

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

\_\_\_\_\_  
DERRICK J. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001337

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

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2013-GS-21-01645

STATE OF SOUTH CAROLINA,  
 Plaintiff,

-vs-

DERRICK J. BROWN,  
 Defendant.

TRANSCRIPT OF RECORD

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September 6, 2013  
 Florence, South Carolina

B E F O R E:

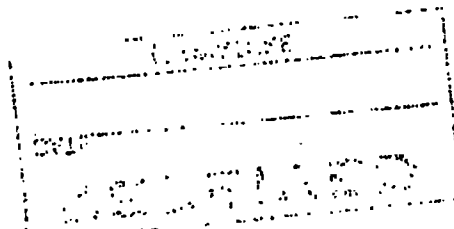
THE HONORABLE D. CRAIG BROWN, Judge

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

JOHN JEPERTINGER, Deputy Solicitor  
Attorney for the Plaintiff

DANIEL JORDAN, Esquire  
Attorney for the Defendant

KRYSTAL J. SMITH  
Court Reporter



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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 SEPTEMBER 6, 2013

2 (WHEREAS this matter was scheduled for a term of General  
3 Sessions, the defendant appeared along with his counsel  
4 of record. The hearing began at 9:13 a.m. with the  
5 rights given to all defendants present as follows.)

6 THE COURT: All right. Listen up. I'm going to go over  
7 your constitutional rights with you. When you plead guilty,  
8 you give up certain important constitutional rights.

9 Each of you have a right to a jury trial. At a jury  
10 trial, I would tell the jury that you are presumed innocent,  
11 that you are presumed not guilty. The State would bear the  
12 burden of proving you guilty beyond a reasonable doubt.

13 You would have the right to question any witnesses  
14 against you, as well as the right to present witnesses for  
15 your defense.

16 If you went to trial, you'd have a right to remain  
17 silent. If you went to trial and remained silent, I would  
18 tell the jury that they could not hold that fact against you.

19 You would have the right again to present any defense to  
20 the charge or charges against you, and if you made any  
21 incriminating statements, you would have a right to challenge  
22 the admissibility of those statements.

23 Does anybody in here not understand those rights?

24 (Whereupon, there is no response.)

25 THE COURT: When you plead guilty, you give up those

1 rights. Does anybody in here not understand that when they  
2 plead guilty, they give up those rights?

3 (Whereupon, there is no response.)

4 THE COURT: Now, some of you may come before this Court  
5 waiving presentment of your charge to the grand jury. Please  
6 understand that you have a right to have your charge or  
7 charges presented to the grand jury for them to determine  
8 whether or not there is sufficient evidence to bring your case  
9 into this court.

10 However, you may waive that right and proceed here today  
11 and plead guilty. Does anybody in here not understand that  
12 they have a right to have their charge or charges presented to  
13 the grand jury for them to determine whether or not there is  
14 sufficient evidence to bring your case into this court?

15 (Whereupon, there is no response.)

16 THE COURT: Does anybody in here not understand that they  
17 may waive their right to have their charge presented to the  
18 grand jury and proceed here in court and plead guilty?

19 (Whereupon, there is no response.)

20 THE COURT: All right.

21 (Whereupon, there is a break in this proceeding from 9:17  
22 a.m. until the defendant's case is called by the  
23 solicitor at 9:45 a.m.)

24 MR. JEPERTINGER: Okay. May it please the Court, Your  
25 Honor. Standing in front of you is Derrick Brown on 2012-GS-

1 21-1645. Mr. Brown in that indictment is pleading to  
2 attempted murder and carjacking, Your Honor. The remaining  
3 count of possession of a firearm while in the commission of a  
4 violent crime is being dismissed. He's represented by Mr.  
5 Jordan. There's a negotiated sentence of 20 years to run  
6 concurrent.

7 MR. JORDAN: Burglary first?

8 MR. JEPERTINGER: He's only charged -- yeah. There's  
9 another charge of burglary first and kidnapping that are being  
10 dismissed against him, and that is on -- in Indictment 2012-  
11 1646.

12 THE CLERK: Please raise your right hand. Do you swear  
13 to tell the truth, the whole truth, and nothing but the truth,  
14 so help you God?

15 THE DEFENDANT: I do.

16 THE COURT: All right. Sir, you are Derrick Brown?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you ever been treated for alcohol abuse,  
19 drug abuse, or mental illness?

20 THE DEFENDANT: No, sir.

21 THE COURT: Within the last 24 hours, have you taken any  
22 medication, drugs, or alcohol?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you aware of any physical, emotional, or  
25 nervous problem that would prevent you or keep you from

1 understanding what's going on here today?

2 THE DEFENDANT: No, sir.

3 THE COURT: The State indicates you're pleading guilty to  
4 an attempted murder; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: As well as a carjacking offense; is that  
7 correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that the attempted murder  
10 carries a penalty of up to 30 years?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you understand that the carjacking  
13 offense includes up to 30 years as well?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: The State has indicated that they have  
16 negotiated a sentence with your lawyer for a 20-year period of  
17 incarceration. Is that your understanding?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that under a negotiated  
20 sentence I can either accept it or set it aside and let you  
21 plead on a different day? Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is it your desire that I accept this  
24 negotiated sentence and sentence you to a term of  
25 incarceration for 20 years?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, you understand that each of these  
3 offenses for which you are pleading guilty to here today are  
4 considered under South Carolina law to be violent offenses as  
5 well as most serious offenses; do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: In other words, you understand that you can  
8 count on doing day for day for whatever sentence or for the 20  
9 years that this Court hands down here today; do you understand  
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you understand that as a most serious  
13 offense that this particular -- these particular offenses fall  
14 under the two-strike rule; do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: In other words, if you are convicted by plea  
17 or trial after being released from the Department of  
18 Corrections of another most serious offense and the State has  
19 properly noticed you of their intent to seek life without  
20 parole, the Court would have no alternative but to give you  
21 life. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Understanding the consequences of pleading to  
24 a violent offense as well as a most serious offense, is it  
25 still your desire to go forward here today and plead guilty to

1 these two charges?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, you understand that when you plead  
4 guilty, Mr. Brown, you give up certain important  
5 constitutional rights. You understand that you have a right  
6 to a jury trial. At a jury trial, I would tell the jury that  
7 you are presumed innocent, that you are presumed not guilty.  
8 The State would bear the burden of proving you guilty beyond a  
9 reasonable doubt.

10 You would have the right to question any witnesses  
11 against you, as well as the right to present witnesses for  
12 your defense. You would have the right to remain silent. If  
13 you went to trial and did not testify, I would tell the jury  
14 that they could not hold that fact against you.

15 You would have the right to present any defense you had  
16 to the charges, and if you made any incriminating statements,  
17 you would have a right to challenge the admissibility of those  
18 statements. Do you understand those rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that when you plead guilty,  
21 you give up those rights?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Understanding your rights and  
24 understanding that when you plead guilty you give them up, how  
25 do you plead here today? Guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: All right. You're represented by Mr. Jordan.

3 Are you satisfied with his representation?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you talked with him enough?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you need any more time to talk to him?

8 THE DEFENDANT: No, sir.

9 THE COURT: Understood your talks with him?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Has he done everything you believe he could

12 have done or should have done for you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he done anything you think he shouldn't

15 have done?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you completely satisfied with his

18 representation?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any complaints whatsoever?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Has anybody promised you anything

23 or held out any hope of reward to get you to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Anybody used any threats, force, pressure, or

1 intimidation to get you to plead guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: They have?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You're not pleading today of your own free  
6 will?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did you ---

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has anybody used any threats, force,  
11 pressure, or intimidation to get you to plead?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Who?

14 THE DEFENDANT: Mr. Jepertinger.

15 THE COURT: What has he done to get you to plead guilty  
16 here today?

17 THE DEFENDANT: He tell me if I don't take the 20 years,  
18 I can get -- he's going to make sure I get 60 years on this  
19 trial.

20 MR. JEPERTINGER: I did tell him I'm going to ask for  
21 consecutive sentences and the maximum.

22 THE COURT: And he has every right to do that.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I mean you don't have to take this deal that  
2 they've offered you of 20 years concurrent today. If you want  
3 to go to trial, you can be tried in front of me the week after  
4 next. In fact, you're number one up for trial in front of me  
5 week after next. That's up to you. It is up to you, Mr.  
6 Brown, as to whether or not you decide to plead guilty. If  
7 you don't like the deal they are offering, you have every  
8 right to go to trial the week after next in front of me.

9 I'll be back here and we can strike a jury that Monday  
10 morning and try your case starting that Monday morning, and  
11 we'll go as long as it takes for the State to put it up and it  
12 will be their burden -- their burden and their burden alone to  
13 prove your guilt beyond a reasonable doubt. And like I told  
14 you on your constitutional rights, you don't have to say a  
15 thing, you don't have to put up any evidence at all, and I'll  
16 tell the jury they can't hold any of that against you -- any  
17 of it because the burden rests entirely upon the State.

18 Now, when they -- if a jury convicts you, if they come  
19 back and say the State has met that burden and they've proved  
20 Mr. Brown guilty beyond a reasonable doubt, Mr. Jepertinger  
21 can stand right where he is or stand on the eleventh floor in  
22 the approximate same place and he can ask me, Judge Brown, we  
23 would ask for consecutive sentences in this case, and he can  
24 ask for it all day long. Whether it is imposed upon you would  
25 be my decision and my decision alone at that time. Do you

1 understand that?

2 THE DEFEENDANT: Yes, sir.

3 THE COURT: Now, do you want to go forward here today and  
4 plead guilty to this charge and what they've offered you for a  
5 concurrent 20-year sentence or do you want to stand down and  
6 we'll pick ---

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir?

9 THE DEFENDANT: I'll go ahead, sir.

10 THE COURT: Are you pleading guilty because you are  
11 guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Now, I want you to understand you  
14 have every right to go forward on your trial. Do you  
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, let me ask this question again. Has  
18 anybody used any threats, force, pressure, or intimidation to  
19 get you to plead today?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. I mean I understand that what the  
22 -- the State doesn't have to plea bargain with anybody. They  
23 could come in here on every case that's brought in here and  
24 say you can plead straight up or you can go to trial. In  
25 fact, when I go to Lexington, South Carolina, to hold court,

1 that's how it is. Everybody up there pleads straight up and  
2 they might -- they might reduce some charges up there, but  
3 they don't recommend anything. They don't negotiate anything.  
4 In fact, you plead straight up in Lexington, South Carolina.  
5 So he doesn't have to do it at all. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Has anybody mistreated you in any  
8 way, whether it be law enforcement or Solicitor's Office?

9 THE DEFENDANT: No, sir.

10 THE COURT: Sir?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Have you had enough time to make  
13 up your mind as to whether or not you want to plead guilty or  
14 go to trial?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What do you wish to do?

17 THE DEFENDANT: Plead guilty.

18 THE COURT: Are you pleading guilty as to each of these  
19 charges of your own free will?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you pleading guilty as to each of these  
22 two charges because you are guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Mr. Jepertinger, I'd be happy to  
25 hear from you, sir.

1 MR. JEPERTINGER: Your Honor, on April the 26<sup>th</sup> of 2012  
2 here in Florence County, Georell Blathers had received a phone  
3 call from his mother. Georell had been going to Timmons ville  
4 to take his girlfriend home and, as I said, he got a call from  
5 his mom and said Flacko -- who is the nickname of the  
6 defendant -- and Peanut, Flacko's friend also known as  
7 Dormiell Wilson, are riding by the house with coats on, and  
8 they were heavy coats, Your Honor, and it was between 85 to 90  
9 degrees on that day and it just looked very unusual.

10 So Georell drops his girlfriend off and he comes back to  
11 his house on Pindo Court, and Pindo Court, Your Honor, is in  
12 Florence County. It is behind the Baymont and Crack Barrel in  
13 a trailer park area. It's right off of Fairfield Road there,  
14 Your Honor. And he sees those two individuals down the street  
15 with their camouflage jackets on. He goes in the house to get  
16 a belt and gets -- gets money to go to the mall.

17 At that point, he gets out of the house, gets into his  
18 Chevy Impala. The vehicle is in his girlfriend's name I  
19 believe, but it's the car that he uses all the time. He backs  
20 up, goes down the street just to see why these guys are right  
21 in front of his house. He opens the car door, asks them why  
22 they're riding down the street with these heavy coats on, and  
23 he spoke to the other individual first, Dormiell Wilson, and  
24 Dormiell basically says a racial epithet and basically tells  
25 him to -- for lack of a better term, to F off.

1 As he says that, Flacko without any -- any warning  
2 whatsoever pulls out a handgun and shoots Georell. The bullet  
3 hits him obviously. At first, all he felt was a -- I would  
4 say a burning sensation, and I don't know if he realized that  
5 he had been shot, but then it started hurting, Your Honor. It  
6 caught him kind of right here in the side. I have pictures  
7 from the hospital where he was shot. Of course, they took  
8 him, and his mother, Mary, saw the whole thing, and she saw  
9 Dormiell and Flacko here, the defendant in the case, Derrick  
10 Brown, do the shooting.

11 Now, after he gets shot, the defendant gets into the  
12 defendant's -- into the victim's car -- Mr. Blathers' car and  
13 drives off. The -- I think -- I don't know if Mary saw that  
14 part, but I know Georell's sister, Niquana Washington, sees  
15 this defendant in that car because there was no -- there was  
16 only one ingress and egress to Pindo Court. So he sees -- or  
17 she sees him get in the car and drive off.

18 They don't know where the car is. Eventually, law  
19 enforcement in Williamsburg County said they found vehicle  
20 parts to the Chevy Impala that was his, and either Florence  
21 County goes and gets the parts belonging to the Chevy Impala  
22 or Williamsburg County sends it back to Florence County, but  
23 this is what all that remains of the Chevy Impala.

24 (Whereupon, a photograph is presented to the Court.)

25 MR. JEPERTINGER: Those four or five parts, a couple

1 doors, the trunk. They were able to get the VIN off of one of  
2 the doors there. That's how they knew to whom the car  
3 belonged.

4 It was a cold-blooded shooting, Judge. You can't -- you  
5 can't describe it any other way. All he did was ask them a  
6 question. What are you doing riding down the street in front  
7 of my mama's house? And he gets shot. He did nothing. He  
8 had no weapon. All he did was ask a question and he got  
9 blasted in his guts, Your Honor.

10 In terms of criminal record, this gentleman has got a  
11 receiving stolen goods in 2005 and three counts of burglary  
12 second degree in 2006 for which he received a YOA sentence not  
13 to exceed six years. That's the only criminal record that I  
14 -- I see here.

15 THE COURT: All right. All right. Mr. Brown, you heard  
16 the facts as stated by the solicitor in this case. Do you  
17 agree with those facts?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you, in fact, guilty of carjacking, as  
20 well as attempted murder?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And how do you plead to these charges here  
23 today? Guilty or not guilty?

24 THE DEFENDANT: I plead guilty, sir.

25 THE COURT: As to each of these charges?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Well, let me ask you this, Mr. Brown. We  
3 talked about this a little bit. The State and your lawyer  
4 have negotiated a 20-year sentence. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In other words, I can either accept this plea  
7 and sentence you to 20 years or I can reject it and either let  
8 you plead on a different day in front of another judge or I  
9 guess I could retain jurisdiction and the case could go  
10 forward and be tried in front of me. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is it your desire that I accept this  
13 negotiated sentence and sentence you to this 20 years?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. All right. I do find that there  
16 is a substantial factual basis for this defendant's plea.  
17 That his decision to plead guilty as to each of these charges  
18 has been entered into freely, voluntarily, knowingly, and  
19 intelligently. That he has had the advice and counsel of an  
20 attorney with whom he's indicated he's completely satisfied.  
21 I will accept this plea. Before I hear from you, Mr. Jordan,  
22 Mr. Jupertinger, do the victims or anybody wish to say  
23 anything?

24 MR. JEPERTINGER: Ms. Mary or Georell, do you? Just  
25 address your comments to the Court if you want to say

1 anything.

2 THE COURT: If you wish to say anything, please tell me  
3 your full name for the record and I'll be happy to hear from  
4 you, sir.

5 MR. BLATHERS: Georell Blathers. No, sir, I don't have  
6 anything to say.

7 THE COURT: Okay. Ma'am, anything you want to tell me?

8 MS. WASHINGTON: I'm Mary Washington.

9 THE COURT: Yes, ma'am, Ms. Washington?

10 MS. WASHINGTON: I just wanted to let Mr. Brown know I do  
11 forgive him. Even though I stood there and watched him shoot  
12 my son, take his car, and almost run over me in the process, I  
13 hold no ill will towards him. I just want him to pay for what  
14 he did.

15 THE COURT: All right. All right. Mr. Jordan, I'll be  
16 happy to hear from you.

17 MR. JORDAN: Thank you, Your Honor. Your Honor, Derrick  
18 Brown is 24 years old. He's got a ninth grade education.  
19 He's spent most of his life here in Florence County. Your  
20 Honor, his family is right here in Florence County. His  
21 mother at the time of this incident was living out on Pindo  
22 Court.

23 Mr. Jepertinger got to give his version of the facts here  
24 and I believe I -- Mr. Brown would like me to tell you his  
25 version. Your Honor, on the 26<sup>th</sup>, Pindo Court is not exactly a

1 country club. On the 26<sup>th</sup>, Mr. Brown's mother was going  
2 fishing. She was going to be out all day. Due to a rash of  
3 break-ins in the area, she called her son, Derrick, and asked  
4 him if he would come and sit at the house.

5 About an hour or so after he got to the house, four  
6 people came to the door of the house looking for Georell.  
7 They had been given the wrong address, but they were looking  
8 for Georell in connection to a murder. I'm sorry, not a  
9 murder, a burglary. Derrick told them he didn't know where  
10 Georell was and didn't have any involvement with that. He  
11 wasn't hiding him.

12 Later on, Derrick ran into Georell and informed him of  
13 such. Derrick tells me at that time Georell showed him a gun.  
14 He had a gun. And they may have exchanged some words about,  
15 you know, Derrick keeping quiet and not squealing on him,  
16 things like that, and I don't think Derrick really had any  
17 intention to squeal or what have you.

18 But in essence, that was the bad blood, Your Honor, and  
19 yes, as Mr. Jupertinger said, Derrick and his friend were  
20 outside that evening. Derrick was going down the street.  
21 Georell comes up and they start having words. I believe it  
22 was Peanut who jumped out and was trying to stop these guys  
23 from arguing, you know, and telling them to squash the beef  
24 they had. In the heat of the moment, you know -- I mean Mr.  
25 Jupertinger describes this as a cold-blooded shooting. He

1 says it can't be described any other way. I mean I'm  
2 relatively young, but I think I can describe it a different  
3 way.

4 This was in the heat of the moment, Your Honor. It  
5 wasn't cold-blooded. It wasn't premeditated. Mr. Brown saw  
6 Mr. Blathers with a gun earlier in the day. There were heated  
7 words being exchanged and Mr. Brown thought he was in a kind  
8 of a kill or be killed situation. Fortunately, it didn't turn  
9 out that way.

10 Your Honor, we believe that this negotiated 20-year  
11 sentence is fitting for what occurred here, you know, given  
12 Mr. Brown's youth and inexperience. Your Honor, he was  
13 arrested on July 20<sup>th</sup> of 2012. He has never bonded out. He  
14 did spend some time on a YOA revocation, but I believe you can  
15 still give him credit for all that and I believe that's 401  
16 days that he has either been in the Florence County Detention  
17 Center or on hold by the Florence County Detention Center for  
18 these charges.

19 Your Honor, Derrick has expressed to me that he is  
20 incredibly sorry for what happened. He's known Georell for a  
21 long time. He never had any beef with him before this day.  
22 Your Honor, we just ask you to consider accepting his plea  
23 here and the negotiated sentence.

24 THE COURT: All right. Thank you, Mr. Jordan. Mr.  
25 Brown, anything you want to tell me?

1 THE DEFENDANT: Yes, sir. I'd like to say I apologize to  
2 the Court for wasting its time, you know, and, Your Honor,  
3 what went down, I woked up and went at my mama's. Well, I was  
4 staying at West Florence at my grandma's house in West  
5 Florence. My mama come and say she going fishing. She wanted  
6 me to come watch the house. So I got up and went and watched  
7 the house. I'm at the house laying on a chair. I heard  
8 somebody knocking at the door. I went to the door. I see  
9 four white people outside and I'm seeing a gun and do I know  
10 Georell. Do a Georell stay here? I was like no. Then they  
11 was like where he stay. I say he stay at the second house out  
12 here. I was like no. He was like me and my girlfriend want  
13 my \$35,000. I'm trying to find out where he is. I got money  
14 that's his. So I'm like yes, Your Honor. I mean yes.

15 So next thing you know, me and my homeboys are standing  
16 outside chilling. So I seen Georell pull up. I guess there  
17 was another guy that was in the car with Georell that had  
18 robbed some of the people's family that I been with that day.  
19 So they had some words, whatever. They had words together  
20 with. I didn't have nothing to do with it. I'm just standing  
21 in the yard and they was having words.

22 So the person that Georell came to pick up, they left to  
23 go to work. So my homegirl and her grandmama get in the car  
24 that Georell was in because it was the car of the girl he was  
25 talking to. The car was in her name. So his -- I mean her

1 grandmama was going to get in the car they was in.

2 So we was in the trailer park. They came back. Him and  
3 another guy came back in a -- in a different car, in a Ford  
4 Taurus. So when they came back, they had some words. Well,  
5 him and -- him and the girl's uncle had words. I asked them  
6 why that he had somebody call -- had his niece call that  
7 robbed one of his other nieces. You know what I'm saying? So  
8 I'm standing right there.

9 So that when he jump out the car, he been like ain't none  
10 of y'all business what was going on. I handled it. When I  
11 did, they were like take that. So even like if I did it, so  
12 it's like if he did it, I did it, too. You know what I'm  
13 saying?

14 So then when they leave, somebody shot at the car. So  
15 his -- I guess his mama called the police and told the police  
16 that someone had shot the car that her son was in. So the  
17 police came out there. The police left. So the next thing  
18 you know, it was like -- probably like thirty minutes later  
19 they came. They was coming back. It was like two -- like  
20 three cars deep. You know what I'm saying? But when they was  
21 coming in, the sheriff came in because I guess she had called  
22 the police and told the police that somebody shot at the car  
23 her son was in. So the next thing you know, the police came  
24 and left.

25 I'm going down the road to one of my homegirl's to get a

1 cigarette -- borrow cigarettes. I seen a car coming down the  
2 road swerving. I ain't know who it was. He swerved. He was  
3 swerving. So I got my cigarette and went back down the road.  
4 When I got back in the trailer park, he come running outside.  
5 So his mama like, no, Georell, don't do that. So like before  
6 he even got in the car, his mama and them already started  
7 walking down the road like where everybody been at. So he  
8 jump in the car. I'm going down the road. He behind me  
9 swerving in the car. You know what I'm saying?

10 So he pull in front of me and backed his car up. So my  
11 homeboy Dormiell be like, man, Georell going to go ahead and  
12 kill all of us and this and that and he was like no, F that.  
13 Y'all the reason all this going on. So he had his hands on  
14 the top of the car. Y'all the reason this going on. I'll  
15 tell them to kill you and that's when he pulled out a gun and  
16 I pulled out a gun. That's when I shoot, sir. And the next  
17 thing you know, he took off running. Then his sister had a  
18 gun and she pulled out a gun. So I jumped in the car and left  
19 the scene.

20 MR. JEPERTINGER: Well, is he pleading guilty, Judge?  
21 That's the question I have.

22 THE COURT: Sir?

23 MR. JEPERTINGER: I was wondering if he's pleading  
24 guilty.

25 THE COURT: Well, you've pled guilty to these charges ---

1 THE DEFENDANT: Yes, sir.

2 THE COURT: --- here today and any defenses that you may  
3 or may not have had, when you plead guilty you give up those  
4 defenses.

5 THE DEFENDANT: I know that, sir.

6 THE COURT: Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. All right. Anything else from  
9 the State?

10 MR. JEPERTINGER: No, sir.

11 THE COURT: Anything else, Mr. Jordan?

12 MR. JORDAN: No, sir.

13 SENTENCE OF THE COURT

14 THE COURT: All right. On Indictment 2012-GS-21-1645 as  
15 it pertains to each of these charges, the carjacking as well  
16 as the attempted murder, the defendant -- how many -- how much  
17 -- how much did he do on his Y revocation?

18 MR. JORDAN: Your Honor, I think it was 141 days without  
19 the Y revocation.

20 THE COURT: How many, Mr. Jordan?

21 MR. JORDAN: I think it was 141 without the Y revocation.

22 THE COURT: 141 days without the YOA?

23 MR. JORDAN: Yes, sir.

24 THE PROBATION AGENT: He's no longer on ---

25 MR. JORDAN: It was about 260.

1 THE COURT: 260 days with the revocation?

2 MR. JORDAN: Yes, sir.

3 THE COURT: All right. As it pertains to each of these  
4 charges on Indictment 1645, the defendant is committed to the  
5 State Department of Corrections for a period of 20 years as to  
6 each count. I'm giving him credit for 141 days as to each of  
7 those offenses. I'm not giving him credit for the revocation  
8 on the Y. Good luck to you, Mr. Brown.

9 MR. JEPERTINGER: Thank you, Your Honor.

10 MR. JORDAN: Your Honor, that was concurrent; right?

11 THE COURT: Concurrent, yes. Concurrent.

12 MR. JORDAN: Thank you.

13 (Whereupon, the proceedings end at 10:13 a.m.)

14

15 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA )  
 ) CERTIFICATE  
COUNTY OF FLORENCE )

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 26 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 6th day of September, 2013.

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

Krystal J. Smith  
Court Reporter

Florence, South Carolina  
May 31, 2014

The state of South Carolina  
County of Florence

In the Court of General Session<sup>29</sup>  
The first Judicial Circuit

The state of South Carolina

Case No: 2012A21100033

2012A21100034

2012A21100035

- vs -  
Derrick J Brown

W395015, W395014, W395015

FILED

2013 AUG 28 AM 11:27

CONNIE REEL-SHEARIN  
COPP & ASS  
FLORENCE COUNTY, SC

Notice of motion and motions  
to Release state appointed  
Attorney Daniel J Jordan

In the twelfth circuit General session court Defendant  
moves "Honorable court" to grant motion to Dismiss state  
appointed attorney Daniel J Jordan. The reason of me putting  
this motion in because me or my Attorney not seeing eye to eye  
He isn't doing anything that I ask him to do. He lies to me in  
my family all the time. I request a few motions he telling me  
they don't mean nothing. He talks to me how he want to talk to  
me. I really do feel like he isn't helping to his best ability.  
so I really do will like to ask to be appointed another Attorney  
A.S.A.P I don't want him to no longer have anything to do with my case  
at this time. If you cannot help me with this matter will you  
please instruct me in the right direction. I will like to end  
the request of this motion by saying thank you for your  
time and May God Bless you!

Respectfully submitted

By Derrick J Brown

Date: 8-27-13

FILE FORM 5

STATE OF SOUTH CAROLINA )  
 2014 APR 24 ) 1:19 IN THE COURT OF COMMON PLEAS  
 COUNTY OF Florence )  
 CONNIE REEL )  
 CCSP )  
 FLORENCE C )  
 Full name and prison number (if any) of Applicant. )  
 Derrick S Brown # 315942 )  
 v. )  
 State of South Carolina )

2014-CP-21-1062

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correction Int.
2. Name and location of Court which imposed sentence Florence county
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Attempted Murder (12-4-768
  - (b) Carjacking (12-4-768
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 09-06-13 Attempted Murder
  - (b) 09-06-13 Carjacking

CERTIFIED: A TRUE COPY  
 Connie Reel-Jones  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

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

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

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

NO

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

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

i. \_\_\_\_\_

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

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

N/A

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

i. \_\_\_\_\_

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

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

N/A

(c) the date of each such result:

i. \_\_\_\_\_

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

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

N/A

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

i. \_\_\_\_\_

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

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

N/A

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

(a) \_\_\_\_\_ The reason I did not appeal is because I had taken a negotiated Plea.

(b) \_\_\_\_\_

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

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

- (a)  Because I got too much time for my charges
- (b)  Ineffective assistant counselier
- (c)  Brady violation / prosecution Misconduct / With holding evidence

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

in (10):

- (a)  My Attorney told my family I will not get over 12 years He told my family he was going to fight for self & Defends because that was kind of case he
- (b)  Before I went to court I had done a motion to Releave my Attorney because I felt he wasnt helping to his best ability
- (c)  Before I went to court I was asking my Attorney for any and every Evidence that had something to do with my case he started that I did not have any statements 7

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

- (a) any petition in a State Court under South Carolina Law? \_\_\_\_\_
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (c) the disposition thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

(d) the date of each such disposition:

i. \_\_\_\_\_

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

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

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

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

i. \_\_\_\_\_

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

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

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

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

No

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

(a) which grounds have been presented:

i. \_\_\_\_\_

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

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

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

i. \_\_\_\_\_

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

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

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_

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

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

- (a) your arraignment and plea?
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing?
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

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

- i. A Mr Daniel T Jordan - 180 N Irby St. Florence SC 29501
- ii. \_\_\_\_\_ Mr Daniel T. Jordan - 180 N Irby St. Florence SC 29501
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_ A negotiated plea
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application: I am looking for my Negotiated plea to be overturned so I can better myself a lesser plea or a trial being that I wasn't prepared and didn't have my brady motion do to ineffective counsel and with holding evidence
20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )  
County of Florence County )

VERIFICATION

I, DJB, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Derick Braun

SWORN to and subscribed before me this 18  
day of April, 2014.

[Signature] (L.S.)  
Notary Public

My Commission Expires: 12-16-2019

2014 APR 24 PM 4: 19  
CORRIE FEEL-SHERMAN  
CLERK OF COURT  
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY  
Corrie Feel-Sherman  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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

I, DOS, 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.

Derrick Brown  
Applicant

SWORN or affirmed to and subscribed before me this  
18 day of April, 2014

[Signature]  
Notary Public

My Commission Expires: 12-16-2019

FILED  
2014 APR 24 PM 4:19  
CORNING REFERENCE  
COPP & G.S.  
FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY  
Cristie H. Spain  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
 TWELFTH JUDICIAL CIRCUIT

Derrick J. Brown, #315942, )

2014-CP-21-1062

Applicant, )

v. )

**RETURN**

State of South Carolina, )

Respondent. )

In response to the post-conviction relief application filed on April 24, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the November 2012 term of the Florence County Grand Jury for attempted murder, carjacking, and possession of a firearm during the commission of a violent crime (2012-GS-21-1645) and burglary first degree and kidnapping (2012-GS-21-1646). Applicant was represented by Daniel T. Jordan, Esquire.

On September 6, 2013, Applicant pled guilty to attempted murder and carjacking. The Honorable D. Craig Brown sentenced Applicant to concurrent terms of twenty (20) years imprisonment for each charge. Applicant did not appeal his guilty pleas or sentences.

II.

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

1. Ineffective assistance of counsel.

- a. Applicant's sentence was too harsh.
- b. Counsel told Applicant's family he would only get twelve (12) years imprisonment.
- c. Counsel did not go over discovery materials with Applicant.

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

### III.

Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine

confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

IV.

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

[Signature on following page]

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. CROOM HUNTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

11/4, 2014

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2014-CP-21-1062

DERRICK J. BROWN, #315942

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

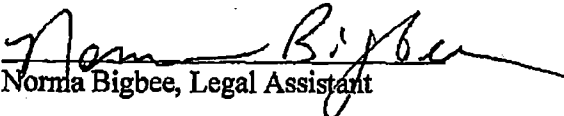
STATE OF SOUTH CAROLINA,

Respondent.

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

**Tristan Michael Shaffer, Esquire**  
4701 Oleander Drive  
Myrtle Beach, SC 29577

DATED this 4<sup>th</sup> day of November, 2014.

  
Norma Bigbee, Legal Assistant

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2014-CP-21-01062
	)	
Derrick L. Brown,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

---

August 8, 2016  
Florence, South Carolina

**B E F O R E:**

The Honorable William H. Seals Jr., Judge

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

Tristan Shaffer, Esquire  
Attorney for the Plaintiff

Jessica Kinard, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption
	or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 AUGUST 8, 2016

2 (WHEREUPON, the proceedings began at 11:48 a.m.)

3 THE COURT: All right. Whenever you're ready.

4 MS. KINARD: Thank you, Your Honor. May it please the  
5 Court.

6 THE COURT: Sure.

7 MS. KINARD: This is the matter of Derrick J. Brown  
8 versus the State of South Carolina. It's Case Number 2014-CP-  
9 21-1062.

10 We're before the Court on an application for post-  
11 conviction relief that was filed April 24<sup>th</sup>, 2014. The  
12 applicant is presently incarcerated pursuant to orders of the  
13 Florence County Clerk of Court. He was indicted at the  
14 November 2012 term for attempted murder, carjacking,  
15 possession of a firearm during the commission of a violent  
16 crime, as well as burglary first-degree and kidnapping. He  
17 was represented by Daniel T. Jordan.

18 On September 6<sup>th</sup>, 2013, applicant pled guilty to attempted  
19 murder and carjacking. He was sentenced by the Honorable D.  
20 Craig Brown to concurrent terms of 20 years' imprisonment for  
21 each charge. He did not appeal his pleas or his sentences.

22 THE COURT: All right.

23 MS. KINARD: The State is present and ready to proceed.  
24 Mr. Brown is present and represented by Tristan Shaffer.

25 THE COURT: All right. Mr. Shaffer?

DANIEL JORDAN - DIRECT BY MR. SHAFFER

1 MR. SHAFFER: Thank you, Your Honor. The applicant would  
2 go ahead and call Daniel T. Jordan, Your Honor.

3 THE COURT: All right. Come around, Mr. Jordan.

4 THE CLERK: Do you swear or affirm that the testimony you  
5 give in this case will be the truth, the whole truth, and  
6 nothing but the truth, so help you God?

7 THE WITNESS: Yes, ma'am.

8 DANIEL JORDAN, being first duly  
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SHAFFER:

12 Q: Mr. Jordan, you represented Derrick Brown; correct?

13 A: I did.

14 Q: Okay. Tell us a little bit -- how -- well, how did you  
15 come to represent him?

16 A: Well, I have a private practice and at the time I was  
17 actually in private practice with the Law Office of Wallace H.  
18 Jordan Jr., PC. In addition to that, I'm a part-time  
19 assistant public defender here. And so I was assigned through  
20 the Public Defender's Office to represent Mr. Brown.

21 Q: Okay. Now, tell us a little bit, if you recall, a brief  
22 summary of the allegations against him?

23 A: If memory serves -- and as I've already indicated, I  
24 received an email from you last week about some issues, but  
25 otherwise I had no idea that this was going forward today. So

DANIEL JORDAN - DIRECT BY MR. SHAFFER

1 this is just based on memory and a brief review of the State's  
2 file.

3 What -- what I remember is that Mr. Brown was accused of  
4 attempted murder, kidnapping and I think carjacking, maybe  
5 possession of a weapon during a violent crime. Those are  
6 things that, you know, just off the top of my head I recall.

7 Q: Okay. Now, did you -- do you recall any of the facts  
8 surrounding what led to the attempted murder?

9 A: In essence, it seemed like -- and it was sort of hinted  
10 at there was a dispute between Mr. Brown and another  
11 gentleman. Mr. Brown lived or his girlfriend somehow lived  
12 around Pendo Court here in Florence County. He was out there.

13 He and the other gentlemen I think was, like, driving an  
14 Impala or something like that. Met up, along with several  
15 other people. There was some words exchanged. Tensions were  
16 high and I think Mr. Brown ended up shooting this other  
17 gentleman, who was then driven to the hospital I think by his  
18 sister. Not Mr. Brown's sister, the victim's sister. And  
19 that's what I remember of that.

20 Q: Okay. Do you recall -- do you recall how many times you  
21 met with Mr. Brown?

22 A: I personally probably met with Mr. Brown four or five  
23 times. I know that Mr. McKenzie, who is the investigator with  
24 my office, met with him maybe more than that. On several  
25 occasions, Mr. McKenzie and I met with him together.

DANIEL JORDAN - DIRECT BY MR. SHAFFER

1 Q: And I know you're sort of at a disadvantage here because  
2 of the scheduling of this, but do you recall what your trial  
3 strategy was going to be?

4 A: Well, the trial strategy -- there was some indication, at  
5 least from Mr. Brown's perspective, that the victim had a gun  
6 as well. So the trial strategy would have been potentially  
7 that Mr. Brown shot this fellow in self-defense. However, we  
8 could -- you know, I couldn't find anybody to substantiate or  
9 corroborate --

10 Q: Okay.

11 A: -- that the victim was in possession of a weapon.

12 Q: Do you recall any witnesses that you might've talked to  
13 or your investigator talked to?

14 A: I don't recall their names. I remember a bunch of them  
15 had nicknames. There was one little fellow I think that rode  
16 up on a bicycle. I know we talked with obviously Mr. Brown.  
17 Like I said, the little fellow on the bicycle -- I can't  
18 remember his name. The victim's sister. And I can't recall  
19 the others that we talked to. There were a number.

20 Q: Do you recall the victim's mother being a potential  
21 witness in the case?

22 A: I do.

23 Q: Okay. And what was -- do you recall the substance of her  
24 testimony?

25 A: Well, I mean she didn't testify.

DANIEL JORDAN - DIRECT BY MR. SHAFFER

- 1 Q: Or her statement. Excuse me.
- 2 A: I believe that initially she informed law enforcement  
3 that she heard some shots and then came out and saw that it  
4 appeared that her son had been shot and her daughter was  
5 running over there and that kind of thing.
- 6 Q: Okay. Do you recall ever receiving any other statement  
7 related to her?
- 8 A: I never received any other statement that I can recall.
- 9 Q: Okay.
- 10 A: I do remember shortly before trial having a discussion  
11 with the solicitor regarding the victim's mother and her  
12 potential testimony and that it seemed her -- her story may  
13 have changed. However, I don't recall ever receiving any sort  
14 of -- anything written.
- 15 Q: Okay. Do you recall anything about him moving to have  
16 you relieved?
- 17 A: I mean Mr. Brown filed numerous motions --
- 18 Q: Okay.
- 19 A: -- on his own.
- 20 Q: Okay. Do you recall anything about it though? About  
21 that motion?
- 22 A: I mean I recall he filed it and I believe it was heard  
23 and denied, but other than that, I don't recall. From what I  
24 do remember, it seemed like he didn't feel like I was meeting  
25 with him enough and the case wasn't moving forward as quickly

DANIEL JORDAN - DIRECT BY MR. SHAFFER

1 as he wanted it to.

2 Q: Is it possible that it was not actually heard? Is it  
3 possible that that motion didn't actually get heard?

4 A: It's possible. You know, like I said, I don't remember  
5 that. Mr. Brown filed numerous motions, you know, on his own.

6 Q: Yes.

7 A: And so I can't remember. Like I said, I haven't reviewed  
8 the file prior to today because I didn't know about the  
9 hearing, but . . .

10 Q: Did Mr. Brown seem like or at least did he indicate to  
11 you prior to the day of the plea that he wanted to plead  
12 guilty?

13 A: Yes.

14 Q: Okay. Do you recall -- was it the first -- when did he  
15 first indicate he wanted to plead guilty? Do you recall?  
16 About how far before the hearing was it?

17 A: I can't remember the exact date. What I can tell you is  
18 that the -- from what I remember, the case was very high up on  
19 the trial roster. And when I say I met with Mr. Brown four or  
20 five times, I'm not talking about, you know, five- or ten-  
21 minute meetings at the courthouse. I'm talking about extended  
22 meetings with him at the jail to review his discovery and  
23 things like that.

24 Prior to the trial, I know that we had several meetings  
25 that week prior to potentially picking a jury on Monday and he

DANIEL JORDAN - DIRECT BY MR. SHAFFER

1 made the decision to plead guilty prior to coming to court to  
2 try the case, and it certainly wasn't the morning of the trial  
3 or anything like that. It was -- the decision was -- I mean  
4 he was informed, he made the decision, and he was brought to  
5 the courthouse after the solicitor was informed of his  
6 intentions.

7 Q: Do you have any recollection of where or what plea offers  
8 were given and when they were given?

9 A: I don't remember the exact dates. It seems like Mr.  
10 Brown's sentence was a negotiated plea.

11 Q: Uh-huh.

12 A: I know initially -- Mr. Jepertinger was the solicitor I  
13 believe initially. The offer was as charged. And I believe  
14 he went to 30 and I think it finally dropped to, like, a  
15 negotiated 20, if I'm not mistaken.

16 Q: Okay.

17 MR. SHAFFER: No further questions.

18 THE COURT: All right. Cross-examination?

19 MS. KINARD: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. KINARD:

22 Q: Mr. Jordan, how long have you been practicing law?

23 A: Almost six years.

24 Q: Okay. And at that time of this case, were you very  
25 familiar with criminal law?

DANIEL JORDAN -CROSS BY MS. KINARD

1 A: I was.

2 Q: You felt comfortable handling this case?

3 A: I did.

4 Q: Did you file Rule 5 or a Brady motion or was that done on  
5 your behalf by the Public Defender's Office?

6 A: It was.

7 Q: Did you receive all the discovery that you anticipated  
8 receiving?

9 A: I did.

10 Q: Did you review all of that with the applicant?

11 A: I did.

12 Q: Did he have any questions or concerns that you couldn't  
13 answer regarding the discovery?

14 A: No, ma'am.

15 Q: Did he seem to understand everything that you asked him?

16 A: Yes, ma'am.

17 Q: At any point during your representation, did you feel  
18 uncomfortable talking to him or that he didn't know what was  
19 going on?

20 A: No, ma'am.

21 Q: Did you discuss his version of the facts?

22 A: Yes, ma'am.

23 Q: And you discussed the potential trial strategy?

24 A: Yes, ma'am.

25 Q: And any possible defenses that could've happened?

DANIEL JORDAN -CROSS BY MS. KINARD

- 1 A: Yes, ma'am.
- 2 Q: And part of that turned on the victim's mother's  
3 testimony potentially?
- 4 A: Potentially.
- 5 Q: Okay. But overall, it was a self-defense --
- 6 A: Yes, ma'am.
- 7 Q: -- case? Okay. And you said that you entered into plea  
8 negotiations; is that correct?
- 9 A: Yes, ma'am.
- 10 Q: And what ended up was a negotiated sentence of 20 years?
- 11 A: Yes, ma'am.
- 12 MS. KINARD: Your Honor, I call the Court's attention to  
13 page 7 of the transcript. I'm sorry. Page 6, if you'd like  
14 to review that.
- 15 BY MS. KINARD:
- 16 Q: Do you recall anything unusual about the entry of his  
17 plea?
- 18 A: No, ma'am.
- 19 Q: So you -- as far as you remember, it was the ordinary  
20 colloquy?
- 21 A: Yes, ma'am.
- 22 Q: Okay. Prior to that, had you reviewed everything with  
23 the applicant regarding his constitutional rights?
- 24 A: Yes, ma'am.
- 25 Q: So he understood he was giving up things like a right to

DANIEL JORDAN -CROSS BY MS. KINARD

1 confront his accusers, right to a jury trial, right to remain  
2 silent, and all of that by going forward with his plea?

3 A: Yes, ma'am.

4 Q: Did -- excuse me. Do you understand the differences  
5 between a straight up plea, a recommendation, and a negotiated  
6 sentence?

7 A: Yes, ma'am.

8 Q: So he understood that he was going to get a negotiated 20  
9 years?

10 MR. SHAFFER: Objection, Your Honor, just to the he -- he  
11 understood the difference. I think that calls for  
12 speculation.

13 THE COURT: I think she was asking did he understand.

14 MR. SHAFFER: Oh.

15 THE COURT: The lawyer? Is that right?

16 MS. KINARD: No. I wasn't, but I can rephrase.

17 THE COURT: Okay.

18 BY MS. KINARD:

19 Q: Do you believe that Mr. Brown understood what his  
20 negotiated sentence meant?

21 A: Yes, ma'am. I mean I explained to him that, unlike a  
22 straight up plea or a cap of 30, this was a negotiated  
23 sentence. If the judge accepted it, he could get no more or  
24 no less than the 20 years.

25 Q: And he understood that, if he had gone to trial, the

DANIEL JORDAN -CROSS BY MS. KINARD

1 State would have to plead all of the elements of each offense  
2 beyond a reasonable doubt?

3 A: Yes, ma'am.

4 Q: And despite all that, he agreed -- not agreed. Excuse  
5 me. He decided to plead guilty?

6 A: Yes, ma'am.

7 Q: And that was his own decision?

8 A: Yes, ma'am.

9 Q: And did you support that decision?

10 A: Yes, I did.

11 MS. KINARD: I have no further questions. So if you'd  
12 like to tell the Court anything else about your  
13 representation, please feel free. Thank you.

14 THE WITNESS: Your Honor, just -- unless Mr. Shaffer has  
15 rebuttal, I --

16 MR. SHAFFER: I have a couple.

17 THE COURT: Redirect? Go ahead.

18 REDIRECT EXAMINATION

19 BY MR. SHAFFER:

20 Q: Now, I know the State -- the State subpoenaed you here,  
21 but you didn't get the subpoena; correct?

22 A: That's -- that's correct.

23 Q: Okay. So you're -- you're sort of at a disadvantage.  
24 I'm not trying to pick on you. Okay?

25 A: Yes, sir.

DANIEL JORDAN - REDIRECT BY MR. SHAFFER

1 Q: But it's fair to say that you might not remember every  
2 detail about this case?

3 A: It would be fair to say. However, I've been a public  
4 defender for the majority of my practice and I've probably  
5 only tried five or six cases. And so preparing a case for  
6 trial makes it much more memorable.

7 Q: Okay. Now, you testified that you didn't think that  
8 there was -- you didn't recall anything unusual about the plea  
9 colloquy; is that correct?

10 A: That's correct.

11 Q: Okay. Do you recall Mr. -- do you recall --

12 MR. SHAFFER: And Court's indulgence. I'm actually  
13 trying to find it myself.

14 BY MR. SHAFFER:

15 Q: Do you recall Mr. Brown actually testifying that -- or  
16 telling the judge that he was coerced into making the guilty  
17 plea?

18 A: I don't recall that.

19 Q: Okay. I'm going to let you review page 11, I guess,  
20 through 13 of the transcript. I believe it ends at 13. And  
21 if you look down at -- hang on a second. Go to 11 back here.  
22 Just from -- from line 10, just refresh your recollection and  
23 view from line 10 over to the next page -- next two pages.

24 (WHEREUPON, there was a pause in the proceedings, after  
25 which the proceedings resumed as follows.)

DANIEL JORDAN - REDIRECT BY MR. SHAFFER

1 BY MR. SHAFFER:

2 A: Okay.

3 Q: And I'm really not trying to pick on you because I forget  
4 things all the time myself, but it's been a long time since  
5 this?

6 A: It has been.

7 Q: So it's possible that your memory might be less-than-  
8 perfect about this particular case?

9 A: It may be.

10 Q: Okay. And in that section that you just reviewed, it  
11 appears that he said that the solicitor coerced him; right?

12 A: He says he felt like Mr. Jepertinger did.

13 Q: Okay.

14 A: Yes, sir.

15 MR. SHAFFER: No further questions.

16 THE COURT: All right.

17 RECROSS-EXAMINATION

18 BY MS. KINARD:

19 Q: In the pages that Mr. Shaffer just referred to, do you  
20 feel like the Court cured this misunderstanding that Mr. Brown  
21 had regarding what Mr. Jepertinger had told him?

22 A: I believe so. Yes, ma'am.

23 Q: So, in other words, could this be phrased as confusion  
24 regarding the wording of a negotiated sentence or, for  
25 example, that -- strike that. Do you think Mr. Brown felt he

DANIEL JORDAN - RECROSS BY MS. KINARD

1 received a threat just because the Solicitor's Office said  
2 they would seek the maximum?

3 MR. SHAFFER: Objection. Calls for speculation.

4 THE COURT: Sustained.

5 MS. KINARD: I'll retract that and rephrase it.

6 BY MS. KINARD:

7 Q: Do you believe these pages of the transcript reflect a  
8 misunderstanding that is sometimes had at pleas?

9 A: Yes, ma'am.

10 MR. SHAFFER: Objection.

11 THE COURT: Overruled.

12 BY MS. KINARD:

13 Q: And what would that be?

14 A: Well -- and Mr. Shaffer asked me if I thought there was  
15 anything strange about the colloquy, which I don't think there  
16 was anything strange about the colloquy. And Mr. Jepertinger,  
17 in his recitation of the facts and the way that he approaches  
18 his cases, it's not uncommon for him to make a statement such  
19 as this is the deal and, if it's not the deal, then, you know,  
20 we're going to go for the max. And so that's unfortunately  
21 not uncommon here in Florence.

22 I don't -- I believe personally that Mr. Brown was  
23 informed of all the facts. He had all the information  
24 necessary and available to him to make -- make a decision  
25 about going to trial or taking a plea. He understood what the

DANIEL JORDAN - RE-CROSS BY MS. KINARD

1 plea offer was, what the sentence would be if accepted, and  
2 yeah, I don't believe that he was forced or, you know,  
3 burdened or coerced into entering into that plea. He made  
4 that decision on his own.

5 Q: Thank you. You used the phrase not uncommon. Is it your  
6 practice and the usual practice in this area of -- I'm sorry.  
7 Let me take that back. Is it your practice of reviewing  
8 everything with a defendant with going over all their charges,  
9 their discovery -- do you have a usual case preparation  
10 system?

11 A: Yes, ma'am.

12 Q: And you did all that with Mr. Brown?

13 A: Yes, ma'am.

14 Q: And all of that -- that case preparation system would  
15 cover some of the things that Mr. Shaffer brought up, such as  
16 elements, collateral consequences, constitutional rights, so  
17 on and so forth?

18 A: Yes, ma'am.

19 Q: And because it's your usual practice, you believe that  
20 all of those burdens and methods were satisfied with Mr.  
21 Brown's case?

22 A: Yes, ma'am.

23 MS. KINARD: Thank you. No further questions.

24 THE COURT: Anything further?

25 MR. SHAFFER: Your Honor, may I ask just a few questions?

DANIEL JORDAN - REDIRECT BY MR. SHAFFER

1 THE COURT: Sure.

2 REDIRECT EXAMINATION

3 Q: Mr. Jordan, are you saying that you didn't think it was  
4 -- that you think that it wasn't uncommon for a -- for one of  
5 your clients to tell the judge that he was coerced by the  
6 solicitor?

7 A: No. What -- what I'm saying is that it's not uncommon  
8 for the solicitor to have spoken with a client with their  
9 attorney present --

10 Q: Right.

11 A: -- and made a statement such as this is the plea offer.  
12 If not, I'll seek the max.

13 Q: Okay. But it -- but it's uncommon that your client might  
14 tell the judge that during his plea; right? Has that ever  
15 happened to you before?

16 A: It has, and it's been cured in the same manner.

17 Q: Is there a regular basis of that happening?

18 A: There's not a regular basis.

19 Q: Okay. And the point I was trying to make is that there  
20 is -- you know, you had testified that there was nothing  
21 unusual about the plea, but this might be unusual.

22 A: I mean --

23 Q: Is that fair to say?

24 A: It would be somewhat uncommon. However, it was cured and  
25 I believe that Mr. Brown acknowledged that he understood the

DANIEL JORDAN - REDIRECT BY MR. SHAFFER

1 difference between being coerced and making a voluntary  
2 decision to enter the plea.

3 Q: Okay. But it's possible -- well, during your original  
4 testimony, you said there wasn't anything uncommon, your  
5 original cross.

6 A: Well, it --

7 Q: Did you forget that this happened?

8 A: Absolutely.

9 Q: Okay.

10 A: Yes, sir.

11 MR. SHAFFER: All right. Thank you very much.

12 THE COURT: All right.

13 MS. KINARD: Nothing further.

14 THE COURT: You may step down. Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Any other witnesses?

17 MR. SHAFFER: The applicant would call Mr. Derrick Brown.

18 THE CLERK: Raise your right hand as much as you're able.  
19 Do you swear or affirm to tell the truth, the whole truth, and  
20 nothing but the truth, so help you God?

21 THE APPLICANT: I do.

22 THE CLERK: Thank you.

23 DERRICK BROWN, being first duly  
24 sworn, testified as follows:

25 DIRECT EXAMINATION

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 BY MR. SHAFFER:

2 Q: Mr. Brown, the charges you're currently doing 20 years  
3 with, what exactly -- could you tell us the facts that led up  
4 to those charges?

5 A: Well --

6 Q: And you don't have to go into every detail. I just want  
7 a general statement of what happened.

8 A: It was an incident happened earlier that day and the  
9 victim came -- well, the victim's mother -- the victim got  
10 shot at. Somebody shot at the victim's car that was leaving,  
11 his mother's car. The police -- and the police came out there  
12 to the scene or whatever. I mean the police came out to the  
13 scene and left, and then the victim's mother must be called  
14 him back out there to the scene saying something -- saying me  
15 and my -- one of the co-defendants was riding past the house.  
16 So the victim came back and I was coming back in the trailer  
17 park and he jumped out. Well, as I was going up the street,  
18 his mama came off the porch.

19 Q: What were you going up the street on?

20 A: I was coming -- I was on a bicycle.

21 Q: Okay. So you were riding up the street on a bicycle.  
22 What happens at that point?

23 A: The victim jumped in the car and started getting --  
24 started -- got behind me and started swerving. His mother and  
25 them was already walking up the street. His mother and them

DERRICK BROWN - DIRECT BY MR. SHAFFER

- 1 already had passed us while he was on the bicycle.
- 2 Q: Okay. What happened after the victim swerved -- was  
3 swerving behind you?
- 4 A: He pulled in front of me and backed up in the parking lot  
5 and jumped out of the car.
- 6 Q: Okay. At that point, do you think the victim was armed?
- 7 A: Yes, sir. He pulled out a firearm.
- 8 Q: How do you know?
- 9 A: He pulled out a firearm.
- 10 Q: Okay. And at that point, what did you do?
- 11 A: Pulled out a firearm and shot.
- 12 Q: Okay. So you shot him? You're not denying that you shot  
13 him?
- 14 A: No, sir.
- 15 Q: Okay. And you're saying he had a firearm? Okay?
- 16 A: Yes, sir.
- 17 Q: Is that correct?
- 18 A: Yes, sir.
- 19 Q: Okay. You were arrested obviously for the attempted  
20 murder. When was the first time you met with Mr. Jordan?
- 21 A: At SCDC at Turbeville.
- 22 Q: Okay. Why were you at Turbeville?
- 23 A: A YOA violation.
- 24 Q: Okay. And how many times do you recall meeting with Mr.  
25 Jordan?

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 A: At Turbeville?

2 Q: Or at -- the entire time he represented you?

3 A: Four or five.

4 Q: Okay. Now, did he go over the discovery with you  
5 whenever he met with you?

6 A: Yes, sir.

7 Q: Okay. And what was going to be the defense if you went  
8 to trial? What was your understanding of what was going to be  
9 the defense?

10 A: Self-defense.

11 Q: Okay. So y'all would've presented a self-defense claim?

12 A: Yes, sir.

13 Q: Okay. And is that your understanding of what Mr. Jordan  
14 was going to do in your case is present a self-defense claim?

15 A: Yes, sir.

16 Q: Now, do you recall the first plea offer that was conveyed  
17 to you?

18 A: 30 years.

19 Q: Okay. And you denied that; is that right?

20 A: Yes, sir.

21 Q: Okay. What -- do you recall them coming up other times  
22 and offering you different plea offers?

23 A: No, sir.

24 Q: When -- you don't recall any other plea offers other than  
25 that the one for 20 years?

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 A: I think when they called my mother, it was 25 years.  
2 Q: Now -- but they -- they had told you at some point it was  
3 25 years and then it went to 20?  
4 A: Yes, sir.  
5 Q: Is that fair to say? Did -- did you want to accept the  
6 20-year plea offer?  
7 A: No, sir.  
8 Q: Okay. Now, I'm going to ask you about one of the pro se  
9 motions you filed. You filed a lot of motions yourself with  
10 the clerk; right?  
11 A: Yes, sir.  
12 Q: One of those motions, which it should be in the Court's  
13 packet, is a motion to relieve your attorney; is that correct?  
14 A: Yes, sir.  
15 Q: Okay. And you filed -- you would have filed that on  
16 August 28<sup>th</sup>, 2013?  
17 A: Yes, sir.  
18 Q: Now, in that motion, do you recall ever going in front of  
19 the judge for that motion?  
20 A: No, sir.  
21 Q: Okay. Do you recall the judge ever making a ruling on  
22 that motion?  
23 A: No, sir.  
24 Q: What -- why didn't you tell the judge whenever you were  
25 pleading guilty about this motion?

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 A: Because I felt like I would've had to represent myself.

2 Q: Why did you feel that way?

3 A: Because Mr. Jepertinger -- I mean Mr. Jordan told me that  
4 he spoke with the judge hisself and the judge told him that he  
5 was not going to relieve him off my case and, if he do, I  
6 would have to represent myself.

7 Q: Okay. Did you ever go in front of the judge and hear  
8 that yourself?

9 A: No, sir.

10 Q: Did you go -- ever go in front of the judge and have a  
11 chance to argue this motion yourself?

12 A: No, sir.

13 Q: Okay. You were just told by Mr. Jepertinger? Is that  
14 fair to say?

15 A: I was told by Mr. Jordan.

16 Q: Oh, Mr. Jordan, yeah. Did anyone else come to you? Did  
17 the Court come to you and say we're denying your motion?

18 A: No, sir. The Clerk of Court wrote me back and told me I  
19 had to have been taken in front of a circuit judge to get my  
20 attorney relieved off my case.

21 Q: Okay. And that would be the clerk of court who wrote you  
22 that?

23 A: Yes, sir.

24 Q: Okay. You never went in front of the circuit judge?

25 A: No, sir.

DERRICK BROWN - DIRECT BY MR. SHAFFER

- 1 Q: Why do you say that you felt like you would have to  
2 represent yourself if you wanted Mr. Jordan fired or off the  
3 case, relieved?
- 4 A: Because he told me that I would -- the judge told him  
5 that I would have to represent myself if he relieved him off  
6 of my case.
- 7 Q: Now, did you ever see an order related to that anywhere?
- 8 A: No, sir.
- 9 Q: In that motion -- why did you file that motion?
- 10 A: Because I was requesting Mr. Jepertinger to -- I mean Mr.  
11 Jordan to look into my charges for me and look into further  
12 evidence, but he refused to.
- 13 Q: Okay. What evidence specifically are you talking about?
- 14 A: I had -- I had two witnesses told Mr. Jordan that the  
15 victim pulled out a gun on me, but he told me that wasn't  
16 enough evidence to prove self-defense.
- 17 Q: Why did he tell you that? Did he explain that?
- 18 A: He said because the victim -- no, he said -- he said they  
19 said the victim pointed the gun at me, but he never get a  
20 chance to point it at me.
- 21 Q: So he's saying that they -- I want you to rephrase that  
22 and clarify because I didn't really understand what you just  
23 said.
- 24 A: He spoke -- I gave him -- he spoke with two witnesses and  
25 the witnesses told him that, yes, the victim did pull a gun on

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 me, but the victim never did get a chance to point the gun at  
2 me.

3 Q: Okay. So did you think that you would be able to present  
4 a self-defense claim?

5 A: Yes, sir.

6 Q: Okay. Did Mr. Jordan tell you he was going to present  
7 the self-defense claim?

8 A: No, sir.

9 Q: Why didn't he -- or what sort of justification would he  
10 have for not presenting it if he had a gun?

11 A: He said it wasn't strong enough evidence.

12 Q: Okay. Now, Mr. Jepertinger at some point spoke with you;  
13 right?

14 A: Yes, sir.

15 Q: What did Mr. Jepertinger say to you?

16 A: He spoke with me and told me if I don't take the 20  
17 years' plea and I go to trial and they convict, he's going to  
18 make sure I get the maximum sentence on my charges and that's  
19 60 years.

20 Q: Okay. And when -- when did this conversation take place?

21 A: When I was in the -- in the stand, like, right sitting.

22 Q: How far prior to your plea?

23 A: A month before my plea.

24 Q: Okay. Why did -- why were you in the court here?

25 A: I guess they was bringing me to take the plea, but Mr.

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 Jepertinger asked me on the stand was I going to take the plea  
2 and I told him, no, sir, so they took me back to the county.

3 Q: Okay. So you had -- you had previously rejected the 20-  
4 year offer?

5 A: Yes, sir.

6 Q: Now, you have made a claim about a Brady violation  
7 related to something -- something that the victim's mother  
8 said, and I want you to explain that to the Court what you're  
9 -- the basis of that claim is?

10 A: I requested -- I was writing to the Clerk of Court about  
11 any statements, written statements, written documents, and  
12 they told me there wasn't any. They didn't have any  
13 statements or any written documents from anyone. And the day  
14 I went to court and took the plea, Mr. Jepertinger pulled out  
15 a statement from the victim's mother and started reading it.

16 Q: Did you ever ask your attorney for that statement?

17 A: Yes, sir.

18 Q: What did your attorney tell you?

19 A: He told me there wasn't any statement. He spoke with Mr.  
20 Jepertinger. They didn't have any statement.

21 Q: Okay. But during the plea, he was reading from the  
22 statement?

23 A: Yes, sir.

24 Q: Do you think that that statement would've been helpful to  
25 you?

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 A: Yes, sir.

2 Q: Why?

3 A: Because the story changed, inconsistent statement from  
4 what they -- what the police report said. It changed to a  
5 whole another statement, to another story. She's saying  
6 something else.

7 Q: Okay. And explain how it was different, if you don't  
8 mind?

9 A: Because in -- in the police report, she stated that her  
10 son was going to turn around and I came out of nowhere and  
11 shot him, but in the statement she admitted that she called  
12 her son back out there and told her son that me and my co-  
13 defendant was riding up and down the road, and he came back  
14 out there to the house to get a belt to go to the mall and  
15 some money and came down the road and asked us why we keep  
16 riding up and down, riding up and past the house.

17 Q: Okay. So you're saying that she told police that you  
18 just shot him for no reason?

19 A: Yes, sir.

20 Q: And then she acknowledged that there might have been some  
21 sort of altercation from earlier?

22 A: Yes, sir.

23 MS. KINARD: Your Honor, I'm going to object to all this.  
24 The statement is not in the record and it's not referenced in  
25 the transcript as far as I can find. I don't believe that has

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 any relevance.

2 MR. SHAFFER: Your Honor, I think it is in the transcript  
3 actually and I think it is part of the notes during the  
4 recitation of facts by the -- the statement of facts by the  
5 solicitor.

6 THE COURT: All right. Why don't you go ahead and find  
7 it and reference it?

8 MS. KINARD: I'm certainly happy to, Your Honor, but I  
9 can't find it.

10 THE APPLICANT: Page 15.

11 MR. SHAFFER: It's 15, Your Honor, and probably about the  
12 first -- actually, the entire page essentially. And what it's  
13 talking about is them riding up and down the road and that  
14 they saw essentially the whole thing. I'm just trying to find  
15 it.

16 MS. KINARD: I'll agree they're referring to the  
17 recitation of facts, but I don't see anything about a  
18 statement by the mother.

19 MR. SHAFFER: They said the mother. Your Honor, I  
20 believe that he says -- I mean the transcript --

21 THE COURT: Why don't you ask questions and you can refer  
22 to the page and the line number?

23 MR. SHAFFER: Thank you.

24 BY MR. SHAFFER:

25 Q: Do you have a copy of the transcript up there?

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 A: Yes, sir. I've got it right here.

2 Q: Okay. I want you to go to page 15, obviously, line 1  
3 through 3. They're saying that they received a call from the  
4 mother; correct?

5 A: Yes, sir.

6 Q: Okay. Where in that statement -- or where in the next  
7 page and a half is it that the -- that they're saying that she  
8 would've witnessed the shooting?

9 A: On page 8 on -- I mean page 16 on line 8.

10 Q: Okay. 16, line 8? Mary saw the whole thing. The mother  
11 and Mary saw the whole thing. Is that right?

12 A: Yes, sir.

13 Q: Okay. Now, how is that different than what Mr. Jordan  
14 told you about the discovery?

15 A: Because she said she was -- that he was going to turn  
16 around like she was at the house and she didn't see anything.

17 Q: Okay.

18 A: She just heard some gunshots.

19 Q: All right. Now --

20 MS. KINARD: Your Honor, I'm going to renew my objection.

21 That has nothing to do with a statement as stated per se.

22 Therefore, we have no basis that that's a discovery violation.

23 THE COURT: I'm going to overrule it. Go ahead and  
24 continue.

25 MR. SHAFFER: Thank you, Your Honor.

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 BY MR. SHAFFER:

2 Q: If you could, tell us -- if you would have known that  
3 there was a statement out there -- and I'm going to go back a  
4 little bit. Mr. Jordan said that there was no statement from  
5 anyone that the -- that he wasn't able to substantiate that  
6 the victim had a gun; is that correct?

7 A: Yes, sir.

8 Q: Okay. Was there -- well, is there any statement? Was  
9 there any statement in your discovery about the victim having  
10 a gun?

11 A: No, sir.

12 Q: Okay. Who -- was there any witness that would say that  
13 the victim had a gun?

14 A: Yes, sir.

15 Q: Okay. Which witnesses would've said that?

16 A: Marilyn. Marilyn Wilson.

17 Q: Okay. But those were not listed in your discovery?

18 A: No, sir.

19 Q: Okay. Now, going back to the victim's mother, there --  
20 what exactly is -- how is that different than what -- or how  
21 is that statement -- and we're talking about 16 and the  
22 recitation of the facts. How is the recitation of the facts  
23 as given by the solicitor different than your understanding of  
24 what the discovery said?

25 A: Because in the police report, she stated that her son was

DERRICK BROWN - DIRECT BY MR. SHAFFER

1 turn -- her son was leaving to turn around to leave out the  
2 trailer park and I came out of nowhere and shot him while he  
3 was in the car.

4 Q: Okay. And so this is obviously somewhat different than  
5 that; right?

6 A: Yes, sir. It's --

7 Q: If you would have known there were two versions of the  
8 facts, do you think that would've changed your mind about  
9 taking the plea?

10 A: Yes, sir.

11 Q: Why would that have changed your mind about taking the  
12 plea?

13 A: Because it would've proved my point of stand your ground  
14 where she -- where she -- her statement changed where she  
15 admitted that her son came to where I been at and pulled out a  
16 gun on me.

17 Q: Okay.

18 MR. SHAFFER: No further questions.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MS. KINARD:

22 Q: Would you agree with Mr. Jordan's testimony that y'all  
23 had several lengthy meetings together?

24 A: Yes, sir.

25 Q: And that you were -- well, preparing for trial with a

**DERRICK BROWN - CROSS BY MS. KINARD**

- 1 self-defense claim?
- 2 A: Yes, sir.
- 3 Q: And like Mr. Shaffer asked you, the motion to be relieved
- 4 that you filed, you decided not to inform the Court that it
- 5 hadn't been decided on; is that correct?
- 6 A: Yes, ma'am.
- 7 Q: And because you were afraid of the possibility of having
- 8 to represent yourself?
- 9 A: Yes, ma'am.
- 10 Q: Yet you still went ahead and took the plea that day?
- 11 A: Yes, ma'am.
- 12 Q: Do you remember telling the Court that you were satisfied
- 13 with the services of your attorney?
- 14 A: Yes, ma'am.
- 15 Q: Why did you tell the Court that?
- 16 A: Because I was instructed by Mr. Jordan to go in there and
- 17 tell them that I was satisfied with him.
- 18 Q: Okay. Do you recall the discussion that has been
- 19 testified about today regarding the potential of you being
- 20 coerced?
- 21 A: Yes, ma'am.
- 22 Q: Do you remember that?
- 23 A: Yes, ma'am.
- 24 Q: When the judge tried to clarify that issue with you, did
- 25 you understand what was happening?

DERRICK BROWN - CROSS BY MS. KINARD

1 A: Sort of, kind of.

2 Q: Okay. And you understood what the negotiated sentence  
3 was, that you could get 20 years, no more, no less?

4 A: Yes, ma'am.

5 Q: And you understood that before you went in the courtroom;  
6 is that correct?

7 A: Yes, ma'am.

8 Q: Okay. Now, did you give Mr. Jordan a list of witnesses  
9 to investigate?

10 A: Yes, ma'am.

11 Q: And do you believe he and his investigator contacted  
12 those witnesses and spoke with them?

13 A: Yes, ma'am.

14 Q: Did he tell you that they found two witnesses, the two  
15 witnesses you discussed?

16 A: Yes, ma'am.

17 Q: Did you hear him testify earlier that there weren't any  
18 witnesses?

19 A: Yes, ma'am.

20 Q: Okay. Yet you maintain that there were two witnesses and  
21 that he found them?

22 A: Yes, ma'am.

23 Q: Okay. And you said that both he and yourself had asked  
24 the Clerk of Court's Office for this alleged statement by the  
25 victim's mother; is that correct?

DERRICK BROWN - CROSS BY MS. KINARD

- 1 A: Yes, ma'am.
- 2 Q: But nobody produced a copy?
- 3 A: Yes, ma'am.
- 4 Q: Yet somehow, Mr. Jepertinger had different facts that he  
5 presented at the recitation of facts at your trial -- at your  
6 plea?
- 7 A: Yes, ma'am.
- 8 Q: Okay. Did you understand all of the constitutional  
9 rights that you were giving up?
- 10 A: Yes, ma'am.
- 11 Q: And you testified to the same at your plea; is that  
12 correct?
- 13 A: Yes, ma'am.
- 14 Q: So was it ultimately your decision to take this plea?
- 15 A: No, ma'am.
- 16 Q: Why not? Whose was it?
- 17 A: Because it was -- it wasn't my decision, but it was --  
18 like, after I -- I denied the plea three times and when the --  
19 when Mr. Jepertinger told me about the -- whenever that --  
20 whenever Mr. Jepertinger told me that I would be -- if I  
21 wouldn't take the plea, I would be getting a maximum sentence  
22 of my time, then that's when I still denied the plea. Then  
23 Mr. Jordan came to the quads with my sentencing sheet and  
24 talked me into taking the plea. That's when I took the plea.
- 25 Q: So you chose taking 20 years for certain over rolling the

DERRICK BROWN - CROSS BY MS. KINARD

1 dice and perhaps getting 60?

2 A: Yes, ma'am. Because he told me if I would have gone to  
3 trial, it wouldn't have been enough evidence.

4 Q: They wouldn't have had enough evidence to convict you?

5 A: Yes, ma'am.

6 Q: Yet you still took the plea and you understand its  
7 consequences?

8 A: Yes, ma'am.

9 MS. KINARD: No further questions.

10 THE COURT: All right. Anything further, Mr. Shaffer?

11 MR. SHAFFER: Nothing further, Your Honor.

12 THE COURT: All right. You may step down. Thank you.

13 Any other witnesses?

14 MR. SHAFFER: No, Your Honor. I do have one thing that  
15 I'd like to clarify.

16 THE COURT: All right.

17 MR. SHAFFER: Essentially, what I was bringing up about  
18 the fact that the statement was in there is that maybe Mr.  
19 Jordan's memory isn't exactly correct on everything that  
20 happened. You know, I don't blame him. If I -- if you asked  
21 me about a case from three years ago, I probably wouldn't  
22 remember the details of it, especially given the situation he  
23 was in.

24 Obviously, in most of these cases, the -- you know, they  
25 send the subpoena out, send the subpoena out for the file.

1 He's saying he wasn't aware of the subpoena or the file, you  
2 know, and I think it's an honest mistake on his part that he  
3 wasn't aware of it. I do think it shows that possibly some of  
4 the things that he testified to are not exactly accurate and  
5 he might not be the best person to give some of the facts  
6 about this case because he might not remember them.

7 MS. KINARD: I object to all this. I'm pretty sure that  
8 he's testified to the best of his ability and he has relayed  
9 what his practice was and what he did in this case.

10 MR. SHAFFER: Your Honor, it's argument and I'm just  
11 trying to say that for a credibility determination, I think it  
12 should play a role in -- in your determination. Like I said,  
13 whether or not he can remember everything, you know.

14 And that's really the reason I brought up the strange  
15 thing that happened. I thought it was universally strange to  
16 have someone say the solicitor coerced me. I'm saying it's  
17 not unheard of, but it's -- that's unusual for a plea and I  
18 think that even Mr. Jordan would say that that's unusual for a  
19 plea.

20 Your Honor, one thing that sort of struck me in this case  
21 is that, you know, he filed this motion to have him relieved  
22 and it was never heard. You know, if -- you know, if my  
23 client credibly testified, if you believe my client that Mr.  
24 Jordan came back and said the judge said he's going to relieve  
25 him off my case -- I mean relieve -- if the judge is going to

1 relieve me, he's going to make you represent yourself.

2 That conversation very well may have happened. I mean I  
3 think that my client credibly testified that Mr. Jordan told  
4 him that. I don't know if the conversation happened or not.  
5 I wasn't there obviously.

6 But I think that one thing is that's not a ruling on the  
7 case. You know, the judge told me this in chambers isn't a  
8 ruling and I think that that motion never really got ruled  
9 upon and I think that that's a problem. And I think that here  
10 today in a PCR, that's ineffective assistance of counsel not  
11 to at least make sure that that's at least on the record that  
12 the -- whether the client wanted to proceed forward with this  
13 attorney or not.

14 THE COURT: All right. Anything from the State?

15 MS. KINARD: Thank you, Your Honor. To start with the  
16 last motion -- or the last issue first, this motion for  
17 relief, first of all, is hybrid representation and I  
18 understand that it's slightly different when it is a motion  
19 for relief of counsel. However, there's nothing on the  
20 transcript or in the record to indicate that Mr. Brown ever  
21 attempted to have this heard before going forward with his  
22 plea.

23 There is evidence in the transcript and from Mr. Jordan  
24 that he understood the consequences of a plea, such as the  
25 ability to challenge the evidence and part of that is -- is

1 waiving everything that's come before essentially. There's --  
2 there's no way to look at all of these things.

3 And Mr. Brown also testified on the record and today that  
4 he was satisfied with the assistance of his counsel. That  
5 certainly goes against anything that he might have brought up  
6 in his motion to relieve Mr. Jordan.

7 As far as any credibility issues about Mr. Jordan today,  
8 I think that's a red herring. He looked over my file here and  
9 he testified extensively to things that were his practice.  
10 When you're in criminal defense, as you well know, there are  
11 certain things you do with every client. You lay out  
12 different elements. There's no reason to believe that any of  
13 this would've been any different on Mr. Brown's case than any  
14 other client that Mr. Jordan has had.

15 And the last thing regarding the issue during the --  
16 excuse me -- the colloquy about coercion, it's something I've  
17 seen happen repeatedly and I'm sure Your Honor has where  
18 sometimes a defendant just doesn't quite understand the  
19 language of, you know, force or coercion, and the fact that a  
20 plea negotiation or recommendation is in a sense a promise,  
21 but it is not the kind of promise that the Court refers to  
22 during the colloquy and, therefore, it's different than a  
23 coercion.

24 Certainly, I think that regardless of that, the judge  
25 cured that misconception with the further -- furtherance of

1 his colloquy on page 13 and that really that is a nonissue at  
2 this point.

3 Therefore, I think Mr. Jordan absolutely satisfied all  
4 the elements of representation. He could not be found to be  
5 deficient or prejudicial and, therefore, I believe the Court  
6 should deny any relief that this applicant has requested.

7 THE COURT: All right.

8 MS. KINARD: Thank you, Your Honor.

9 MR. SHAFFER: Your Honor, just a brief reply. I don't  
10 think he actually testified that he was satisfied with Mr.  
11 Jordan today. I think he said he recalls testifying or he  
12 recalls telling the judge that, and the reason he told the  
13 judge that is that he didn't want to represent himself. I  
14 think that that was the substance of his testimony here today  
15 is that he recalls telling the judge that during the plea  
16 colloquy, but he didn't want to represent himself.

17 MS. KINARD: I apologize if I misspoke. That's what I  
18 intended to say.

19 MR. SHAFFER: Your Honor, I think that when you -- I mean  
20 certainly he made efforts to have the Court hear this and  
21 filed a motion for it with the Court. I mean it's still  
22 clocked. It never got rescinded or anything like that. I'm  
23 not exactly sure why that happened, but maybe because of the  
24 fact it's a motion to relieve counsel.

25 I think that certainly if Mr. Jordan had been -- become

1 aware of this motion, which obviously he testified he was, it  
2 was his duty as his attorney to at least present -- present it  
3 in front of a Court and have an actual hearing on it, at least  
4 a -- at least a ruling on the written motion, Your Honor, in  
5 writing.

6 THE COURT: All right. I'll take it under advisement.

7 MR. SHAFFER: Thank you, Your Honor.

8 THE COURT: I'll let you know something by the end of the  
9 week.

10 MS. KINARD: Thank you, Your Honor.

11 THE COURT: Thank you.

12

13 (WHEREUPON, the proceedings ended at 12:38 p.m.)

14

15 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina )  
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County of Florence )

Certificate

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 42, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 8<sup>th</sup> day of August, 2016.

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

Krystal J. Smith

Court Reporter

Florence, South Carolina

September 1, 2017

STATE OF SOUTH CAROLINA  
 COUNTY OF FLORENCE

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

Derrick J. Brown, #315942,

) Case No. 2014-CP-21-1062

) Applicant,

) v.

) ORDER OF DISMISSAL

) State of South Carolina,

) Respondent.  
 \_\_\_\_\_

The matter before the Court is an action for post-conviction relief (PCR) commenced by Derrick Brown (Applicant) on April 24, 2014. In his PCR application, Applicant alleged ineffective assistance of counsel. The State submitted its return on November 4, 2014.

An evidentiary hearing convened August 8, 2016, at the Florence County Courthouse before the undersigned. Applicant was present and represented by Tristan Shaffer, Esquire. Assistant Attorney General Jessica Kinard represented the State. Applicant and his former plea counsel testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds, as explained below, Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

#### I. FACTS & PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the November 2012 term of the Florence County Grand Jury for attempted murder, carjacking, and possession of a firearm during the commission of a violent crime (2012-GS-21-1645), as well as first-degree burglary and kidnapping (2012-GS-21-1646). Applicant was represented by Daniel T. Jordan, Esquire. Deputy Solicitor John Jepertinger prosecuted the case.

Applicant's attempted murder, carjacking, and weapons charges stem from an incident that occurred on April 26, 2012. Applicant was on a bicycle in a trailer park and was approached by Georell Blathers, who was driving a car. Applicant and Blathers had a heated exchange, and Blathers exited his car. Thereafter, Applicant shot Blathers, then entered Blathers' car and drove away. Blathers mother and sister witnessed the incident from inside their trailer. (Plea Tr. 15-17).

On September 6, 2013, Applicant pleaded guilty to attempted murder and carjacking with negotiated concurrent twenty-year sentences before Judge D. Craig Brown. Applicant's remaining charges were dismissed in exchange for his guilty plea. Judge Brown accepted Applicant's guilty plea and sentenced him pursuant to the negotiated sentence. Applicant did not appeal his guilty plea or sentences.

## II. ALLEGATIONS RAISED

Applicant alleges he is being held in custody unlawfully for the following reasons alleging ineffective assistance of counsel in that:

1. Plea counsel told Applicant's family Applicant would only get twelve-years' imprisonment;
2. Applicant moved to relieve plea counsel before he pleaded guilty; and
3. Plea counsel failed to review discovery materials with Applicant or the State withheld discovery from Applicant.

## III. PCR TESTIMONY

### Plea Counsel

Plea counsel testified he was assigned to represent Applicant by the Florence County Public Defender's Office. (PCR Tr. 5). Plea counsel testified he was a part-time assistant public defender, familiar with criminal law, and felt comfortable handling Applicant's case. (PCR Tr. 5, 10-11). He testified he met with Applicant four or five times. (PCR Tr. 6, 9). Plea counsel stated he filed a Rule 5 discovery motion and received all of the discovery materials he anticipated receiving.

(PCR Tr. 11). Plea counsel stated he was able to communicate with Applicant and believed Applicant understood what was going on; he reviewed all of the discovery materials with Applicant; he and Applicant discussed Applicant's version of the facts; and he and Applicant discussed a potential trial strategy and any possible defenses. (PCR Tr. 11).

As to the potential trial strategy, plea counsel testified Applicant claimed Victim had a gun and he shot Victim in self-defense; however, plea counsel stated he was unable to find anyone to substantiate or corroborate Applicant's claim Victim had a gun. (PCR Tr. 7). Plea counsel recalled Victim's mother was a potential witness. (PCR Tr. 7). Plea counsel stated, "[I]nitially [Victim's mother] informed law enforcement that she heard some [gun] shots and then came out and saw that it appeared that her son had been shot . . . ." (PCR Tr. 8). Plea counsel recalled having a conversation with the solicitor before trial. Plea counsel stated the conversation led him to believe "[Victim's mother's] story may have changed;" however, he did not remember receiving anything written regarding the change of Victim's mother's story. (PCR Tr. 8).

Plea counsel stated he and Applicant were preparing for trial when Applicant first indicated he wanted to plead guilty. (PCR Tr. 9). Plea counsel stated the State initially offered to allow Applicant to plead as charged to a thirty-year sentence, but he was able to negotiate for a better deal—a plea to the attempted murder and carjacking charges with negotiated twenty-year concurrent sentences. (PCR Tr. 10). Plea counsel testified he explained to Applicant the benefits and risks associated with going to trial, and he explained to Applicant the meaning of a negotiated sentence. (PCR Tr. 12–13).

Plea counsel recalled Applicant informing the plea court Applicant felt the State coerced his guilty plea; however, plea counsel felt any questions regarding Applicant's coercion were cured by the plea court's colloquy. (PCR Tr. 15–16).

Applicant

Applicant did not deny shooting Blathers; rather, Applicant testified he shot Blathers in self-defense. (PCR Tr. 21–22). Applicant testified he first met with plea counsel while he was serving a different sentence under the Youthful Offender Act<sup>1</sup> (YOA sentence). (PCR Tr. 22). Applicant stated he met with plea counsel four or five times regarding these charges. Applicant stated he and plea counsel were preparing a self-defense claim for trial, and the first plea offer from the State was for thirty-years' imprisonment. Applicant refused the State's initial offer. Applicant stated a twenty-five year offer was conveyed to his mother, and then he learned of the twenty-year offer. (PCR Tr. 23). Applicant testified he did not want to accept the State's twenty-year offer. (PCR Tr. 24).

Applicant recalled moving *pro se* to relieve plea counsel but stated he never went into court regarding his motion. (PCR Tr. 24). Applicant testified he did not bring the motion to relieve plea counsel to the plea court's attention because he felt he would have then had to represent himself. Applicant testified plea counsel informed him plea counsel met with the judge, and the judge said he would only relieve plea counsel if Applicant wished to proceed *pro se*. (PCR Tr. 25). Applicant testified he moved to relieve plea counsel because he wanted plea counsel to look deeper into the charges and evidence in the case, but plea counsel refused to do so. Applicant wanted plea counsel to speak with two potential witness who would have supported his self-defense claim, but plea counsel informed him the witnesses would not provide enough to support his self-defense claim. Applicant stated plea counsel interviewed the two witnesses and the witnesses told him Blathers had a gun, but Blathers never pointed the gun at Applicant. (PCR Tr. 26).

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<sup>1</sup> S.C. Code Ann. §§ 24-19-5 to -160 (2007 & Supp. 2018).

Applicant recalled requesting the discovery in his case. Specifically, Applicant testified the Clerk's Office told him there were no statements or written documents from anyone in connection to his case. However, Applicant testified that on the day of his plea, the State pulled out a statement from the victim's mother and started reading it. (PCR Tr. 28). Applicant testified he asked plea counsel for that statement, but plea counsel told him there was no statement. (PCR Tr. 28). Applicant claims the statement would have helped his case because it was inconsistent with the victim's mother's previous statement. (PCR Tr. 29).

On cross-examination, the State asked Applicant, "So you chose taking [twenty] years for certain over rolling the dice and perhaps getting [sixty]?" (PCR Tr. 36). Applicant replied, "Yes ma'am. . . ." (PCR. Tr. 37).

#### IV. DISCUSSION

The issue before the Court is whether Applicant's plea was the result of ineffective assistance of counsel. Specifically, Applicant alleges plea counsel was ineffective because plea counsel told Applicant's family Applicant would only receive twelve years' imprisonment, Applicant moved to relieve plea counsel before he pleaded guilty, and plea counsel failed to review the discovery with Applicant. Applicant further claims he would not have pleaded guilty and would have insisted on proceeding to trial absent these alleged deficiencies. These allegations are properly before the Court as attacks on the knowing and voluntary nature of Applicant's plea. See *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (stating a defendant who entered a plea with the advice of counsel may only attack the voluntary and intelligent nature of the plea).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained

prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

In his PCR application, Applicant alleged plea counsel told Applicant's family he would only receive twelve-years' imprisonment. However, Applicant presented no evidence regarding this allegation at the PCR hearing. Conversely, Applicant recalled the State offering thirty years, twenty-five years, and twenty years in exchange for his guilty plea. Applicant testified he refused the State's thirty and twenty-five year offers, and he initially refused the State's twenty year offer. However, Applicant testified he eventually accepted the State's twenty year offer over facing a potential sixty year sentence at trial. The plea transcript and Applicant's testimony at the PCR hearing show Applicant knowingly pleaded guilty to negotiated concurrent twenty-year sentences.

The Court finds plea counsel was not deficient because Applicant knew he was pleading guilty to negotiated concurrent twenty-year sentences. Applicant failed to prove he was prejudiced because, as he admitted, he chose to plead pursuant to the State's offer instead of potentially

receiving a sixty-year sentence at trial. Therefore, the Court denies relief and dismisses this allegation with prejudice.

Applicant alleges ineffective assistance of counsel because Applicant moved to relieve plea counsel. In support of this allegation, Applicant testified he moved *pro se* for plea counsel to be relieved from his case. Applicant testified plea counsel was aware of his desire to relieve plea counsel from representing Applicant, and plea counsel then spoke to a judge regarding Applicant's motion. Applicant testified plea counsel told him the judge would only grant his motion if Applicant wished to proceed *pro se*. (PCR Tr. 24–26). Applicant stated he did not want to represent himself, so he did not inform the plea court of the motion to relieve plea counsel. (PCR Tr. 24).

The Court finds Applicant has failed to show prejudice resulted from his motion to relieve plea counsel. Applicant testified at the PCR hearing he did not inform the plea court of his motion to relieve counsel because he did not want to represent himself. The Court finds credible Applicant's testimony that he did not want to represent himself and alternatively chose to be represented by plea counsel. It is also clear from Applicant's PCR testimony he was aware of the dangers of self-representation and did not wish to represent himself. See *Faretta v. California*, 422 U.S. 806, 835 (1975) (stating a defendant must knowingly and intelligently waive the benefits associated with the right to counsel before relinquishing the right to counsel). Further, at the plea hearing, Applicant informed the plea court, under oath, he was completely satisfied with plea counsel's representation and plea counsel had done everything Applicant asked him to do. (Plea Tr. 10). Based on the foregoing, the Court finds plea counsel was not ineffective on this allegation; therefore, relief is denied and the allegation is dismissed with prejudice.

Finally, Applicant alleges plea counsel either failed to review all the discovery with him or the State withheld evidence from him. The Court disagrees.

The disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. *State v. Kennerly*, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. *United States v. Bagley*, 473 U.S. 667, 676 (1985). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993).

At the PCR hearing, Applicant testified that on the day of his plea, the State pulled out a statement from the victim's mother and started reading it. (PCR Tr. 28). Applicant testified he asked plea counsel for that statement, but plea counsel told him there was no statement. (PCR Tr. 28). Applicant claims the statement would have helped his case because it was inconsistent with the victim's mother's previous statement. (PCR Tr. 29). Plea counsel stated he reviewed all the discovery with Applicant, and he and Applicant discussed presenting a self-defense claim at trial. Plea counsel recalled the victim's mother was a potential witness at trial, and she provided a statement to law enforcement. However, plea counsel recalled the State informing him the victim's mother's story may have changed leading up to trial. (PCR Tr. 8).

The Court finds credible plea counsel's testimony he reviewed all the discovery he received with Applicant, and he and Applicant discussed pursuing a claim of self-defense at trial. As for the allegation of prosecutorial misconduct or a *Brady* violation, the Court finds Applicant has failed to meet his burden of proof. The only evidence in support of this allegation was Applicant's

self-serving testimony the State read from a statement the victim's mother gave that was inconsistent with her previous statement and was never produced to Applicant. However, plea counsel recalled the State informing him the victim's mother's testimony at trial may be different from her initial statement to the police. Based upon plea counsel's credible testimony, the State disclosed the information which plea counsel could have used to impeach the victim's mother at trial. Therefore, there was no *Brady* violation. Further, Applicant has failed to show the victim's mother's second statement was ever reduced to writing or how it differed from the first statement. What the State referred to during its recitation of the facts at the plea hearing is merely speculative from the record before the Court. Therefore, the Court finds Applicant has failed to meet his burden of proof on this allegation.

#### V. CONCLUSION

The Court finds plea counsel's representation was neither deficient nor prejudicial. Applicant pleaded guilty pursuant to the advice of plea counsel. Applicant knew the meaning and consequences of pleading guilty to the charges and voluntarily chose to do so. Applicant failed to show plea counsel was ineffective for allegedly telling Applicant's family Applicant would only receive twelve years' imprisonment, Applicant moved to relieve plea counsel before he pleaded guilty, and failing to review the discovery with Applicant. Additionally, the Court finds the State did not withhold evidence from Applicant. Further, the Court finds Applicant knowingly and voluntarily pleaded guilty because the plea court's colloquy cured any of plea counsel's alleged deficiencies. *See Wolfe v. State*, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (stating any possible misconceptions due to counsel's alleged deficiencies can be cured by the plea court's colloquy) Therefore, based on the foregoing, the Court denies relief on all allegations and dismisses this PCR action with prejudice.

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


**THEREFORE:**

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

**AND IT IS SO ORDERED.**



WILLIAM H. SEALS, JR.  
Presiding Judge  
Twelfth Judicial Circuit

 South Carolina

7/16, 2019.

**WITNESSES**

William Hester      Florence County Sheriff

John C Jupertinger

**ARREST WARRANT NUMBER**

N195013      N195014      N195015

**ACTION OF GRAND JURY**

**TRUE BILL**

*Kimberly Bonelli*  
Foreperson of Grand Jury  
Date: *11-12*

**VERDICT**

Foreperson of Petit Jury      Date:

DOCKET NO. 2012-GS-21-01645

The State of South Carolina

County of

FLORENCE

**COURT OF GENERAL SESSIONS**

NOVEMBER      TERM      2012

**THE STATE**

vs.

**DERRICK BROWN**

Indictment for

**ATTEMPTED MURDER,**

**CARJACKING**

**AND**

**POSSESSION OF A FIREARM DURING THE**

**COMMISSION OF A VIOLENT CRIME**

*Kimberly Bonelli*  
CERTIFIED: A TRUE COPY  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, SC.

2012 NOV - 1 AM 11: 16  
CONNIE REEL-SHEARIN  
Clerk of Court  
C.P. & G.S.  
FLORENCE COUNTY, SC

**FILED**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

INDICTMENT FOR  
ATTEMPTED MURDER,  
CARJACKING  
AND  
POSSESSION OF A FIREARM DURING THE  
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on NOVEMBER 1, 2012 the Grand Jurors of FLORENCE County present upon their oath:

**COUNT ONE- ATTEMPTED MURDER**

That DERRICK BROWN did in Florence County, on or about April 26, 2012, with malice aforethought attempt to murder Georell T. Blathers , by shooting him with a gun, causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

**COUNT TWO- CARJACKING**

That DERRICK BROWN did in Florence County on or about the April 26, 2012, take and/or attempt to take one Chevrolet Impala from Georell Blathers by force and violence or by intimidation while said victim was operating and/or in the vehicle, causing great bodily injury to the victim, in violation of Section 16-3-1075(B)(2), S. C. Code of Laws, 1976, as amended.

**COUNT THREE - POSSESSION OF A FIREARM  
DURING THE COMMISSION OF A VIOLENT CRIME**

That DERRICK BROWN did in Florence County, on or about April 26, 2012, possess a firearm, or visibly display a handgun, during the commission or attempted commission of a violent crime to wit: a Carjacking and Attempted Murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

**E.L. Clements, III**  
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE  
NOV 1 2012  
COURT OF GENERAL SESSIONS  
CLERK OF COURT  
COURT HOUSE  
FLORENCE, SOUTH CAROLINA

**WITNESSES**

William Hester

Florence County Sheriff

John C Jepertinger

**ARREST WARRANT NUMBER**

2012A2110200033

2012A2110200034

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury

Date:

*Kimberly Powell*  
*11-1-12*

**VERDICT**

Foreperson of Petit Jury

Date:

**DOCKET NO. 2012-GS-21-01646**

The State of South Carolina

County of

FLORENCE

**COURT OF GENERAL SESSIONS**

**NOVEMBER**

**TERM**

**2012**

**THE STATE**

vs.

**DERRICK BROWN**

Indictment for

**BURGLARY FIRST DEGREE**

**AND**

**KIDNAPPING**

*Conrad J. J. ...*  
CERTIFIED: A TRUE COPY  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

*not press*  
*JC Jepertinger*  
*9/6/2013*

CONNIE REEL-SHEARH  
CCCP & GS  
FLORENCE COUNTY, SC

2012 NOV - 1 AM 11: 17

**FILED**

