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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable George M. McFaddin, Circuit Court Judge

ALMONDO D. WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001503

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

State of South Carolina

PLAINTIFF,

v.

Almondo Washington,

DEFENDANT.

TRANSCRIPT OF PLEA
Docket# 2015-GS-45-00132

Williamsburg County Courthouse
June 1, 2016

BEFORE:

HONORABLE R. FERRELL COTHRAN, JR., PRESIDING JUDGE.

APPEARANCES:

Kimberely Barr, Esquire
Assistant Solicitor for The State of South Carolina

Doward Harvin, Esquire
Williamsburg County Public Defender for
Defendant Almondo Washington

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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Certificate of Service

15

Almondo Washington vs. State of South Carolina

3

1 Ms. Barr: This is the State of South Carolina vs.
2 Almondo Washington. Your Honor, this is an indictment
3 for Armed Robbery, possession of a weapon during the
4 commission of a violent crime and criminal conspiracy.
5 Mr. Washington is here with his attorney Mr. Doward
6 Harvin. Your Honor, he wishes to enter a guilty plea to
7 count one of the indictment which is the armed robbery
8 count. In consideration of that guilty plea, the State
9 is going to dismiss counts two and three.

10 The Court: Okay.

11 Ms. Barr: We have a recommendation of a minimum
12 sentence of ten (10) years.

13 The Court: Okay. Mr. Washington, do you want to
14 plea guilty?

15 Mr. Washington: Yes, sir.

16 The Court: Have you had enough time to talk to your
17 lawyer about this?

18 Mr. Washington: Yes, sir.

19 The Court: Are you satisfied with his
20 representation?

21 Mr. Washington: Yes, sir.

22 The Court: Anybody promised you anything or
23 threatened you in any way to get you to plead guilty?

24 Mr. Washington: No, sir.

25 The Court: Do you understand this crime carries from

Almondo Washington vs. State of South Carolina

4

1 ten to thirty years in prison?

2 Mr. Washington: Yes, sir.

3 The Court: It is a no parole-able offense, do you
4 understand?

5 Mr. Washington: (Nods head affirmatively).

6 The Court: It is a most serious offense and it's
7 violent, which means if you get another most serious
8 offense against you, you're going to be looking at life
9 without the possibility of parole, do you understand?

10 Mr. Washington: Yes, sir.

11 The Court: Are you under the influence of alcohol or
12 drugs today?

13 Mr. Washington: No, sir.

14 The Court: You've got to speak up, okay?

15 Mr. Washington: No, sir.

16 The Court: Have you got any mental conditions that
17 would keep you from understanding what you're doing here
18 today?

19 Mr. Washington: No, sir.

20 The Court: By pleading you're giving up your
21 constitutional right to remain silent under the Fifth
22 Amendment because you're telling me you're guilty, do you
23 understand?

24 Mr. Washington: Yes, sir.

25 The Court: You're also giving up your right to a

Almondo Washington vs. State of South Carolina

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1 jury trial where you would be presumed innocent and the
2 State would have to prove you guilty of these charges
3 beyond a reasonable doubt to all twelve jurors. You'd be
4 able to sit in the courtroom and confront each and every
5 witness that would testify against you in that trial.
6 Your lawyer could cross examine the state's witnesses and
7 he could subpoena witnesses to testify in your behalf.
8 But when you plead you're giving all that up, do you
9 understand?

10 Mr. Washington: Yes, sir.

11 The Court: And you're giving up any appeals that
12 could come out of that trial, do you understand that?

13 Mr. Washington: Yes, sir.

14 The Court: Have you had an opportunity to look at
15 the discovery that the State has provided your attorney?

16 Mr. Washington: (Could not understand his response).

17 The Court: Do you have any questions about that?

18 Court Reporter: Did he say yes, sir or no, sir. I'm
19 sorry?

20 Mr. Washington: No, sir.

21 The Court: Huh?

22 Mr. Washington: No, sir.

23 The Court: The last question was yes, sir.

24 Mr. Washington: What was the last question?

25 The Court: That you went over the discovery that the

1 State provided with your attorney?

2 Mr. Washington: Yes, sir.

3 The Court: Okay. If you want to appeal this guilty
4 plea today, you or your lawyer must file it with the
5 Clerk's office within ten (10) days of today's date or
6 you give up that right, do you understand?

7 Mr. Washington: Yes, sir.

8 The Court: Do you have any questions you want to ask
9 me concerning your rights?

10 Mr. Washington: No, sir.

11 The Court: The solicitor is going to tell me what
12 happened and I'm going to come back and talk to you about
13 it.

14 Ms. Barr: If it please the Court, Your Honor. This
15 incident occurred back on November 16 of 2012 at [REDACTED]
16 Long Street. The street which is located in the town
17 limits of Kingstree in Williamsburg County, South
18 Carolina. A little shy of, I believe, it's right before
19 9:00 at night. There were two female victims in the
20 case. Tonya Williams and a Patrese(sic) Thomas. They
21 were seated inside a vehicle that was marked on South
22 Long Street. Present in the courtroom today is Ms. Tonya
23 Williams. She has always been here throughout the court
24 proceedings. But, in any event, Ms. Williams was in the
25 front passenger seat, the other victim, Ms. Thomas, if

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1 I'm correct, was in the driver's seat. Both women
2 described sitting there talking while two black males
3 both armed with handguns or what appeared to be handguns
4 approached them. One on the driver's side, one on the
5 front passenger's side. Ms. Thomas actually thought it
6 was a joke and made the comment that she took her hand
7 and kind of swatted the gun away and then she heard the
8 person at the driver's window tell her, this isn't a joke
9 give me your pocketbook. She told police at that point
10 she realized it was serious and she thought she may die
11 and so she gave that individual her pocketbook and her
12 phone. The victims describe the individual at the
13 driver's door, I believe, was wearing all black and the
14 individual at the front passenger door as having on a red
15 shirt and both of them had red bandanas covering their
16 mouths and their noses. The victim who was seated in the
17 front passenger seat described, as they approached and
18 demanded the money, that she looked at the person on the
19 driver's side and recognized who she thought to be Mr.
20 Washington. She had known Mr. Washington from the
21 community and he seemed to have a surprised look on his
22 face and what stood out to them was earlier in the day
23 they were, I believe, at Tanner's and Ms. Williams was
24 cashing a check at Tanner's and she noticed Mr.
25 Washington and a co-defendant Mr. Scott at Tanner's and

1 both of those defendants saw her cashing a check and it
2 stood out to her because they were driving, they were in
3 a '98, '99 Escort but had a Mickey Mouse emblem or symbol
4 or something on the back windshield. So, later on that
5 day they had traveled, I believe, to Family Dollar or
6 Dollar General or some place like that and saw the car
7 again and just kind of thought it was just ironic because
8 it appeared to be them that the car was following them.
9 This was before the armed robbery. So, after the robbery
10 happened and the person at the driver's side, the person
11 at the passenger's side ran off, Ms. Williams runs inside
12 an apartment complex and tells her, I believe, it might
13 have been her boyfriend, at the time, that they were just
14 robbed and to call 911. Well, the boyfriend runs out
15 trying to find whoever it was that committed the armed
16 robbery and indicated that he saw somebody run to a
17 vehicle, an Escort that had a Mickey Mouse emblem on the
18 back and he gets in the car to try and follow this
19 vehicle and I think ended up following the vehicle and
20 losing it in traffic somewhere on Main Street. But, in
21 any event, the police put out a BOLO for the Escort with
22 the Mickey Mouse emblem on the back and they get a call
23 indicating that the vehicle was seen backed into a
24 residence located at [REDACTED]. And, so when
25 one of the police officers arrived at the location, the

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1 owner of the vehicle indicated that the vehicle had been
2 there all night and had not been touched. Well, the
3 officer touches the hood of the vehicle and it's warm to
4 the touch and so the officer then asked the owner, well,
5 will you give me permission to search or I'm going to
6 have to tow it because we believe that it was involved in
7 an armed robbery. We believe the individuals may be in
8 your home. Eventually, Mr. Washington and I'm not sure
9 whether it was he and Mr. Scott or he and Mr. Singletary,
10 but at least two of the individuals involved came out and
11 surrender. The owner of the vehicle gave them permission
12 to search the vehicle and in the trunk of the vehicle was
13 a black bag that contained --- that belonged to Mr.
14 Washington. In the black bag was a red hoodie, a .25
15 caliber pistol, two clips that had bullets in it. A pink
16 Ipod with earphones. Black pair of gloves and some red
17 shoes. While the officer had taken custody of the book
18 bag he noticed that near one of the trash cans on the
19 curb it looked like there was a trash bag located there.
20 So, the officer then checked the trash bag and inside the
21 trash bag was where he found the pocketbook belonging to
22 the person who is sitting in the driver's seat, Ms.
23 Thomas. He had Ms. Thomas to come and identify the
24 pocketbook. She identified it positively as hers and told
25 the officers that the only thing that was actually

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1 missing was one of her children's birth certificates.
2 So, a chain of custody form was done for the purse and it
3 was returned to the victim.

4 Judge, you'll notice in the indictment that there is
5 a third individual by the name of Mark Singletary. On
6 October 28, 2013, Mr. Singletary pled guilty to criminal
7 conspiracy. During the course of his guilty plea, he
8 indicated that his job was to be the driver of the
9 vehicle and that it was Mr. Scott and Mr. Washington who
10 were the individuals to get out of the vehicle and who
11 had the guns and who committed the robbery and he was to
12 wait in the car for them until they came back after the
13 robbery was clear.

14 The Court: Okay. Are those facts correct, Mr.
15 Washington?

16 Mr. Washington: Yes, sir.

17 The Court: Okay. And you're pleading guilty because
18 you are guilty?

19 Mr. Washington: Yes, sir.

20 The Court: That was a yes, sir?

21 Mr. Washington: Yes, sir.

22 The Court: All right. Then I find as a factual
23 basis for your plea it is freely and voluntarily entered
24 into. You've had the advice of competent counsel whom
25 you tell me you're satisfied with and I'll accept your

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1 plea. Mr. Harvin.

2 Mr. Harvin: May it please the Court. Just to clear
3 the record as it relates to representation. There was a
4 period of time, why I was assigned to represent Mr.
5 Washington back in 2012, shortly thereafter another
6 lawyer stepped in and represented Mr. Washington from
7 2012 until last year August, I think, of 2015. We were
8 then reassigned to represent Mr. Washington. And, so,
9 there was a period of time where our office had no
10 interaction with this case and so I wanted the record to
11 reflect that there was another lawyer that was on this
12 case. I don't know if he ever filed the proper
13 paperwork. I don't know if he was ever actually removed
14 properly but we were appointed because it seemed to be
15 some issue of whether or not he was going to come into
16 court and represent Mr. Washington. Nonetheless, Mr.
17 Washington served approximately two and a half months in
18 jail before he bonded out. Since that time, and he was
19 seventeen when this happened, and since that time he
20 hasn't gotten in any trouble, in fact, if there was ever
21 a poster child for making a change after just an arrest
22 and realizing the consequences of his actions, it would
23 be Mr. Washington.

24 He has a family. A five month old child that he
25 takes care of. He works every day. In fact, he just got

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1 off of work this morning. I've seen him on multiple
2 occasions by himself just, you know, doing the things
3 that you would expect a young man to do as a productive
4 citizen. So, it's very unfortunate that the mandatory
5 minimum for armed robbery is ten (10) years. It's
6 unfortunate that him and his friends decided to commit
7 this act. I do not believe when they did this and he was
8 seventeen years of age, I do not believe that he
9 understood the gravity of the actions that he was taking
10 at that time. But, I do believe that he understood them
11 after the fact, after he was arrested and it was
12 explained to him at that time. He seems like a very
13 intelligent young man. Obviously, we know the victim was
14 very traumatized by the incident because the other
15 gentlemen, Mr. Walter Scott, who had a weapon, it is
16 alleged that he attempted to fire a weapon a couple of
17 times, but for some reason his weapon just never
18 discharged. I don't believe Mr. Washington ever
19 attempted to discharge his weapon. Nonetheless, Your
20 Honor, there isn't much that you can do regarding
21 lowering his sentence but we would ask the court to at
22 least go along with the recommendation of a ten (10) year
23 sentence. The driver of the vehicle received a time
24 served sentence which equated to one (1) year. I believe
25 at the time when the other lawyer was representing Mr.

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1 Washington, he was offered a YOA sentence. But,
2 nonetheless, Judge, we find ourselves in this position
3 where he is looking at ten (10) years and we would ask
4 the court to accept that recommendation.

5 The Court: Okay. Anything else from the State?

6 Ms. Barr: Your Honor, the victim, Ms. Tonya Williams
7 is here and I'd like the Court to give her an opportunity
8 to address the court if she wishes to.

9 The Court: Yes, ma'am.

10 Ms. Williams: Since that incident, it's like --- it
11 happened in front of my door. I don't sleep well at
12 night. I actually just purchased a fire arm to protect
13 me and my son and I never thought that I would actually
14 have to purchase a fire arm because I don't deal with
15 them at all but for me to know the --- for me to know
16 him. It hurt me a lot for him to actually do it to me
17 like that. And, I just be scared for my life and my
18 child because I could have been dead. And for them to
19 actually walk around like this, like nothing and just
20 doing that and getting in trouble. It just scare me. It
21 hurt me a lot.

22 The Court: Well, I appreciate you coming and I'm
23 sorry that you had to go through all this. Anything
24 else?

25 (No responses)

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1 The Court: All right. The sentence of the court is
2 you are committed to the State Department of Corrections
3 for a term of ten (10) years. I'm giving you credit for
4 the time you've already served. When you get out I hope
5 you can turn your life around and be a productive citizen
6 and not get in any more trouble.

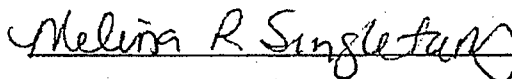
7 (End of Hearing)

CERTIFICATE

This is to certify that the plea transcript in the matter of State vs. Almondo Washington, consisting of Fourteen (14) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 27th day of November, 2016.



Melissa R. Singletary
Certified Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PL)

COUNTY OF WILLIAMSBURG)

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

ALMONDO WASHINGTON)
v. #368479)

State of South Carolina)

APPLICATION FOR)
POST-CONVICTION RELIEF)2016 AUG -5 PM 3:27
CLERK OF COURT
WILLIAMSBURGINSTRUCTIONS - 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 MACDOUGALL 1516 OLD GILLIARD RD, RIDGEVILLE.
2. Name and location of Court which imposed sentence WILLIAMSBURG COUNTY
3. Name(s) of co-defendant(s) (if any) WALTER B. SCOTT JR.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-45-0132 ARMED ROBBERY
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-1-16
 - (b) 10 YEARS

SCANNED
8/12/16

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty NIA
- (c) after a plea of nolo contendere NIA
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO, I REQUESTED COUNSEL TO FILE APPEAL
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NIA
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. NIA
- iii. _____
- (c) the date of each such result:
- i. NIA
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NIA
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) COUNSEL FAILED TO DO HIS DUTY
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: FAILURE TO FILE APPEAL
PLEA NOT VOLUNTARY OR INTELLIGENTLY ENTERED
SUBJECT MATTER JURISDICTION NOT VESTED

- (a) _____
- (b) _____
- (c) _____

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

- (a) SEE ATTACHMENT FACTS
- (b) SEE ATTACHMENT FACTS
- (c) SEE ATTACHMENT FACTS

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

- iv. _____
- (d) the date of each such disposition:
- i. NIA
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NIA
- 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 FIRST BITE OF THE APPLE
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. NIA
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. NIA
- 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) THIS IS A FREASH CASE,
- (b) FIRST BITE OF THE APPLE
- (c) _____
17. Were you represented by an attorney at any time during the course of:
YES

ATTACHMENT "FACIS"

FAILURE TO MOVE FOR SUPPRESSION OF SPEEDY TRIAL AND SUPPRESS THE EVIDENCE.

UNITED STATES V. WOOD, 879 F.2 70 927, 934 E.D.C.CIR. 1989] TO MAKE OUT A CLAIM OF INEFFECTIVE ASSISTANCE RELATED TO AN ATTORNEY'S FAILURE TO MOVE FOR SUPPRESSION OF SPEEDY TRIAL MOTION, AND TO SUPPRESS THE EVIDENCE AND A MOTION TO SUPPRESS THE INDICTMENT, THE MOVANT MUST SHOW THAT THE CLAIM HAD MERIT AND THERE IS A REASONABLE PROBABILITY THAT BUT FOR THE EXCLUDABLE EVIDENCE THE VERDICT WOULD HAVE BEEN DIFFERENT.

ADVICE CONCERNING PLEA ON Y.O.A.

DEFENDANT HAD A PLEA FOR A Y.O.A. COUNSEL FAILED TO DO HIS DUTY AND PULL PLEA, WHEN DEFENDANT DID NOT GET THE PLEA THAT HAD BEEN PROMISED.

PADILLA V. KENTUCKY, 559 U.S. ____ 176 L.E.2D 284, 296-97 [2010] AFFIRMATIVE MISADVICE BY AN ATTORNEY AND A FAILURE TO ADVISE ABOUT THE ADVANTAGES AND DISADVANTAGES OF GUILTY PLEA ARE TREATED THE SAME WHEN ASSESSING WHETHER COUNSEL'S PERFORMANCE WAS DEFICIENT.

SENTENCE RENDERED PLEA UNKNOWNING AND INVOLUNTARY AND CONSTITUTED INEFFECTIVE ASSISTANCE:

PAGE 1. OF 3

Almonds Wash. y/v

DEFENDANT

PLEA IS NOT VOLUNTARY OR INTELLIGENTLY ENTERED.

SHORT V. UNITED STATES 471 F.3D 686, 692 [6TH CIR. 2006] A DEFENDANT CHALLENGING HIS ATTORNEY'S CONDUCT DURING PLEA BARGAINING MUST SHOW THAT COUNSEL DID NOT ATTEMPT TO LEARN THE FACTS OF THE CASE AND FAILED TO MAKE A GOOD-FAITH ESTIMATE OF A LIKELY SENTENCE. HE MUST ALSO SHOW THAT HIS LAWYER'S DEFICIENCY WAS A DECISIVE FACTOR IN HIS DECISION TO PLEAD GUILTY. UNITED STATES V. BOOZE, 293 F.3D 516 [D.C. CIR. 2002] REMANDING FOR A HEARING ON CLAIM THAT ATTORNEY ADVISED CLIENT TO ACCEPT PLEA BASED ON "PLAINLY INCORRECT" ESTIMATE OF THE LIKELY SENTENCE DUE TO IGNORANCE OF APPLICABLE LAW ATTORNEY SHOULD HAVE BEEN AWARE OF.

HILL V. LOCKHART, 894 F.2D 1009 [8TH CIR. 1990] WHERE A DEFENDANT ENTERS A GUILTY PLEA UPON COUNSEL'S ADVISE, THE VOLUNTARINESS OF THE PLEA DEPENDS ON WHETHER THE ADVISE WAS WITHIN THE RANGE OF COMPETENCE DEMANDED OF ATTORNEYS IN CRIMINAL CASES. THE TWO-PART STANDARD ADOPTED IN STRICKLAND V. WASHINGTON 466 U.S. 668. FOR EVALUATING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL REQUIRING THAT THE DEFENDANT SHOW THAT COUNSEL'S REPRESENTATION FELL BELOW AND OBJECTIVE

ATTACHMENT "FACTS"

STANDARD OF REASONABLENESS AND THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT APPLIES TO GUILTY PLEA CHALLENGES BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL. IN ORDER TO SATISFY THE SECOND, OR PREJUDICE REQUIREMENT, THE DEFENDANT MUST SHOW THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS, HE WOULD NOT HAVE PLEADED GUILTY, AND WOULD HAVE INSISTED ON GOING TO TRIAL.

MC MANN V. RICHARDSON, 397 U.S. 759, 397 U.S. 771 [1970] WHERE, AS HERE, A DEFENDANT IS REPRESENTED BY COUNSEL DURING THE PLEA PROCESS AND ENTERS HIS PLEA UPON THE ADVICE OF COUNSEL, THE VOLUNTARINESS OF THE PLEA DEPENDS ON WHETHER COUNSEL'S ADVICE WAS WITHIN THE RANGE OF COMPETENCE DEMANDED OF ATTORNEYS IN CRIMINAL CASES.

SUBJECT MATTER JURISDICTION NOT VESTED.

THE INDICTMENT IS A NULLITY AND VOID PROCESS. UNDER 17-19-20 THIS INDICTMENT DOES NOT STATE WHERE THE CRIME HAPPEN. THIS LEFT THE GRAND JURY TO SPECULATE ON WHERE THE CRIME HAPPEN IN WILLIAMSBURG. SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY TIME. CARTER V. STATE.

- (a) your arraignment and plea? YES
- (b) your trial, if any? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO IT WAS NEVER FILED
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

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

- i. DONARD K. HARVIN - 125 WEST MAIN ST. RM #309
- ii. LEGRAND W. CARRAWAY - 124 SOUTH ACADEMY ST. KINGSTREE SC
- iii. _____

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

- i. PLEA
- ii. SENTENCE
- iii. _____

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

TO VACATE SENTENCE AND GIVE THE V.O.A. THAT WAS THE PLEA.

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

NO

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT**

IN SUPPORT THEREOF

ALMONDO WASHINGTON #368479

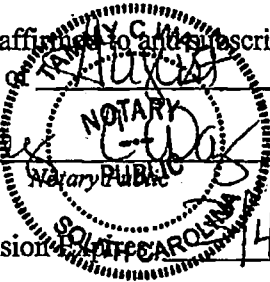
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.

Almondo Washington
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of August, 2016

[Signature]
Notary Public
My Commission 14/2024



FILED
2016 AUG -5 PM 3:27
CLERK OF COURT
KINGS TREE, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Almondo D. Washington, #368479,

2016-CP-45-363

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 5, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Williamsburg County. Applicant was indicted by the May 2013 term of the Grand Jury for Williamsburg County for Armed Robbery, Possession of a Weapon during the Commission of a Violent Crime, and Criminal Conspiracy (2013-GS-45-0132). Applicant was represented by Doward K. Harvin, Esquire, and LeGrand Carraway, Esquire. On June 1, 2016, Applicant pled guilty as indicted to Armed Robbery, with the other two charges being dismissed in consideration of the guilty plea. Applicant was sentenced by the Honorable R. Ferrell Cothran, Jr. to ten years' imprisonment. Applicant did not appeal his conviction or sentence.

II.

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

1. Ineffective Assistance of Counsel

- a. "Failure to file appeal."
 - b. "Failure to move for the suppression of a speedy trial (sic) and suppress evidence."
 - i. "Failure to advise me that under my 5th Amendment right I did not have to answer to any crime whether it be capital or infamous unless on a presentment of indictment of a Legal Grand Jury"
- 2. Involuntary Guilty Plea
 - a. "Plea is not voluntarily or intelligently entered."
- 3. Subject Matter Jurisdiction
 - a. "This indictment is a nullity."
 - b. "This indictment does not state where the crime happened. This left the Grand Jury to speculate where the crime happened in Williamsburg."

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

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Applicant further alleges that defense counsel was ineffective for failing to file a direct appeal at his request.

While trial counsel is required to make certain the defendant is made fully aware of the right to appeal, the standard for a guilty plea differs. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id. at 225, 670 S.E.2d at 374 (citing Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)). "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). Since Applicant claims he did not voluntarily waive his right to a direct appeal, an evidentiary hearing is warranted on this issue.

This allegation regarding a belated direct appeal may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to address this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Respondent further submits Applicant's second allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312

S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). 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. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

VI.

Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v.

Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, supra; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, supra. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. For the aforementioned reasons, Respondent submits that this allegation should be dismissed.

VII.

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

VIII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

IX.

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

[signature page to follow]

X.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

February 13, 2017

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

ALMONDO D. WASHINGTON,
#368479

2016-CP-45-0363

Applicant,

vs

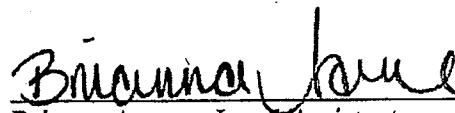
AFFIDAVIT OF SERVICE BY MAIL

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 on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
807 Gervais Street, Suite 203
Columbia, South Carolina 29201

DATED this 13th day of February, 2017.


Brianna Arnone, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

2016-CP-45-0363

ALMONDO D. WASHINGTON,
#368479

Applicant,

vs

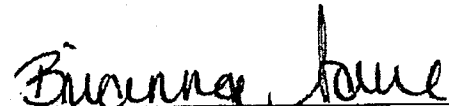
AFFIDAVIT OF SERVICE BY MAIL

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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Almondo D. Washington, #368479
MacDougall Correctional Institution
1516 Old Gilliard Rd
Ridgeville, SC 29472

DATED this 13th day of February, 2017.


Brianna Arnone, Legal Assistant
For Respondent

1	State of South Carolina	)	In the Court
2	County of Williamsburg	)	Of Common Pleas
3	Almondo D. Washington,	)	Case No.: 2016-CP-45-00363
4	Applicant/Plaintiff,	)	
5	vs.	)	Transcript of Record
6	State of South Carolina,	)	
7	Respondent/Defendant.	)	
8			

9

November 16, 2017

10

Sumter, South Carolina

11

12 BEFORE:

13

The Honorable George M. McFaddin, Judge

14

15 APPEARANCES:

16

17

Lance S. Boozer, Esquire
Attorney for the Applicant/Plaintiff

18

19

Julie Coleman, Assistant Attorney General
Attorney for the Respondent/Defendant

20

21 ALSO PRESENT:

22

Almondo D. Washington

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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1 November 16, 2017

2 Thereupon, the following proceedings were had,

3 BAILIFF: All rise.

4 THE COURT: Thank you. Please be seated. Good
5 morning. Ms. Coleman, whenever you're ready, ma'am.

6 MS. COLEMAN: Thank you, Your Honor. This is
7 Almondo D. Washington versus the State of South Carolina.
8 Docket number 2016-CP-45-363. Applicant is presently
9 confined in the South Carolina Department of Corrections
10 pursuant to orders of committment of the Williamsburg
11 County Clerk of Court. Applicant was indicted by the May
12 2013 term of the Williamsburg County Grand Jury for armed
13 robbery, possession of a weapon during the commission of
14 a violent crime and criminal conspiracy, applicant was
15 represented by LeGrand Carraway, Esquire and Doward K.
16 Harvin, Esquire.

17 On June 1st, 2016 applicant pled guilty as indicted
18 to armed robbery with the two other charges dismissed in
19 consideration of the guilty plea. Applicant was
20 sentenced by the Honorable R. Ferrell Cothran, Junior to
21 10 years imprisonment. Applicant did not appeal his
22 conviction or sentence.

23 Applicant subsequently filed a timely application
24 for post conviction relief on August 5th, 2016 alleging
25 that he was being held in custody unlawfully based on the

1 following allegations; ineffective assistance of counsel,
2 involuntary guilty plea, and subject matter jurisdiction.
3 The State filed its return on February 13th, 2017 and he
4 is present today and represented by Mr. Lance Boozer.

5 THE COURT: Mr. Boozer.

6 MR. BOOZER: Thank you, Your Honor. May it please
7 the Court. Judge, just as a preliminary matter and to
8 kind of focus, I guess, the issues in this hearing, if
9 Your Honor looks to the PCR application which should be
10 included in the packet --

11 THE COURT: Yes, sir.

12 MR. BOOZER: -- by the State, on what he's got
13 labeled as his page 1 of 3 which is a handwritten page.

14 THE COURT: Yes, sir.

15 MR. BOOZER: And it's the second or third paragraph
16 which is the advice concerning the plea on the YOA,
17 defendant had a plea for a YOA. Counsel failed to do his
18 duty with the plea when the defendant did not get that
19 plea that he had been promised, I just wanted to clarify,
20 all of his allegations concern his lawyer's failure to
21 notify or bring that to the court's attention, the
22 existence of a prior plea offer that had been signed by
23 all parties and basically failing to notify the court of
24 that and request that that plea be enforced. That would
25 be sort of a clarification as to that allegation.

ALMONDO WASHINGTON - DIRECT BY MR. BOOZER

5

1 Judge, we would go ahead and call Mr. Washington to
2 the stand.

3 THE COURT: All right, sir.

4 Thereupon,--

5 ALMONDO D. WASHINGTON

6 after having been first duly sworn, testified as follows,

7 THE CLERK: State your name and spell your last name
8 for the record.

9 THE WITNESS: Almondo Washington,
10 W-a-s-h-i-n-g-t-o-n.

11 THE COURT: Mr. Boozer.

12 MR. BOOZER: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. BOOZER:

15 Q. Mr. Washington, how are you doing today?

16 A. All right.

17 Q. Are you nervous today?

18 A. (Witness nodding head.)

19 Q. You'll have to speak up and state everything on the
20 record --

21 A. Yes, sir.

22 Q. -- for the Court reporter.

23 A. Yes, sir.

24 Q. Okay. Now, you have been waiting for this moment
25 for some time, haven't you?

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 A. Yes, sir.

2 Q. All right. Mr. Washington, what are you currently
3 incarcerated for?

4 A. Armed robbery.

5 Q. All right. And you filed a PCR application; is that
6 correct?

7 A. Yes, sir.

8 Q. What sort of sentence did you receive from that
9 armed robbery?

10 A. Ten years.

11 Q. What's your max out date?

12 A. 2024.

13 Q. How old are you?

14 A. 22.

15 Q. Okay. At the time of your plea how old were you?

16 A. At the time of the plea?

17 Q. Yes, sir.

18 A. Uhm, 21. My birthday.

19 Q. And when was it alleged that this armed robbery
20 occurred, what year?

21 A. 2012.

22 Q. How old would you have been back then?

23 A. 17.

24 Q. Okay. Mr. Washington, you've got a very specific
25 issue and claim in this. Is your claim, just to clarify, that

1 there was a plea offer in which that you signed a sentencing
2 sheet, your former attorney signed the sentencing sheet and
3 the Solicitor signed the sentencing sheet; is that right?

4 A. Yes, sir.

5 Q. Was that to plea to strong armed robbery and receive
6 a YOA sentence?

7 A. Yes, sir.

8 Q. All right. And your claim is you had a different
9 lawyer who came onto your case ultimately representing you at
10 the plea which you're serving the time for now but that lawyer
11 should have tried to enforce that prior YOA plea?

12 A. Yes, sir.

13 Q. And you don't want a new trial, do you?

14 A. No, sir.

15 Q. What you're asking this Court for is you're asking
16 him to grant your application and send it over to General
17 Sessions so that you can accept that YOA plea or have that
18 plea enforced?

19 A. Yes, sir.

20 Q. Okay. So let's do this, Mr. Washington. Your plea
21 was to the armed robbery and that was on June 1st of 2016?

22 A. Yes, sir.

23 Q. Who represented you at that plea?

24 A. Mr. Doward Harvin.

25 Q. Doward Harvin?

1 A. Yes, sir.

2 Q. Okay. Prior to -- Let me ask you this: How did
3 Mr. Harvin come about representing you?

4 A. I had to, uhm, sign -- I had to reassign, uhm, sign
5 up for a Public Defender.

6 Q. You said, I think you said reassign. Did you have
7 someone representing you before Mr. Harvin?

8 A. My people, my mom and dad hired Mr. Carraway to get
9 me a bond reduction.

10 Q. So why did Mr. Carraway stop representing you and
11 you had to sign up for a Public Defender?

12 A. I don't know.

13 Q. All right. Do you know when Mr. Carraway was hired
14 for a bond hearing?

15 A. It had to be when I was in the county in 2012.

16 Q. All right. Did you actually bond out?

17 A. Yes, sir.

18 Q. All right. Now, while Mr. Carraway was representing
19 you, was there a plea offer that was made to you?

20 A. No, because I didn't see him. After the bond
21 reduction, I never saw him no more.

22 Q. But eventually did it come about to where some sort
23 of offer was made to you of a plea to strong armed robbery and
24 a YOA sentence?

25 A. Yes, sir.

ALMONDO WASHINGTON - DIRECT BY MR. BOOZER

9

1 Q. Do you know when that was done?

2 A. I don't know when it was done but I can remember the
3 day but I can't remember when.

4 MR. BOOZER: Your Honor, may I approach the witness?

5 THE COURT: Yes, sir.

6 BY MR. BOOZER:

7 Q. Mr. Washington, I'm going to hand you a document.
8 If you could just take a moment and look at that. Have you
9 seen that document before?

10 A. Yes, sir.

11 Q. Okay. And is this a copy of a sentencing sheet?

12 A. Yes, sir.

13 Q. All right. And it says at the top Williamsburg
14 versus Almondo Washington. The indictment case number is
15 2013-GS-45-132. Is that from your armed robbery case?

16 A. Yes, sir.

17 Q. Then it says to armed robbery. Then it has that
18 written out and says strong armed robbery and then it looks
19 like it's got defendant and is that your signature on there?

20 A. Yes, sir.

21 Q. Is this a true and accurate copy of that document as
22 it looked the date you signed it and accepted it?

23 A. Yes, sir.

24 MR. BOOZER: Your Honor, at this time I move to have
25 this marked as Applicant's Exhibit 1.

1 MS. COLEMAN: No objection.

2 THE COURT: All right. Thank you, ma'am.

3 (Whereupon, Applicant's Exhibit #1 marked for
4 identification and entered.)

5 BY MR. BOOZER:

6 Q. Now, Mr. Washington, looking at this sheet, was it
7 your understanding that you were going to accept and plead to
8 strong armed robbery and receive a YOA sentence?

9 A. Yes, sir.

10 Q. Okay. And there are a couple of other signatures
11 that are on there. Did you see anyone else sign it when you
12 signed it?

13 A. The only one I saw sign it was Tyler.

14 Q. When you say Tyler, was that Mr. Brown who is with
15 the Solicitor's Office?

16 A. Yes, sir.

17 Q. Okay. And then does that appear to be based on your
18 knowledge Mr. Carraway's signature?

19 A. Yes, sir.

20 Q. Okay. This particular plea or the sentencing sheet,
21 what happened? Why was it not entered?

22 A. I don't know.

23 Q. Okay. Did you think that you were going to be
24 sentenced -- Would you have signed that plea sheet had you
25 known you were not going to be given that plea?

1 A. No, sir.

2 Q. So you relied on that?

3 A. Yes, sir.

4 Q. Did you have any conversation with Mr. Harvin about

5 the plea sheet, the sentencing sheet that's been marked as

6 Applicant's Exhibit 1?

7 A. I told him about it June 1st when they offered me
8 the 10 years.

9 Q. You told him about it? Yes or no?

10 A. Yes, sir.

11 Q. What did he tell you?

12 A. He said he was gonna talk to Ms. Barr about it and
13 then he came back and said she wasn't gonna do it.

14 Q. Okay. Did you tell him that you had actually signed
15 the document?

16 A. I didn't told him that in those exact words, but I
17 told him I was offered the Y. I thought I was getting a Y.
18 That's what I told him.

19 Q. Okay. And so then ultimately you ended up pleading
20 to armed robbery and got a 10 year sentence?

21 A. Yes, sir.

22 Q. Why at the plea did you not speak up and say, hey, I
23 thought I had this other plea? Why didn't you do that?

24 A. Because they give me 10 years and I was sorry. I
25 didn't know what to say and she told me if I didn't sign it, I

1 could go to trial and get more time.

2 Q. Okay. How many meetings or conversations did you
3 have with Mr. Carraway?

4 A. He came to the county jail when I was locked up and
5 talked to me. Then I saw him, he came to the bond reduction
6 and that was it. I never saw him again.

7 Q. Okay. So you really didn't have a whole lot of
8 contact with Mr. Carraway?

9 A. No, sir.

10 Q. Did you have any problems with Mr. Carraway?

11 A. No, sir.

12 Q. How much contact or meetings did you have with
13 Mr. Harvin?

14 A. When I - when I got assigned to him, I think I
15 talked to him then and then I saw him a couple of times at
16 roll call but we never really talked about nothing then. Then
17 I talked to him that day I got the 10 years.

18 Q. Okay. So 2012 is when you're arrested and 2016 is
19 when this plea ultimately happens so that's about four
20 years?

21 A. Yes, sir.

22 Q. During most of that time did you think that you were
23 gonna get this YOA sentence that you had signed this
24 sentencing sheet for?

25 A. Yes, sir.

1 MR. BOOZER: Your Honor, that's all the questions I
2 have of Mr. Washington.

3 THE COURT: All right. Let me ask a couple of
4 questions here. This exhibit that you put in with him
5 just now, right?

6 MR. BOOZER: Yes, Your Honor.

7 THE COURT: That shows the signature of LeGrand
8 Carraway; is that right?

9 MR. BOOZER: I believe it does, Your Honor.

10 THE COURT: And Kimberly Barr?

11 MR. BOOZER: No, Your Honor.

12 THE COURT: That's not Kim's signature. I know
13 that.

14 MR. BOOZER: It's not, Your Honor. As an officer of
15 the court, Judge, I spoke in investigating this case on
16 behalf of Mr. Washington, when he indicated to me that
17 there was a sentencing sheet or that he believed he had
18 signed something and accepted this, I contacted the
19 Solicitor's Office. Tyler Brown who was the Solicitor at
20 the time communicated by e-mail with myself and Solicitor
21 Warren Anderson. They pulled the file and sent it to me
22 via e-mail this sentencing sheet. That's where this came
23 from.

24 When I discussed this with Mr. Brown, he indicated
25 to me that, yes, that is his signature. That's not

1 Kimberly Barr's signature. He signed this. When I asked
2 him about the circumstances surrounding this, he did not
3 have any recollection, any specific recollection of it
4 about him signing it or why it didn't go through or what
5 may have happened afterward. He said, you know, I'm
6 happy to come to the hearing but there's really nothing
7 that he can add. But as an officer of the court that is
8 the conversation I had with Mr. Brown.

9 THE COURT: Okay. The one signed by Mr. Brown, the
10 Solicitor, what day was this done?

11 MR. BOOZER: Judge, that is something that I have
12 not been able to come to any exact conclusion. My client
13 is not exactly sure of the date that that happened.
14 Mr. Brown is not sure of the exact day that that happened
15 so I do not know, Your Honor. Obviously it was before,
16 of course, the ultimate plea.

17 THE COURT: All right. Well, I need to be careful
18 about how many questions I ask and how deeply I get into
19 it so let me save anything I might have until the very
20 end, okay?

21 MR. BOOZER: Of course.

22 THE COURT: All right, sir.

23 MS. COLEMAN: Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. COLEMAN: Thank you. May it please the Court.

ALMONDO WASHINGTON - CROSS BY MS. COLEMAN

15

1 CROSS EXAMINATION

2 BY MS. COLEMAN:

3 Q. Mr. Washington, good morning.

4 A. Good morning.

5 Q. You ended up pleading guilty on June 1st, 2016,
6 right?

7 A. Yes, ma'am.

8 Q. So there's no question that you robbed the victims
9 in this case, right?

10 MR. BOOZER: Objection, Your Honor.

11 THE COURT: Sustained.

12 MS. COLEMAN: Your Honor, if I may ask for a
13 clarification on that ruling.

14 THE COURT: Well, are we here today to go back to
15 the guilt phase or to find out what allegedly went wrong?

16 MS. COLEMAN: Well, the scope of my question is
17 really regarding whether his plea that he ended up
18 entering was knowing and voluntary.

19 THE COURT: Okay. I'll let you ask it then.

20 MS. COLEMAN: Thank you, Your Honor. I appreciate
21 that.

22 BY MS. COLEMAN:

23 Q. So you admitted to the court at the guilty plea on
24 June 1st, 2016 that you robbed the victims, you were involved
25 in this robbery; is that right?

1 A. Yes, ma'am.

2 Q. And you pled guilty?

3 THE COURT: Ms. Coleman, let me just tell you, the
4 only reason I overruled you to begin with or sustained
5 the objection was that I'm so mindful of some of these
6 hearings drifting into retrials, okay? But you are
7 right. Go ahead, ma'am.

8 MS. COLEMAN: Thank you, Your Honor.

9 BY MS. COLEMAN:

10 Q. You ended up getting the mandatory minimum on the
11 armed robbery charge, right, a 10 year sentence?

12 A. Yes, ma'am.

13 Q. How many times did you meet with Mr. Harvin to
14 prepare for this case? I believe you've already testified you
15 met with him a couple times and talked to him?

16 A. I met with him the day that I got the 10 and I met
17 with him, I saw him like a couple times when I went to roll
18 call.

19 Q. And you didn't bring up the YOA sentence to the plea
20 court that day, right, on June 1st?

21 A. He told them.

22 Q. Who did?

23 A. Mr. Harvin. He tell them about the Y. It's in the,
24 uhm --

25 Q. In the transcript?

WILLIAM CARRAWAY - DIRECT BY MS. COLEMAN

17

1 A. Yeah.

2 Q. Okay. So he mentioned that to the court?

3 A. Yes, ma'am.

4 MS. COLEMAN: I have nothing further. Thank you,
5 Your Honor.

6 THE COURT: All right. Mr. Boozer.

7 MR. BOOZER: Nothing further, Your Honor.

8 THE COURT: All right, sir. You may step down.

9 MR. BOOZER: Nothing further on behalf of the
10 Applicant, Judge.

11 MS. COLEMAN: The State calls LeGrand Carraway.
12 Thereupon,

13 WILLIAM LeGRAND CARRAWAY
14 after having been first duly sworn, testified as follows,

15 THE CLERK: State your name for the record and spell
16 your last name please.

17 THE WITNESS: LeGrand Carraway, C-a-r-r-a-w-a-y.

18 DIRECT EXAMINATION

19 BY MS. COLEMAN:

20 Q. Good morning, Mr. Carraway. How are you?

21 A. I'm good.

22 Q. How long have you been practicing law?

23 A. About 28 years.

24 Q. How did you come to represent the Applicant in this
25 case?

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 A. I represented him. I was Public Defender for
2 Williamsburg County for 23 years and I represented him as in
3 my capacity as Public Defender.

4 Q. So you were appointed to this case?

5 A. I was appointed.

6 Q. Did you file any Rule 5 or Brady motions?

7 A. No. I did not.

8 Q. What was the Applicant's version of the facts? Do
9 you recall discussing that with him?

10 A. No. I don't. I don't ever recall meeting him.

11 Q. Okay. Did you represent him at his bond hearing to
12 your recollection?

13 A. I was there at the bond hearing and we actually had
14 it in the family court there because they were still
15 refurbishing our courthouse. They were doing that and we had
16 it in the family court and I remember Clifton Newman was the
17 judge there for his bond hearing.

18 Q. Do you recall any discussion of a plea offer or
19 specifically of his YOA plea offer with the Solicitor's
20 Office?

21 A. Yes. I do.

22 Q. What do you recall about that?

23 A. I think what actually came about here was Tyler
24 Brown made this offer before he had actually talked to the
25 victim and found out what her version of the facts were

1 because as always you know whenever you do a guilty plea, the
2 victim has to be notified. They have to call and if you're
3 doing a guilty plea and there's a victim involved, the judge
4 is gonna say, is the victim here? And the Solicitor says no,
5 she's not but we have talked to her about this plea. We have
6 discussed this with her and she chose not to be here. So what
7 happened was, what undoubtedly happened here was he made this
8 offer before he was aware of the facts of the case.

9 MR. BOOZER: Objection, Your Honor.

10 THE COURT: Ms. Coleman, your reply to the
11 objection?

12 MS. COLEMAN: I think he has a right to testify
13 about his discussions with counsel, although he might not
14 be able to speculate as to his thought process.

15 THE COURT: I think that's what he's doing and I
16 sustain it.

17 MR. BOOZER: Thank you, Your Honor.

18 BY MS. COLEMAN:

19 Q. What was your understanding of --

20 A. I did have a discussion with Kimberly Barr about
21 this and what she said that's what she told me had happened or
22 whatever. Then when they called the victim, the victim said
23 no, no, no. That's not what happened here. This was not this
24 and she told me exactly what the facts were that this victim
25 recited and what she recited then, she said the victim said to

1 her was that some guys were following she --

2 MR. BOOZER: Objection, Your Honor.

3 THE COURT: Ms. Coleman.

4 MS. COLEMAN: I'll move on.

5 THE COURT: All right. Sustained.

6 BY MS. COLEMAN:

7 Q. Do you recall when this sentencing sheet was signed?
8 Obviously it didn't go forward because the judge didn't sign
9 it, right? But do you recall when he would have signed this
10 exhibit 1?

11 A. I do not.

12 Q. But you believe Mr. Brown had made that offer to you
13 as a formal plea offer?

14 A. Yes. I do.

15 THE COURT: Let me just jump in real quick now
16 because of this date situation. Mr. Carraway, when was
17 the last time you remember seeing the defendant?

18 THE WITNESS: I saw him, the last time I remember
19 seeing him was when he came to the bond hearing.

20 THE COURT: Where you moved for the bond reduction?

21 THE WITNESS: That's right.

22 THE COURT: So would you have had a reason to sign
23 this YOA sentencing sheet after that?

24 THE WITNESS: Yes. I would.

25 THE COURT: She asked you when you last saw him,

1 right?

2 THE WITNESS: Yes.

3 MS. COLEMAN: Or I believe he asked that.

4 THE COURT: Or I think I asked that. What I'm
5 trying to get to is when was this thing signed?

6 THE WITNESS: If you want me to tell you when I
7 think it was signed, I can tell you that.

8 THE COURT: Was it after the bond hearing?

9 THE WITNESS: I believe it was.

10 THE COURT: All right. Proceed, ma'am.

11 MS. COLEMAN: Thank you, Your Honor.

12 BY MS. COLEMAN:

13 Q. Is there any question that this is your signature?

14 A. That is my signature.

15 Q. But you don't recall exactly when it was signed but
16 it was some time after the bond hearing?

17 A. Yes.

18 Q. Do you recall, was there ever a hearing over, a plea
19 hearing to enter this plea before a judge?

20 A. No. There was not.

21 Q. Do you recall why that is?

22 A. I do not.

23 Q. Did the Solicitor at any point ever withdraw the
24 offer?

25 A. Yes. They did. And I have stated why.

1 Q. Yes.

2 A. Yeah.

3 Q. What were your discussions with him after he
4 withdrew the offer?

5 A. I never talked to him after that, not to my
6 recollection. I don't ever remember talking to him at all.

7 Q. And how did you, how were you relieved from this
8 case? Why did you stop representing Mr. Washington?

9 A. Well, Doward Harvin took over as a Public Defender
10 in Williamsburg County and that's how that happened.

11 MS. COLEMAN: Nothing further. Thank you.

12 THE COURT: Mr. Boozer.

13 MR. BOOZER: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. BOOZER:

16 Q. Mr. Carraway, how are you?

17 A. I'm very good.

18 Q. Good. Do you have Applicant's Exhibit I?

19 A. I do have one.

20 MR. BOOZER: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. BOOZER:

23 Q. Mr. Carraway, you would agree with me that that is
24 your signature?

25 A. That is my signature.

1 Q. And this is to strong armed robbery being reduced
2 from the robbery?

3 A. Yes. It is.

4 Q. And it's checked recommendation by the State to a
5 suspended YOA?

6 A. Yes. It is.

7 Q. And it's signed by Tyler Brown?

8 A. I knew that wasn't Kimberly Barr's signature. I was
9 looking at that and I knew that was not her signature or
10 whatever.

11 Q. Do you know if that's Mr. Brown's signature?

12 A. I do not know if it is, but I don't think it could
13 be anybody else's because he was the Assistant Solicitor at
14 that time so I'm sure that I would not question that that's
15 his signature.

16 Q. Okay. And then Mr. Washington's signature is on
17 there as the defendant?

18 A. Yes. It is.

19 Q. When that is signed, do you consider that to be
20 offer acceptance, now we just have to go get the judge to
21 approve it?

22 A. Yes. I do.

23 Q. And is it your understanding that at the time that
24 you're signing it and at the time your client is signing it
25 that y'all are accepting this offer by the State?

1 A. Yes.

2 Q. Do you consider that offer at this point subject to
3 any objections by the judge to be binding on both parties?

4 A. No. I don't.

5 Q. You do not?

6 A. No.

7 Q. Okay. You don't recall -- Do you recall having any
8 discussion with Mr. Washington about this not going forward?

9 A. No. I don't ever -- I will tell you this: The
10 reason for all this delay here is he never showed up in court
11 for a long time. That's what happened. That's why for all
12 this delay of four years in here or whatever. But that's what
13 happened there. And then it became known that the victim
14 coming forward with these facts and whatever and oh. But I
15 will agree with you, if we had been standing in court on this
16 particular day and he had been there or whatever, I'm not
17 quite sure why -- I'm not sure, quite sure when these
18 signatures and everything were done, whether they were all
19 done contemporaneously with all of us right there together and
20 with the judge sitting up on the bench and whatever, but
21 obviously something came -- I've told you what happened, what
22 derailed this whole deal here. But had he been there that day
23 either a trial was going on or something happened where
24 something else didn't happen that week or whatever there.

25 MR. BOOZER: Thank you, Mr. Carraway. That's all I

1 have.

2 THE COURT: Mr. Carraway, was this YOA sentence
3 sheet signed on the day of the bond hearing?

4 THE WITNESS: I can't tell you that. I don't know
5 if it was.

6 THE COURT: Did you see your client --

7 THE WITNESS: I did not see him sign it.

8 THE COURT: You didn't see him sign it?

9 THE WITNESS: No. I did not.

10 THE COURT: Okay. All right. Thank you, sir.

11 Anything else?

12 MS. COLEMAN: One brief follow up question. Thank
13 you.

14 REDIRECT EXAMINATION

15 BY MS. COLEMAN:

16 Q. Mr. Carraway, in your opinion based on your
17 experience if you had taken this plea before a judge and the
18 victim had objected to it, would he have accepted the plea?

19 A. No. He would not.

20 MR. BOOZER: Objection, Your Honor.

21 THE COURT: Yes, sir.

22 MR. BOOZER: I'm sorry. I couldn't hear his answer.
23 I was objecting.

24 THE COURT: I couldn't hear either because you --

25 MR. BOOZER: I'm sorry. Go ahead and answer. I'm

1 sorry.

2 BY THE WITNESS:

3 A. No. He would not have and particularly Judge Newman
4 would not have.

5 BY MS. COLEMAN:

6 Q. And was it going before Judge Newman?

7 A. Well, the bond hearing was before Judge Newman.

8 Q. So if it had been raised that day, you don't believe
9 it would have been accepted?

10 A. If the victim had been there, I know because I can
11 give you numerous examples of when he has not accepted pleas
12 based on that even over Solicitor's recommendations.

13 MS. COLEMAN: Thank you, Mr. Carraway. Nothing
14 further.

15 THE COURT: Yes, sir.

16 MR. BOOZER: Nothing further.

17 THE COURT: Thank you, sir. May he be excused?

18 MS. COLEMAN: Yes. He may be excused.

19 THE COURT: Okay.

20 MS. COLEMAN: The State calls Doward Harvin.

21 Thereupon,

22 DOWARD HARVIN

23 after having been first duly sworn, testified as follows,

24 THE CLERK: State your name for the record and spell
25 your last name please.

DOWARD HARVIN - DIRECT BY MS. COLEMAN

27

1 THE WITNESS: My name is Doward Harvin. Last name
2 is H-a-r-v-i-n.

3 DIRECT EXAMINATION

4 BY MS. COLEMAN:

5 Q. Good morning, Mr. Harvin.

6 A. Good morning.

7 Q. How long have you been practicing law?

8 A. Oh, man, what year is this? 2017. So probably
9 about nine years.

10 Q. Okay. How did you come to represent Mr. Washington
11 on these charges?

12 A. So this is kind of a convoluted fact pattern and
13 I'll try to summarize it. So initially I was appointed to
14 represent him through the Public Defender's Office. Me and
15 Mr. Washington had a bond hearing I believe in front of Judge
16 Newman. Judge Newman denied bond at that time based upon the
17 information that was provided to him. At some point in time
18 thereafter Mr. Carraway took upon representation and was able
19 to get him a bond.

20 What happened after that I'm not sure. We were then
21 re-appointed by a Circuit Court judge. I'm not sure if it was
22 Newman or Cothran or who it was but it was definitely a judge
23 who then re-assigned the Public Defender's Office or at least
24 re-assigned me to then represent him in 2015.

25 Q. So how long before the plea did you represent

1 Mr. Washington?

2 A. Uhm, I believe not quite a year but somewhere around
3 a year.

4 Q. Have you ever seen Applicant's Exhibit 1? Have you
5 seen this sentencing sheet before?

6 A. Uhm, I didn't see the sentencing sheet before he
7 pled guilty but after the PCR application I was privy to
8 seeing the documentations that were being provided.

9 Q. So you had not seen this before the guilty plea?

10 A. I had not. No, ma'am.

11 Q. Did Mr. Washington ever tell you about the YOA deal
12 that he claims he was offered?

13 A. Absolutely. I mean, we had conversations about the
14 offer that was presented to him. I had no idea that anybody
15 had signed anything but I did know about the offer that was
16 presented to him by Mr. Tyler Brown. Never really knew why
17 that didn't go forward or what took place until Ms. Barr -- So
18 I'm gonna back up just a little bit more. I'm sorry.

19 So when I was appointed to represent him, Ms. Barr
20 had already planned to call it for trial so at this point she
21 knew I came into the picture, all plea offers were off the
22 table. We're putting 12 in the box and that's where we are
23 and so at that point I explained that to him.

24 The challenge in this case as it unfortunately is in
25 a lot of cases that I handle by the Public Defender's Office

1 is that we have difficulty getting in contact with people and
2 so in this case my assistant, my first assistant, Ms. -- her
3 name escapes me -- but my first assistant when I first got
4 this case, she made attempts to try to get in contact with him
5 via mail and via telephone. We were unable to do so.

6 The Solicitor's Office had presented to me that
7 they were gonna try to get a bench warrant against him around
8 the end of 2015 for not coming to court. At that point we
9 sent a letter pretty much, you know, begging him to come to
10 court so that we could get this matter resolved. Upon finally
11 talking to him we were able to get the matter resolved and so
12 I was able to get the bench warrant lifted that was already
13 put in place and so all he had to do was basically come in
14 court, show his face and leave.

15 This case came up for trial in May of 2016. We were
16 notified probably the first part of May. We sent out a letter
17 to the addresses that we had on record, again trying to make
18 phone calls again and were unable to get him. The week of
19 trial came which was the week of May 31st. Solicitor Barr at
20 that time was prepared to try him in his absence. I begged
21 and pleaded that it not be placed as the first trial so that I
22 could continue to try to get him because I didn't want that to
23 happen.

24 Luckily maybe like on the Monday or Tuesday of that
25 week I just happened to be traveling through town and I saw

1 Almondo and so we pulled over and I told him, hey, you need to
2 come to court. This is the situation. You know, we've got to
3 address this issue because they're gonna call your case for
4 trial and so at that point he came in on the 1st, June 1st.
5 Did that answer your question?

6 Q. Yes.

7 A. Okay. I wanted to back up and kind of bring it
8 forward.

9 Q. What were the discussions or negotiations that led
10 to the plea offer that he ended up accepting in this case?

11 A. Well, when he mentioned to me that they had offered
12 him a YOA sentence, you know, I obviously wanted to try to get
13 him a YOA sentence so I went to the Solicitor and basically
14 said, listen, you know, he says he was offered this. What is
15 the situation? Why can't he get the benefit of the previous
16 offer? At that point in time we learned that at the time of
17 the offer that was made by Mr. Brown that he believed that he
18 could make contact with the victim and so Ms. Barr, when she
19 took over the case was able to do so.

20 The victim described a pretty horrific crime and so
21 Ms. Barr took the position that based upon the information
22 that she had and based upon what was being presented to her at
23 that time that the plea offer that was given, it had to have
24 been years prior was no longer on the table and so I actually
25 because, you know, we were going back and forth and I'm up

1 against the clock obviously because I have a jury panel that's
2 also prepared. I've got a judge that's prepared to hear this
3 case so we're up against the clock. But Ms. Barr was gracious
4 enough to come in and speak to Almondo about the situation
5 regarding a YOA sentence and explained to him exactly why that
6 wasn't going to happen and Almondo made the decision he didn't
7 want to go to trial.

8 And I'll be honest, he didn't do a lot of talking.
9 In any of our meetings or conversations he was always very
10 quiet and in these meetings he was quiet. Before he pled
11 guilty, I actually spoke to the judge on the issue about the
12 previous plea offer because I believe it was Judge Cothran and
13 Judge Cothran is really good about, you know, giving insight
14 on certain situations. So we approached the side bar and I
15 explained to the judge -- I'm sorry. I've got a nasal
16 situation -- but I explained to the judge what the situation
17 was, why Ms. Barr was there and the judge basically said, you
18 know, it was really nothing he could do because the charge
19 that was coming before him was armed robbery which carried a
20 mandatory minimum so there was no way that he could do
21 anything with that other than give him the minimum.

22 Q. What sentence did he end up receiving?

23 A. He received the minimum 10 year sentence and then
24 the other charges were dismissed as well as a part of that
25 plea.

1 Q. Was there any question on your part on the day that
2 he pled guilty that he understood the situation, he understood
3 what it meant to plead guilty versus going to trial?

4 A. Oh, absolutely.

5 Q. Did you explain all those risks to him?

6 A. Yes. Yeah. And I felt like if we had went to trial
7 and that young lady presented the information that she
8 presented and he was found guilty, I felt like 10 years, we
9 weren't looking at a 10 year sentence. We were looking at at
10 least 20 to 25 easy because she described, like I said, a very
11 horrific situation where she was basically hunted for lack of
12 a better term and then robbed at gun point and that they then
13 tried to fire their weapons but the weapons never discharged
14 for some reason. So that fact pattern in front of Judge
15 Cothran, if he was found guilty, yeah, it wasn't a good
16 picture.

17 Q. So did you believe it was in his best interest to
18 plead guilty?

19 A. Absolutely.

20 Q. Whose decision ultimately was it to plead guilty?

21 A. It was his decision. If he wanted to go to trial, I
22 would have happily, you know, followed his decision and we
23 would have tried to do our best in court although my analysis
24 said that wasn't the right approach.

25 MS. COLEMAN: Thank you. Nothing further.

DOWARD HARVIN - CROSS BY MR. BOOZER

33

1 THE COURT: Mr. Boozer.

2 MR. BOOZER: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. BOOZER:

5 Q. Mr. Harvin, how you doing?

6 A. Like I said, I'm a little nasal but I'm good.

7 Q. We'll work through it.

8 A. Yeah. Thank you.

9 Q. Mr. Harvin, you had indicated earlier that I think
10 you were on the case initially as Public Defender, then
11 Mr. Carraway comes along and you get re-assigned or the Public
12 Defender's Office gets re-assigned and then you come back into
13 the case; is that right?

14 A. Absolutely. Yes.

15 Q. Okay. Was Mr. Carraway involved as a Public
16 Defender or was he involved privately? What was your
17 understanding?

18 A. I'm not quite sure given the -- Let me see. There
19 ain't no date on that. There was a period of time in where me
20 and Mr. Carraway was both Public Defenders working in
21 Winnsboro County. I'm not sure when he stopped being a Public
22 Defender. I'm just not aware of that at all. I just know
23 that at some point he took over representation but I don't
24 know. I know I came in in 2011 so there was a period we were
25 together but I can't tell you.

1 Q. So you're not sure if he was with the PD's Office
2 representing him in that capacity or if he was representing
3 him privately?

4 A. I'm not sure and I would obviously rely on his
5 recollection on that because obviously he knows when he
6 left.

7 Q. Okay. Now, you had indicated earlier that you knew
8 about the YOA offer but you had not seen the sentencing sheet
9 until after this PCR action began?

10 A. Yes.

11 Q. So at the time of the plea that you were involved in
12 that sentencing sheet obviously wouldn't have been available
13 to you?

14 A. It would have been in the Solicitor's file. Now,
15 whether or not it was available to me I doubt it because it
16 wouldn't have been in my file. I don't know if that's
17 discoverable under Rule 5.

18 Q. Is that a request you could have made? I mean, you
19 can always ask.

20 A. I mean, if he had told me that he had signed
21 something but I was unaware that they had actually signed a
22 sentencing sheet. I was just aware that he was offered the
23 YOA sentence at some point.

24 Q. Okay. And actually at his plea hearing, have you
25 reviewed the plea transcript at all?

1 A. Yeah. I looked it over.

2 Q. Okay. And on page 13 this is you speaking. You
3 tell the Court that he was offered a YOA sentence but
4 nonetheless we find ourselves in this position where he's
5 looking at 10 years. You brought that to the court's
6 attention in that way?

7 A. Well, it was always brought to the court's attention
8 before that so I'm referencing side bar in that I'm basically
9 letting the judge know, listen, we talked about this and this
10 is the situation so that it recall his memory of what we
11 talked about. But yeah. That's kind of how I reference it on
12 the record.

13 Q. At the side bar though and it's not reflected in the
14 transcript?

15 A. Yeah. You wouldn't see it. Yeah. Absolutely.

16 Q. Okay. You rely on what the transcript reflects?

17 A. Yes, sir.

18 Q. All right. Did you bring or think about bringing
19 any sort of motion before the court either at the plea or
20 prior to the plea to try and enforce this prior plea that Mr.
21 Brown signed off on and Mr. Washington signed off on and that
22 Mr. Carraway had signed off on?

23 A. Well, no, because I didn't know there was a signed
24 plea sheet.

25 Q. Exactly. Had you known that there was this signed

1 plea sheet that's marked as Applicant's Exhibit 1, is that
2 something you would have made the effort to do?

3 A. Well, what I would have done if I had known about
4 this and we had the time to have the conversations that we
5 needed to have, I would have advised Mr. Washington concerning
6 what we could do proceeding forward, what could happen as far
7 as the judge's ruling, and what would that mean as far as any
8 subsequent plea offers obviously. If we lost, if he decided
9 to go forward with the motion to enforce this and we lost
10 that, then we also have to deal with the fact that the
11 Solicitor's Office takes all offers off the table and now
12 we're back in a compromising situation.

13 Q. Weren't you already in that situation because you
14 were going to trial, there were no offers on the table, and
15 then the 10 year one pops up; isn't that right?

16 A. Well, not quite because, you know, the Solicitor's
17 Office has a lot of power in the State of South Carolina so
18 obviously she could get or any Solicitor at a guilty plea can
19 obviously ask the court even without a recommendation that he
20 get the maximum or she could not ask for the maximum at a
21 guilty plea and just present the information, allow the victim
22 to give information. So Solicitors are very powerful
23 individuals as to how they handle particular situations so I
24 have to be mindful of all of that when I'm dealing with
25 Solicitors in any capacity and I advised my client to that,

DOWARD HARVIN - CROSS BY MR. BOOZER

37

1 too. That's like a non legal advice but just something we
2 have to consider.

3 Q. Would you agree with me that having this signed plea
4 sheet that we have today that it's a rare occurrence that you
5 have that and then ultimately have a plea later on to
6 something much more, with much more time attached to it?

7 A. I would say that I have never dealt with this
8 situation before.

9 Q. Okay. And if either you had gone out and made a
10 request to get or investigate the sentencing sheet, I mean,
11 being in such a rare occurrence wouldn't you agree with me
12 that that's something you would want to bring before the court
13 and at least get a ruling on it?

14 A. Yeah, if I knew about it. I mean, it would be
15 something we would at least would ask the judge about, you
16 know. It's worthy of a conversation.

17 Q. Absolutely. And if it were denied, that's
18 certainly, you file an appeal, right?

19 A. Yeah. He would have the ability to file an appeal
20 and go forward from that point.

21 Q. Mr. Harvin, going back, I think you indicated you
22 had some trouble getting in touch with Mr. Washington?

23 A. Yes.

24 Q. To your knowledge, are you sure that there was a
25 bench warrant that had been issued for him?

1 A. So basically he would have never seen it because how
2 I handled it when it was issued, you know, I basically went to
3 the Solicitor's Office and said I made contact with him and
4 he's gonna come in tomorrow so before you get the judge to
5 sign that, you know, basically he's gonna come in, pull that
6 back. So he never would have seen it because the only thing
7 he would have known is that I reached out to him and said
8 they're about to issue a bench warrant and then I filed the
9 motion to lift the bench warrant just in case they issued it
10 when he walked in the door or something crazy happened and in
11 my letter I think I reflected to him like, listen, when you
12 come in, they may arrest you and take you in. I'm not sure.
13 But if that happens, you will be released right after that
14 because I have already resolved the bench warrant issue. And
15 it was just one of those situations. At that time, you know,
16 the way that they were doing roll call which was kind of
17 archaic is just having a whole bunch of people come in at one
18 time and that wasn't a good way to handle roll call at all.

19 MR. BOOZER: Thank you. That's all the questions I
20 have.

21 THE COURT: Ms. Coleman.

22 MS. COLEMAN: Thank you, Your Honor. Just briefly.

23 REDIRECT EXAMINATION

24 BY MS. COLEMAN:

25 Q. Did Mr. Washington do anything that hurt his case in

1 reliance on this plea? For example, giving a statement
2 implicating himself?

3 A. He did not. He did not. Mr. Washington really
4 didn't give me much to work with because he didn't talk that
5 much. Many of our conversations were just me talking and I
6 wasn't getting any feedback to try to defend him or any
7 information to defend him like I would typically get if
8 somebody wanted me to zealously defend them and we've had
9 conversations. We talked. I actually think Almondo after
10 this as I put in the transcript and I'm sure the judge has, I
11 think he turned his life around. It's just unfortunately this
12 crime was just lingering out there and he had to deal with
13 it.

14 Q. In your opinion did Mr. Washington detrimentally
15 rely on this plea offer?

16 MR. BOOZER: Objection, Your Honor.

17 MS. COLEMAN: I'm not asking him to make a legal
18 conclusion. Just -- I can rephrase the question.

19 THE COURT: Please, ma'am.

20 MS. COLEMAN: Thank you, Your Honor.

21 BY MS. COLEMAN:

22 Q. In your opinion based on your discussions with him
23 was this, or really based on the evidence against him or
24 anything, was his case hurt at all by not getting the offer
25 for the YOA sentence?

1 A. Not from a defense perspective of defending him
2 against the charges. There was nothing lost. No. There
3 wasn't anything lost. From my perspective, I mean, the time
4 period that I had the case I don't see anything being lost by
5 the fact that he didn't go forward with it. I questioned why
6 he didn't go forward with it. I could speculate but that's
7 not what I'm here to do.

8 MS. COLEMAN: Thank you. Nothing further.

9 THE COURT: Mr. Boozer.

10 MR. BOOZER: Nothing further, Your Honor.

11 THE COURT: Thank you, sir.

12 MS. COLEMAN: The State has no further witnesses.

13 Would request a very brief closing argument if Your Honor
14 will allow it.

15 THE COURT: On this one I will.

16 MS. COLEMAN: Thank you. Basically what's been
17 shown here today is obviously there's some question
18 about this offer that was made by the previous Solicitor
19 on the case about this offer that was made by the
20 previous Solicitor on the case Tyler Brown that
21 originally handled it but it's clear from everyone's
22 understanding that he had not spoken with the victim
23 about it. He hadn't confirmed it and that's a necessary
24 part of the guilty plea process as Mr. Harvin testified.
25 Or I'm sorry. That was Mr. Carraway testified that in

1 his opinion based on his experience especially with Judge
2 Newman he didn't believe the judge would have accepted
3 the plea even if it had been presented to the court based
4 on the victim's objection. It's clear that the facts of
5 this case are more heinous than perhaps the strong armed
6 robbery charge might have covered.

7 The State, South Carolina law definitely allows the
8 Solicitor broad discretion in what they choose to charge
9 in the case and in their plea negotiations leading up to
10 that. The defendant does not have a constitutional right
11 to a specific guilty plea offer in this case. The only
12 way for him to win on this is to prove that he
13 detrimentally relied on the offer that was made by the
14 State and Mr. Harvin's testimony showed that there was no
15 reliance on this. He didn't do anything that harmed his
16 case or give a statement because he thought that he was
17 going to get this specific plea deal. So I just don't
18 think he can prove detrimental reliance and we should --
19 And also the 10 year plea that he ended up entering and
20 getting the mandatory minimum, everything in the record
21 shows that it was knowingly and voluntarily made. His
22 attorney said that he seemed to know what he was doing.
23 He understood the risks as he entered into this plea and
24 that should stand.

25 I don't think the Applicant has shown any reason why

1 that should be vacated because he did not end up getting
2 this plea. Thank you.

3 THE COURT: Mr. Boozer.

4 MR. BOOZER: Thank you, Your Honor. If it pleases
5 the Court. Judge, I think this is a, and I've been doing
6 PCR work now for probably 11 years, I have never seen
7 this particular issue where you have actual evidence of
8 every party involved, the offeree and the acceptee or
9 however, the offerer and the offeree getting together,
10 meeting of the minds, everyone is on the same page in
11 taking the sentence. The only thing that was left to do
12 was for it to go before the judge and be signed.

13 I have seen cases where a client or an Applicant
14 will say, well, I was offered this and then you start
15 investigating it and you come to find out, well, yeah,
16 they were offered that verbally or that may have been
17 thrown around but circumstances changed and the plea was
18 never accepted and they went to trial or did something
19 else. I have never seen this issue where there's actual
20 evidence of it being accepted.

21 Judge, I think in these unique circumstances
22 although I understand Mr. Harvin may not have known at
23 the time he was representing him that there was some
24 sentencing sheet, obviously through my representation of
25 Mr. Washington I was able to discover that. I was able

1 to get that from the Solicitor's Office. They provided
2 it directly to me. I think at the time Mr. Harvin could
3 have done the same thing and Mr. Harvin could have gone
4 before this judge, Mr. Harvin could have gone before the
5 chief administrative judge and said, look, this was
6 accepted by everyone, the only thing we needed was your
7 stamp of approval. I just don't see how it's fair to Mr.
8 Washington that everyone signs it, he signs it and then
9 the Solicitor who is not here today to testify revokes
10 the offer after everything has been signed.

11 I just don't think it's fair to him and I think
12 there is detrimental reliance. I think in this
13 particular case I would argue we don't need to prove that
14 because there's written proof of what I would call a
15 contract, but I think it's detrimental in that, yeah, the
16 YOA offer and all of a sudden he goes and pleads to 10
17 years. That's pretty detrimental. He's facing a
18 significant amount of time that he even still now has
19 left to serve. He was only 17 when the allegations were
20 made against him. I certainly think that's detrimental,
21 Judge, and that's why we would ask you to grant the PCR
22 application, sending it over to General Sessions for him
23 to accept this particular plea offer and for it to be
24 enforced. Not accepting it. He already accepted it. To
25 enforce it. Thank you, Your Honor.

1 THE COURT: All right. I would like to speak to the
2 two lawyers in chambers please.

3 (Short break.)

4 THE COURT: Back on the record. As to this last
5 case for the sake of the record I'm going to take it
6 under consideration or as we call it under advisement to
7 look into that contract issue further, all right?

8 MS. COLEMAN: Thank you.

9 MR. BOOZER: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 WHEREUPON, THE HEARING WAS CONCLUDED.
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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

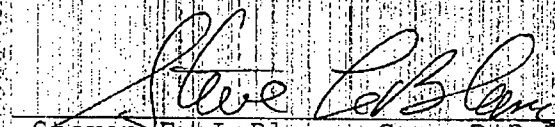
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 16th day of November, 2017.

11 I FURTHER CERTIFY that the forgoing 44 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 30th day of October, 2018.

17
18
19 
20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.
23
24
25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

COURT OF COMMON PLEAS & GENERAL SESSIONS

EXHIBIT RECORD & RECEIPT FORM

CASE TITLE Almondo Washington v State of SC.
 DOCKET # 2016 CP 45- 363

Applicant's

PLAINTIFF'S EXHIBITS

① Sentencing Sheet

2. _____

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DEFENDANT'S EXHIBITS

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2017 NOV 22 PM 3:00
 SHARON W. STAGBETS
 CLERK OF COURT
 WILLIAMSBURG COUNTY, SC

FILED

Steve LeBlanc
 COURT REPORTER

11-16-17
 DATE

PAGE 1 OF Page 1

Dandy Dickerson
 CLERK RECEIVING EXHIBITS

A CERTIFIED TRUE COPY
Sharon W. Stagbets
 SHARON W. STAGBETS
 CLERK OF COURT
 WILLIAMSBURG COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEWilliamsburg
VS.

Almondo D. Washington

AKA:

Race: 2 Sex: M Age: 17

DOB: 08-01-1995 SS#:

Address: 325 Oakridge Road

City/State/Zip: Kingstree, SC 29556

DJA: 120497405 SID#:

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery - Armed Robbery, 5203, 325 (425)

INDICTMENT/CASE#: 2013-GS-15-0132

A/W#: 2012A4510100440

Date of Offense: 11/16/2012

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) 325 (425) of the S.C. Code of Laws, bearing CDR Code # 0139 0132 (425)

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory UPS/CSC ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (Defendant's initials) p.p.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State, p.p.

ATTEST: 11/22/12 76316 Almondo Washington 13157

Bryce Kimberly V SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of days/months/years or ☐ under the Youthful Offender Act not to exceed

and/or to pay a fine of \$ provided that upon the service of days/months/years and/or

of \$ plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-133.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-45 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Del. Waiver Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED ☐☐ Set by SCDDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5%) \$ \$ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ pmts. of \$ beginning

§ 56-5-2995 (DUI Assessment) \$12 \$ \$ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ Other:

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (DUI Breath Test Fee) \$50 \$

§ 56-5-2942(f) (Vehicle Assessment) \$400 \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$

3% to County (if paid in installments) \$

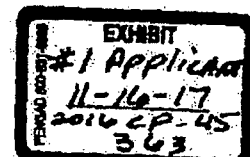
TOTAL \$

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

Clerk of Court/ Deputy Clerk Presiding Judge

Court Reporter: Judge Code:

SCCA/217 (03/2011) Sentence Date:

A CERTIFIED TRUE COPY
Sharon W. Staggers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Almondo D. Washington, #368479,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2016-CP-45-363

ORDER OF DISMISSAL

2017-02-24 11:24

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 5, 2016. Respondent submitted its Return on February 13, 2017. An evidentiary hearing into the matter was convened on November 16, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from W. LeGrand Carraway, Esquire, and Doward K. Harvin, Esquire ("Plea Counsel"). This Court had before it the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records for the Department of Corrections, the plea transcript, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Williamsburg County. Applicant was indicted by the May 2013 term of the Grand Jury for Williamsburg County for Armed Robbery, Possession of a Weapon during the Commission of a

Violent Crime, and Criminal Conspiracy (2013-GS-45-0132). Applicant was represented by Doward K. Harvin, Esquire, and W. LeGrand Carraway, Esquire. On June 1, 2016, Applicant pled guilty as indicted to Armed Robbery, with the other two charges being dismissed in consideration of the guilty plea. Applicant was sentenced by the Honorable R. Ferrell Cothran, Jr. to ten years' imprisonment. Applicant did not appeal his conviction or sentence.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Failure to file appeal."
 - b. "Failure to move for the suppression of a speedy trial (sic) and suppress evidence."
 - i. "Failure to advise me that under my 5th Amendment right I did not have to answer to any crime whether it be capital or infamous unless on a presentment of indictment of a Legal Grand Jury"
2. Involuntary Guilty Plea
 - a. "Plea is not voluntarily or intelligently entered."
3. Subject Matter Jurisdiction
 - a. "This indictment is a nullity."
 - b. "This indictment does not state where the crime happened. This left the Grand Jury to speculate where the crime happened in Williamsburg."

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicant's testimony

At the evidentiary hearing, Applicant testified he did not want a new trial on his charges, but rather wanted to enforce the original plea deal that his attorney should have secured for him. He stated he was currently twenty-two years old and was serving a ten year sentence for the

armed robbery he committed. He stated he was twenty-one years old when he plead guilty, and he was seventeen years old when he committed the crime in 2012. Applicant testified he was originally offered a plea deal from the State for a strong-armed robbery charge, and if he accepted the deal the State would recommend a sentence under the Youthful Offenders Act not to exceed six years.

Applicant testified he signed up for a public defender and was originally represented by Doward K. Harvin (Plea Counsel). He stated his parents then hired attorney LeGrand Carraway to represent him at his bond reduction hearing. He stated he does not know why Carraway was relieved as counsel. Applicant testified he got bond and bonded out of jail, and he did not see Carraway again after his bond hearing. He stated he does not remember when the original plea offer was made to him. He testified that he signed a sentencing sheet in order to plead to the YOA plea deal, and it was also signed by Carraway and by Solicitor Tyler Brown. He stated he relied on this plea deal to go forward, but for some reason, he was not able to enter his plea for this recommended sentence.

Applicant stated that after Carraway was relieved from his case, Plea Counsel represented him again. He testified that he told Plea Counsel about the plea deal for a recommendation of a YOA sentence and asked him to get that deal for him. He stated he did not want to go to trial and get more than ten years in prison. Applicant testified that, even though he was not able to accept the original plea offer, he did plead guilty with Plea Counsel and understood he was getting a ten year sentence, which was the mandatory minimum sentence for armed robbery.

W. LeGrand Carraway's testimony

W. LeGrand Carraway testified he has been practicing law for twenty-eight years, and he served as an Assistant Public Defender for twenty-three years. He testified he recalled being

appointed to this case, although he could not recall the circumstances surrounding being relieved or how Plea Counsel took over representation. He stated he did not file any Rule 5 or Brady motions in this case because Applicant's previous attorney had already done so. Carraway testified he represented Applicant at a bond hearing in Family Court before Judge Clifton Newman.

Carraway testified he recalled participating in plea negotiations with Solicitor Tyler Brown, and Solicitor Brown offered him the YOA plea offer informally, before he had spoken to the victim in the case. He stated that after the Solicitor spoke to the victim, he realized the victim did not agree with the plea deal, so he told Carraway he could not offer this plea deal. He stated he did sign a sentencing sheet for this plea offer, and he probably had Applicant sign the sentencing sheet when he saw him after his bond hearing. He testified that he considered the signing of the sentencing sheet to be an offer by the State and acceptance of the offer by Applicant, but he did not consider it to be a binding contract on the parties because they had not yet appeared before the court to have a plea judge accept the plea. Carraway stated that Applicant never showed up to court on the day he was supposed to plead guilty to accept the original deal, and that is why there was a delay. He opined that if Applicant had been in court that day, he could have pled to the original deal.

Plea Counsel's testimony

Plea Counsel testified he was originally appointed to Applicant's case through the Public Defender's Office. He stated he represented Applicant through a bond hearing held before Judge Clifton Newman where bond was denied. He stated that he was then relieved for some reason and Carraway was appointed to the case. Plea Counsel testified that Carraway represented



Applicant at another bond hearing before Judge Newman and got Applicant out on bond. He stated he was then reappointed to the case in 2015.

Plea Counsel testified that he and Applicant did have conversations about the original plea offer, but he did not know there had been a sentencing sheet signed. He testified that Solicitor Tyler Brown left the Solicitor's Office and Solicitor Kimberly Barr took over the case, and she informed him she would not be extending the original plea offer. Plea Counsel testified Solicitor Barr planned to call the case for trial and did not extend any plea offers. He stated that he could not get in contact with Applicant to prepare for trial, despite his best efforts. He testified that he tried to contact Applicant via mail and telephone, and he begged him to come to court, and he eventually wanted to get a bench warrant to have him brought to court.

Plea Counsel testified he appeared for Applicant's trial on May 31, 2016, and Applicant did not appear. He stated Solicitor Barr was prepared to try the case in Applicant's absence. Plea Counsel stated that he happened to see Applicant driving in town that week, and told him to come to his trial. When he did, the bench warrant was lifted.

Plea Counsel testified that when Solicitor Barr took over the case from Tyler Brown, she spoke to the Victim and took the position that the original plea offer from years prior was no longer on the table. He stated Solicitor Barr sat down with him and Applicant and she explained to Applicant about the YOA sentence and explained why it would not happen. He stated Applicant did not speak much in this meeting, but he believed Applicant understood the circumstances surrounding the plea deal. Plea Counsel testified it was Applicant's decision to plead guilty to armed robbery and accept the ten year sentence. He testified that he brought the original plea deal up to the plea court on the record and at a sidebar at the guilty plea. Plea



Counsel testified that the Solicitor has a lot of power, and he did not feel he had any way to force the Solicitor to re-offer the original plea deal.

IV. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not

have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

DETRIMENTAL RELIANCE

First, Applicant alleges he is entitled to a vacation of his guilty plea and to be able to plead guilty according to the terms of the original plea offer from the State because he detrimentally relied on the State's offer, and it was a binding contract which the State was obligated to uphold. This Court finds this allegation meritless, as Applicant has failed to prove detrimental reliance, and the plea offer was not a binding contract because it was not entered before the court.

Solicitors have broad discretion in choosing the offenses with which a defendant will be charged and in plea negotiations leading up to trial. State v. Johnson, 287 S.C. 171, 172, 337 S.E.2d 204, 205 (1985) (citing State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975)). Furthermore, a criminal defendant has no constitutional right to a plea bargain. . Lafler v. Cooper, 132 S. Ct. 1376 (2012); State v. Easter, 322 S.C. 333, 471 S.E.2d 745 (Ct.App.1996), aff'd as modified, 327 S.C. 121, 489 S.E.2d 617 (1997). The decision whether to offer a plea bargain is within the solicitor's discretion. State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996) (citing State v. Chisolm, 312 S.C. 235,

439 S.E.2d 850 (1996)). Our Supreme Court has recognized a plea agreement rests on contractual premises. State v. Gates, 299 S.C. 92, 94-95, 382 S.E.2d 886-87 (1989). Parties are free to withdraw offers until performance occurs. Reed v. Becka, 333 S.C. 676, 687, 511 S.E.2d 396, 402 (Ct. App. 1999). A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. Id. at 668, 511 S.E.2d at 403. Until formal acceptance has occurred, the plea is not binding on the defendant, the State, or the court. Id.

Reed explicitly holds that a plea agreement, even if the defendant has accepted its terms, is not a binding contract until the actual plea has been accepted by the court:

A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. A defendant accepts the "offer" by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court. See Harden v. State, 453 So.2d 550 (Fla. Dist. Ct. App. 1984) (until formal acceptance of plea has occurred, plea binds no one, not defendant, prosecutor, or court; formal acceptance of plea occurs when trial court affirmatively states to parties, in open court and for the record, court accepts the plea).

Reed, 333 S.C. at 688, 511 S.E.2d at 402. Reed does not differentiate between oral or written plea agreements. Plea agreements are often negotiated in writing via letter or e-mail, but an e-mail offer from the solicitor and an e-mail accepting the offer from defense counsel does not make the negotiations a binding contract. This is no different than the case at hand. Reed is very clear on its holding regarding the contractual principles of a plea agreement, and any plea agreement is a contract whether it is oral or written. Accordingly, in this case, because Applicant never pled guilty to this offer and the court did not accept his guilty plea and the terms of the agreement, this plea offer was not accepted and it is not a binding contractual agreement.

Absent a plea of guilt, a defendant may enforce an oral plea agreement upon a showing of detrimental reliance. State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 44, 454 (2007). "Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a

prosecutorial promise in plea bargaining could make a plea agreement binding." Reed, 333 S.C. at 688, 511 S.E.2d at 402-03 (citing United States v. Savage, 978 F.2d 1136 (9th Cir.1992)). "A defendant relies upon a solicitor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer." Id. (citing State v. Vixamar, 687 So.2d 300 (Fla. Dist. Ct. App. 1997)). Reliance may not be shown "by the mere passage of time," and it may not be shown by the prospect of a longer sentence. Id. (citing Cope v. Kentucky, 645 S.W.2d 703 (Ky. 1983)).

Here, Applicant has failed to show that he detrimentally relied in any way on the prior plea offer. Importantly, Applicant later entered a valid guilty plea to the charge of armed robbery and received the mandatory minimum sentence of ten years. Plea Counsel testified it was Applicant's decision to plead guilty to armed robbery on June 1, 2016. The record before the Court shows Applicant knowingly and voluntarily pled guilty to armed robbery with no detrimental reliance on the prior plea offer. Because there is no detrimental reliance here, this Court finds no reason to enforce the prior plea offer from the State, and this allegation is denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on

going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Although Applicant alleges Plea Counsel was ineffective for failing to enforce the original plea offer from the State, this Court finds Plea Counsel cannot be ineffective for failing to do so. Plea Counsel credibly testified he discussed the prior plea offer with Applicant and with Solicitor Barr, but when Solicitor Barr took over the case and consulted with the victims, she took the position that she would not be re-offering the prior plea agreement. As discussed above, this Court finds the prior plea offer was not an enforceable, binding contract, and Applicant did not detrimentally rely on the offer from the State. Accordingly, this Court finds Plea Counsel was not deficient for failing to secure the prior plea offer from the State.

This Court further finds there is no resulting prejudice from Plea Counsel's inability to resurrect the State's prior plea offer. In the circumstances here where an applicant asserts ineffective assistance of counsel that caused him to reject a plea offer, in order to prove prejudice the applicant must show that (1) "but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea *and the prosecution would not have withdrawn it in light of intervening circumstances*);" (2) "that the court would have accepted its terms;" and (3) "that the conviction or sentence, or both, under the offer's terms would have been less severe than under



the judgment and sentence that in fact were imposed." Lafler, 132 S. Ct. at 1385 (2012) (emphasis added). Furthermore, "a trial judge is not required to accept a plea." Reed, 333 S.C. at 685, 511 S.E.2d at 401 (citing Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct.App.1996); Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) (defendant has no absolute right to have guilty plea accepted; court may reject plea in exercise of sound judicial discretion)).

In the present case, the testimony presented at the evidentiary hearing shows that the original plea offer was made before the solicitor spoke with the victims, and that once a new solicitor took over the case and consulted with the victims, she took the position that the prior plea offer was no longer on the table. Plea Counsel testified that Solicitor Barr spoke to Applicant about the prior offer for a YOA sentence and explained to him why it was no longer available. Respondent submits that the evidence presented about the discovery of the victim's position on the plea offer and the change in prosecuting solicitor on the case constitute intervening circumstances that properly allowed the State to withdraw the plea. Accordingly, the first prong of the requirements of Lafler listed above is not met. Furthermore, the second prong likely would not have been met, because it is highly probable that the plea court would not have accepted the guilty plea if the victims, who had a right to be present at the plea, voiced their concerns about the agreement.

Therefore, Applicant cannot prove prejudice from any alleged deficiencies on the part of either attorney who represented him, and he has failed to meet his burden of proving ineffective assistance of counsel. This Court finds Plea Counsel's representation and advice was reasonable under the circumstances and nothing he did was outside the scope of reasonable professional norms. Plea Counsel fully represented his client and advised him based on his best interests in light of the evidence against him, which was to plead guilty with the State's recommendation for



the mandatory minimum. The plea deal Applicant accepted also included the dismissal of two other charges against Applicant in exchange for his plea. Accordingly, Applicant has failed to prove that Plea Counsel was deficient or that he would have gone to trial but for these deficiencies, and post-conviction relief is denied.

INVOLUNTARY GUILTY PLEA

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

Applicant alleges he was coerced into pleading guilty. The record and Plea Counsel's testimony clearly show Applicant was not threatened, forced, or coerced to plead guilty. This Court finds very credible Plea Counsel's testimony that it was Applicant's decision to plead

guilty under the circumstances, and he understood the terms of the guilty plea offer he was accepting.

At the guilty plea, the plea court asked Applicant if anyone had promised him anything to get him to plead guilty, and Applicant responded no. Tr. 3, line 22. Applicant testified at the plea hearing that he was satisfied with his attorney and he did not need more time to consider his decision before pleading. Tr. 3, line 16 - 19. Applicant has failed to prove he was coerced into pleading guilty and would have gone to trial otherwise.

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

LACK OF SUBJECT MATTER JURISDICTION

Applicant's allegations that the plea court lacked subject matter jurisdiction to accept his guilty plea because of flaws in his indictments are meritless. Applicant alleges that his indictment is defective. This allegation is improper for post-conviction relief. The sufficiency of an indictment is not a matter of subject matter jurisdiction, and thus cannot be raised at any time. *State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("[S]ubject matter jurisdiction of

the circuit court and the sufficiency of the indictment are two distinct concepts.”) Furthermore, in order to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. §17-19-90 (2003). Applicant waived his right to challenge the sufficiency of the indictments when he pled guilty to the charges against him, thus he can no longer raise this issue.

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Indictments are sufficient when they allege time and place, as required by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a “practical eye” to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution. See Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Moreover, “an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.” Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007).)

Even if Applicant had properly raised this issue as one of ineffective assistance of counsel, this Court finds no merit to the claim. The indictment is clearly valid on its face, and Plea Counsel was not deficient for failing to challenge it. Furthermore, there is no resulting prejudice from any possible error in the indictment because Applicant pled guilty to the crime,

solemnly admitting his guilt in open court. Therefore, since neither prong of the Strickland test is met, this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

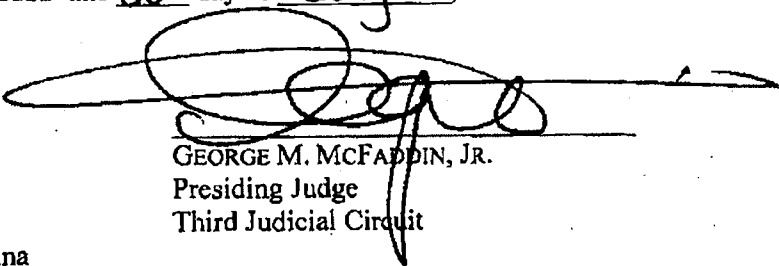
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 20th day of July, 2018.


GEORGE M. MCFADDIN, JR.
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

WITNESSES

F. Davis
Kingstree Police Department

ARREST WARRANT NUMBER

2012A4510100440 2012A4510100441
2012A4510100443 DIRECT PRESENTMENT

DIRECT PRESENTMENT DIRECT PRESENTMENT
DIRECT PRESENTMENT DIRECT PRESENTMENT
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL

Date 05-02-2013

Antoni M. [Signature]
Foreperson of Grand Jury
Date: 5-2-13

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-45-0132

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE

vs.

ALMONDO D. WASHINGTON

WALTER BERNARD SCOTT, JR.

LAWRENCE SINGLETARY

Indictment for

Armed Robbery; Use of a Weapon During a
Violent Crime; Criminal Conspiracy

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

FILED

13 MAY -2 AM 11:16

SHARON STAGGERS
CLERK OF COURT
KINGSTREE, S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

Armed Robbery; Use of a Weapon During a Violent
 Crime; Criminal Conspiracy

At a Court of General Sessions, convened on May 2, 2013 the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - ARMED ROBBERY

That in Williamsburg County on or about November 16, 2012, the defendants, Almondo D. Washington, Walter B. Scott, Jr., and Lawrence Singletary did violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, in that they did feloniously take from Tonya Williams by means of force or intimidation goods or monies of the said Tonya Williams, such goods or monies being described as: a pocketbook and a phone, while armed with a deadly weapon, to-wit: one black in color pistol.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Williamsburg County on or about November 16, 2012, the defendants, Almondo D. Washington, Walter B. Scott, Jr., and Lawrence Singletary did possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

COUNT THREE - CRIMINAL CONSPIRACY

That in Williamsburg County on or about November 16, 2012, the defendants, Almondo D. Washington, Walter B. Scott, Jr., and Lawrence Singletary did combine, conspire, confederate, agree or have tacit understanding with another, for the purpose of committing a crime; to wit, Armed Robbery, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

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

Solicitor

Lawrence A. Fanning III

DECEMBER 16, 2013

CONSP