

RECEIVED

MAR 11 2020

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Brian M. Gibbons, Circuit Court Judge

BOOKER T. HILL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO 2019-001364

APPENDIX

SARAH E. SHIPE
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

WILLIAM M. BLITCH
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT OF GUILTY PLEA HEARING HELD JULY 17, 2018.....	1
APPLICATION FOR POST-CONVICTION RELIEF	12
RETURN AND MOTION FOR MORE DEFINITE STATEMENT.....	29
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD JUNE 3, 2019.....	38
ORDER OF DISMISSAL.....	94
INDICTMENTS	108
SENTENCING SHEETS.....	112

State of South Carolina
County of Greenville

Court of General Sessions

State of South Carolina)

)

)

v.)

)

Booker Thomas Hill, III)

)

Defendant.)

Transcript of Record

2017-GS-23-01832

2017-GS-23-01778A

July 17, 2018

Greenville, South Carolina

B E F O R E:

The Honorable Edward W. Miller, Judge.

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

Hunter Blouin, Assistant Solicitor
Attorney for the State

Richard Warder, Assistant Public Defender
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

No Witnesses.

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits.

P R O C E E D I N G S

* * * * *

THE CLERK: Your Honor, in the case of 2017-GS-23-1832, the *State v. Booker Thomas Hill, III*, indicted for attempted murder and possession of a weapon during the commission of a -- of a crime of violence. He is pleading to attempted murder and possession of a weapon, and this is true billed.

In the case of 2017-GS-23-1778A, Mr. Hill is indicted for armed robbery, pleading to armed with a deadly weapon -- robbery, armed with a deadly weapon. It is also true billed, and it is a direct presentment.

And, Mr. Hill, if you would, could you raise your right hand, please?

THE DEFENDANT: (Complying.)

THE CLERK: Do you promise to tell the truth, the whole truth, and nothing but the truth so help you God?

THE DEFENDANT: (Nonverbal response.)

THE COURT: All right. Mr. Hill, in the last 24 hours, have you had any drugs, alcohol, or medications?

THE DEFENDANT: No, sir.

THE COURT: Have you ever been treated for

1 substance abuse or mental illness?

2 THE DEFENDANT: Yes, sir. Mental illness.

3 THE COURT: Well, tell me about that.

4 THE DEFENDANT: I go to Piedmont Mental Health
5 for mental illness, bipolar disorder.

6 THE COURT: All right. You're not supposed to
7 be on medication?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you on it?

10 THE DEFENDANT: No. I'm in the detention
11 center right now.

12 THE COURT: Yeah, well, they've got medication
13 down there. Well, does the fact that you're
14 supposed to be on it and you're not on it limit your
15 ability to understand what you're doing? Do you
16 understand what's going on today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. First indictment alleges you
19 did here in Greenville County, November 22, 2016,
20 armed with a deadly weapon or alleging you were with
21 the representation of one, you took by force or
22 intimidation -- you took by force or intimidation a
23 bottle of liquor from Keteen Patel and/or Nakita
24 Patel (phonetic), owner of Wine and Spirits. And
25 that carries 10 to 30 years. It's a violent offense

1 and most serious offense. Impacts parole
2 eligibility. And if you get convictions for two or
3 more most serious offenses, you're eligible for life
4 in prison without parole. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. The next one alleges,
7 Count 1, Greenville County, November 22, 2016, with
8 malice aforethought, attempted to kill Keteen Kumar
9 Patel. And attempted murder carries up to 30 years
10 in prison. It's a violent and a serious offense.
11 And if get convictions for three or more serious
12 offenses, could result in life in prison without
13 parole. Understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And Count 2, Greenville County,
16 November 22, 2016, you possessed or displayed a
17 sharp object used to stab the victim in the
18 commission of that attempted murder. And that is a
19 five-year maximum. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How do you want to plead to all of
22 that?

23 THE DEFENDANT: Guilty.

24 THE COURT: Is that your free and voluntary
25 choice?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you understand you have an
3 absolute right to a trial by jury where you would be
4 presumed innocent unless and until the State could
5 prove you guilty beyond any reasonable doubt of each
6 and every element of each offense you're charged
7 with?

8 And you'd have a right to confront and
9 cross-examine the witnesses and the evidence put up
10 against you by the State.

11 You'd have a right to compel in court all
12 relevant and competent evidence in your own defense.

13 Or you can remain silent. Your silence could
14 not be held against you. And you could never be
15 compelled to incriminate yourself.

16 You understand all those rights?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And are you guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you totally satisfied with your
21 lawyer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you know what the evidence
24 is the State has against you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Tell me about it.

2 MR. BLOUIN: Your Honor, on November 22nd of
3 2016, officers with the Greenville Police Department
4 responded to Wine and Spirits located at 101 Verdae
5 Boulevard in Greenville County in response to an
6 armed robbery.

7 The defendant entered the store and had a
8 conversation with the victim store owner regarding
9 plans since this was happening right before
10 Thanksgiving.

11 The defendant then went to the back of the
12 store and was seen on video taking a bottle of
13 Hennessy and concealing it in his pants.

14 The defendant then attempted to leave the
15 store, but was confronted by the owner about the
16 bottle of liquor.

17 The defendant ran out of the store. The victim
18 followed the defendant into the parking lot. The
19 defendant then stopped. And when the victim got to
20 him, the defendant turned around and stabbed the
21 victim in the neck with a sharp object before
22 escaping in a truck with the bottle of liquor.

23 The victim then went back to the store where he
24 received medical attention. The victim suffered a
25 cut, minor artery and muscle damage in his neck

1 which required surgery and had 18 staples to close
2 the eventual wound.

3 When the defendant was apprehended and
4 interviewed, he admitted being on the scene, being
5 confronted by the victim outside the store, but did
6 not admit at that time to -- to stabbing him, only
7 to pushing him.

8 He has a prior record if the Court would like
9 to hear that, and there's no recommendation.

10 THE COURT: Okay. Is all of that substantially
11 true and correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. All right. Anything you
14 want to tell me?

15 MR. WARDER: Your Honor, yes. Booker is a
16 likable, helpful individual. Two people that went
17 to the store with him, he didn't know them, but they
18 were going to the liquor store so he took them down
19 there.

20 Your Honor, while he was down there, people
21 were nice in the store. He talked with the owner.
22 They talked about Thanksgiving. I think the owner
23 at one time told him to come back to the store and
24 eat some turkey the next day.

25 My client helped himself to a bottle of scotch.

1 He went down the aisle, turned around the corner,
2 and got it. When he come back up, the owner asked
3 him about it. He ran. The owner followed him out.

4 He -- we went over the facts. And, certainly,
5 under the law, a jury could've found him guilty. I
6 think entering this has -- has some advantages to
7 it.

8 THE COURT: Oh, definite advantage.

9 MR. WARDER: His wife's back there. They're a
10 couple, but, you know, they -- they express great
11 feelings for each other. It's not a man that's out
12 there without a family or on a cause.

13 THE COURT: Yeah, it's just terrible, isn't it?
14 You know, he was overcome by this temptation.

15 MR. WARDER: That's it.

16 THE COURT: Okay. All right. I'm going to
17 give you ten on attempted murder; ten on the armed
18 robbery; five on the other. They're all concurrent.
19 Credit for the time you've done. Good luck to you.

20 (The proceedings concluded at 10:39 a.m.)

21 * * * * *

22

23

24

25

1 C E R T I F I C A T E O F R E P O R T E R

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF GREENVILLE

5
6 I, the undersigned, Lisa Scott, Circuit Court
7 Reporter for the Thirteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Greenville County, South Carolina, on the
14 17th day of July, 2018.

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

17
18 March 18, 2019

19
20 /s/Lisa Scott

21 Lisa Scott
22 Circuit Court Reporter
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Greenville)
)
Booker T. Hill, #131643)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
)

IN THE COURT OF COMMON PLEAS

2018-CP-23- 05860

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
 2018 NOV 19 AM 9:23

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 to 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 Kirkland Correctional Institution, E-B1-38;
4344 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Greenville
Court of General Sessions 305 E. North St. Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number(s) (if known) upon which and the offense(s) for which sentence was imposed:
 - (a) 2017-GS-23-01832, Attempted Murder
 - (b) 2017-GS-23-01832, Possession of weapon during violent crime

- (c) 2017-GS-23-001778A, Robbery, Armed With A Deadly Weapon
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2017-GS-23-01832; CDR 3410; 7/17/18; 10 years concurrent
- (b) 2017-GS-23-01832; CDR 0549; 7/17/18; 5 years concurrent
- (c) 2017-GS-23-001778A; CDR 0139; 7/17/18 10 years concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes, After Promises From Counsel
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence? NO
8. If you answered yes to (7), list:
- (a) the name of each court to which you appealed:
- i N/A
- ii N/A
- iii N/A
- (b) the result in each such Court to which you appealed:
- i N/A
- ii N/A
- iii N/A
- (c) the date of each such result:
- i N/A
- ii N/A
- iii N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i N/A

ii N/A

iii N/A

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

(a) NO ISSUES PRESERVED FOR APPEAL

(b) NO ISSUES PRESERVED FOR APPEAL

(c) NO ISSUES PRESERVED FOR APPEAL

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

(a) See Pages 3(a) et seq., attached hereto

(b) See Pages 3(a) et seq., attached hereto

(c) See Pages 3(a) et seq., attached hereto

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

(a) See Pages 3(a) et seq., attached hereto

(b) See Pages 3(a) et seq., attached hereto

(c) See Pages 3(a) et seq., attached hereto

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

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

(b) any petition in State or Federal Courts for Habeas Corpus or post-conviction relief? NO

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

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

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

(a) the specific nature thereof:

i. N/A

10 & 11. GROUNDS AND SUPPORTING FACTS

I. Hill was deprived of his right to the Effective Assistance of Counsel that he is guaranteed by virtue of the Sixth and Fourteenth Amendments of the Constitution of the United States, as well as Article I, § 3 and Art. I, § 22 of the Constitution of the State of South Carolina as more specifically set forth below:

A. Counsel unreasonably failed to take the case to trial as he was hired and directed to do and he failed to take such action as was required to contact the witnesses and prepare them to testify at trial when at least two (2) witnesses were ready to testify as to the following on behalf of Hill in that, as Hill told his lawyer more than once, the following is essentially what had occurred at the time of the alleged crimes for which Applicant (hereinafter "Applicant" or "Hill"), was charged with, as alleged herein.

1. On or about November 10, 2016, Hill was sitting at home when two (2) guys that Hill knows from the neighborhood visited Hill's house and asked him for a ride to the liquor store and Hill agreed to give them a ride.
2. Upon arriving at the store, the two (2) guys went into the store to make a purchase and after Hill sat in his vehicle for what appeared to Hill to be a long time, Hill became impatient and decided to go into the store.
3. Hill entered the store to see what was taking so long and as he entered the store, he noticed about seven (7) or eight (8) other guys in the store, but he approached the two (2) guys who he gave a ride to and told them to hurry up because he wasn't going to sit around all day.
4. Thereafter, Hill walked towards the exit and when he was passing by the counter, the manager said something to Hill as if to start a conversation with him and Hill responded in kind.
5. Thereafter, the manager began to make remarks to Hill of an accusatory nature, which confused Hill and caused him to be concerned, so Hill told the Store manager that he was just going to leave and he continued walking towards the exit.
6. As Hill was leaving, the manager began to come out from around the counter as if he was mad at the Hill, even though Hill had done absolutely nothing unlawful or wrong.
7. Hill became afraid and concerned for his own safety because the manager was larger than Hill, appeared angry at Hill for some unknown reason and Hill had no idea of what might cause the manager to behave in such a manner, so Hill continued to leave the store and saw the manager begin to chase him.

8. Hill, being afraid that the manager was going to commit a battery upon him and inflict serious harm for some unknown reason, ran towards his truck while pulling his pickup truck keys from his pocket so he could start the truck right away when he was able to get into his truck, but the manager was running close behind him and this made Hill fearful.
9. Hill, having his keys in his hand, hearing the manager right behind him, and being concerned for his own safety due to the unprovoked and unexpected actions of the manager, turned towards the manager while simultaneously putting his arms and hands up and pushing away in a manner consistent with one who is trying to push someone away in an attempt to defend himself, right at the time that the manager ran into him.
10. At no time whatsoever did Hill possess a deadly weapon or use a deadly weapon or indicate by words or actions that he possessed a deadly weapon.
11. At no time whatsoever did Hill enter the liquor store with any intent to commit a crime or to do anything other than to see what was taking the two (2) guys so long that he had given a ride to and to hurry them along.
12. At no time did Hill attempt to kill anyone or possess the intent to kill anyone and Hill's alleged conduct towards the manager after the manager came at Hill in a threatening manner, was solely in self defense whereas Hill used no more force, if it can be said that he used force at all, than was necessary to repel what a reasonable person would believe to be an unprovoked and unlawful attack or threat of an attack of a store manager, upon Hill.
13. Hill denies that he knew of any reason why the manager might be acting that way, denies that he maliciously used his keys as a weapon and Hill asserts that if a party who threatened or attacked Hill was injured during the brief pushing that occurred in front of the store as Hill was exercising his rights, among other things, to be left alone and to defend himself from a legitimate threat, the party was thus injured due solely to his own unlawful conduct towards Hill and based on Hill's instinctive response of putting his hands and arms up in a defensive posture (although he had his keys in his hand at that time), and pushing towards the manager at the same time that the manager ran into Hill and for no other reason.
14. Thereafter, the manager turned around, ran back towards the store while yelling for someone in the store to call 911 and Hill entered his vehicle, left the premises and drove home, which is what he was suppose to do to avoid trouble.

15. Hill told counsel the facts as stated in ¶¶ 1-14 above at the time he hired counsel in counsel's office in March of 2017, told counsel that the witnesses in the store would testify to essentially his version of events, told counsel to check the store's security video and he also told counsel on more than one occasion that he wanted a trial by jury since he was not guilty of the charges lodged against him.
16. Counsel agreed to take the case and prepare for trial as Hill had directed and Hill gave him the warrants while his wife wrote out a check for the amount counsel had stipulated to and handed the check to counsel.
17. Later in 2017 while Hill was out on bond and about one (1) week prior to roll call, counsel had called Hill to come to counsel's office to discuss a plea offer that was made by the Solicitor, so Hill went to counsel's office.
18. At counsel's office, counsel informed Hill that he could plead to Assault and Battery of High and Aggravated Nature, that the charge carried fifteen (15) years, but that counsel would keep Hill out of prison and that counsel would get him some probation.
19. Hill did not want to plead to anything, but after being told that he was not going to serve any more time, Hill agreed to plead to ABHAN if it would get the case over with in that it appeared that since Hill had already paid counsel, Hill was not going to be able to get counsel to contact the witnesses and take the case to trial and Hill was without any other recourse known to him.
20. On or about the Tuesday following the meeting in counsel's office, Hill attended roll call accompanied by his wife and met with counsel and counsel's paralegal to enter the plea.
21. Counsel's paralegal gave Hill an indictment charging Hill with assault and battery of a high and aggravated nature and Hill signed it in accordance with what counsel told him at the previous meeting in counsel's office. But the paralegal then left with the signed indictment and came back with a second one which charged Hill with armed robbery and told Hill to sign it.
22. Hill said "no," denied committing an armed robbery and he asserted that all he did was to try to avoid an attack by a manager who was acting crazy, left the area when the crazy manager tried to attack him and he wanted a trial by jury.
23. Counsel again agreed to take it to trial so Hill left the courthouse and did not return until the next roll call that was held in 2018.

- B). Counsel failed to contact the Public Defender's Office regarding a second attempted murder charge that had been lodged against Hill in a different situation, when, if he had done so, he would have learned that the attempted murder charge was going to be dismissed in that Hill was justified in using force to defend himself, his wife and his property.
24. Hill herein repeats and re-alleges the facts as stated in ¶¶ 1-23 above as if repeated verbatim herein and further states the following:
 25. In May of 2018, Hill and his wife became aware of a man who kept riding around Hill's neighborhood, threatening to shoot people and Hill and his wife took photos of the man and kept text messages that the man had sent to Hill in which he made threats to kill Hill.
 26. On or about May 9, 2018, a man did unlawfully enter onto the property of Hill with the intent to kill Hill with a gun, but Hill successfully defended himself, although Hill was arrested on May 10, 2018 and charged with attempted murder.
 27. Hill was appointed a public defender to defend him in that case and after Hill explained to the public defender what had transpired, and showed him the evidence that Hill and his wife possessed, the Public Defender informed him that the matter would be dismissed and not to worry about it.
 28. Thereafter, Hill's counsel learned of the incident and unreasonably formed an opinion that Hill was guilty of the second attempted robbery and therefore must have be guilty of the attempted murder, armed robbery and possession of a firearm charge for which counsel was hired to defend Hill against.
 29. Counsel then began to unreasonably pester Hill to enter a plea of guilty to the charges of attempted murder, armed robbery and the weapons charge for which counsel was suppose to defend Hill, in exchange for a ten (10) year sentence, asserting that since Hill had committed another attempted murder, then the Judge was going to give him at least 30 years in the present case if he went to trial and therefore he had better accept the Solicitor's plea offer.
 30. Hill told counsel that he wanted a trial, that the other attempted murder charge was going to be thrown out because the man attacked Hill at his own house with a gun and Hill was successful in defending himself.
 31. Counsel disregarded Hill's wishes to proceed to trial and unreasonably began to use Hill's wife as a method to convince hill to accept the plea offer.

32. Counsel unreasonably told Hill's wife that because of the other attempted murder charge, that Hill would receive about thirty (30) years if he went to trial instead of accepting the Solicitor's offer and pleading guilty to the three (3) charges in exchange for a ten (10) year sentence.
 33. As a result of counsel's misinformation to Hill's wife, she was scared and hurt to think that she would be without Hill for thirty (30) years and her will was overborne to the extent that she wrote a note and sent the note to Hill in which she encouraged him to accept the plea offer, which she would not have done had she been properly informed and had she known that counsel had not prepared for a trial, had not had not contacted the Public Defender's Office to learn of the status of the second attempted murder charge (which was ultimately dismissed) and had failed to contact witnesses who were in the store that day and whose testimony would have exonerated Hill in the present case.
 34. After Hill received the note and discovered that his wife was scared that she would never be with him again, he asked to see her so he could explain what was going to happen with the 2nd attempted murder charge and other matters however, the Court and his counsel would not let Hill see his wife so he was unable to let her know that counsel did not check on the status of the 2nd attempted murder charge, or contact the witnesses, or do much of anything for the money he was paid.
 35. Hill was prejudiced in that had counsel performed his duties that he owed to Hill and had he not enlisted the help of Hill's wife by providing her with inaccurate information, he would not have pled guilty and would have insisted on going to trial.
- C) Counsel failed to object to the Solicitor's improper comment(s) to the trial judge that Applicant Hill had committed another attempted murder and as a result, the Court improperly considered that unsubstantiated allegation when sentencing Hill.
36. Hill herein repeats and re-alleges the facts and allegations as stated in ¶¶ 1-35 above as if repeated verbatim herein and further states the following:
 37. Counsel knew that a second attempted murder charge had been lodged against Hill as a result of Hill being attacked at his home, but failed to check on the status of that case as stated above and alleged herein.
 38. Hill was now trying to decide what to do in light of what counsel told his wife and in light of the other facts known to Hill.

39. Counsel unreasonably influenced Hill to plead guilty by telling him that he would not serve anywhere near the full ten (10) years and that counsel would get him probation and as a result, Hill's will was overborne and he felt he had no choice but to plead guilty and try to challenge his conviction on appeal.
 40. At the plea colloquy in the present case, the Solicitor, as a method of urging the judge to accept the guilty pleas without a factual basis and without sufficient evidence to allow for acceptance of the pleas, told the Judge that Hill committed a second attempted murder while he was out on bond and was facing that charge as well, and counsel failed to object or take any reasonable action to intercede on behalf of Hill, while the judge shook his head in dismay.
 41. The second attempted murder was eventually thrown out in that, based upon information and belief, it was determined that Hill had acted lawfully in defending himself, his wife and his property.
 42. Hill was prejudiced because the judge accepted the assertion of the Solicitor, without objection from counsel, that Hill had committed a second attempted murder before entering judgment in the present matter and sentencing Hill.
 43. Hill asserts that, based upon information and belief, he was sentenced more harshly than he would have been sentenced if not for the Prosecutorial Misconduct where the Prosecutor told the Judge that Hill had committed a second attempted murder, without an objection from counsel, when the fact is, Hill did not ever attempt to murder anyone.
- D) Counsel failed to ensure that Hill was made aware of the Maximum sentence he would face if he entered a plea of guilty.
44. Hill herein repeats and re-alleges the facts and allegations as stated in ¶¶ 1-43 above as if repeated verbatim herein and further states the following:
 45. Hill did not know of a statutory requirement that he must serve two (2) years of community supervision and pay a fee in addition to any sentence that he might receive, including probation, and had he known this and had counsel not led him to believe that he would only serve four (4) or five (5) years plus probation, he would not have pled guilty and would have insisted on going to trial.
- E. Counsel failed to explain to Hill, the elements of the offenses he was charged with and Hill did not otherwise know or understand the elements to each of the charges until he was informed of the elements of each offense after his incarceration.

46. Hill herein repeats the facts and allegations as stated in ¶¶ 1-45 above as if repeated verbatim herein and further states the following:
47. Hill was charged with Attempted Murder, Armed Robbery and Possession of a Weapon during the Commission of A Violent Crime.
48. As to the charge of Attempted Murder, "specific intent to commit murder" is an element of the offense, however, Hill did not know and understand that fact and his lawyer failed to inform him of that fact.
49. Hill understood his lawyer to say that Hill could be found guilty of attempted murder if someone was severely injured in a fight even though he [Hill], was trying to get away from the person and was merely trying to defend himself.
50. Hill did not know the store manager, never met him before that he knew of, and did not have either "specific intent" or "general intent" to murder him or anyone else and the state did not present a sufficient factual basis to the court to support a guilty plea to Attempted murder.
51. Hill was prejudiced in that had he been aware that "specific intent" was an element of the crime of attempted murder and that the State was required to prove that element beyond a reasonable doubt, he would not have pled guilty under any circumstances and would have insisted on going to trial.
52. As to the charge of Armed Robbery, counsel failed to explain the elements of that charge with Hill.
53. Hill was led to believe by counsel, that he would be found guilty of armed robbery based on an unsupported allegation of a store owner that he had a suspicion that Hill took something from the store without paying for it (which Hill DENIES), and because Hill had his keys in his hand when he acted in self defense and his keys may have caused an injury to the store manager.
54. Hill's counsel did not inform Hill of the fact that if he went to trial, the jury would decide whether the keys that Hill had in his hand when he defended himself from the store manager was a dangerous weapon.
55. Had Counsel told Hill of the facts stated in ¶¶ 51&54 above, and that no reasonable juror would believe that a person who allegedly possesses the "specific intent" to murder someone, would rob and attempt to murder a person with a set of truck keys instead of a real weapon, Hill would not have entered a guilty plea to armed robbery or the other charges and would have insisted ongoing to trial.

- F. The guilty plea to all charges violated Hill's Federal and State Due Process rights in that Hill did not enter the plea knowingly, voluntarily, and intelligently, and it was entered because he was denied the Effective Assistance of Counsel that he is guaranteed under the State and Federal Constitutions and was prejudiced to the extent that but for counsel's actions and inactions, Hill would not have entered a plea of guilty to any of the charges, would have insisted on going to trial, and the outcome would have been different.
56. Hill herein repeats the facts and allegations as stated in ¶¶ 1-55 above as if repeated verbatim herein and states the following:
57. Hill avers that because of the facts as stated in ¶¶ 1-56 above, his pleas to each charge violated Due Process as stated in Ground F) and he asserts the following:
58. Hill did not understand the consequences of the plea in that he was never informed by counsel or the court that he was waiving his appeal as he wanted an appeal because he was not able to compel counsel to investigate and prepare for trial after having hired counsel specifically for that purpose.
59. Hill did not have an understanding of the law in relation to the facts of this case and his attorney did not assist him with understanding how he can be charged and convicted of committing three crimes just because he took two people to the store and retreated as the law requires him to do when he was threatened by the store manager for no reason known to him, nor how it is legal for him to be threatened with a lengthy prison sentence if he refuses to plead guilty to crimes that he did not commit, or to be subjected to a trial where someone may test their skills of convincing a jury that he is guilty of crimes that he did not commit by the use of fabricated evidence and the art of persuasion.
60. Counsel failed to inform Hill that in entering the pleas to the charges, he was in fact entering into a binding contract and Hill asserts, as he has been informed and otherwise has learned since his incarceration, that since the Due Process Clause of the South Carolina Constitution affords a person more protection than the Federal Constitution, that counsel and/or the Court should be required to inform an accused at a plea proceeding and on the record, that by pleading guilty he is entering into a binding contract and that if there are any hidden promises, bargains, possible misunderstandings or deals that were to be kept quiet, then he must state that in the record at that time or be bound by the contract and the waiver of all rights associated with the contract.

61. Had the requirements of the Due Process Clause of the State Constitution been followed as explained in ¶ 60 above, then Applicant would have informed the court of the facts that led up to the incident and the facts as they pertain to his counsel's refusal to protect his best interests.
62. The facts leading up to the incident would have established that he is actually and factually innocent, and he would have informed the court of the apparent misunderstanding and promises as it pertains to his sentence and the false statements of the prosecutor, whereas there would have been no guilty pleas and Hill would have proceeded to trial.
63. Hill asserts that he did not tell the judge that he wanted to proceed to trial and did not want waive his Constitutional rights, like many other unwary Defendants have failed to do because questioning a Defendant in open court will not, most of the time, bring out into the open a promise, deal or some type of misunderstanding that has induced a guilty plea.
64. It is well known that a Defendant will sometimes deny the existence of a bargain that has in fact occurred out of fear that a truthful response will either jeopardize the bargain or, in the mind of the defendant, will cause the defendant's attorney to become angry at defendant and fail to act in the best interest of the defendant thereafter.
65. Likewise, it is well known to Judges, Lawyers, and others who are familiar with the legal system, as Hill has also learned first hand at the plea proceeding and since then, that "[I]f the judge, the prosecution, or defense counsel makes a statement in open court that is contrary to what he has been led to believe, especially, as to promises by the prosecutor, or his defense counsel, [the defendant] would no more challenge the statement in open court than he would challenge a clergyman's sermon from the pulpit." [Quoted from Trebach, *The Rationing Of Justice*, pp. 159-160 (1964)].
66. Hill avers that he failed to inform the court as to his dissatisfaction with counsel, again, because as this Court, other courts, and other legal professionals are fully aware, it simply is not done in open court 99% of the time.
67. A Defendant, most of the time, does not state in open court what his counsel did wrong or did not do and just as had occurred in Hill's case, a Defendant does not know what his counsel did or didn't do until after the conviction.
68. Hill's attorney did not keep Hill informed of what he was doing, if anything, and it appeared to Hill that his counsel was acting as a second prosecutor in that he wanted to, and did, induce a guilty plea through not performing his duties.

69. At the plea proceeding, Applicant answered the judge's questions as he was instructed to do by his counsel, which is shown by the fact that each time the trial judge asked a question during the colloquy, Hill looked at counsel and counsel answered the question first, then Hill gave the same answer so the trial judge and/or a reviewing court would be alerted to the fact that Hill didn't want to plead guilty to anything because he was not guilty of anything and Hill was not answering questions voluntarily and intelligently if he was simply repeating his counsel's answers.
70. The facts presented by the State at the plea hearing did not include the requisite corroborating evidence of attempted murder, armed robbery or possession of a weapon during the commission of a violent crime because the State did not allege that Hill was armed nor took any action which would allow a witness to reasonably believe he was armed, nor did the State produce any witness that saw a weapon of any kind.
71. The State alleged that Hill had used "something sharp" and that he committed a second attempted murder (which was not true) but failed to present any facts or evidence that Hill made any attempt to murder anyone, or rob anyone, or that he in fact possessed an identifiable weapon, or that Hill did anything other than to protect himself.
72. There is a difference between "being armed" with a weapon and having "something sharp" while scuffling with someone in an attempt to protect oneself from potential harm which is all that Hill did and he was lawfully permitted to do so.
73. Hill was prejudiced in that, but for counsel's unreasonable actions and inactions, Hill would not have entered a plea of guilty to any of the charges, would have insisted on going to trial, and the outcome would have been different.

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been presented previously to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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) For all Grounds raised in the instant PCR Action, A PCR

(b) Application is the first and only remedy available under

(c) State Law in which to raise the claims set forth herein.

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

(a) your arraignment and plea? I don't think I was Arraigned

(b) your trial, if any? Yes - Guilty Plea Trial

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? N/A

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

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

i. N/A in that I don't believe that I was arraigned and I appeared before Magistrate Judge without counsel.

ii. Richard Warder, Attorney At Law 15 Primrose St., Greenville, SC 29601

iii. Richard Warder, Attorney At Law 15 Primrose St., Greenville, SC 29601

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

i. No counsel when appeared before Magistrate

ii. Guilty Plea Trial Negotiations/Colloquy.

iii. Sentencing

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

Applicant seeks to have the guilty plea and sentence, vacated, set aside or reversed and to have this case remanded back to the lower court for a trial by an impartial jury, or that that this Court Grant such other and further relief as is just and proper.

20. Are you now under sentence from any other court that you have not challenged? No

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Booker T. Hill, 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 at this time 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.

Booker T. Hill JR
Booker T. Hill, #131643

SWORN to and subscribed to before me

this 29 day of October, 2018.

Bathsheba S. Joe
Notary Public For South Carolina

My Commission Expires: BATHSHEBA S JOE

NOTARY PUBLIC
SOUTH CAROLINA

MY COMMISSION EXPIRES 05-08-23

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

I, Booker T. Hill, 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.

Booker T. Hill
Booker T. Hill, #131643

SWORN to and subscribed to before me

this 29 day of October, 2018.

Bathsheba S. Joe
Notary Public For South Carolina

My Commission Expires: _____
BATHSHEBA S JOE
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 05-06-23

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Booker T. Hill, #131643,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-23-05860

**RETURN AND MOTION
FOR MORE DEFINITE
STATEMENT**

The State of South Carolina (Respondent), making its Return to the Application for Post-Conviction Relief filed on November 19, 2018, would respectfully show this Court:

I. Procedural History

Booker T. Hill (Applicant) is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of the Greenville County Clerk of Court. During its November 2017 term, the Greenville County Grand Jury indicted Applicant for attempted murder (2017-GS-23-01832) and possession of a weapon during the commission of a violent crime (2017-GS-23-01832). During its May 2018 term, the Greenville County Grand Jury indicted Applicant for armed robbery (2017-GS-23-001778A).

Applicant was represented by Richard H. Warder, Esquire, and Assistant Solicitor Hunter C. Blouin of the Thirteenth Circuit Solicitor's Office prosecuted the case. On July 17, 2018, Applicant appeared before the Honorable Edward W. Miller and pleaded guilty to all three charges as indicted without any sentencing recommendation from the State. Judge Miller sentenced Applicant to ten years for attempted murder, ten years for armed robbery, and five years for possession of a weapon during the commission of a crime of violence, with credit for

time served, and all sentences running concurrently. Applicant did not appeal his plea or sentence.

II. Factual History

As summarized by Assistant Solicitor Blouin during Applicant's plea hearing, on November 22, 2016, Applicant entered Wine and Spirits in Greenville County and engaged Victim, the store's owner, in a conversation about his plans for the upcoming holiday of Thanksgiving. Applicant then went to the rear of the store and was captured on video concealing a bottle of liquor from the store shelf in his pants. When Applicant attempted to leave the store with the bottle of liquor still concealed in his pants, Victim confronted him, and Applicant then ran into the parking lot. Victim followed and then Applicant stabbed Victim in the neck with a sharp object before escaping in a truck with the liquor.

Officers from the Greenville Police Department responded to the scene. Victim suffered a cut, minor artery and muscle damage that required surgery, and the use of eighteen staples to close his wound. When Applicant was apprehended by police and interviewed, he admitted to being on the scene and being confronted by Victim outside the store, but initially said that he merely pushed Victim and did not stab him.

III. Application for Post-Conviction Relief

In his Application for Post-Conviction Relief, Applicant alleges that he is being held in custody unlawfully based on:

- I. Ineffective Assistance of Counsel.
 - a. "Counsel unreasonably failed to take the case to trial as he was hired and directed to do"
 - b. Counsel failed to contact and prepare for trial two witnesses
 - c. Applicant "told counsel to check the store's security video"
 - d. Counsel enlisted Applicant's wife to convince Applicant to plead guilty to the charges despite his desire to go to trial

- e. Applicant "told counsel on more than one occasion that he wanted a trial by jury since he was not guilty"
- f. "[C]ounsel did not check on the status of the 2nd attempted murder charge, or contact the witnesses, or do much of anything for the money he was paid."
- g. Counsel failed to object to solicitor's statement that Applicant had committed a second attempted murder
- h. Counsel "failed to . . . take any reasonable action to intercede on behalf of Hill" when solicitor referred to second attempted murder charge
- i. Counsel did not inform Applicant of potential sentences
- j. Counsel did not explain the elements of the offenses charged
- k. Applicant did not enter his guilty pleas knowingly, intelligently, and voluntarily and would have insisted on trial but for counsel's errors

Applicant prays for relief as follows: "Applicant seeks to have the guilty plea and sentence, vacated, set aside or reversed and to have this case remanded back to the lower court for a trial by an impartial jury, or that this Court Grant such other and further relief as is just and proper."

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the transcript from Applicant's plea hearing, Applicant's records from the South Carolina Department of Corrections, and Applicant's Post-Conviction Relief Application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Claims of Ineffective Assistance of Counsel

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). In order to satisfy the prejudice prong of this test following a guilty plea,

the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Many of the allegations presented by Applicant in his Application directly contradict his testimony at the plea hearing. At the plea hearing, Applicant testified that he understood the charges against him and the potential sentences after Judge Miller explained them. Tr. 5-6. Applicant pleaded guilty. Tr. 6. Applicant affirmed that his decision to plead guilty was freely and voluntarily made. Tr. 6-7. Applicant affirmed that he understood his trial rights and his right to remain silent. Tr. 7. Applicant again affirmed his guilt. Tr. 7. Applicant affirmed that he was satisfied with counsel's representation of him. Tr. 7. Applicant affirmed that he understood the evidence against him. Tr. 7. Applicant affirmed that the assistant solicitor's recitation of facts was substantially true and correct. Tr. 9. The solicitor did mention at the plea hearing that Applicant had a criminal record, but never specified what kinds of convictions or charges would have appeared on Applicant's record, and there was *no other reference* to his record at the hearing. Tr. 9.

Respondent submits that Applicant likely can satisfy neither requirement of the Strickland and Hill tests on his various claims of ineffective assistance of counsel. However, the claims of ineffective assistance of counsel probably raise questions of fact that the record may not conclusively refute. When an application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing." Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Accordingly, Respondent requests an evidentiary hearing to fully resolve these issues.

V. Motion for a More Definite Statement

Applicant alleges that he is being held in custody unlawfully based on allegations of ineffective assistance of counsel, one of which lacks specificity. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Applicant has failed to state with any specificity the specific facts giving rise to one of his claims in that Applicant has failed to identify the witnesses whom counsel did not interview or call as witnesses. Respondent therefore moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel and to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss this allegation or claim.

VI. Discovery Issues

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the

evidentiary hearing. Because Applicant is represented by counsel, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCR. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCR.

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

VII. General Denial of Allegations

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

VIII. Conclusion

WHEREFORE, Respondent requests that this Court require Applicant to amend his Application in order to provide a more definite statement and supporting facts as to the allegation specified above, and then convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

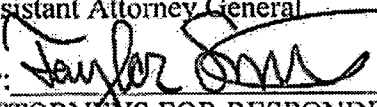
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR Z. SMITH
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

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

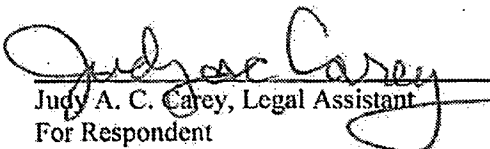
April 25, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2018-CP-23-5860
	)	
BOOKER T. HILL, 131643	)	
	)	
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 and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street; Suite 11
Greenville SC 29601

DATED this 26th day of April, 2019.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2018-CP-23-05860
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
	)	
BOOKER T. HILL,	)	
APPELLANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
	)	

June 3, 2019
Greenville, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE

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

R. MILLS ARIAIL, JR., ESQ
Attorney for the Appellant

TAYLOR Z. SMITH, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

INDEX

(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

	<u>PAGE</u>
<u>(AW) BOOKER THOMAS HILL, III:</u>	
Direct Examination by Mr. Ariail	4
Cross-Examination by Mr. Smith	16
Applicant Rests	23
<u>(RW) RICHARD HAROLD WARDER:</u>	
Direct Examination by Mr. Smith	24
Cross-Examination by Mr. Ariail	39
Redirect Examination by Mr. Smith	49
State Rests	50
Certificate of Reporter	56

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
-----------	--------------------	-----------	------------

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 1:33 p.m.)

MR. SMITH: Your Honor, this is the case of Booker T. Hill v. State, 2018-CP-23-05860.

Mr. Hill is presently incarcerated pursuant to orders of commitment from the Greenville County Clerk of Court. In its November 2017 term, the Greenville County grand jury indicted him for attempted murder, possession of a weapon during the commission of a violent crime. During the May 2018 term, they also indicted him for armed robbery. He was represented by Mr. Richard H. Warder, and Assistant Solicitor Blouin of the 13th Circuit Solicitor's Office prosecuted the case.

On July 17, 2018, Mr. Hill appeared before Judge Miller and pleaded guilty to all three charges as indicted with no sentencing recommendation. Judge Miller sentenced applicant to ten years for attempted murder, ten years for armed robbery, five years for possession of a weapon, credit for time served, all sentences running concurrently. He did not appeal his plea or sentence.

Your Honor, the State is ready today, but we just ask that applicant specify the allegations he intends to go forward on today as the State also filed a motion for more definite statement in its return. It's just a little

1 unclear. But other than that, we're ready to move forward
2 today.

3 THE COURT: All right. Mr. Ariail, are you ready to
4 go forward?

5 MR. ARIAIL: I am, Your Honor. I call Mr. Hill to
6 the stand.

7 THE COURT: All right. Sir, come on around here.

8 THE CLERK: Mr. Hill, please step over to the witness
9 -- place your left hand on the Bible and raise your right
10 hand.

11 WHEREUPON,

12 BOOKER THOMAS HILL, III

13 After having been duly sworn, testified as follows:

14 THE CLERK: Thank you. You may be seated.

15 Please state your full name for the record.

16 THE WITNESS: Booker Thomas Hill, III.

17 DIRECT EXAMINATION

18 BY MR. ARIAIL:

19 Q Mr. Hill, in regards to this case, you filed a PCR,
20 and you're seeking relief through that application. I
21 want to go through this with you a little bit.

22 You were represented by Mr. Warder; is that correct?

23 A Yes, sir. Correct.

24 Q Mr. Warder?

25 A Yes, sir. Correct.

1 Q Okay. And he represented you on all these charges
2 that basically we stated here: attempted murder,
3 possession of a weapon during a violent crime; is that
4 correct?

5 A Correct. Yes, sir.

6 Q Now, you retained him; is that correct?

7 A Retained?

8 Q You paid him money.

9 A Yes, sir. Sure did. Yes, sir.

10 Q And let me just kind of go through the time frame in
11 this. You were arrested for these charges at some time.
12 And were you incarcerated for a time?

13 A On GPS monitoring.

14 Q Okay. So you got out on bond.

15 A Yes, sir.

16 Q Okay. Now, when did he come in and start
17 representing you after ---

18 A Immediately.

19 Q Okay.

20 A Immediately after bond.

21 Q After the bond. Okay.

22 A Yes, sir.

23 Q So he gathered discovery for you and went over the
24 case with you; is that correct?

25 A No, sir.

1 Q Okay. So initially, when you hired him, did he sit
2 down with you and tell you what the -- I guess the charges
3 you had, the offenses you're facing, and the elements of
4 each of those crimes? Do you remember that?

5 A Yes, sir. I remember that.

6 Q Okay. Did he tell you what the evidence that would
7 be used against you ---

8 A No, sir.

9 Q --- to prove this attempted murder and all these?

10 A No, sir.

11 Q Okay. Now, did you go over with him what you
12 believed, you know, the facts of the case were, your
13 version of what was being alleged?

14 A Yes, sir.

15 Q Okay. And you told him you were not guilty of these
16 things.

17 A Correct. Yes, sir. Several times.

18 Q Okay. So out of that, did you tell him to take
19 certain steps to ---

20 A Yes, sir. Sure did.

21 Q What did you tell him to do out of those meetings?

22 A Get evidence.

23 Q Okay.

24 A Get witnesses. I have witnesses.

25 Q Okay.

1 A And I begged several times for a jury trial.

2 Q Okay.

3 A Begged. Not asked, begged.

4 Q Okay. Let's go through each of those. Now, the
5 evidence that you wanted, what were you asking him to be
6 able to get to show you?

7 A Get the weapon.

8 Q Okay. So you wanted to see the weapon?

9 A Yes.

10 Q And did he tell you or say this has been shown to me
11 by the Solicitor's Office or by the investigators as what
12 the weapon was?

13 A No, sir.

14 Q Okay. Did he ever give you a weapon in regards to
15 it?

16 A No, sir.

17 Q Okay. So you asked him to provide that to you and he
18 didn't.

19 A Provide, yes, sir. That and surveillance CCA --
20 CCATV.

21 Q Surveillance camera, security?

22 A Yes, sir. All of that.

23 Q Okay. So you asked him to get all that.

24 A Correct. And witnesses.

25 Q Okay. And let's go through the first couple of

1 things right there. In regards to that evidence you asked
2 him, did you ever say, "Where is that?" or, "Why am I not
3 getting that"?

4 A Correct.

5 Q Okay. What was the response from him?

6 A His response was, at the time, "Give me time."

7 Q Okay. But there was a point in time where you came
8 to court and they were asking you to plead guilty,
9 correct?

10 A Correct. That was from the beginning, plea.

11 Q At that point in time, you still didn't have that
12 information, correct?

13 A No, sir.

14 Q Did you raise that to him again?

15 A Yes, sir, I did.

16 Q And what was the response at that point in time?

17 A Plea.

18 Q Okay. And you went about and you basically said I've
19 got some witnesses that I want him to find, too.

20 A Correct.

21 Q Who were those individuals you wanted him to find?

22 A One was named Anthony Booth.

23 Q Okay.

24 A And the other one was a guy from the neighborhood by
25 the name of Raheem [phonetic]. I don't know his last

1 name.

2 Q Okay. And why did you want him to find those
3 witnesses?

4 A To prove my innocence.

5 Q Were they going to prove an alibi or were ---

6 A To prove -- to prove innocence, not just alibi.

7 Q Okay.

8 A To prove, literally, eyewitness.

9 Q But it did not happen the way they ---

10 A It didn't. None of that happened. Yes, sir.

11 Q Okay. What happened with the witnesses? Where --
12 did he find them?

13 A I've never heard no more from him or the witnesses.

14 Q Okay. So they weren't able to come and provide
15 statements or anything of that nature.

16 A I don't know. He told -- he told me he couldn't get
17 in touch with them. I don't know if he tried or not.

18 Q Okay. And you believe those individuals would have
19 provided testimony that would have shown that you didn't
20 do ---

21 A Yes, sir. Probably wouldn't be here today in these
22 handcuffs.

23 Q Okay. And the other item you said was you wanted a
24 jury trial.

25 A Yes, sir.

1 Q Now, I know one of the key things in this case is you
2 wouldn't have plead guilty to these, correct?

3 A Sure wouldn't.

4 Q Okay. But let's go through. You said you wanted a
5 jury trial.

6 A Begged for a jury trial.

7 Q Okay. Then why on the day of this plea did you go
8 ahead and plead guilty to these charges?

9 A I was threatened with time.

10 Q Okay. When you say that, who threatened you with
11 time?

12 A The attorney. The attorney threatened me with time.
13 I was coerced into pleading to a guilty plea ---

14 Q Okay.

15 A --- or I was going to get 30 years.

16 Q Okay. So basically, they said if you don't do this
17 and take it to trial, you're going to get 30 years.

18 A That's correct.

19 Q You think that's -- that was -- you were coerced into
20 doing that?

21 A Correct.

22 Q You also showed me something in regard to a statement
23 from your ---

24 A It's in the envelope on the table.

25 Q Why? Okay. Just tell the Court in regards to it

1 because I just want to understand what it is.

2 A He told me -- well, she -- he had her to write a
3 note.

4 Q "She" is? What's her name?

5 A My wife, Jennifer Hill.

6 Q Jennifer. Okay. And she came -- or he ---

7 A And on the note stating take the plea.

8 Q Okay.

9 A Take what they're offering. The judge is shaking his
10 head. She's scared. 30 years is too long to do in a
11 cell.

12 Q Okay. So you believed -- okay. Based on that, what
13 was your position ---

14 A Based on that, and my position was he's the one that
15 threatened her with me for 30 years. So I'm scared,
16 signed the plea, and took what they gave me.

17 Q Okay. And did you notify the Court at any time of
18 any of this information? Do you remember bringing it up?

19 A Verbally, no.

20 Q Okay.

21 A But with my actions of how I answered the judge and
22 looking at him, I was trying to tell -- to give away that
23 I was being forced into that.

24 Q Okay. Did you tell Mr. Warder at any time, "I don't
25 want to do this"?

1 A Correct.

2 Q "I feel like I'm being forced into it"?

3 A Yes, sir. Yes, sir.

4 Q And I know you're going to get asked this question.
5 Why didn't you, at any time during this guilty plea, tell
6 the judge, "I believe I'm being forced into this"?

7 A The reason why being is if this is my attorney and
8 he's paid and he's for me, if I make him mad, I'm really
9 going to do some time.

10 Q Okay.

11 A So I was scared.

12 Q And we've talked about some of these things right
13 here, and I know you've listed other things in your
14 application, some of which I think we discussed might not
15 apply. Are there other things that you want to bring up
16 to the Court, because those were our main issues we
17 discussed, that you believe he didn't do that you asked
18 him to do or that he was ineffective in doing?

19 A You have them on the paper?

20 Q What's that?

21 A Do you have them on the application?

22 Q I've got a copy of your application right here.
23 There's a lot of -- but there's 73 paragraphs of stuff
24 have been put in here. It's a lot of it but it's been
25 summarized down into a couple. I'm going to give you the

1 points right here.

2 A Thank you.

3 Q Let me show you what we -- and I will tell you this
4 just for the record, too. The Court has this in front of
5 him and can review it, so it's part of it.

6 A Thank you. Thank you.

7 Q The main ones I want to go through and see, give you
8 these two pages right here. The first one we talked about
9 is counsel failed to take the case to trial as he was
10 hired and directed to do. You've talked about that.

11 A Correct.

12 Q Counsel failed to contact and prepare trial for two
13 witnesses.

14 A Correct.

15 Q Those were the two witnesses you had.

16 A Correct.

17 Q Applicant told counsel to check the store security
18 video.

19 A Correct.

20 Q Okay. He didn't produce that to you.

21 A No, sir.

22 Q We talked about that.

23 A No, sir.

24 Q Counsel enlisted applicant's wife to convince
25 applicant to plead guilty to the charges despite his

1 desire to go to trial.

2 A Correct.

3 Q We talked about that.

4 A Correct.

5 Q Applicant told counsel on more than one occasion that
6 he wanted a jury trial since he was not guilty.

7 A Begged for it. Yes, sir.

8 Q Okay. Counsel did not check on the status of the
9 second attempted murder charge or contact the witnesses or
10 do much of anything for the money he was paid.

11 A Which was thrown out.

12 Q Okay.

13 A Correct.

14 Q So the second one was thrown out.

15 A Innocent.

16 Q Okay. And you believe he should have -- how do you
17 think that relates to this?

18 A I'd have been innocent on this one, too.

19 Q Okay. Counsel failed to object to solicitor's
20 statement that applicant had committed a second attempted
21 murder.

22 A Correct.

23 Q So you say during the guilty plea he should have
24 objected or said, "Let's don't bring that in because you
25 were found not guilty on it."

1 A Thank you.

2 Q Were you found not guilty after the guilty plea or
3 before the guilty plea?

4 A I was already in Kirkland before I found out that it
5 had been dropped.

6 Q Okay. Counsel failed to take any reasonable action
7 to intercede on behalf of Hill when solicitor referred to
8 second attempted murder charge. That's discussed in
9 there.

10 A Yes, sir.

11 Q Okay. He did not inform you of potential sentences.

12 A No, sir.

13 Q So you didn't know it could be zero to 30 or the
14 different ranges on the charges?

15 A No, sir. No. No, sir. Nothing.

16 Q Okay. Counsel did not explain the elements of the
17 offenses charged.

18 A No, sir.

19 Q Okay. Applicant did not enter his guilty plea
20 knowingly, intelligently, voluntarily and would have
21 insisted on trial but for counsel's errors.

22 A Correct.

23 Q So that was based on you felt like you were coerced
24 into that during the trial.

25 A Yes, sir. Yes, sir.

1 Q Okay. So those are the main items. Are there other
2 things that I've missed out on or that you would like to
3 add to this today? You've got a lot of stuff in your
4 application which the judge can review in regards to that.

5 A Yes, sir. Am I addressing the judge?

6 THE COURT: Yeah. Talk to me.

7 THE WITNESS: Your Honor, please.

8 THE COURT: Yes, sir.

9 THE WITNESS: I want to beg you today. I want to beg
10 you, please, give me a chance. I am innocent. I paid a
11 lawyer, and I didn't get what I paid for. And by rights,
12 to be honest, that's strong-arm robbery. Took my money
13 and did not do nothing. Look at me. I've got a family
14 back there, man, I need to get home to. I'm not a
15 criminal. Please, I beg you today, please, please,
16 whatever it takes, allow me to have this PCR trial to
17 where I can go home to my family, please.

18 THE COURT: All right, sir.

19 MR. ARIAIL: Thank you, Mr. Hill. If you'd answer
20 any questions that the attorney general has for you.

21 THE COURT: Mr. Smith, your witness.

22 CROSS EXAMINATION

23 BY MR. SMITH:

24 Q Mr. Hill, how many times did you meet with Mr. Warder
25 before your plea hearing?

1 A I want to say probably five, maybe six times, no more
2 than ten over a two-year period.

3 Q Okay. And you're saying he didn't explain to you
4 what the charges were and the sentences were.

5 A Sir?

6 Q You're saying he, Mr. Warder, didn't explain to you
7 what the charges or sentences were, potential sentencing
8 range.

9 A No. He explained the charges, but no potential
10 sentences. No, sir, he didn't.

11 Q But Judge Miller did that at the plea hearing, didn't
12 he?

13 A Yes, sir. Judge Miller did.

14 Q Okay. And if we look at -- I don't know if you have
15 a copy of the transcript.

16 A Yes, sir, I do. It's over there.

17 Q Okay. We're looking on page 5.

18 THE COURT: Here. Take him a copy.

19 BY MR. SMITH:

20 Q Okay. We're looking at page 5 ---

21 A All right.

22 Q --- Line starting at about 18.

23 A Okay.

24 Q Correct me if I'm wrong, but that's Judge Miller's
25 explaining to you what the charge was for armed robbery,

1 it looks like. But he says, "That carries ten to
2 30 years," right, on Line 25?

3 A Yes, sir.

4 Q Okay. And then when we get over on page 6 at Line 5,
5 he asks you, "Do you understand?" And what did you say?

6 A I said, "Yes, sir."

7 Q Okay. And then he explains the next charge starting
8 at Line 6. And he says, "it carries up to 30 years,"
9 right?

10 A Yes, sir.

11 Q And at Line 14, you said what?

12 A "Yes, sir."

13 Q Okay. And then he explains the third charge
14 beginning on Line 15, and he says, "That's a five-year
15 maximum," right?

16 A Yes, sir. Okay.

17 Q And then what did you say?

18 A I said, "Yes, sir."

19 Q Okay. So you understood that. So you heard it,
20 right?

21 A Yes, sir.

22 Q Okay. And he also went over your trial rights. He
23 told you you could go to trial if you wanted to.

24 A Correct.

25 Q Right? And you told him you understood?

1 A Yes, sir.

2 Q And that you wanted to plead guilty anyway?

3 A That's what I -- that's what I was told to say. Yes,
4 sir.

5 Q Okay. But you did, in fact, say it, right?

6 A I was told to say that by my attorney.

7 Q And then you did say it.

8 A And I said what my attorney said, yes, sir. I said
9 exactly what he said.

10 Q I'm not sure you're answering the question.

11 A I copied my attorney's words.

12 THE COURT: Okay. Whoa. Stop. Ya'll don't talk
13 over each other. You answer and you question.

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Go ahead. Rephrase your
16 question.

17 BY MR. SMITH:

18 Q Okay. Did you tell the judge that you wanted to
19 plead guilty anyway after he explained your trial rights?

20 A Yes, sir.

21 Q Okay. All right. And Judge Miller asked you did you
22 understand the evidence that the State had, right?

23 A What was that again, sir?

24 Q Judge Miller asked you did you understand the
25 evidence that the State had against you.

1 A Yes, sir.

2 Q And you told him you did.

3 A Okay. Yes, sir.

4 Q You did that, right? That's what you told him?

5 A Yes, sir. Yes, sir.

6 Q Okay. All right. At any point during the hearing,
7 did you tell the judge that you changed your mind, you
8 wanted to go to trial?

9 A No, sir, I didn't.

10 Q Okay. You also mentioned in your application, you
11 said that he didn't object to something about a second
12 attempted murder charge, but can you point to the
13 transcript where that happens? Because I can't find it.

14 A It's not in there. As far as I know, it's not in
15 there.

16 Q Okay. You're saying that that was said anyway at the
17 hearing, but it's just not recorded in the transcript?

18 A Evidently so.

19 Q Okay. Is that the only thing you're saying that
20 happened at the hearing that's not recorded in the
21 transcript?

22 A No. I'm not saying that.

23 Q Okay. But you are admitting that even though that's
24 your allegation, that that is not reflected from the
25 transcript from the hearing?

1 A It's not in here.

2 Q Okay. So you also identified two witnesses that you
3 say you gave to -- that you told Mr. Warder about.

4 A Yes, sir.

5 Q Anthony Booth and Raheem.

6 A Yes, sir.

7 Q You don't know Raheem's last name?

8 A I sure don't.

9 Q Okay. Do you know Anthony's -- do you have his
10 address?

11 A It's been three years since I've been incarcerated.

12 Q Did you have his address at the time?

13 A I did then. I did then. And I could get it now if I
14 need to.

15 Q Okay. And you don't know Raheem's last name?

16 A No, sir, I don't.

17 Q Did you know it at the time?

18 A No, sir. Just somebody had asked for a ride to the
19 store.

20 Q Okay. Did you give him the address of Raheem?

21 A No, sir.

22 Q You said you did give him the address of Anthony?

23 A I give him -- yes, sir, I did.

24 Q Okay.

25 A Yes, sir.

1 Q But you're making allegations about Mr. Warder, but
2 Judge Miller asked you at the plea hearing were you
3 satisfied with Mr. Warder, right?

4 A Correct.

5 Q And you told him you were?

6 A I was told to tell him I was, yes, sir.

7 Q But you did tell him that you were happy with
8 Mr. Warder.

9 A That's what I was told to say, yes, sir.

10 Q There again, you're saying that's what you were told
11 to say ---

12 A Yes, sir.

13 Q --- but that's not -- so you can say that, but what
14 I'm asking you is you did tell him you were happy with
15 Mr. Warder.

16 A That's what I was told to say, yes, sir.

17 MR. SMITH: I mean, for the record, Your Honor, I
18 don't believe he's answering the question.

19 THE COURT: All right. I understand. Move on.

20 BY MR. SMITH:

21 Q Okay. And when he asked you was that your free and
22 voluntary choice to plead guilty, you told him it was.

23 A Yes, sir. That's what I was told to say.

24 MR. SMITH: Okay. Your Honor, just beg the Court's
25 indulgence for a moment.

1 THE COURT: Yes, sir.

2 BY MR. SMITH:

3 Q At any point did you tell the judge you were pleading
4 guilty just because of the letter your wife had given you?

5 A No, sir.

6 Q Okay. What were the -- tell me about the physical
7 cues you were trying to give to the judge. What were you
8 doing?

9 A When the judge asked me a question, I would look at
10 my attorney, and my attorney would say the words, and I
11 would repeat it to the judge just like that (gesturing).
12 Whatever I was told to say, that's what I said.

13 MR. SMITH: Thank you, Mr. Hill.

14 Your Honor, I have no more questions.

15 THE COURT: All right. Any further redirect?

16 MR. ARIAIL: No, Your Honor. Thank you.

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

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Mr. Ariail, you can call your next
20 witness.

21 MR. ARIAIL: That is our case, Your Honor.

22 THE COURT: All right. The applicant rests.

23 All right. Mr. Smith?

24 MR. SMITH: All right. Your Honor, the State would
25 call Mr. Dick Warder.

1 THE COURT: All right. Let him get back seated.

2 THE CLERK: Mr. Warder, please place your left hand
3 on the Bible and raise your right hand.

4 WHEREUPON,

5 RICHARD HAROLD WARDER

6 After having been duly sworn, testified as follows:

7 THE CLERK: Thank you. You may be seated.

8 Please state your full name for the record.

9 THE WITNESS: Richard Harold Warder.

10 DIRECT EXAMINATION

11 BY MR. SMITH:

12 Q Okay. Mr. Warder, tell me where you practice law.

13 A You said how long?

14 Q Well, where and how long?

15 A I've been -- I practice here in Greenville. I've
16 practiced for 45 years here.

17 Q Okay. How much of that time has been spent in the
18 practice of criminal law?

19 A In the last probably 15 or 20 years, 100 percent.

20 Q Okay. How did you come to represent Mr. Hill?

21 A I don't recall who contacted me. I think it might
22 have been his family, though, but it might have been
23 Booker. I don't remember the initial hiring.

24 Q Okay. Do you remember how far along in this case he
25 was when you were hired?

1 A I started at the very beginning, I think.

2 Q Okay. Do you remember how many times you met with
3 him before the plea hearing in July of 2018?

4 A I would think that we probably met ten or 15 times,
5 though he didn't always -- he came to the office. He
6 didn't always. We -- I have an investigator that he works
7 with, and I usually assign him to come in and talk to the
8 investigator, too. They went over the tapes I know at
9 that time. Discovery, usually both of us go over it.

10 Q Okay. And you said ten or 15 times. Were those ten
11 or 15 times meetings with you or do some of those include
12 meetings with your investigator?

13 A They would include meeting with my investigators or
14 all together.

15 Q Do you remember how many times he met with you
16 personally?

17 A No. We met several times. Booker was -- was a great
18 guy. I mean, I like Booker. He was in -- he comes from a
19 good family. When he says his sentence is too long, it
20 is, because, you know, the predicament we were in, he
21 could be convicted, and ten years was as good as it gets
22 on armed robbery.

23 Q Okay. Now, when your investigator met with Mr. Hill,
24 how do you know what they talked about?

25 A Well, I work with my staff, too. I mean, they're not

1 independent.

2 Q Okay.

3 A And so when we had concerns, why, Wayne and I would
4 talk about it.

5 Q Okay. What is your investigator's name?

6 A Wayne Christy.

7 Q Okay. Whenever Mr. Christy met with Mr. Hill, did
8 you discuss the case before the meetings?

9 A Yes. Usually we'd know why it was, you know, what we
10 want. We'd have an objective, usually.

11 Q Okay. Did you discuss their conversations after
12 their meetings?

13 A Yes.

14 Q Okay.

15 A But I went over it with Mr. Hill. We talked about
16 the risk of trial, what -- where our case was good, where
17 our case was bad.

18 Q Right.

19 A You know, I don't mean -- and just to sum it, what we
20 had was that Booker had picked up two friends -- I take
21 that -- Booker picked up two gentlemen in a neighborhood
22 that he didn't know well, but he -- he knew they all went
23 to a liquor store. They all went in, Booker, at some
24 point took a bottle of Hennessy scotch, put it in the
25 front of his pants. The owner and Booker had quite a

1 conversation. They talked a lot. They joked some. And
2 the owner -- Booker said he didn't know what he was going
3 to do on Christmas, and the owner talked about having him
4 come to the store and eat turkey with him. Then Booker
5 went and got the bottle of scotch. And when he started
6 out the door, the owner and his wife hollered something
7 about they were going to call the police, and stop. And
8 Booker took off running. The owner of the store come out
9 after him, and he got stabbed in the neck.

10 And -- you know, and we talked how those facts, how I
11 thought that those facts were bad because it made the
12 store owner sound like a good guy, you know, and like
13 Booker was bad. And neither one -- I don't know the
14 owner, but I know Booker wasn't -- you know, I think maybe
15 some alcohol embedded in that.

16 And Booker had always maintained to me that he
17 stabbed the guy with his keys. He said he had a big ring
18 of keys and he stabbed him. And when we talked to the
19 doctor, the doctor diagnoses it as a knife wound both
20 pretrial and posttrial, said it was cutting the skin. It
21 had come terribly close to an artery and it nicked it and
22 they had to make a bigger incision to repair this artery.
23 And outside of that, there was no real injury to the
24 owner.

25 I don't know. You know, they wouldn't have come off

1 the charges, and so I had to plead to the charges. I just
2 couldn't get no better deal than ten. And I thought at a
3 trial, the case had angles that would be disastrous, and
4 so I recommended he plead guilty.

5 Q Okay.

6 A Recommended to his family, too.

7 Q Well, in response to your discovery, what things did
8 the State give to you?

9 A Gave to me witness statements from inside the store,
10 gave me video inside the store. I think there might have
11 been one witness that saw outside the store.

12 Q Okay.

13 A We went over all of that.

14 Q Is there any discovery that you got from the State
15 that you did not go over with Mr. Hill?

16 A No. And I think all of the discovery he knew about.
17 I mean, he'd been over it both with me and my
18 investigator.

19 Q Okay. Do you remember what the store video showed,
20 the surveillance footage?

21 A Yeah. The surveillance footage was a camera that
22 appeared to be high ceiling mounted, and it showed -- it
23 was designed so it would show the -- down the liquor
24 aisles. And Booker and the two gentlemen he was with went
25 around, and when Booker went by where the Hennessy scotch

1 was, you can see his back, and you don't see him but you
2 see looking consistent with poking it down the front of
3 his pants.

4 When he comes up the aisle, then that's when the
5 owner of the store starts saying, "Stop. I'm going to
6 call the police." And Booker runs to the door, and the
7 owner runs out after him. So that was kind of the
8 footage.

9 The danger to that, Booker was -- always said he
10 didn't take the scotch, and I thought that the video would
11 convince the jury that he did. And I just thought at
12 trial, it put us in an awkward place.

13 Q Is there anything that you remember being in those
14 videos that would have helped Mr. Hill at trial on the
15 armed robbery charge?

16 A No.

17 Q In other words, was there anything exculpatory?

18 A They didn't show the armed robbery. It was my belief
19 that the crime of armed robbery continues until the escape
20 is made. In other words, if you run out a door and then
21 you have to pull a gun or something to get away, it's
22 still an armed robbery, I think. I think you can turn a
23 shoplifting into an armed robbery.

24 Q Okay. The witness statements, what was significant
25 in the witness statements that you got from the State?

1 A Well, they -- because there wasn't a lot of bad
2 activity inside, there's not, they described Booker as
3 being a black man with a beard, thin. Part of them didn't
4 go outside, part of them described them run out, and
5 shortly thereafter the owner come back and bleeding from
6 the neck, things like that.

7 Q Do you believe at the time that there was anything
8 exculpatory in those witness statements?

9 A I can't remember whether there was some. There were
10 probably some things that we could have used in
11 cross-examination and stuff to talk about how polite he
12 was, how good mannered he was.

13 Q Okay. But there were also aspects the State would
14 have used in its case.

15 A There were witnesses that would have put us there and
16 put us there within minutes of the owner coming back in.

17 Q Okay. Did the State ever recover a weapon in this
18 case?

19 A Never recovered.

20 Q Okay.

21 A Assuming the weapon went with the perpetrator.

22 Q Okay. Would you have expected in that case to have
23 gotten a weapon from the State pursuant to your ---

24 A No. It had to be recovered.

25 Q Okay. Did Mr. Hill ask you to produce a weapon?

1 A Yes. He thought that was a winning flaw in the
2 State's case.

3 Q And what did you tell him about that?

4 A That, you know, they had to prove the act, but they
5 didn't have to have the -- the weapon, you know, to do
6 that. They could -- you know, the testimony of the owner
7 that he saw a flash with something in his hand and he was
8 instantly stabbed would prove the . . .

9 Q Okay. And I believe you said earlier that Mr. Hill
10 told you that he used his car keys.

11 A Said he was getting his car keys out to make a
12 getaway, and that he hit him with the car keys.

13 Q Okay. And if that was his explanation to you of what
14 happened, would you have expected a weapon to be recovered
15 from the scene?

16 A Not with that, but the doctor would say it wasn't a
17 tearing wound. It was a cutting like a knife. It was a
18 clean . . .

19 Q Okay. Did Mr. Booker ask you to take his case to
20 trial?

21 A Yes.

22 Q Do you remember how many times?

23 A No. But he would have liked to, and we talked often
24 about the risk involved. And if Booker said I recommended
25 that he take the plea deal for the ten, it was one of

1 those -- in the morning when we come to court, there's a
2 pretrial about it, and the Court inquires how far we are
3 apart. And at one of those, he indicated I thought that
4 he would probably go along with the State's
5 recommendation, and I told Booker that it was a gamble and
6 I would advise him not to take the gamble. And that's
7 what he did. And I see my duty to him as to give him my
8 best advice, to always be honest with my clients, and
9 that's what I was with Booker.

10 Q Okay. Now, you did say that he was asking for a
11 trial. In the timeline of when your representation begins
12 and the day of the plea hearing, were those requests for
13 trial aggregated mostly in the early part of the
14 representation or closer to the plea hearing?

15 A He still was ambiguous, you know, the day we went
16 down there. It was when I was going to trial and wasn't
17 sure I was going to trial. I mean, we had talked about
18 all the risks before. And Booker would decide maybe he
19 should plead guilty and then he might a day or two later
20 say he wanted to go -- didn't want to do that. We were
21 down there on the trial docket, you know, so we had
22 obviously told the Court, we told the Solicitor's Office
23 it was a trial and we pled off the trial docket. So, I
24 mean, Booker had told me and I was ready to go to trial.

25 Q Did you believe that it was in his best interest to

1 take the deal, to plead?

2 A I believe his best interest was to take the sentence
3 he did, the ten years. It was, I think, more than
4 Booker's personally demanded, or certainly he didn't
5 intend that day to go out, I think -- I don't -- I think
6 -- I don't -- I mean, his day's activities wasn't to go
7 down and steal scotch and commit a crime, but it just
8 ended up on him.

9 Q Did you discuss the case with Mr. Hill's wife?

10 A Yes.

11 Q Okay. Did you tell her that you believed that it was
12 in his best interest to plead?

13 A I did.

14 Q Okay. To the best of your knowledge, did she relay
15 that information to Mr. Hill?

16 A I know she did.

17 Q Okay. But that was relaying information that you had
18 already shared with him.

19 A Yes.

20 Q Okay. Did you do anything to threaten him with more
21 time if he didn't plead guilty?

22 A No, no. I gave him advice. I told him the risk, I
23 told him what -- both possible outcomes: one you go home
24 today and one you cap it off at ten.

25 Q Did he ever tell you that he was afraid of what you

1 would do if you didn't follow his advice?

2 A That he was what?

3 Q Afraid of you.

4 A No.

5 Q Okay. Did anything -- did he tell you anything that
6 would indicate to you that he was scared to do something
7 against your advice?

8 A No, no. We talked and -- clearly and cogently, and
9 obviously he knew what was going, he understood me, he
10 understood the risk, and he just was, "What should I do?"

11 Q Right. Well, at the plea hearing -- well, let me
12 back up a little bit. Did you ever go over the potential
13 sentences with him ahead of time?

14 A Oh, yes.

15 Q Okay.

16 A Yes. I told him -- you know, we were getting what I
17 considered was the best we could get because the statute
18 of armed robbery requires the ten years.

19 Q Okay. And the day of the plea hearing when Judge
20 Miller is questioning Mr. Hill, was he giving him any sort
21 of physical cues that he was unhappy with his decision?

22 A No, no. He was happy that day. The great
23 unhappiness set in when he got to the -- having to do it.

24 Q Did you get the impression that he was trying to give
25 verbal cues to the judge that he was being coerced?

1 A No, no, no. The judge was -- demeanor that he was --
2 it was Judge Miller, and he's always attentive and pays
3 attention.

4 Q Okay.

5 A There was no . . .

6 Q If during that hearing Mr. Miller [sic] had told you
7 he changed his mind, he wanted to go to trial ---

8 A I would have told His Honor.

9 Q Can you explain to us what's going on with the second
10 attempted murder charge that Mr. Hill had at that time?

11 A Those were relatively new cases that was going on.
12 The solicitor, because this case -- these cases were on
13 the trial docket, couldn't do further negotiations for
14 some reason, and it's a policy. But he assured us that
15 those would be dismissed, and they were.

16 Q Okay. Was that being dismissed as part of this
17 agreement?

18 A Yeah. It was part of the agreement. We knew it when
19 we -- you know, they had offered that, and I passed that
20 on to Booker.

21 Q Okay. Did you consider yourself to be representing
22 Mr. Hill on that other case?

23 A Yeah. I felt -- yeah. It happened during my
24 representation.

25 Q Okay.

1 A It was, you know, one morning there were one and then
2 there were two, and I was -- hadn't done any work to speak
3 on it because we were doing one, the old one first. And,
4 of course, we kind of determined what we did, a conviction
5 in the first we would have then tried, but this wiped it
6 out.

7 Q Do you remember any comments by the solicitor at the
8 plea hearing about that other case?

9 A No. We talked before, and, in fact, I even think
10 that part of the talks that Booker was there when the
11 solicitor was saying. But yeah. I don't think it was in
12 the hearing with Judge Miller that we talked about it, but
13 we did talk about it that day.

14 Q Okay. When you were discussing that, would Judge
15 Miller have heard that conversation? Is that something he
16 would have heard?

17 A Judge Miller?

18 Q Right.

19 A I don't know whether Judge Miller knew that the other
20 charges were being dismissed or not, depending on it.

21 Q Okay. Have you ever heard the name -- has Mr. Hill
22 ever told you the name Anthony Booth?

23 A I don't know. I know we went out and looked on some
24 road, and Wayne went to an address that we thought was
25 there, and no one was there. They didn't know that. And

1 I think we -- another individual we made some contact, but
2 he didn't seem to be helpful in any way.

3 Q Okay. Do you remember the name of the other person?

4 A I don't. I might have some subpoenas in part of my
5 files somewhere, but I don't.

6 Q And do you mind seeing if you have that with you?

7 A It's back here at the back of the ---

8 Q In that?

9 A Yeah.

10 (Pause in proceedings.)

11 BY MR. SMITH:

12 Q Mr. Warder, while you're looking at that, I might ask
13 you one or two more questions.

14 A Sure.

15 Q Did Mr. Hill give you the name of people he alleged
16 were witnesses?

17 A I don't think he gave me any witnesses' names.

18 Q He mentioned earlier a Raheem. Do you remember
19 discussing someone named Raheem?

20 A I don't remember. It's been a while since we . . .

21 Q All right.

22 A We had prepared a subpoena for Dulma McBrown
23 [phonetic] of 1 -- 16 Willie Mae Drive to be at the trial.

24 Q All right. What do you remember about what that
25 person would have supposedly -- who was that person?

1 A I'm not sure, to be honest. I still have the
2 subpoena so I think it was one we probably couldn't serve.
3 I have ---

4 Q You said that you and your investigator were driving
5 to try to find someone. Do you remember who you were
6 looking for?

7 A I -- an Anthony Booth, and we served a subpoena on
8 that one on the 31st of May.

9 Q Was that the date of service?

10 A Yes.

11 Q Whose decision was it to plead guilty instead of
12 going to trial?

13 A It's Booker's. He made the decision. I tried to
14 paint the options, but he made the decision.

15 Q Okay. And you subpoenaed Mr. Booth, you said?

16 A Yes.

17 Q If Mr. Hill had decided to go to trial, would you
18 have attempted to enforce this subpoena?

19 A Sure.

20 Q Okay. Are there any other witnesses that you can
21 remember that you would have called at trial?

22 A No. Not at this time.

23 Q Okay. I think maybe I just have one more question.
24 And I apologize. Maybe I should have asked this earlier.
25 But when you were discussing the case with Mr. Hill, did

1 you go over the elements of the offenses?

2 A Yes. We -- that was where we were looking at what
3 the State would have to prove and if they could do it.

4 Q Okay.

5 A You know, we always look to see if we could not have
6 to put up any evidence and have the State fail to meet its
7 burden of proof.

8 MR. SMITH: Okay. Thank you.

9 Your Honor, I have no further questions.

10 THE COURT: All right.

11 MR. ARIAIL: May it please the Court.

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION

14 BY MR. ARIAIL:

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

16 A Good.

17 Q Good. I want to start off, just go back a little bit
18 in regard to your representation with him. You indicated
19 that I think he came in your office ten to 15 times. You
20 met with him two to three times is what you remember? Is
21 that ---

22 A No. I think I would have met with him more than
23 that.

24 Q Okay. Is there any time during your conversations
25 with him that you felt like he didn't understand what was

1 going on?

2 A No. You know, sometimes when he -- he would want to
3 argue with me over things, but we always understood. We
4 just come from different positions, and the law was not
5 what he needed it to be to get where he wanted to go.

6 Q Okay. And, I guess, I mean, his position from the
7 beginning was he was innocent, correct?

8 A His position was -- from his initial statement to the
9 police to all the time I represented him, his position was
10 he was there, that he took off running and that the owner
11 come out after him, and he says that he hit him with his
12 keys. And I think that was -- he told the police he was
13 there, I think, and that he didn't -- he didn't have
14 contact with the owner, I think. But ---

15 Q Okay. So under his -- I'm trying, because he's got
16 attempted murder and possession of a weapon during the
17 commission of a violent crime and an armed robbery. And
18 I'm going back, and the way he tells it to me is that
19 cameras don't show anything, and you think they show him
20 putting something in his ---

21 A Yeah. I think that -- I think that would be a good
22 analysis.

23 Q Okay. They don't show anything about he's armed or
24 has anything during the ---

25 A No, no. I think that either him and the owner, both

1 the owner said he went in his pocket just before they turn
2 around and the blows -- the knife -- or the stabbing
3 occurred.

4 Q Okay. So it appears that that's after the fact when
5 they're outside and the owner says that he's either taken
6 something out of his pocket and stabbed him with something
7 at that point?

8 A Yes, sir.

9 Q So that's the -- I guess based on that, that was what
10 you believed was enough to be able to get a conviction for
11 armed robbery?

12 A I didn't know. I thought it had great risk to it.

13 Q Okay. And, I mean, I guess, in your opinion, you've
14 done enough. I mean, you've been practicing for long
15 enough. Did you discuss with him that here are the
16 elements ---

17 A Yeah.

18 Q --- this is where I think it falls within that, and
19 these are the risks that you take?

20 A Yeah. He would have liked the crime to have ended at
21 the time he ran out the door.

22 Q Right.

23 A And I thought that under the law, the crime would
24 continue until the escape, until the ---

25 Q Okay. It's a little backwards in most of these that

1 we have, you know, where we have a weapon that's involved
2 in it and you're stealing the liquor and you're doing that
3 here.

4 A Yeah, yeah.

5 Q The weapon comes out apparently after the fact.
6 While they're outside well in the struggle, there's no
7 video of that from my understanding, and it's the word of
8 the store owner versus my client; is that true?

9 A That's true. That's exactly true.

10 Q Were there any -- and based on that, and I know you
11 looked at it, were there any legal arguments that you
12 thought you could make which potentially could have, you
13 know, I guess, dismissed or reached a dismissal in regards
14 to that armed robbery charge that -- I mean, that's one of
15 the big charges he had that he was looking at. Was there
16 anything you thought you could do with that?

17 A I don't think I could have been successful.

18 Q Did you file any motions or discuss with him, hey, we
19 can do a motion to dismiss to see if we could be
20 successful with this? Did you go over that with him?

21 A No. Because the motion to dismiss, if you just file
22 a motion to dismiss, then, you know, you'd have to put on
23 all the testimony, you know. I mean, I would think
24 whether a motion to dismiss, if you -- you would make a
25 motion for a directed verdict at the end of the State's

1 case, but you -- I don't see how you can make a pretrial
2 motion to dismiss that would be effective.

3 Q And I understand that, but did you discuss with him,
4 hey, these are the routes we can take?

5 A Yeah.

6 Q I mean, I can try to get this -- because if you get
7 that dismissed before trial or there's not enough evidence
8 there, judge says, "I don't see any armed robbery taking
9 place," then that starts to crumble their case a little
10 bit; would you agree with that?

11 A Yeah. If you could have got a pretrial ruling that
12 the State didn't have a case, that would certainly make a
13 wonderful difference.

14 Q Okay. Did he ask you or did y'all discuss let me try
15 to do this, let me see what I can do, because if we get
16 that ruling, I don't know if ---

17 A No. I didn't think -- I didn't -- I didn't think
18 that any -- I didn't think that motion had any chance
19 without the testimony actually coming in.

20 Q Okay.

21 A I mean, I didn't know that I could put on -- get the
22 officers to come and reconstruct it all before.

23 Q Okay. I mean, because if that's thrown out, I mean,
24 that's the lynchpin of their case somewhat is that he was
25 armed with something, there was a fight that took out --

1 outside or some struggle where he was cut. So if that's
2 out, did you think that that would have been beneficial
3 for him if he'd have gotten that ---

4 A Oh, obviously, I think if some judge would rule
5 anything out it would be beneficial.

6 Q Was there anything outside -- I mean, I know there
7 was this video or he was looking for a security store
8 video that was outside. Did you have any other videos
9 that you ---

10 A No. The in-store video was the only video.

11 Q Okay. And there were two people that were with him,
12 apparently?

13 A Yeah. He brought two people to the store with him.

14 Q And just from my understanding, were those the two
15 people he was saying here are the ones that were with me?

16 A I don't think so.

17 Q Okay. You think those are different than the
18 witnesses he gave you. This Raheem and this Anthony
19 Booth, were those two ---

20 A I think at one time he was trying to say he wasn't
21 there.

22 Q Okay. So there's some issue of whether or not he was
23 there, and then there's another that it didn't happen the
24 way it happened. Do you remember having a discussion with
25 him?

1 A I remember we talked about everything.

2 Q Okay. In this -- and I know you negotiated with him
3 in regards to it, they weren't willing to do any type of
4 reduction on these charges.

5 A No.

6 Q I'm still trying to kind of understand. You think
7 the armed robbery charge, I mean, the elements of the
8 armed robbery clearly were -- you were thinking there was
9 enough there based upon the taking of the liquor and the
10 struggle outside, that that would have satisfied the
11 elements of that.

12 A Yeah. I think the stabbing the owner outside would
13 satisfy.

14 Q Okay. And the attempted murder was based upon ---

15 A Same facts.

16 Q --- taking some object out or something that caused
17 injury to the store owner.

18 A Yeah.

19 Q Okay. And then the possession of the weapon during a
20 violent crime, you believed his theory was that it was
21 some keys.

22 A He said that.

23 Q And you thought that was satisfactory for a -- I
24 guess a weapon under that violent -- commission ---

25 A No. I didn't think I could prevail on convincing

1 those keys based on the doctor's testimony.

2 Q Okay. You thought it was more of a sharp -- it was a
3 knife or a ---

4 A Doctor said it was.

5 Q What was that?

6 A The doctor said it was.

7 Q Said it was a sharp edge and it wouldn't have been a
8 key is what the doctor said?

9 A Yeah. He didn't think it could possibly try to ---

10 Q Okay. I mean, he -- and I guess throughout this,
11 what I'm just kind of confused, he's saying, "I don't want
12 to plead guilty. I'm against this," and all of a sudden
13 he gets to the guilty plea and he changes his mind. Do
14 you remember what changed his mind?

15 A No. It wasn't -- it wasn't that he wouldn't. He
16 considered it, we'd talk about it and he'd say, "That's
17 what I'm going to do," and then the next time he'd say, "I
18 don't want to," and we'd talk about it some more.

19 Q Okay.

20 A I mean, this was ---

21 Q You've heard him today. He said he was dead-set
22 against it. So you're saying that's not what happened
23 during this, I guess?

24 A I don't remember him, yeah, as ever saying
25 "dead-set."

1 Q And you were pleading this off the trial docket, too;
2 is that correct?

3 A Yes, yes.

4 Q Okay. Now, during the plea, I think he said he was
5 giving you some physical cues or there was some things.
6 You don't remember anything about that?

7 A No.

8 Q You indicated that you were working with him on the
9 second attempted murder charge, but he had retained Chris
10 Grubbs on that, correct?

11 A I don't know.

12 Q Okay. And you don't know -- were you handling that
13 or were you just dealing -- what do you remember about
14 that?

15 A It'd just come up in the negotiations that they would
16 dismiss it at that time.

17 Q Okay. So they would dismiss it if he pled to the --
18 this attempted murder charge. Okay.

19 And that didn't come up. From your understanding, it
20 didn't look like it was in the plea transcript. You don't
21 remember anything being said about ---

22 A No, I wasn't. The solicitor's position was they
23 couldn't negotiate on that once it was on the trial
24 docket.

25 Q Okay.

1 A But they told us that they would, and they did.

2 Q Okay. And you could -- I'm trying to understand.

3 Anthony Booth, you either had a subpoena served on him --
4 you indicated there was somebody that had been served with
5 a subpoena.

6 A Yes.

7 Q Okay. If you had gone to trial, I guess you would
8 have tried to enforce that subpoena at some point in time;
9 is that correct?

10 A Yeah. If he -- if he didn't respond, we would have
11 -- you know.

12 Q Right. You would have done something to try to get
13 him there and get his testimony.

14 A Yeah.

15 Q Bear with me one second.

16 I know one thing I asked, did he ever ask you to
17 appeal after he got the ten-year sentence? Do you
18 remember anything about that?

19 A No.

20 Q Okay. Did you think there were any grounds to appeal
21 if he had asked you to appeal it?

22 A No. I think the guilty plea . . .

23 Q Okay.

24 MR. SMITH: Your Honor, I'm going to move to strike
25 that last question and answer as irrelevant because I

1 don't believe there was any testimony from the applicant
2 about failure to appeal.

3 THE COURT: Objection overruled.

4 MR. ARIAIL: If you'll bear with me one second.

5 THE COURT: All right.

6 MR. ARIAIL: Your Honor, I'm going to ask him a
7 couple questions.

8 Your Honor, I have no further questions.

9 THE COURT: All right. Redirect?

10 REDIRECT EXAMINATION

11 BY MR. SMITH:

12 Q Mr. Warder, did Mr. Hill give you any evidence or
13 witnesses that you did not attempt to follow up on?

14 A No. I'm comfortable we followed up on everything we
15 could find.

16 Q Okay. And you mentioned before that the two of you
17 did discuss whether it would be better for him to go to
18 trial or to plead guilty. Did he ever beg you to take his
19 case to trial?

20 A No. He made what he thought was the best decision
21 and what I thought was the best decision.

22 Q Okay. If he had begged you to take his case to
23 trial, what would you have done?

24 A I would have done any -- either thing for him. I
25 mean, I was certainly willing to try.

1 Q And it was, in fact, on the trial docket?

2 A Yes.

3 MR. SMITH: Okay. Thank you. Thank you, Mr. Warder.

4 No further questions.

5 THE COURT: All right. Thank you, sir. You can step
6 down.

7 The State can call its next witness.

8 MR. SMITH: Your Honor, that's the State's case.

9 THE COURT: The State rests. All right. Let's hear
10 brief argument.

11 MR. ARIAIL: Your Honor, I'll be glad to address the
12 Court in regards to that.

13 THE COURT: Yes, sir.

14 MR. ARIAIL: Our grounds, one of the things that I
15 kind of caught onto, what I talked to my client in regards
16 to is I think there are certain things that potentially
17 Mr. Warder could have done in regards to that armed
18 robbery charge and some of the evidence that could have
19 been disputed in that. My concern is and based upon what
20 he's telling me is he believes that there's no evidence of
21 a struggle or anything inside of the use of a weapon.

22 Before that there is an argument, that once he got outside
23 with it, there was a scuffle or something which resulted
24 in him either hurting or cutting the individual out there.
25 My concern is, and based upon not having -- you know, I've

1 talked with him in regards to the evidence. I don't think
2 there would have been sufficient information or sufficient
3 facts to be able to prove an armed robbery in this case
4 based upon what I've heard, and I think out of an
5 abundance of caution, a motion to dismiss or something
6 could have been made potentially at trial to exclude that
7 or have some directed verdict, which ---

8 THE COURT: How would that affect the attempted
9 murder, however, which carries up to 30 for which he got
10 ten?

11 MR. ARIAIL: The question with that, Your Honor, and
12 I think then we would have to go to -- and I -- I mean,
13 his testimony is I didn't do it. There was either a cut
14 out there or something that happened. The question that I
15 would have would be the weapon that was used, and I know
16 there was evidence that he says it was a straight cut
17 versus what he said it was his keys, there would be some
18 argument as to whether or not that would be weapons. I
19 know, Your Honor, it potentially could be interpreted that
20 keys could be a weapon. I just think that, based upon
21 what I'm hearing, there is a legal argument that could
22 have been made potentially to help him in that case.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 Yes, sir, State?

1 MR. SMITH: Yes, Your Honor. I mean, to me this is a
2 -- it's not that it's simple, but, I mean, Mr. Hill did
3 plead guilty and he did admit that he had committed the
4 offenses here.

5 So just as to his specific allegations, I think
6 Mr. Warder has presented testimony that he did try to
7 follow up on these potential witnesses and that those were
8 unsuccessful. And in one case, he actually did subpoena
9 one of the two witnesses and testified that he'd have had
10 him at trial if Mr. Hill had decided to go forward to
11 trial.

12 He testified that there were no leads from Mr. Hill
13 that he did not follow up on, so it sounds like he did his
14 due diligence to me and would have had the case at trial.

15 He contradicted Mr. Hill's testimony about their
16 discussions going over evidence. He said he went over
17 witnesses with him and went over the store footage.

18 As to, you know, the witnesses or what the security
19 camera footage showed, you know, there could have been
20 parts of the witness statements that may have helped the
21 State a little bit, there were parts that may have helped
22 Mr. Hill some, but it sounds like they took all of that
23 into consideration in their discussions and that Mr. Hill
24 decided that it was still in his best interest to plead
25 guilty. I mean, and I'll also point out that those

1 witnesses weren't here to testify today. I mean, this
2 might have been a different story if we'd have had these
3 two people here saying, yeah, he wasn't at the store even
4 that day. He was with me somewhere else or, no, he didn't
5 attack the store owner. So, you know, I'm not sure how we
6 can prevail on that because he hasn't shown that they
7 would have helped him at trial.

8 As far as the incident of, you know, where's the
9 weapon, I mean, Mr. Hill's own story to Mr. Warder about
10 what happened involved keys. And if that's the case, you
11 wouldn't expect the police to find a weapon because it
12 sounds like they made the getaway in the car. So, you
13 know, to me that doesn't sound like an issue really
14 either. So I'm not sure how he could have produced a
15 weapon if he used keys and then took it with him.

16 You know, as far as the failure to object, doesn't
17 sound like there was anything to object to at the plea
18 hearing. I don't see anything on the record about this
19 other attempted murder case. Maybe that was sort of the
20 prehearing discussion between the solicitor and
21 Mr. Warder.

22 Ultimately, Your Honor, he told the judge, yes,
23 that's what happened, and I want to plead guilty knowing
24 that I could go to trial and call witnesses and all that.
25 He pled guilty anyway.

1 As far as the visual cues, to me that sounds like
2 something the judge would have picked up on if they were
3 that obvious, and besides that, Mr. Warder has
4 contradicted that testimony anyways.

5 So I believe there's evidence both in the transcript
6 and here today that his decision to plead guilty was
7 voluntary, intelligent, and, you know, he was making the
8 best decision for himself at the time. Maybe he got a
9 greater sentence than he thought could come about, but it
10 doesn't sound like there were any promises made about what
11 the sentence would be. And, you know, hindsight is 20/20.

12 So, Your Honor, you know, we ask you to dismiss his
13 application.

14 THE COURT: All right. Thank you.

15 Anything else you wish to tell me, Mr. Ariail?

16 MR. ARIAIL: No, Your Honor.

17 THE COURT: All right. Thank you. Gentlemen, I'm
18 going to take this matter under advisement. What that
19 means, Mr. Hill, is, you know, I have this packet of
20 information I have to read through again and consider with
21 all the notes I've taken down. And I'll communicate to
22 the attorneys what my decision is going to be. I don't
23 like to sit on these things too long, and I know you want
24 my decision, okay? So I will have a decision for you by
25 the end of the week.

1 All right. You have a good day. Thank you very
2 much. That concludes this hearing.

3 (WHEREUPON, proceedings concluded at 2:42 p.m.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)4 COUNTY OF GREENVILLE)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenville County, South Carolina, on the
14 3rd day of June, 2019.

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

17
18 October 10, 2019
19
20

21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Booker T. Hill, #131643,

Case No.: 2018-CP-23-5860

Applicant,

ORDER OF DISMISSAL
RECEIVED

v.

State of South Carolina,

AUG 16 2019

Respondent.

S.C. SUPREME COURT

FILED CLERK OF COURT
PAUL B. WICK
GREENVILLE
2019 JUL 29 PM 3:36

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on November 19, 2018, by Booker T. Hill (Applicant). The State (Respondent) filed a Return and Motion for More Definite Statement on May 8, 2019. An evidentiary hearing into the matter was convened before the Honorable Brian M. Gibbons on June 3, 2019, at the Greenville County Courthouse. Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf, and Richard H. Warder, Esquire, (Counsel) testified on behalf of Respondent. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of the Greenville County Clerk of Court. During its November of 2017 term, the Greenville County Grand Jury indicted Applicant for attempted murder (2017-GS-23-01832) and possession of a weapon during the commission of a violent crime (2017-GS-23-01832). During its May of 2018 term, the Greenville County Grand Jury indicted Applicant for armed

robbery (2017-GS-23-001778A). Applicant was represented by Counsel in the cases, and Assistant Solicitor Hunter C. Blouin of the Thirteenth Circuit Solicitor's Office prosecuted the case. On July 17, 2018, Applicant appeared before the Honorable Edward W. Miller and pleaded guilty to all three charges as indicted without any sentencing recommendation from the State. Judge Miller sentenced Applicant to ten years for attempted murder, ten years for armed robbery, and five years for possession of a weapon during the commission of a violent crime, with credit for time served, and with all sentences running concurrently. Applicant did not appeal his guilty pleas of sentences.

CURRENT PROCEEDING

Respondent requested at the start of the hearing that Applicant specify for the record the grounds upon which Applicant would move forward at the hearing. Applicant specified that he was moving forward only upon the allegations presented in the Application for Post-Conviction Relief, which are:

1. Ineffective Assistance of Counsel:

- a. Counsel unreasonably failed to take the case to trial as he was hired and directed to do.
- b. Counsel failed to contact and prepare for trial two witnesses.
- c. Applicant told Counsel to check the store's security video.
- d. Counsel enlisted Applicant's wife to convince Applicant to plead guilty to the charges despite Applicant's desire to go to trial.
- e. Applicant told counsel on more than one occasion that he wanted a trial by jury since he was not guilty.
- f. Counsel did not check on the status of the second attempted murder charge, or contact the witnesses, or do much of anything for the money he was paid.
- g. Counsel failed to object to solicitor's statement that Applicant had committed a second murder.
- h. Counsel failed to take any reasonable action to intercede on Applicant's behalf when solicitor referred to second attempted murder charge.
- i. Counsel did not inform Applicant of potential sentences.
- j. Counsel did not explain the elements of the offenses charged.

2. Involuntarily Guilty Plea

- a. Applicant did not enter his guilty pleas knowingly, intelligently, and voluntarily, and would have insisted on trial but for counsel's errors.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). The “prejudice prong ordinarily requires more than simply a defendant’s assertion that but for counsel’s deficient performance he would not have pled but would have gone to trial.” Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified



acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” Id. at 690.

“A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 74 (1977)). “Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea.” Garren v. State, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); see Jamison v. State, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”).

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. The allegations are addressed fully below:

Counsel did not inform Applicant of potential sentences. Counsel did not explain the elements of the offenses charged.

The basis of these allegations is that Applicant was alleging that Counsel did not tell him the potential sentences that he could face for the charges of armed robbery, attempted murder, and possession of a weapon during the commission of a violent crime, and that Counsel did not explain to him the elements of those three crimes.

Applicant testified that Counsel did not inform him of the potential sentences that he could be facing or the elements of the offenses charged. He testified that he met Counsel on five to ten occasions during the course of Counsel’s representation of him.



Counsel testified that he has been practicing law for forty-five years, and that his practice has been devoted exclusively to criminal law in the past fifteen to twenty years. He testified that he had participated in ten to fifteen meetings in preparation for Applicant's defense, which would have included Counsel's meetings with his investigator and his meetings with Applicant. He testified that he explained the elements of the offenses, defenses available to Applicant, and sentences to which Applicant was exposed in his case. He testified that Applicant always understood his legal advice and explanations, but that Applicant argued with him during the representation because Applicant did not agree with the law and Counsel's explanation thereof.

This Court finds that Counsel did review with Applicant the nature of the charges and the elements thereof, potential defenses that were available to Applicant, and potential sentences to which Applicant would have been exposed. At the plea hearing, Applicant affirmed to Judge Miller that he understood when Judge Miller read the indictments and potential sentences to him. Plea Tr. 5-6. Applicant has failed to meet his burden in establishing the constitutional ineffectiveness of counsel as to these allegations since he has not shown any deficiency or resulting prejudice in Counsel's performance. As such, these allegations are denied and dismissed with prejudice.

Counsel failed to contact and prepare for trial two witnesses. Applicant told Counsel to check the store's security video.

The basis of these allegations is that Applicant was alleging that he told Counsel about two potential witnesses that he wanted to call at trial and that Counsel did not contact them or call them as witnesses at trial, and that Counsel did not acquire a copy of security camera footage of the store so as to use it to defend Applicant at trial.

Applicant testified that he presented the names of two eyewitnesses to Counsel: Anthony Booth and one other person named Raheem. Applicant could not provide or remember the last name of Raheem at the time of the evidentiary hearing. He testified that Counsel told him that he



had been unable to establish contact with the two witnesses. He testified that he believed that the testimony of the two witnesses would have been beneficial to his defense if they had been called at his trial.

Applicant testified that Counsel started working on his case immediately after he hired him, but that Counsel did not explain to him the evidence gathered through discovery. He testified that he wanted Counsel to get the surveillance camera footage from the store and then show it to Applicant.

Counsel testified that Applicant did share with him the name of supposed witnesses that he suggested could be called to testify on his behalf at trial, but Counsel also testified that he believed that the two witnesses named by Applicant at the evidentiary hearing were not the same witnesses suggested to him by Applicant during the course of his representation of Applicant. Counsel testified that he attempted to contact the potential witnesses suggested to him by Applicant, did not have success in locating them, and that he would have had any witness that he had discovered testify at Applicant's trial if the testimony would have been beneficial to Applicant's defense. Counsel testified that, in accordance with his investigation of the case and his preparation of the case for trial, he had either issued a subpoena and had it served on one of the two alleged witnesses mentioned by Applicant at the evidentiary hearing, or else that he had attempted to have it served without success.

"Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." Tollett v. Henderson, 411 U.S. 258, 267-68 (1973). "Although counsel should conduct a reasonable investigation into potential defenses, Strickland does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably



help their client.” Tucker, 350 F.3d at 442 (quoting Green v. French, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Strickland, 466 U.S. at 691; Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

Counsel testified that he reviewed all discovery with Applicant, including the store’s surveillance footage. He testified that the surveillance footage only showed the inside of the store, and not the outside; therefore, the camera only captured the portion of events that occurred inside the store. He testified that the struggle between Applicant and the victim occurred outside of the store, and so the video did not prove that Applicant did not stab the victim. He testified that the doctor who treated the victim believed that the weapon used to harm the victim was a knife but that Applicant admitted that he struck the victim, but said that he did so with his car keys and not a knife. He also testified that he believes that Applicant had wanted to claim at the time that he was never present at the store.

This Court finds that Counsel conducted reasonable investigation in preparation for the case. Applicant put forth at the evidentiary hearing the names of two individuals that he alleged could have been witnesses for him at trial, and claimed that he shared this information with Counsel. For one of the two supposed witnesses, Applicant failed to remember the witness’s last name. Counsel attempted to contact all potential witness identified for him by Applicant, and even issued a subpoena for one of the two potential witnesses mentioned by Applicant at the evidentiary hearing in preparation for trial. Applicant did not present at the evidentiary the testimony from any of the alleged witnesses, but has merely speculated that their testimony would have been helpful; Applicant therefore has failed to show that any testimony provided by these witnesses at trial



would have been beneficial to his defense. This Court finds that Applicant's allegation that Counsel did not investigate potential witnesses is not credible in light of Counsel's testimony and Applicant's testimony at the plea hearing. During Applicant's plea hearing, Judge Miller informed Applicant that he would have the right, among other rights, to "compel in court all relevant and competent evidence" in Applicant's defense at trial, and Applicant affirmed that he understood his right, and nevertheless pleaded guilty. Plea Tr. 7.

This Court finds that Counsel adequately reviewed the discovery in the case with Applicant, including the security camera footage. Even Applicant admits that Counsel met with him on multiple occasions, but his allegation that Counsel never reviewed discovery or the store's surveillance footage with him is not credible in light of Counsel's testimony and Applicant's testimony at the plea hearing. Counsel reviewed the evidence in the case with Applicant, including the surveillance footage, and discussed its significance with Applicant. At the plea hearing, Applicant affirmed to Judge Miller that he was "totally satisfied" with Counsel and that he knew of the evidence that the State had against him. Plea Tr. 7. After the solicitor presented a recitation of the facts supporting the charges against Applicant, Applicant affirmed to Judge Miller that the solicitor's recitation was "substantially true and correct." Plea Tr. 8-9.

Applicant has failed to meet his burden in establishing the constitutional ineffectiveness of counsel as to these allegations since he has not shown any deficiency or resulting prejudice in Counsel's performance. As such, these allegations are denied and dismissed with prejudice.

Counsel did not check on the status of the second attempted murder charge, or contact the witnesses, or do much of anything for the money he was paid. Counsel failed to object to solicitor's statement that Applicant had committed a second murder. Counsel failed to take any reasonable action to intercede on Applicant's behalf when solicitor referred to second attempted murder charge.



The basis of these allegations is that Applicant was alleging that he had a second attempted murder charge pending against him in an unrelated case and that Applicant was ineffective for allowing the solicitor to use this second case to improperly prejudice Applicant during the plea hearing of the criminal case that underlies this action.

Applicant testified that he had another pending attempted murder charge against him at the time of his case. Counsel testified that Applicant's other attempted murder case and that it was ultimately dismissed. Counsel testified that the solicitor did not make any statements to the court at sentencing about that other case.

As addressed elsewhere in this Order, Counsel conducted a reasonable investigation, and this Court reaffirms that Applicant's allegations here to the contrary are without merit. This Court finds that the solicitor did not make comments to the court during sentencing about Applicant's second attempted murder case. Counsel testified that the solicitor did not make such comments to the plea court during the plea hearing. The transcript of the plea hearing gives no indication that such comments were made. Applicant's allegations that these comments were made are without merit and lack credibility.

Applicant has failed to meet his burden in establishing the constitutional ineffectiveness of counsel as to these allegations since he has not shown any deficiency or resulting prejudice in Counsel's performance. As such, these allegations are denied and dismissed with prejudice.

Guilty plea was not entered voluntarily and intelligently. Counsel enlisted Applicant's wife to convince Applicant to plead guilty to the charges despite Applicant's desire to go to trial. Applicant told counsel on more than one occasion that he wanted a trial by jury since he was not guilty. Counsel unreasonably failed to take the case to trial as he was hired and directed to do.

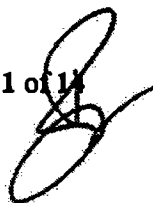
The basis of these allegations is that Applicant was alleging that he did not want to plead guilty but wanted a trial, but that Counsel employed multiple means to coerce him into pleading



guilty against his will, including having Applicant's wife beg him to plead guilty and threatening to intentionally lose his case at trial if he refused to plead guilty.

Applicant testified that he desired to take his case to trial. He testified that he begged Counsel on multiple occasions for a jury trial. He testified that he pleaded guilty because Counsel threatened him by telling him that he would be sentenced to thirty years in prison if he went to trial. He testified that Counsel coerced him to plead guilty. He testified that he only pleaded guilty because his wife wrote a letter to him at Counsel's request, in which she begged Applicant to plead guilty. He testified that he did not give any verbal indication to Judge Miller at the plea hearing that he was pleading guilty under duress from Counsel; rather, he testified that, during the plea hearing, he was trying to use his body language and other physical cues to send a signal to Judge Miller that he was only pleading guilty because of coercion from Counsel. When asked to demonstrate to this Court the physical cues that Applicant was allegedly attempting to give Judge Miller during the plea hearing, Applicant opened his eyes widely and looked at the Court intensely. He testified that he did not do more to alert Judge Miller to the alleged coercion on the part of Counsel because he was afraid that Counsel would take revenge upon him by intentionally losing Applicant's case if it were to thereafter go to trial.

Counsel testified that Applicant did ask for a trial during his representation, and that Counsel was preparing the case for trial in response. He testified that he advised Applicant that he believed that Applicant would be found guilty if he proceeded to trial based upon the evidence that the State would present and that Applicant could be facing extensive prison time following a trial, possibly as much as thirty years. He testified that the surveillance camera footage from inside the store showed part of the crime and that, although there was no surveillance camera footage of the struggle between Applicant and the victim outside of the store, that other evidence would have



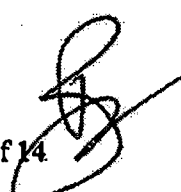
been used against Applicant had he taken his case to trial. He testified that Applicant admitted to him that he had attempted to steal liquor and that he had struck the victim outside the store, but that Applicant told him that he had struck victim with his car keys. He testified that he does not remember Applicant's ever being "dead set" on taking the case to trial. He testified that Applicant ultimately decided to plead guilty. He testified that he did not coerce Applicant into pleading guilty, did not threaten Applicant, and would have tried the case had Applicant backed out of Applicant's decision to plead guilty. He testified that he did not coerce Applicant through Applicant's wife. He testified that he did not see any behavior on the part of Applicant during the plead hearing, body language or eye movements, that indicated that Applicant was attempting to send secret messages to Judge Miller.

This Court finds that Counsel was not deficient in advising Applicant of the risks of proceeding to trial and the potential sentence that he could face if found guilty following a trial, and that Counsel's evaluation of the merits of Applicant's case was reasonable and competent. "A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the range of" required competence for criminal defense attorneys. Richardson v. State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993). Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel believes the sentence would be if the defendant were convicted at trial. See Bennett v. State, 371 S.C. 198, 204-05, 638 S.E.2d 673, 676 (2006). Counsel advised Applicant that he believed that Applicant would be found guilty following a trial, and advised Applicant of the potential sentence that Applicant could face thereafter. Counsel based his advice on the evidence in the case and his reading of the case law.



Applicant's allegations that Counsel coerced him and threatened him in order to get him to plead guilty are contradicted by Counsel's more credible testimony and by the transcript from Applicant's plea hearing, which gives no indication that Applicant was attempting to give messages to Judge Miller through eye movements or that Applicant was coerced into pleading guilty. On the contrary, Judge Miller asked Applicant during the plea hearing whether it was Applicant's free and voluntary choice to plead guilty, and Applicant affirmed that it was. Plea Tr. 6-7. After the solicitor presented a recitation of the facts supporting the charges against Applicant, Applicant affirmed to Judge Miller that the solicitor's recitation was "substantially true and correct." Plea Tr. 8-9. Applicant affirmed to Judge Miller that he was guilty. Plea Tr. 7. Applicant made his decision to plead guilty based upon Counsel's advice as to the evidence, the findings of Counsel's investigation, and the potential sentence that he could face in sentencing. Counsel did not coerce Applicant to plead guilty, threaten him with a particular sentence, or threaten to intentionally throw Applicant's case at trial if he were to proceed to trial; indeed, Counsel was preparing the case for trial in the event that it did go to trial. Applicant made his decision to plead guilty freely and without coercion, and based upon the merits of his defense and the potential sentence that could result after a trial.

Applicant has failed to meet his burden in establishing the constitutional ineffectiveness of counsel as to these allegations since he has not shown any deficiency or resulting prejudice in Counsel's performance, or that the advice given to him by Counsel was outside the range of required competence for criminal defense attorneys. As such, these allegations are denied and dismissed with prejudice.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a loop.

CONCLUSION

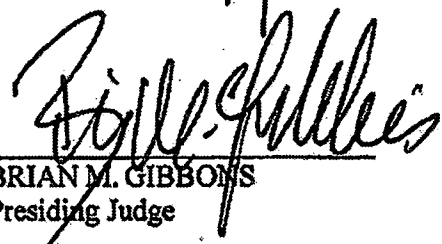
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this _____ day of 7/19, 2019.


BRIAN M. GIBBONS
Presiding Judge

 South Carolina

Copy mailed to	
Attorney <u>general / Arriai</u>	
on <u>7</u> / <u>28</u> / <u>2019</u>	

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER
and
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME OF VIOLENCE

NOV 21 2017

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

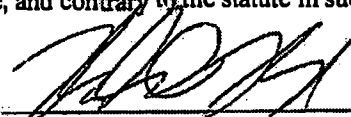
COUNT I - ATTEMPTED MURDER

That BOOKER THOMAS HILL III did in Greenville County, on or about the 22nd day of November 2016, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill KATENKUMAR PATEL. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME OF VIOLENCE

That BOOKER THOMAS HILL III did in Greenville County, on or about the 22nd day of November 2016, possess or visibly display a sharp object used to stab the victim during the commission or attempted commission of a violent crime, to wit: Attempted Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 80145

WITNESSES

A S Smith

DL 11-4-17

Greenville Police Department

12/3/2016

ARREST WARRANT NUMBER

2016A2320602421 and 2016A2320602423

**ACTION OF GRAND JURY
TRUE BILL**

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-23-
HCB

037659 1832

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2017

THE STATE

vs.

BOOKER THOMAS HILL III

Indictment for

3410 and 0549

ATTEMPTED MURDER

and

**POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME OF VIOLENCE**

VIOLATION § 16-03-0029 and § 16-23-0490

[Signature]
ENTERED

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
ARMED ROBBERY

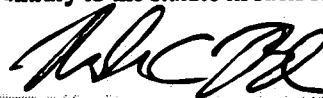
At a Court of General Sessions, convened on
County present upon their oath:

MAY 22 2018

the Grand Jurors of Greenville

That BOOKER THOMAS HILL III did in Greenville County, on or about the 22nd day of November, 2016, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a bottle of liquor from the person or presence of KETON PATEL AND/OR NIKITA PATEL, owner of WINE & SPRITS. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

BAR # 80145

WITNESSES

A S Smith

Greenville Police Department

12/3/2016

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: /1968 BM SSN:

TRUE BILL
ACTION OF GRAND JURY

TRUE BILL
FOREMAN GRAND JURY

Foreperson FOREMAN GRAND JURY

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-23-001778A

AMENDED HCB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
May

TERM 2018

THE STATE

vs.

BOOKER THOMAS HILL III

0139 ✓
-0028-

Amended Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

ENTERED
EXACT

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Booker Thomas Hill III

AKA: _____
 Race: BLACK Sex: M Age: 50
 DOB: 1968 SS#: _____
 Address: _____
 City, State, Zip: Greenville, SC 29607-4699
 DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
 TO: Murder/Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS230 B32

A/W#: 2016A2320602421

Date of Offense: 11/22/2016

S.C. Code § 16-0 39029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Blouin, Hunter 80145 SC Bar# Defendant WARDER, RICHARD 05827 SC Bar#
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP. 608 PMS

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: \$ _____
 §14-1-206 (Assessments 107.5 %) \$ _____
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso (Public Def/Probation) \$500 \$ _____
 §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 §14-1-213 (Drug Court Surcharge) \$150 \$ _____
 §50-21-114(BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☒ Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter: Scott

Presiding Judge Dickman

Judge Code: 2130

Sentence Date: 7-17-18

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Booker Thomas Hill III

AKA:

Race: BLACK Sex: M Age: 50

DOB: -1968 SS#:

Address:

City, State, Zip: Greenville, SC 29607-4699

DL#: SID#:

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

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

TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

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

ATTEST: 80145 05827

Blouin, Hunter

SC Bar#

Defendant

WARDER, RICHARD
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 608 DAYS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Payment Terms:

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5 %)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL

\$ 128.75

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter: Scott

Paul B. Wickensine

Presiding Judge

Judge Code: 2130

Sentence Date: 7-17-18

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Booker Thomas Hill III

AKA:

Race: BLACK Sex: M Age: 50DOB: 1968 SS#: Address: City, State, Zip: Greenville, SC 29607-4699DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Robbery, Armed With A Deadly Weapon

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS23001778AA/W#: 2016A2320602422 Direct HCSDate of Offense: 11/22/2016S.C. Code § 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ LEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Blouin, Hunter 80145 SC Bar# Defendant Rehab Warden 05827 SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SDOC. 6080 HJ☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>2500</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 128.75Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Paul B. WickensCourt Reporter: Scott

Presiding Judge

Judge Code: 2130Sentence Date: 7-17-18