21st?

7 A. Okay. August 21st I come to court. I was scared, I
8 tell Mr. Dunn that I was scared to do six to eight years.
9 He said that he was gonna talk to the solicitor and get a
10 final answer and that I could leave court and he was gonna
11 call me back when he got a final answer.

12 Q. And did he call you back?

13 A. He says he did but he didn't.

14 Q. So you never got a call back?

15 A. No, sir.

16 Q.. So ultimately September 21st come around and you end
17 up getting nine years; is that right?

18 A.. Yes, sir.

19 Q. How did you show up to court that day?

20 A. I got picked up on a bench warrant and I was already
21 in the county.

22 Q. You were already incarcerated at that time?

23 A. Yes, sir.

24 Q. Okay. Did you have any other conversations with Mr.
25 Dunn between August and September?

JAVONTE WALLS: DIRECT BY MR. SHELDON
CROSS BY MS. GREGORY

-13-

1 A. No, sir.

2 Q. Okay. And what relief are you asking the Court for
3 today?

4 A. A new trial.

5 Q. A new trial on all the charges?

6 A. Yes, sir.

7 Q. Okay. And you're asking him to vacate the guilty
8 plea?

9 A. Yes, sir.

10 Q. Did you voluntarily plead guilty in this case?

11 A. Yes, I did.

12 Q. When you were -- when you rejected that offer did you
13 understand what was going on?

14 A. No, sir, I didn't.

15 Q. Did you believe it was gonna get better?

16 A. Yes, I did.

17 Q. And what were you relying on to believe that?

18 A. What was I relying --

19 Q. Whose advice were you relying on?

20 A. Oh, Mr. Dunn's, his advisement.

21 MR. SHELDON: Thank you, your Honor. I don't have any
22 more questions.

23 THE COURT: Ms. Attorney General.

24 CROSS-EXAMINATION

25 JAVONTE WALLS BY MS. GREGORY:

JAVONTE WALLS: CROSS BY MS. GREGORY

-14-

1 Q.. How many times did you meet with Mr. Dunn before your
2 guilty plea?

3 A. Maybe three, three or four times.

4 Q. And did you discuss your constitutional rights before
5 your guilty plea? Do you recall going over those with Mr.
6 Dunn?

7 A. No, ma'am.

8 Q. Do you recall signing a plea affidavit, the Plea
9 Waiver Form, that indicates your rights on the day of your
10 guilty plea? There's a Plea Waiver Form that you
11 initialed.

12 A. No, ma'am, I don't recall.

13 Q. Do you recall agreeing with the facts the prosecutor
14 recited in court?

15 A. Yes, ma'am.

16 Q.. Do you recall telling the judge you were satisfied
17 with your attorney?

18 A.. Yes, ma'am.

19 Q. And the Plea Waiver Form also indicated that you were
20 pleading freely and voluntarily. But you don't recall that
21 form at all?

22 A. No, ma'am.

23 Q. Do you recall the judge warning you a couple of times
24 that if you failed to show up on August 21st that the
25 recommendation of the six to eight years would go away and

JAVONTE WALLS: CROSS BY MS. GREGORY

-15-

1 you would be going up to the full twenty years?

2 A. Yes, ma'am, I recall it.

3 MS. GREGORY: No, further questions, your Honor.

4 THE COURT: Ms. Attorney General, have you got the
5 Plea Waiver Form?

6 MS. GREGORY: It should be in your packet.

7 THE COURT: I'm not asking for me. Won't you show it
8 to the witness and see if he recalls it? I think his
9 testimony was he doesn't recall doing that. He didn't say
10 he didn't do it.

11 MS. GREGORY: May I approach the witness, your Honor?

12 THE COURT: Yes, you may.

13 BY MS. GREGORY:

14 Q. Can you look this over?

15 (WITNESS COMPLIES.)

16 A. Yes, ma'am.

17 Q. Do you recall this form now?

18 A. Yes, ma'am, I do.

19 Q. Thank you. And this form, did you review your rights
20 with Mr. Dunn when you signed this form?

21 A. If we did it was fast because I don't remember going
22 over the form.

23 Q. Okay.

24 MS. GREGORY: All right. No further questions, your
25 Honor.

PATRICIA HEMPHILL: DIRECT BY MR. SHELDON

-16-

1 THE COURT: Anything further, Mr. Sheldon?

2 MR. SHELDON: I don't have anything further for this
3 witness.

4 THE COURT: All right, sir. Thank you, you may step
5 down.

6 (WITNESS LEAVES WITNESS STAND.)

7 MR. SHELDON: And, Judge, just for clarification
8 because we ordered the June 8th transcript late kind of in
9 the process, I just want to make sure that was included in
10 the court packet as well. It would be June 8th in front of
11 Judge Hall.

12 THE COURT: Yes, sir.

13 MR. SHELDON: Okay. Thank you, your Honor.

14 We would call Patricia Hemphill to the stand.

15 (WHEREUPON, PATRICIA
16 HEMPHILL, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
17 FOLLOWS:)

18 MR. SHELDON: Thank you, your Honor, may it please the
19 Court.

20 DIRECT EXAMINATION

21 PATRICIA HEMPHILL BY MR. SHELDON:

22 Q. Ms. Hemphill, please state your name for the record.

23 A. Patricia Hemphill.

24 Q. And how are you related to Mr. Javonte Walls?

25 A. That's my grandson.

1 Q. Okay. So you've heard all the testimony. He was
2 charged with several charges from November 16 until he
3 ultimately gets sentenced in September of 2017; is that
4 right?

5 A. Yes, sir.

6 Q. During the course that he was represented by Mr. Dunn,
7 did you have an opportunity to meet with Mr. Dunn on any of
8 those occasions?

9 A. Yes, sir.

10 Q. And were you present for a meeting where Mr. Dunn and
11 Mr. Walls discussed a potential offer from the State?

12 A. Yes, sir.

13 Q. And to the best of your knowledge what's your
14 recollection of that conversation?

15 A. Well he ask him, you know, told him charges that was
16 against him and everything.

17 Q. And when you say -- wait just a minute, you use
18 pronouns for our court reporter. We're talking, when you
19 say he are you talking about Mr. Dunn or Mr. Walls?

20 A. Mr. Dunn. Yes. And Mr. Dunn told -- ask him about
21 -- I mean what was -- excuse me -- the charges against him
22 and what he was offering. He said that a year and he said
23 because he was the youngest and he wasn't actually in the
24 store.

25 Q. So was it your understanding that Mr. Dunn said that

PATRICIA HEMPHILL: DIRECT BY MR. SHELDON
CROSS BY MS. GREGORY

1 he could get a year YOA?

2 A. Yes, sir.

3 Q. And you were present for that conversation?

4 A. Yes, sir.

5 Q. Okay.

6 MR. SHELDON: Judge, I don't have any more questions
7 for this witness.

8 CROSS-EXAMINATION

9 PATRICIA HEMPHILL BY MS. GREGORY:

10 Q. Were you present during all of the conversations
11 Mr. Walls had with Mr. Dunn?

12 A. No, ma'am, I wasn't.

13 Q. Okay.

14 MS. GREGORY: No further questions, your Honor.

15 THE COURT: All right. Thank you, ma'am. You may
16 step down.

17 MS. HEMPHILL: You're welcome.

18 (WITNESS LEAVES WITNESS STAND.)

19 MR. SHELDON: Judge, that's the applicant's case.

20 THE COURT: All right. Thank you, sir.

21 Madam Attorney General.

22 MS. GREGORY: We would call Geoffry Dunn.

23 THE COURT: Mr. Dunn, if you'll please come around and
24 be sworn, sir.

25 (WHEREUPON, GEOFFRY DUNN,

1 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 DIRECT EXAMINATION

3 GEOFFRY DUNN BY MS. GREGORY:

4 Q. Good morning, Mr. Dunn.

5 A. Good morning.

6 Q. How long have you been practicing law?

7 A. Since November of 2004.

8 Q. And how much of that is in -- of your experience is in
9 criminal law?

10 A. About fifty percent of my practice is criminal law
11 and has been since that time.

12 Q. And in this case you were appointed?

13 A. I was.

14 Q. How long did you represent Mr. Walls before his
15 guilty plea?

16 A. I believe I got appointed to represent him fairly
17 early in the process. My letter of appointment was
18 December 21st, 2016.

19 Q. And how many times did you meet with him prior to the
20 guilty plea?

21 A. Probably three or four, five.

22 Q. Other than the charges arising against Mr. Walls,
23 what was the State's case against him?

24 A. The case primarily was one of the co-defendant's
25 there was three individuals that were arrested, Mr. Cousar

1 and -- I can't remember RJ's last name, but one of the
2 defendant's left fingerprints behind on some cigarette
3 butts, or, excuse me, on a package of cigarettes that were
4 taken from the convenient store and those fingerprints led
5 back to one of the co-defendant's; that co-defendant gave a
6 statement against Mr. Walls.

7 He also gave a statement against Mr. Cousar. Mr.
8 Cousar when he was interviewed also gave a statement that
9 implicated Mr. Walls. And then I think there was some --
10 so between the two statements and then the fingerprints and
11 there was some pictures and things of Mr. Wall's car.

12 Q.. Okay. Did you file Rule 5 and Brady motions in this
13 case?

14 A. I did.

15 Q. And was the State compliant with those?

16 A. I believe they were.

17 Q. Did you review that discovery with Mr. Walls?

18 A. I did.

19 Q. Did you have enough time to review that prior to the
20 pleading with Mr. Walls and did he ask you any questions?

21 A. No. In fact we went over it in my office because
22 there was a lot of digital discovery in this case too. So
23 I provided paper copy of what I could and then he and I and
24 his mother reviewed the digital discovery on May the 15th,
25 2017.

1 Q. Would you say the State had a strong case?

2 A. I believe they did.

3 Q. Did you discuss Mr. Walls version of the facts?

4 A. He never gave me a version that I could use.

5 Q. Was there any discussions of possible defenses for
6 him in this case?

7 A. There was discussion but there was never anything
8 given to me.

9 Q. Did you investigate Mr. Walls' case?

10 A. In as much as I could.

11 Q. How did the plea negotiations come about?

12 A. Normally in any case I always approach the solicitor
13 or the solicitor approaches me to begin. With this
14 particular case once I saw that there was fingerprints and
15 two statements against him, and ultimately see a video with
16 him involved as well, you know, my goal was to try to
17 mitigate and minimize the damage that was done to Mr.
18 Walls.

19 At some point I was able to negotiate down a three-
20 year YOA which I thought was a pretty good plea offer on
21 this considering the facts of it being an armed robbery and
22 an innocent, or two innocent victims being -- having a gun
23 shoved in their face at a gas station late at night by
24 individuals. I was able to convince the solicitor he would
25 agree that a YOA was an appropriate sentence for Mr. Walls.

GEOFFRY DUNN: DIRECT BY MS. GREGORY

-22-

1 because he was the last culpable of the three individuals.

2 Q. Okay. Now you heard some discussions and testimony

3 earlier about a one-year YOA. Was that ever --

4 A. Discussed with him? Yes. I mean I would have talked

5 with him and try to get that three down to a Y but there

6 was never anything that was agreed upon by the State. It

7 was never anything I told him that he had. My client's

8 always want better than whatever we can offer and so

9 there's always the added I'll see what I can do about

10 getting it better but I never told him that he had a one-

11 year Y or that I could get him a one-year Y. I told him I

12 would attempt to.

13 Q. Okay. And what led him to rejecting that offer?

14 A. I don't remember all of the details of why he rejected

15 it. I always just got the feeling that because of where he

16 was from, he's from Chester County, and the way the cases

17 are handled in Chester County is far different than how

18 cases are handled in York County, and punishments tend to

19 be less and cases tend to go on a lot longer and all that.

20 I just got the feeling that he didn't quite appreciate what

21 he was in for in York County.

22 The day of his plea rejection on June the 8th I talked

23 with him four or five times that morning about the plea.

24 He at that point had told me he was trying to get another

25 lawyer. I called the other lawyer, called the solicitor,

1 and apparently there was some conversations with that
2 lawyer but nothing never ever happened with it. My notes
3 say client doesn't want to accept the three-year YOA, he
4 wants a better offer. I explained to him that it probably
5 wouldn't happen, and that was on June the 8th. I believe
6 that's probably in the morning time because I think that
7 hearing, if I remember correctly, was probably in the
8 afternoon. I know that after that there was continual talk
9 about him trying to hire private counsel even up until the
10 point of the trial.

11 I just think -- like I said I just always got the
12 feeling that things happened too quickly for him and he
13 just didn't appreciate the severity of the situation.

14 Q. How many plea offers were extended after the three-
15 year YOA was rejected?

16 A. Once that was rejected there was no more plea offers.

17 There were officially extended the week of -- so his
18 case went to -- he pled guilty on what ever the court date
19 that he pled guilty that week before that because he pled
20 guilty the Monday of his trial week and so the week before
21 that which would a been -- I think it was on June 27th he
22 and I had met late that week either on a Thursday or a
23 Friday and he had told me that he wanted to try to get
24 another offer on the table. I told him that York County
25 doesn't typically put offers back on the table once you

GEOFFRY DUNN: DIRECT BY MS. GREGORY

-24-

1 reject them especially when you reject them on the record
2 like he had done back in June, but I would certainly do
3 everything I could because I thought that he was gonna be
4 found guilty. I mean I thought the case was strong against
5 him and he was looking at at least ten years of his life in
6 prison and he had never been in trouble and so I went back
7 and spoke with Mr. Shelton.

8 Mr. Shelton told me it was no longer in his hands.
9 With the officer policy being what it is he could no longer
10 extend and offer. He said that -- and I don't remember if
11 he said he would go talk to Mr. Brackett or if he told me
12 that I could talk to Mr. Brackett but either way I wanted
13 -- I actually drove over here to try to talk to Mr.
14 Brackett in person. That failed through, he was not here
15 or he was in a meeting or something and so I ended up
16 having to send an email to him that day. I put everything
17 in writing and basically put my cards on the table and that
18 email is dated -- that email is dated June the 21st, or
19 excuse me, July the 21st and basically said you know it
20 would be a travesty of justice if Mr. Walls got more time
21 than Mr. Cousar did him being the least culpable person
22 involved in this.

23 Mr. Cousar was one of the -- in fact I think Mr.
24 Cousar had the gun. He got six years. He had pled earlier
25 before all this and got six years and I thought it would be

1 a travesty if Mr. Walls went to trial and ended up getting
2 more that just because he didn't appreciate the problem.

3 Mr. Brackett finally responded to me and at that point
4 they said they would do six to eight which I wasn't crazy
5 about but it was better than the mandatory ten of what
6 armed robbery carries. In all my honesty I think I
7 discussed it with Mr. Walls as well. I fully expected the
8 plea judge to give him six just because with mitigation
9 that was involved and with his lack of record; the fact
10 that the handgun guy got six, I had trouble believing that
11 a plea judge would have punished him more than six but the
12 potential was there and we talked about it.

13 Q. And he eventually plead to the six to eight year
14 range?

15 A. Right. And so that was on Monday he pled. That
16 Saturday or Sunday so between the time I wrote the letter
17 to Mr. Brackett and the time he pled that weekend he had --
18 I can't remember if it was Mr. Walls or if his mother had
19 called, or both, but he had told me that his grandmother
20 had died ---

21 Q. Okay.

22 A. --- and I told him that I would do everything I could
23 to try to get a continuance because that's a pretty
24 traumatic experience. Mr. Walls was living with his
25 grandmother at the time and I talked to Mr. Walls about it

GEOFFRY DUNN: DIRECT BY MS. GREGORY

-26-

1 and he was crying and he was clearly upset and I
2 appreciated, you know, when your grandmother dies.

3 That Monday the State basically took the position of
4 he still needed to plead. Judge Hayes in chambers said
5 that he could plead, that he would defer sentencing to give
6 Mr. Walls time to mourn his grandmother and gave him a
7 future court date which is whatever that July date was or
8 whatever has been mentioned. It's in the record.

9 Q. And he was told if he didn't show up for that deferred
10 sentencing what would happen?

11 A. That the six to eight would be off the table. I
12 believe it was put on the record. I believe it's in the
13 record.

14 Q. And did he show up on -- I think it was August 21st?

15 A. He did. So the -- I believe August 21st was a Monday.
16 Again I think it was that Sunday because I don't usually
17 work on Saturdays but I work on Sunday's a lot and so I
18 talked -- I believe it was his girlfriend, I don't have my
19 notes for it. It's just one of those conversations I
20 remembered because of the nature of the case. She was
21 upset that he had to be in court on the 21st because she
22 was not seeing his name on the trial docket or on the roll-
23 call docket and I told them that it did not matter that the
24 way it works is he had to be there. He knew he had to be
25 there. I believe, in fact I'm pretty sure, I had written a

1 letter -- I have to look it up but I'm pretty sure I wrote
2 a letter to him that had said all of that as well. And he
3 showed up, I mean he was there July the -- did we say the
4 21st? What ever that day was he was there.

5 Q. And what transpired that day that he ended up leaving?

6 A. He was very -- he was very agitated. He was very
7 upset. His girlfriend was there; she was upset. They
8 didn't understand why they -- why he had to plead since he
9 wasn't on the docket. Or excuse me, they didn't show he
10 was being sentenced since he was on the docket, told him it
11 didn't matter. He knew about it, he was there and it was
12 gonna happen, he had to deal with it. You know we had to
13 do it.

14 Back in the July, whenever the first plea, he had
15 signed sentencing sheets. Our clerk's office makes the
16 defendant sign new sentencing sheets on deferred
17 sentencing; that caused agitation, he didn't understand why
18 he had to sign new ones since he's already signed these old
19 ones. I told him that was just a policy and that there was
20 nothing I could do about it. Nothing changed, it wasn't --
21 I mean nothing's changed in the terms of the deal. And
22 then he at some point there was sometime between prpbably
23 9:00 and 9:30 he had ask me if he could go out and smoke or
24 go to -- I think in fact he ask if he could go to the store
25 and buy some cigarettes and I told him I didn't really

GEOFFRY DUNN: DIRECT BY MS. GREGORY

-28-

1 care. I mean it was obvious he was back that morning for
2 his plea but with it being a Monday morning nothing really
3 happens quickly on Monday mornings when one the judges end
4 up having to qualify a jury and they tend to do probation
5 violations and that sort of thing and so pleas are never
6 done first thing Monday morning and I told him he had a
7 little bit of time. He left and he never came back.

8 Q. Did he understand, based on when he did the plea, was
9 it made clear to him that that six to eight-year range
10 would be off the table?

11 A. I believe I made it as clear as I could make it.

12 Q. Prior to the guilty plea did you go over the plea
13 waiver form with him?

14 A. Yes. I go over it with my client's the same time
15 they sign the sentencing sheet.

16 Q. And the Constitutional rights, you sent over those
17 constitutional rights that he'd be waiving with him?

18 A. Yeah. Sometimes I explain them twice and sometimes I
19 just explain them one time as we go through the form. The
20 form goes over all the rights that the judge talks about in
21 the plea form, the plea hearings.

22 Q. Did you believe it was in Mr. Walls' best interest
23 to plead guilty?

24 A. Yes.

25 Q. Who's decision was it to plead guilty that day?

GEOFFRY DUNN: DIRECT BY MS. GREGORY
CROSS BY MR. SHELDON

-29-

1 A.. It was his.

2 Q. Did he ever indicate to you that he wanted to go to
3 trial?

4 A. Before that June, I mean there was some indication
5 because after he rejected the plea but, you know, like I
6 said that week before where he finally did plead he wanted
7 to plead.

8 Q. And if he had told you he wanted to go to trial
9 instead of pleading guilty would you have taken his case to
10 trial?

11 A. Yes. In fact I have -- I drafted, and I don't do this
12 until I know I'm going to trial, I drafted his -- my
13 motions in limine. They were dated July the 22nd and was
14 setting there for trial. I don't do that particular until
15 I know I'm for trial because its extra work I don't like
16 doing.

17 Q.. All right.

18 MS. GREGORY: Thank you. No further questions.

19 MR. SHELDON: Thank you, your Honor.

20 Beg the Court's indulgence, your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 GEOFFRY DUNN BY MR. SHELDON:

24 Q. Mr. Dunn, so going back to prior to the June court
25 date where the offer was rejected on the record, you

GEOFFRY DUNN: CROSS BY MR. SHELDON

-30-

1 indicated that you had met with Mr. Walls and relayed an
2 offer of a three year YOA; is that right?

3 A. Yes.

4 Q. And that would essentially be a YOA to some sort of
5 burglary second violent; is that right?

6 A. I don't remember what the terms would have been.

7 Q. I mean is there any other YOA where you're doing
8 three day for day?

9 A. Not normally.

10 Q. Okay. And so a one-year YOA would not be --

11 A. And this is a non-conforming YOA.

12 Q. A one-year YOA would not have been possible unless
13 the charge -- unless some sort of the charges were reduced?

14 A. Exactly.

15 Q. Or he plead on the conspiracy and the conspiracy
16 alone; is that right?

17 A. Right.

18 Q. And so when you're explaining all this to Mr. Walls
19 did you explain that -- did you explain the difference
20 between why one is three years and others are one year, six
21 months, nine months; things like that?

22 A. I don't know if I explained to him the technicalities
23 of the ends and outs.

24 Q. Would you have explained to him how a YOA could have
25 gone from three to one?

1 A. I don't remember if I did or not.

2 Q. Okay.

3 A. Some of those technical's even I don't always
4 understand. I just -- the end of the day I try and get
5 results for them and that's --

6 Q. And so when he leaves your office with an offer of
7 a three-year YOA with the understanding I think based on
8 your own testimony that you would try to get it down to a
9 one-year YOA?

10 A. Yeah. There's never a reason not to try. I mean until
11 he's in front of a judge there's always hope that the
12 solicitor changes their mind.

13 Q. And that's prior to withdrawing the offer on the
14 record June 8th or 7th, or whatever date ---

15 A. Right.

16 Q. --- that was?

17 A. Right. And once we were in court that day he knew
18 that that was the offer and it wasn't getting any better.

19 Q. And I think you said that he went off of that offer on
20 May 15th with him of 2017; right? That initial three-year
21 YOA.

22 A. I went over the discovery with him and his mom on May
23 15th. When he and I discussed the offer I don't remember.

24 Q. Would have been at least on the day of or after you
25 went over the discovery with him; right?

GEOFFRY DUNN: CROSS BY MR. SHELDON

-32-

1 A. We would have discussed it after that, yeah.

2 Q. Okay.

3 A. Certainty not until -- I just don't remember when the
4 first time that number came out.

5 Q. And that's fine. But sometime between May 15th when
6 you go over the discovery with him, and it may have been
7 that day, ---

8 A. Right.

9 Q. --- and prior to June 8th when you walked into court
10 and reject the offer, the offer was relayed to him?

11 A. Yes.

12 Q. Okay. So it wouldn't have been relayed to him in
13 January and then the discovery gone over with him then?

14 A. No, no.

15 Q. Okay. So we're only talking about essentially a
16 three or four week span in between where he has to decide
17 whether to accept or reject that three-year offer?

18 A. Like I said I don't remember the first time we had
19 that discussion. I know it took me a while to get Mr.
20 Shelton on board with the idea of a YOA of any kind..

21 Q. And so -- but he eventually gets on board with that
22 offer; is that right?

23 A. Yes. Yes.

24 Q. And so in that -- so when you wanted - when you're
25 talking to him about trying to get the offer better we're

1 only talking about a short span of three to four weeks?

2 A. Yes..

3 Q. When he needs to accept or reject it which would have
4 been by the end of that term in June; is that right?

5 A. I believe you're correct.

6 Q. Okay. And at what point in time after you relayed
7 the original offer did you discuss with him that this isn't
8 gonna get any better, you need to take it or leave it?

9 A. I don't remember. I don't have notes for it. I know
10 we had that discussion, I just couldn't tell you when. It
11 was sometime between, you know, May and July or May and
12 June. I don't remember when.

13 Q. When he ends up rejecting the offer on the record?

14 A. Right. I don't always take notes from calls. I
15 should but I don't.

16 Q. So you think that was done by phone call?

17 A.. It would have more than likely because whenever I
18 meet with client's in my office I usually at least have a
19 piece of paper that says the date and the client's name
20 just so I know we met.

21 Q. But there's no note in your -- and that you met with
22 him and discussed that issue?

23 A. No.

24 Q. Okay. And so in between the May 15th meeting and
25 the June 8th meeting, were there any meetings at all with

GEOFFRY DUNN: CROSS BY MR. SHELDON

-34-

1 Mr. Walls that you have in your notes? And I say May 15th.
2 I believe that's the date you said but the meeting that you
3 had with him and his grandmother.

4 A. No, it does. Met with him on January 16th, I met with
5 him May 15th, I tried calling him several times on June the
6 5th, his mailbox was full. And like I said, June the 8th I
7 met with client at the courthouse and we talked four or
8 five times. I said spoke four or five times which means I
9 probably done some back and forth between him and the
10 solicitor trying to work out last minute deals but that's
11 what my notes have.

12 Q. So, he obviously knew to show up on June the 8th.

13 A. Yes.

14 Q. And so you had to have at least one conversation with
15 him between May and June the 8th; right?

16 A. Yes. I sent letters to him as well.

17 Q. And so, but nonetheless the offer of the three years
18 he ends up rejecting; is that right?

19 A. Yes.

20 Q. And so there was no conversation that you had that
21 took place in your office about the consequences of
22 rejecting that offer?

23 A. I don't remember.

24 Q. Okay.

25 A. He had roll call some of those times too. It could --

1 I mean we talked at roll call, I just don't remember.

2 Q. Okay:

3 MR. SHELDON: Judge, I don't have any more questions.

4 THE COURT: Anything further from this witness?

5 MS. GREGORY: No, sir.

6 THE COURT: Thank you, sir. Please step down.

7 (WITNESS LEAVES WITNESS STAND.)

8 THE COURT: Anything further from the State?

9 MS. GREGORY: No, sir.

10 THE COURT: All right. Be happy to hear from y'all
11 with any closing remarks.

12 MR. SHELDON: Thank you, your Honor, just very
13 briefly. I mean we'd ask the Court to vacate these
14 convictions based on essentially what amounts to an
15 involuntary plea.

16 You heard the applicant testify that he believed that
17 the only reason he would chose that three-year offer was
18 because he believed, based on his conversation with his
19 attorney, that the offer would in fact get better, in fact,
20 it got worse.

21 He realized it got worse when he pled guilty in the
22 July court date and based on all the testimony we would
23 just simply say that the plea was not done freely and
24 voluntarily and therefore we'd ask the Court to vacate the
25 convictions.

1 THE COURT: Yes, sir.

2 MS. GREGORY: Your Honor, based on the testimony and
3 the record is clear that Mr. Walls knew what the plea was.
4 He knew what his Constitutional rights were and he entered
5 them freely. He waived them freely and voluntarily and
6 entered into the guilty plea which was beneficial to him.
7 He knew he needed to try to get that range of six to eight
8 years and that's very clear on the record that he is warned
9 of that several times. It's his actions that led him to
10 not be able to take the benefit of that range of six to
11 eight years. He was then only sentenced one year above
12 that and we believe all of that is based on his actions.
13 And we would just ask that you deny and dismiss his
14 application in full because he has not met his burden set
15 forth in *Strickland*.

16 THE COURT: Thank you, ma'am.

17 In reviewing the application and the allegations
18 contained and that the application it appears that there
19 was discussion in May about the three-year YOA, and based
20 on what I've heard here today by Mr. Dunn, indicated that
21 he would try to get him a better offer. Then there was the
22 hearing, which I have that transcript, there was a hearing
23 in June where according to Mr. Dunn that he informed him
24 that at that point that it was not going to get any better
25 than the three-year YOA.

1 And then that's when Mr. Walls was put on the record
2 before Judge Hall, and it was reviewed by Judge Hall, and
3 Mr. Walls appears to voluntarily reject that offer.

4 The State made it clear that the rejection of that
5 offer would result in the case being called for trial in
6 June, or in July, depending on when they were able to reach
7 it. So, it does appear when I read the colloquy between
8 Judge Hall and Mr. Walls that he was aware that that plea
9 offer was being withdrawn and that he would not be subject
10 to any further plea offers and he at that point did reject
11 the offer.

12 Then we get to July when the case is ready to be
13 called for trial, July 24th, and there was a last minute
14 effort by Mr. Dunn to put something back on the table.
15 That was done. And then as I go through the colloquy
16 between Judge Hayes and Mr. Walls, Judge Hayes does an
17 outstanding job, he's very detailed in his colloquy with
18 Mr. Walls and he goes through everything regarding this
19 matter.

20 Now at any point there Mr. Walls had every opportunity
21 to explain to the Court what his concerns were but when ask
22 if he was satisfied with his attorney he said that he was.
23 When ask if he understood his Constitutional rights and
24 Judge Hayes went through those rights rather detailed. He
25 also went through the offer which was the six to eight and

1 made it very clear that that was a non-parolable. And
2 there's just nothing in the record here that would indicate
3 that Mr. Walls was not fully apprised of his rights and of
4 what the offer was.

5 And so, his allegations in his application just don't
6 seem to -- he indicates here that where in No. 11 under
7 Application it says State concisely and in the same order
8 of the facts which support each of the grounds set out in
9 No. 10 and No. 10 (b) says the plea wasn't clearly stated
10 and advised. And he goes forward and says I didn't know my
11 rights as of what I could do. Well it was painstakingly
12 clear that Judge Hayes went through everything with him.

13 I just don't see anything in the record here.
14 Obviously there is the testimony of Mr. Walls here today
15 who claims that he was unaware and not made aware of his
16 rights and the approaches involved with that. But the
17 actual record before the Court from that hearing doesn't --
18 just doesn't support that, and so I'm going to respectfully
19 deny his application.

20 MR. SHELDON: Thank you, Judge.

21 MS. GREGORY: Thank you, your Honor.

22 (APPLICANT JAVONTE WALLS EXITS COURTROOM.)

23 - END OF TRANSCRIPT OF RECORD. -
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas on the 29th day of January, 2019.

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

Wanda S. Nelson
Wanda S. Nelson, CVR-M
Certified Verbatim Reporter,
Official Circuit Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: June 1 / 2019

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Javonte Antonio Walls, #374056,)

2017-CP-46-3357

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED-RECEIVED
2019 APR -2 AM 9:58
DAVID HAMILTON
C.C.C.P. & ES
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed on November 13, 2017, by Javonte Walls (Applicant). The State (Respondent) filed a Return on March 15, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on January 29, 2019, at the Moss Justice Center. Applicant was present at the hearing and represented by Nathan J. Sheldon, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Applicant's grandmother, Patrician Hemphill, also testified on Applicant's behalf. Geoffry Mark Dunn, Esquire (Counsel), also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

I. PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's order of commitment. During the June 2017 term, the York County Grand Jury indicted Applicant for armed robbery (2017-GS-46-2309) and criminal conspiracy (2017-GS-46-2312). Counsel represented Applicant. Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case.

Applicant appeared before the Honorable John C. Hayes, III and pled guilty to attempted armed robbery and criminal conspiracy. The State dismissed two kidnapping charges as part of the plea agreement. Sentencing was deferred until August 21, 2017, due to a death in Applicant's family. Although Applicant came to court on August 21st, he did not stay for sentencing. A bench warrant was issued at that time and Applicant was later arrested. The State withdrew their recommended six – eight year sentencing range, and; on September 21, 2017, Applicant was sentenced to nine years imprisonment for attempted armed robbery, and a concurrent five years for criminal conspiracy. Applicant did not appeal his guilty plea or sentence.

II. SUMMARY OF FACTS

On November 2, 2016, Applicant and his two co-defendants parked on the road and walked through the woods to the Catawba Express on Highway 5 in York County. (GP Tr. 10.) Applicant's co-defendants entered the store armed with a handgun while Applicant stayed at the door. (GP Tr. 10.) Two of the employees were held at gunpoint and ushered into the back of the building. (GP Tr. 10.) The co-defendants cleaned out the cash registers and stole a number of cigarettes. (GP Tr. 10.) One of the victims heard Applicant make a noise as if communicating to his co-defendants that it was time to go. (GP Tr. 10.) Applicant and his co-defendants fled the scene through the woods and left the area in Applicant's vehicle. (GP Tr. 10.) The co-defendants confessed to their involvement in the incident and implicated each other as well as Applicant. (GP Tr. 10.) Both co-defendants were prepared to testify against Applicant had he proceeded to trial. (GP Tr. 10.) The State would have tried Applicant under the accomplice liability theory had Applicant proceeded to trial. (GP Tr. 11.)

III. ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel
 - a. Applicant did not know his rights
2. Involuntary Guilty Plea
 - a. Counsel failed to explain the plea to Applicant

An evidentiary hearing was held on January 29, 2019, Applicant informed this Court he intended to proceed on the grounds enumerated in his application.

IV. TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he understands all post-conviction relief can do is undo his plea and allow Applicant to start over. Applicant testified he had an "alright" relationship with Counsel. Applicant testified Counsel went over discovery with him, but he did so kind of late. Applicant testified Counsel told him it was not a good idea to go to trial. Applicant testified Counsel told him about a three-year YOA sentence, and he rejected that offer because Counsel told him he could get him a one-year YOA. Applicant testified Counsel said Applicant was the least culpable because he was the lookout man. Applicant testified he rejected the YOA plea offer because he thought he could get a lesser sentence. Applicant testified he pled guilty a month later and did not know the sentence range was six – eight years. Applicant testified the State took the three-year YOA off the table after he rejected that offer.

Applicant testified he left court, which is why he did not get the six – eight year range. Applicant testified he told Counsel he was scared of the six-eight year range, and Counsel said he

was going to call the solicitor to see if he could get a better offer. Applicant testified he left court expecting Counsel to call him and tell him when to come back, but Counsel never called him.

On cross-examination, Applicant testified he did voluntarily plead guilty, but he did not know what was going on. Applicant testified he did not recall signing the plea waiver form at the time of his plea. Applicant testified he wants a new trial on all of his charges.

Patricia Hemphill's Testimony

Ms. Hemphill testified she was present at a meeting with Counsel and Applicant. Ms. Hemphill testified during that meeting Counsel told Applicant what the charges were against him and that he could get Applicant a one year YOA. On cross-examination, Ms. Hemphill testified she was not present during all of the meetings between Applicant and Counsel.

Counsel's Testimony

Counsel also testified at the post-conviction relief hearing. Counsel testified he has been practicing law since 2004 and half of his practice is dedicated to criminal law. Counsel testified he was appointed to represent Applicant on December 21, 2016. Counsel testified he met with Applicant between three and five times prior to his guilty plea. Counsel testified one of the co-defendant's left behind fingerprints and that subject implicated Applicant in the incident. Counsel testified he filed discovery and Rule 5 motions and reviewed discovery with Applicant. Counsel testified Applicant never gave Counsel a different version of the facts. Counsel testified he reviewed Applicant's constitutional rights with him prior to his plea.

Counsel testified he approached the solicitor regarding a plea deal on Applicant's behalf. Counsel testified the State offered Applicant a three-year YOA sentence, and he communicated that plea offer to Applicant. Counsel testified Applicant rejected that offer, and the State was not going to provide Applicant another plea deal. Counsel testified the week before Applicant's plea,

he drove over to meet with Solicitor Kevin Brackett to request a plea deal, but he was unavailable. Counsel testified he emailed Solicitor Brackett asking for another plea offer in this case. Counsel testified that is when the State offered Applicant the six-eight year range. Counsel testified he fully expected Applicant to get six years based on the sentences of Applicant's co-defendants. Counsel testified Applicant's grandmother died over the weekend, and the State allowed Applicant to plea on Monday and defer sentence for a month due to the family death. Counsel testified Applicant was told if he did not show up for his deferred sentencing date, the six-eight year range would be off the table.

Counsel testified Applicant showed up to court on the date of his sentencing but was annoyed that his name was not on the trial docket and that he had to sign new sentencing sheets. Counsel testified around 9:30 A.M. Applicant asked Counsel if he could go buy cigarettes, and Counsel said "yes." Counsel testified Applicant never returned to the courthouse. Counsel testified he was prepared to take Applicant's case to trial and had already drafted a motion in limine in preparation for trial.

On cross-examination, Counsel testified the State's initial offer was a three-year YOA and Applicant rejected it on the record. Counsel testified the offer was for a burglary second (violent) and that a one-year YOA was not possible because of Applicant's charges. Counsel testified he may not have explained to Applicant the technicalities of how a YOA can go from one to three years. Counsel testified he went over discovery with Applicant. Counsel testified he told Applicant about the YOA offer and explained the offer would not get any better. Counsel testified he met with Applicant and his grandmother at one point. Counsel testified he attempted to call Applicant prior to the plea, but his voicemail was full. Counsel testified he sent letters to Applicant indicating when he needed to show up for court.

V. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984); Butler, 286 S.C. 441, 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).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom. Furthermore, after observing the witnesses and passing on their credibility, this court finds Counsel's testimony to be credible. By contrast, this Court finds Applicant's testimony lacks credibility.

Counsel failed to review Applicant's constitutional rights

Applicant alleges Counsel was ineffective for failing to review his rights with him prior to his guilty plea. This Court finds this allegation meritless. This Court finds credible Counsel's testimony that he reviewed Applicant's constitutional rights with him prior to the plea hearing. Additionally, the transcript reflects the plea judge engaged in a detailed recitation of Applicant's constitutional rights, including the right to a jury trial and Applicant's right to remain silent, during the plea colloquy. (GP Tr. 8-9.) This Court also reviewed the plea waiver form, which was initialed and signed by Applicant and Counsel. The plea waiver form provides the details of the

plea agreement, which includes a review of the constitutional rights Applicant would be waiving by entering his guilty plea.

Accordingly, this Court finds Applicant has failed to meet his burden of proof as to deficiency or prejudice as to this allegation. Therefore, this allegation must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Counsel failed to explain the plea to Applicant

Applicant alleges his plea was not knowingly entered into because Counsel did not explain the plea agreement to him. This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. To find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntarily made. The records before this Court, and particularly the transcript of Applicant's plea proceeding, show that Applicant engaged in a thorough colloquy with the court before electing to forgo his constitutional rights and knowingly, voluntarily, and intelligently enter a plea of guilty. Applicant also initialed and signed a plea waiver form, which provides the details of his plea agreement, including his charges, negotiated sentence, and constitutional rights. The Court finds credible Counsel's testimony that he reviewed with Applicant the terms of the plea, and that the negotiated range of six to eight years would be withdrawn if Applicant failed to show up for the deferred sentencing hearing. However, even if Counsel had failed to explain the plea agreement, this Court finds that any such alleged deficiency was cured by the plea court's colloquy.

Applicant was sworn during the plea hearing and told the plea court he wished to plead guilty. The plea transcript shows the plea court fully explained to Applicant the charges against him, his constitutional rights, and the consequences that Applicant would face if he failed to attend his deferred sentencing hearing. (GP Tr. 5-12.) Applicant further agreed with the facts of the case presented by the State during the plea hearing. (GP Tr. 11.) Accordingly, the Court finds Applicant's allegation that his guilty plea was not knowingly and voluntarily entered to be without merit and, consequently, this allegation is denied and dismissed with prejudice.

VII. CONCLUSION

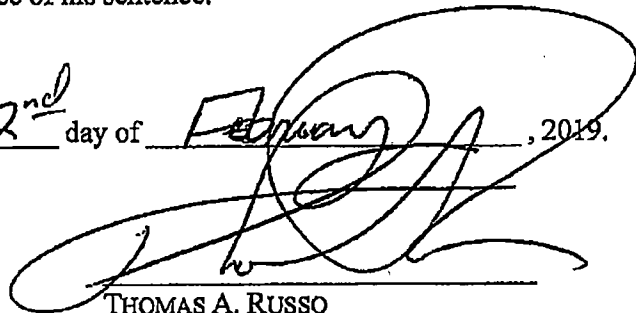
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22nd day of February, 2019.



THOMAS A. RUSSO
Presiding Judge
Sixteenth Judicial Circuit

Attest, South Carolina

WITNESSES

YCSO

Witnessing Officer: T.Hager

ARREST WARRANT NUMBER

2016A4610101425

ACTION OF GRAND JURY

TRUE BILL

6-15-17
Foreperson of Grand Jury

Date: 6-15-17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-46- 02309

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 15, TERM 2017

THE STATE

VS.

JA'VONTE ANTONIO WALLS

INDICTMENT FOR

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Attempted Armed Robbery

Ja'vonte Walls
Defendant

Witness:

Charles Court Spauld
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
INDICTMENT

2017 NOV 14 AM 10:21

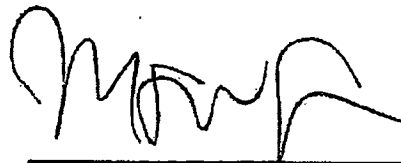
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on June 15, 2017, the Grand Jurors of
York County present upon their oath:

ARMED ROBBERY

The defendant, Ja'vonte Antonio Walls, did on or about November 2, 2016, while at the Catawba Express located at 5595 Highway 5 in Catawba, York County, South Carolina, take by means of force, threats, or intimidation, or as an accomplice to the same, a quantity of U.S. currency and/or cigarettes from the person or presence of Jessica Marie Harris and/or Nancy Lauren Carter while an accomplice/ co-conspirator named Ralph Anthony Cousar Jr was armed with a deadly weapon or displayed what a person present during the robbery would reasonably believe to be a deadly weapon. All in violation of Sections 16-11-0330(A) and 16-1-50 of the *South Carolina Code of Laws* (1976, as amended).

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



MATTHEW W. SHELTON
ASSISTANT SOLICITOR

WITNESSES

YCSO

Witnessing Officer: T.Hager

ARREST WARRANT NUMBER

2016A4610101428

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 6-15-17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-46- 02312

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JUNE 15, TERM 2017

THE STATE

VS.

JA'VONTE ANTONIO WALLS

**INDICTMENT FOR
CRIMINAL CONSPIRACY**

SC Code: § 16-17-0410
CDR Code: 0049

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Ja'vonte Walls
Defendant

Witness:

Children Court
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY

COUNTY OF YORK

2017 NOV 14 AM 10:21

INDICTMENT

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

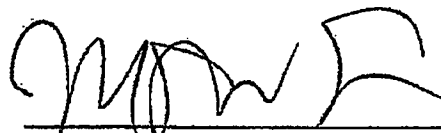
At a Court of General Sessions, convened on June 15, 2017, the Grand Jurors of

York County present upon their oath:

CRIMINAL CONSPIRACY

The defendant, Ja'vonte Antonio Walls, did on or about November 2, 2016, in York County, South Carolina, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree, or have tacit understanding with Ronald Anthony Brown, Jr and/or Ralph Anthony Cousar, Jr for the purpose of committing the crime of Armed Robbery and/or Kidnapping, all in violation of Section 16-17-0410, Code of Laws of South Carolina (1976, amended).

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



MATTHEW W. SHELTON
ASSISTANT SOLICITOR