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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Colleton County

Honorable Thomas Russo, Circuit Court Judge

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RAYMOND POWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001454

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APPENDIX

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
 COUNTY OF COLLETON ) CASE NO.: 2014-GS-15-00163,  
 -00165, -00166

RAYMOND POWELL, #346648, )  
 )  
 )  
 v. ) TRANSCRIPT OF RECORD  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 DEFENDANT. )  
 )

NOVEMBER 17TH, 2014  
 COLLETON COUNTY COURTHOUSE  
 WALTERBORO, SOUTH CAROLINA  
 BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

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EXHIBITS

NONE.

1

1 THE COURT: Call your case, Solicitor.

2 ASST. SOL. KNIGHT: Your Honor, the State is ready in  
3 Indictment number 2013-GS-15-00163, the State v. Raymond  
4 Powell. It's an indictment for possession of a weapon  
5 during the commission of a violent offense. That is zero to  
6 five years. Also, 2013-GS-15-00165, the State v. Raymond  
7 Powell, that's the indictment for attempted murder. That's  
8 zero to thirty years. 2013-GS-15-00166, the State v.  
9 Raymond Powell, is an indictment for attempted murder.  
10 That's zero to thirty years. The State is making a  
11 recommendation, Your Honor, of a cap of 20 years on all,  
12 concurrent. The violent offense of weapons is only zero to  
13 five. May I approach, Your Honor?

14 THE COURT: So it's a cap of 20 years and sentence to  
15 run concurrent?

16 ASST. SOL. KNIGHT: Yes, Your Honor.

17 THE COURT: Now, Solicitor, you have another case on my  
18 trial roster involving Mr. Powell.

19 ASST. SOL. KNIGHT: The reason I'm dismissing that is  
20 one shooting, two people, one gun.

21 THE COURT: Let's put which one, since it's the same  
22 charge, Solicitor. It's possession of a weapon during the  
23 commission of a violent crime; which one are you not  
24 propping?

25 ASST. SOL. KNIGHT: 2013-GS-15-00164.

1 THE COURT: It would be case number five, is that  
2 correct?

3 ASST. SOL. KNIGHT: Yes, sir.

4 THE COURT: All right. Is that everything?

5 ASST. SOL. KNIGHT: Yes, sir.

6 THE COURT: All right. The State is recommending the  
7 maximum sentence of 20 years and the State is recommending  
8 concurrent sentences on the three that you're taking?

9 ASST. SOL. KNIGHT: That is correct, Your Honor.

10 THE COURT: And you're not pressing the fourth because  
11 you didn't believe you could charge him for the same offense  
12 -- you have two possession of a weapon during the commission  
13 of a violent crime?

14 ASST. SOL. KNIGHT: That's correct.

15 THE COURT: Mr. Mathews, has the Solicitor accurately  
16 stated any and all conditions of the plea?

17 MR. MATHEWS: Yes, sir, Your Honor.

18 THE COURT: Counsel approach.

19 (OFF THE RECORD, BRIEFLY.)

20 THE COURT: He was on a YOA suspended to probation?

21 AGENT: Yes, sir. He had a YOA in a probation case.  
22 The YOA has expired now.

23 THE COURT: The YOA is over now, David. What about  
24 probation?

25 AGENT: It's a u-cap. He has a year exposure.

1 THE COURT: So he's looking at one year on the  
2 probation, 2012 at 682. What was the offense?

3 AGENT: Unlawful carrying of a gun.

4 THE COURT: Which you're going to give me that on his  
5 record, Solicitor?

6 ASST. SOL. KNIGHT: Yes, sir.

7 THE COURT: Mr. Mathews, you need to advise him,  
8 because this plea would be a violation, right, Lisa?

9 AGENT: Yes, sir.

10 THE COURT: You're going to have to advise your client  
11 that the plea would be a violation of his probation, and the  
12 maximum exposure on the probation for the unlawful carrying  
13 is one year. The YOA has been terminated, according to what  
14 I'm being told by South Carolina Probation; do you  
15 understand?

16 MR. MATHEWS: I do, Your Honor.

17 THE COURT: Make sure your client understands that  
18 before I have the Clerk swear him.

19 (Off the record, briefly.)

20 MR. MATHEWS: I've explained it and he says he  
21 understands, Your Honor.

22 THE COURT: Mr. Mathews, this is what I'm being told by  
23 the Solicitor. He has handed me the paperwork now. He is  
24 recommending a maximum sentence on two attempted murders and  
25 possession of a weapon for 20 years. All sentences are to

1 run concurrent. He is not pressing a fourth charge which  
2 was possession of a weapon. As he announced the plea,  
3 probation stood up to advise me, which Mr. Knight was aware  
4 of, that he had previously had a plea or a charge for  
5 possession of a weapon for which he is still on probation.  
6 Probation is telling me that they're recommending that I run  
7 whatever sentence I give today concurrent with his probation  
8 because he's looking at a max of one year on the possession  
9 -- actually it was an unlawful carrying of a pistol, not  
10 possession of a weapon, right?

11 AGENT: Yes, sir.

12 THE COURT: I'm also told by probation now that he had  
13 a YOA parole and that has now expired. Have you advised  
14 your client of all of those things?

15 MR. MATHEWS: I have, Your Honor.

16 THE COURT: And he understands that if I accept his  
17 plea today to what the State is proposing, that that would  
18 constitute a violation of his probation case for the  
19 unlawful carrying of a pistol; is that correct, Mr. Mathews?

20 MR. MATHEWS: Yes, Your Honor.

21 THE COURT: Has the Solicitor now accurately stated  
22 with the additional information from probation, any and all  
23 conditions of the plea?

24 MR. MATHEWS: Yes, sir.

25 THE COURT: Madame Clerk, please swear the defendant.

1 (Whereupon, the defendant, Raymond Powell, is duly  
2 sworn.)

3 THE COURT: All right. I'm going to ask you to speak  
4 up. I want everybody in this courtroom to be able to hear  
5 you. I'm used to talking loud in the courtroom, plus I'm  
6 deaf. I wear a hearing aid in my right ear from shooting a  
7 shotgun all of my life. But I know a lot of people come in  
8 here that aren't used to speaking up. I expect people on  
9 the back row back there to be able to hear every word you  
10 say. Do you understand?

11 MR. POWELL: Yes, sir.

12 THE COURT: I want you to give me a verbal answer. Say  
13 yes or no. Don't shake your head, don't nod your head.  
14 Becky Hill can't take that down. Do not say unh-unh or uh-  
15 huh (affirmative). No one remembers or understands that  
16 later on, so say yes or no; do you understand?

17 MR. POWELL: Yes, sir.

18 THE COURT: All right. You've been sworn now. The  
19 answers you're going to give me are under oath. State your  
20 full name for the record.

21 MR. POWELL: Raymond Powell.

22 THE COURT: Mr. Powell, how old are you?

23 MR. POWELL: Twenty-two years old.

24 THE COURT: Twenty-two. How far have you gone in  
25 school?

1 MR. POWELL: Ninth grade.

2 THE COURT: Why did you leave school?

3 MR. POWELL: Family issues.

4 THE COURT: Family history?

5 MR. POWELL: Issues.

6 THE COURT: Well, that doesn't tell me why you left  
7 school. Why did you leave school?

8 MR. POWELL: Being moved back and forth.

9 THE COURT: Do you have your GED?

10 MR. POWELL: No, sir.

11 THE COURT: All right. So you quit. You weren't  
12 expelled?

13 MR. POWELL: I wasn't expelled.

14 THE COURT: All right. What kind of work do you do?

15 MR. POWELL: I was working on a crab boat.

16 THE COURT: How long has it been since you've worked?

17 MR. POWELL: Two years.

18 THE COURT: Are you married?

19 MR. POWELL: No, sir.

20 THE COURT: Do you have any children?

21 MR. POWELL: No, sir.

22 THE COURT: Have you ever been treated in the past for  
23 drug abuse, alcohol abuse, or mental illness?

24 MR. POWELL: Mental illness.

25 THE COURT: What type of mental illness?

1 MR. POWELL: Anxiety, depression and bipolar.

2 THE COURT: All right. Mr. Mathews, do you believe  
3 your client is competent?

4 MR. MATHEWS: I do, Your Honor.

5 THE COURT: Has he been able to adequately assist you  
6 in the preparation of the defense of these charges?

7 MR. MATHEWS: Yes, sir.

8 THE COURT: Do you have any questions about his  
9 competency?

10 MR. MATHEWS: No, sir.

11 THE COURT: Mr. Powell, do you know why you're here?  
12 If I accept your plea, I'm going to sentence you, do you  
13 understand that?

14 MR. POWELL: Yes, sir.

15 THE COURT: You understand why you're here?

16 MR. POWELL: Yes, sir.

17 THE COURT: You've been able to adequately communicate  
18 with your lawyer?

19 MR. POWELL: Yes, sir.

20 THE COURT: You understand the charges against you?

21 MR. POWELL: Yes, sir.

22 THE COURT: Have you taken any drugs, alcohol, or  
23 anything else prescribed or otherwise, within the past 24  
24 hours that might keep you from understanding what you're  
25 doing in Court today?

1 MR. POWELL: No, sir.

2 THE COURT: All right. Mr. Mathews, I understand you  
3 represent him. I understand that you feel he is competent.  
4 Have you advised him of the charges in each of these three  
5 indictments handed to me by the Solicitor? Have you advised  
6 him of the maximum penalty or punishment and its direct  
7 consequences? Have you advised him that if I accept his  
8 plea, it would constitute a violation of his probation for  
9 carrying a pistol? Have you advised him of his  
10 constitutional rights?

11 MR. MATHEWS: I have, Your Honor.

12 THE COURT: In your opinion, Mr. Mathews, as his  
13 attorney, does Mr. Powell understand each of the charges  
14 against him, the maximum penalty or punishment and its  
15 direct consequences, the fact that a plea today would  
16 constitute a violation of his probation, as well as his  
17 constitutional rights?

18 MR. MATHEWS: I believe he does.

19 THE COURT: And how does he indicate to you that he  
20 desires to plead, guilty or not guilty?

21 MR. MATHEWS: Guilty.

22 THE COURT: Mr. Powell, you've heard your lawyer tell  
23 me that he's advised you of the charges in these three  
24 indictments handed to me by the Solicitor, two for attempted  
25 murder and one for possession of a weapon during the

1 commission of a violent crime. He's advised you that if I  
2 accept your plea to these charges, that it would constitute  
3 a violation of your probation for which you're looking at a  
4 maximum additional term of one year, which probation is  
5 recommending that I run concurrent with any sentence I give  
6 you today, according to what they told me when we started.

7 He's advised you of any direct consequences, as well as  
8 the maximum penalty for each of these offenses, and he's  
9 advised you of your constitutional rights, such as your  
10 right to trial by jury. And according to your lawyer, Mr.  
11 Mathews, you understand each of the charges against you that  
12 the Solicitor has called today, you understand the maximum  
13 penalty or punishment and its direct consequences, you  
14 understand that if I accept your plea that it would  
15 constitute a violation of your probation, and you understand  
16 each of your constitutional rights; is that correct?

17 MR. POWELL: Yes, sir.

18 THE COURT: I've been handed first of all by the  
19 Solicitor, Indictment 2013-GS-15-00166, the State v. Raymond  
20 Powell, indictment for attempted murder and true billed by  
21 the Colleton County Grand Jury. This indictment alleges  
22 that you did, in Colleton County, on or about January 30th,  
23 2013, that you, with malice aforethought, did commit an  
24 unlawful act of a violent nature upon the victim, Ervin T.  
25 Walters. It is alleged that you shot the victim. Do you

1 understand that charge in that indictment for the offense of  
2 attempted murder?

3 MR. POWELL: Yes, sir.

4 THE COURT: Counsel approach.

5 (Off the record, briefly.)

6 THE COURT: Let the record reflect that I called  
7 counsel to the bench because on the top of the sentencing  
8 sheet they are required to fill it out, along with the  
9 defendant, and they checked both serious and most serious  
10 for the attempted murders. It is most serious. It is not  
11 serious, although some would argue that the greater includes  
12 the lesser. They have scratched out the serious. David has  
13 shown it to his client who understands that only most  
14 serious and violent are checked for attempted murder; is  
15 that correct, Mr. Mathews?

16 MR. MATHEWS: Yes, Your Honor.

17 THE COURT: Is that correct, Solicitor?

18 ASST. SOL. KNIGHT: Yes, sir.

19 THE COURT: Back to you, Mr. Powell. I've read the  
20 Indictment 2013 at 166, which was attempted murder for the  
21 alleged shooting of Ervin T. Walters. Do you understand  
22 that if I accept your plea to that charge that I could  
23 sentence you to a maximum term of imprisonment of up to 30  
24 years?

25 MR. POWELL: Yes, sir.

1 THE COURT: Do you understand that attempted murder is  
2 both a most serious and a violent offense? Because it is  
3 violent, you would have to assume that you would have to  
4 serve day for day as to any sentence of imprisonment I might  
5 impose. Do you understand that?

6 MR. POWELL: Yes, sir.

7 THE COURT: Because it is most serious, you have to  
8 understand that by my accepting your plea today, if you were  
9 to get in trouble in the future and violate under our code  
10 of laws either a most serious offense or a serious offense,  
11 you could, in the future, if so convicted, face a sentence  
12 of life imprisonment without any possibility of parole; do  
13 you understand that?

14 MR. POWELL: Yes, sir.

15 THE COURT: Next, I've been handed Indictment 2013-GS-  
16 15-00165, the State V. Raymond Powell, an indictment for  
17 attempted murder, true billed by the Colleton County Grand  
18 Jury. This indictment alleges that you did in Colleton  
19 County, on or about January 30th, 2013, that you, Raymond  
20 Powell, malice aforethought did commit an unlawful act with  
21 a violent nature upon the victim, Willie Lemon. It is  
22 alleged that you shot the victim. Do you understand that  
23 charge in that indictment for the offense of attempted  
24 murder?

25 MR. POWELL: Yes, sir.

1 THE COURT: Do you understand that if I accept your  
2 plea to that charge that I could sentence you to a maximum  
3 term of imprisonment of up to 30 years?

4 MR. POWELL: Yes, sir.

5 THE COURT: Do you understand that attempted murder is  
6 both a violent and a most serious offense. Because it is  
7 violent, you would have to assume as to any sentence of  
8 imprisonment I might impose if I accept your plea, that you  
9 would have to serve day for day as to any sentence of  
10 imprisonment; do you understand that?

11 MR. POWELL: Yes, sir.

12 THE COURT: Because it is most serious, under our code  
13 of laws, by my accepting your plea today to attempted  
14 murder, if you were to be convicted in the future of either  
15 a combination of serious or most serious offenses, by my  
16 accepting your plea today, you could, if so convicted in the  
17 future, face the possibility of life imprisonment without  
18 any possibility of parole. Do you understand that?

19 MR. POWELL: Yes, sir.

20 THE COURT: Next, I've been handed Indictment 2013-GS-  
21 15-00163, the State v. Raymond Powell, an indictment for  
22 possession of a weapon during the commission of a violent  
23 crime. This indictment has been true billed by the Colleton  
24 County Grand Jury.

25 This indictment alleges that you did, in Colleton

1 County, South Carolina, on or about January 30th, 2013, that  
2 you, Raymond Powell, did possess a pistol, or visibly  
3 displayed what appeared to be a pistol, during the  
4 commission or attempted commission of attempted murder,  
5 which is alleged to be a violent crime under the laws of the  
6 State of South Carolina. Do you understand that charge in  
7 that indictment for possession of a weapon during the  
8 commission of a violent crime?

9 MR. POWELL: Yes, sir.

10 THE COURT: Do you understand if I accept your plea to  
11 that charge I could sentence you to a maximum term of  
12 imprisonment of up to five years?

13 MR. POWELL: Yes, sir.

14 THE COURT: Any other direct consequences of any of the  
15 pleas in which counsel for the State is aware?

16 ASST. SOL. KNIGHT: No, sir.

17 THE COURT: Any other direct consequences of any of the  
18 pleas in which counsel for the defendant is aware?

19 MR. MATHEWS: No, sir.

20 THE COURT: All right. One last question, Mr. Powell,  
21 Do you understand if I accept your plea today, it would  
22 constitute a violation of your probation for carrying a  
23 pistol?

24 MR. POWELL: Yes, sir.

25 THE COURT: And that you're looking at one year on that

1 probation violation; do you understand that?

2 MR. POWELL: Yes, sir.

3 THE COURT: Understanding each of the charges against  
4 you, understanding the maximum punishment, understanding the  
5 direct consequences, I ask you now, Mr. Powell, how do you  
6 wish to plead, guilty or not guilty?

7 MR. POWELL: Guilty.

8 THE COURT: Do you understand by pleading guilty that  
9 you're giving up your constitutional right to remain silent?

10 MR. POWELL: Yes, sir.

11 THE COURT: Do you understand by pleading guilty that  
12 you're giving up your constitutional right to a trial by  
13 jury?

14 MR. POWELL: Yes, sir.

15 THE COURT: Do you understand that if you had a jury  
16 trial, you would have the right to confront any witnesses or  
17 evidence which the State may have against you and if you had  
18 a jury trial, the State would be required and the State  
19 would have the burden of proving your guilt beyond a  
20 reasonable doubt and if you had a jury trial, you could put  
21 up any witnesses or evidence in your defense if you so  
22 chose. Do you understand that you have each of those rights  
23 as to a jury trial?

24 MR. POWELL: Yes, sir.

25 THE COURT: Understanding your rights as to a jury

1 trial, do you now want a jury trial or do you wish to plead  
2 guilty?

3 MR. POWELL: I wish to plead guilty.

4 THE COURT: Now, you heard the Solicitor tell me at the  
5 outset of this hearing, and it was confirmed to me by your  
6 attorney, Mr. Mathews, that there is a recommendation in  
7 regards to your plea from each of them, both the Solicitor  
8 and your attorney. That recommendation was published to me  
9 as a maximum sentence of 20 years to run concurrent -- also,  
10 probation has recommended that your one-year violation of  
11 probation to be run concurrent. Is that your understanding  
12 of any and all recommendation in connection with your plea,  
13 Mr. Powell?

14 MR. POWELL: Yes, sir.

15 THE COURT: Do you understand that a recommendation,  
16 I'm not bound by a recommendation. If I accept your plea, I  
17 can sentence you to the maximum amount of time I advised you  
18 each of these offenses carried?

19 MR. POWELL: Yes, sir.

20 THE COURT: Other than the recommendation, which has  
21 been placed on record by the Solicitor and confirmed to me  
22 by your attorney, and now by you, has anyone promised you  
23 anything in order to try to get you to plead guilty?

24 MR. POWELL: No, sir.

25 THE COURT: Has anybody threatened you in any manner in

1 order to try to get you to plead guilty?

2 MR. POWELL: No, sir.

3 THE COURT: Are you fully satisfied with the services  
4 of your attorney?

5 MR. POWELL: Yes, sir.

6 THE COURT: Has he done everything in your behalf that  
7 you feel like he should or could have done?

8 MR. POWELL: Yes, sir.

9 THE COURT: Have you had enough time to talk to your  
10 lawyer?

11 MR. POWELL: Yes, sir.

12 THE COURT: Have you understood all of your talks with  
13 your lawyer?

14 MR. POWELL: Yes, sir.

15 THE COURT: Are you completely satisfied with your  
16 lawyer?

17 MR. POWELL: Yes, sir.

18 THE COURT: Do you have any complaints against any law  
19 enforcement officers, court officials, or members of the  
20 Solicitor's Office?

21 MR. POWELL: No, sir.

22 THE COURT: Are you pleading guilty to each of these  
23 offenses of your own free will and your own accord?

24 MR. POWELL: Yes, sir.

25 THE COURT: You understand as to any sentence of

1 imprisonment I might impose, if I accept your plea, you  
2 would have to assume that you would have to serve day for  
3 day; do you understand that?

4 MR. POWELL: Yes, sir.

5 THE COURT: You understand you have the right to appeal  
6 my sentence and this plea, but you must do so within 10 days  
7 of today by filing a notice of intention to appeal; do you  
8 understand that?

9 MR. POWELL: Yes, sir.

10 THE COURT: Have you understood each of my questions?

11 MR. POWELL: Yes, sir.

12 THE COURT: Have your answers to my questions been  
13 truthful answers?

14 MR. POWELL: Yes, sir.

15 THE COURT: Have they been your own answers and not  
16 suggested to you by anyone else?

17 MR. POWELL: Yes, sir.

18 THE COURT: Your own answers?

19 MR. POWELL: Yes, sir.

20 THE COURT: Are you, in fact, guilty of the offense of  
21 attempted murder in Colleton County on or about January  
22 30th, 2013, by the alleged shooting upon the victim, Ervin  
23 T. Walters?

24 MR. POWELL: Yes, sir.

25 THE COURT: Are you, in fact, guilty of the offense of

1 attempted murder in Colleton County on or about January  
2 30th, 2013, in regards to the alleged shooting of the  
3 victim, Willie Lemon?

4 MR. POWELL: Yes, sir.

5 THE COURT: Are you, in fact, guilty of the offense of  
6 possession of a weapon during the commission of a violent  
7 crime in Colleton County on or about January 30th, 2013,  
8 with the violent crime being alleged to be attempted murder?

9 MR. POWELL: Yes, sir.

10 THE COURT: Solicitor?

11 ASST. SOL. KNIGHT: Your Honor, on January 30th, 2013,  
12 about 9:40, deputies from the Sheriff's Department responded  
13 to 1008 Proctor Street. That's in Colleton County. That  
14 location is also the Chase Lounge, as we all know.

15 THE COURT: Which is in the city or the county?

16 ASST. SOL. KNIGHT: It's in the county, Your Honor.

17 THE COURT: The line runs through the property as I  
18 understand it.

19 ASST. SOL. KNIGHT: Yes, sir.

20 THE COURT: They're both in Colleton County; whether  
21 it's in the city or not, Mr. Knight. I'm just asking a  
22 question.

23 ASST. SOL. KNIGHT: Yes, sir. The deputies observed  
24 both victims, Ervin Walters and Willie Lemon, lying on the  
25 ground in the parking lot. Mr. Walters sustained three

1 gunshot wounds to his back. Mr. Lemon sustained a gunshot  
2 wound to his left shoulder. Ervin Walters told the deputy,  
3 Brian Allen, that Doasja, D-O-A-S-J-A, shot me. That's the  
4 street name for the defendant; one of his street names. Mr.  
5 Walters was flown to MUSC where he was treated, and as a  
6 result of the shooting, he sits in the back here in a  
7 wheelchair.

8           While at the hospital, Colleton Regional Hospital,  
9 Willie Lemon stated that Mr. Walters and the defendant were  
10 engaged in a verbal discussion, a confrontation, if you  
11 will, over a female with which the subject knows and has  
12 some relationship with.

13           THE COURT: The subject, meaning the defendant?

14           ASST. SOL. KNIGHT: Right. The defendant believed Mr.  
15 Walters was seeing her. Mr. Powell said, sort of, so to  
16 speak, "That's my woman." That's the straight way to tell  
17 it to you. The confrontation escalated and Mr. Walters  
18 walked away from the subject.

19           Mr. Lemon stated that the subject then approached him  
20 with a revolver and fired multiple shots in their direction,  
21 striking the victims. Later, Mr. Lemon was able to identify  
22 the defendant out of a photo lineup. All of these events  
23 occurred here in Colleton County. And at some time, I will  
24 tell you my reasons for making the recommendation.

25           THE COURT: I'll let you go ahead and tell me now.

1 ASST. SOL. KNIGHT: Your Honor, this is ---

2 THE COURT: You have a reason for recommending a cap of  
3 20 years?

4 ASST. SOL. KNIGHT: Yes, sir. Your Honor, it's amazing  
5 at the Chase Lounge, when something happens, nobody saw  
6 anything. Sgt. Jackie Lawson wrote down seven names of  
7 people in that parking lot. Talked to each one of them,  
8 didn't see a thing; not one thing. Then, a friend, Scott  
9 Aiken, he's a friend of the victims, made a statement. He  
10 said, "All I know is I pulled up and someone yelled, shots  
11 were fired, hit my car. The person who did the shooting was  
12 going by my car." So he didn't even identify the person who  
13 was going by his car and who shot the car.

14 THE COURT: Identified who?

15 ASST. SOL. KNIGHT: The defendant. Could not identify  
16 the defendant.

17 THE COURT: So he couldn't identify the defendant?

18 ASST. SOL. KNIGHT: That walked by his car. Then,  
19 Deshawn Lemon, another friend and possible relative of Mr.  
20 Willie Lemon, it was his description of the person who did  
21 the shooting. "Had a black guy with a red shirt with gloves  
22 on, run from the front of the door of the Chase with a  
23 handgun and started shooting about five shots." No  
24 identification of the defendant. so the only eyewitness  
25 identification I have of the shooting was from the victims.

1 I have nothing to corroborate their statements. I believe  
2 them 100 percent, but juries need more, as we all know.

3 Another thing, there is no gunshot powder residue,  
4 because the defendant wasn't arrested until I think February  
5 11th, so we don't have that. We were able to remove at the  
6 Medical University fragments of a bullet. Also, we were  
7 able to remove fragments of a bullet from the vehicle when  
8 he shot into the vehicle. "He," being the defendant. Those  
9 fragments were sent to SLED, the lab. The lab, and I'll  
10 just be brief, bullet fragment may or may not be suitable  
11 for identification with a specific firearm.

12 THE COURT: So it couldn't identify. Were you able to  
13 recover a firearm in this case?

14 ASST. SOL. KNIGHT: Yes, sir, that's the thing about  
15 it. I was able to get a firearm, but I didn't get any DNA  
16 off of it.

17 THE COURT: You got no DNA off the firearm and  
18 ballistics could not identify that firearm as being the  
19 firearm that fired the shot into the victims.

20 ASST. SOL. KNIGHT: Or the car.

21 THE COURT: I understand your reason for the  
22 recommendation.

23 ASST. SOL. KNIGHT: Well, another thing, I just wanted  
24 to explain that to you why I'm recommending it. He's got  
25 three prior convictions. One is for burglary third, 1-27-

1 2011 he got probation. Unlawful carrying of a pistol ---

2 THE COURT: For which he is still on probation and  
3 which constitutes a violation today?

4 ASST. SOL. KNIGHT: Yes, sir.

5 THE COURT: Mr. Knight, check that for me. That should  
6 be 2012 at 682 in Colleton County; is that right?

7 ASST. SOL. KNIGHT: Yes, sir. That's the unlawful  
8 carrying. He's got two unlawful carryings.

9 THE COURT: Oh, excuse me. But 682 is the one you  
10 still got out there?

11 AGENT: Yes, sir. The other one he received a YOA on.

12 THE COURT: The other one is a YOA.

13 ASST. SOL. KNIGHT: I just want to let the record know  
14 that he's got these three convictions and they're non-  
15 violent.

16 THE COURT: So he has no record for violence and you've  
17 told me your reasons for making the recommendation of a  
18 maximum sentence to run concurrent of 20 years?

19 ASST. SOL. KNIGHT: Yes, sir.

20 THE COURT: Very well.

21 ASST. SOL. KNIGHT: One other thing you haven't asked  
22 me -- or at least I think you would. What was the lighting  
23 conditions in the parking lot that night? Lighting at the  
24 Chase is so-so. You can see, but it's not as bright as it  
25 is in here. So you put all that together and it's a

1 totality of the circumstances why I'm making this  
2 recommendation.

3 THE COURT: I understand, Solicitor. Thank you very  
4 much for enlightening the Court on your recommendation.  
5 Anything else on the factual basis of the plea?

6 ASST. SOL. KNIGHT: No, sir.

7 THE COURT: Very well. I find that there is a  
8 sufficient factual basis for the plea. Mr. Powell, I find  
9 that your decision to plead guilty is freely, voluntarily,  
10 knowingly and intelligently made. That you've had the  
11 advice and counsel of a competent attorney with whom you  
12 tell this Court you are totally and completely satisfied. I  
13 will accept your plea of guilty. Mr. Mathews?

14 MR. MATHEWS: Your Honor, Raymond is 22. He was 20  
15 when this first happened. His mother is here with him today  
16 ---

17 MRS. POWELL: --- I'm his grandmother.

18 MR. MATHEWS: Oh, his grandmother? She looks young.  
19 His grandmother is here with him today. This was a tragic,  
20 horrible thing that happened. Raymond understands and the  
21 Court has instructed him that he's got to assume that any  
22 sentence he gets is day for day. He's already been in jail  
23 for a year and nine months. Raymond is not -- he's  
24 indicated to the Court that he's had some mental health  
25 issues, anxiety, depression, bipolar. I believe he knows

1 what he's doing. He's competent. But, Your Honor, the  
2 bipolar, particularly, is something that might inform --  
3 this is the kind of thing that if you've been properly  
4 treated, might not have happened.

5 The information on the incident report and from what  
6 Mr. Knight says this was an argument that popped up. This  
7 was a meeting at a club, an argument over a girl that  
8 happened. This is not a premeditated event. In a flash, in  
9 an instant, the victim's lives were horribly changed, but  
10 this was just an incident.

11 It was one really bad decision, Your Honor, that has  
12 been made here. And perhaps, with proper medication this  
13 kind of thing wouldn't have happened. Your Honor, something  
14 like this does deserve a substantial sentence. I think Mr.  
15 Powell is aware of that.

16 Your Honor, given that he was young when this happened,  
17 in 10 years, he will be in his 30's. I would ask the Court  
18 to consider a 10-year sentence. That is a substantial  
19 amount of time and I would think that would be time to  
20 perhaps get his medication straight and perhaps this -- it  
21 would certainly be a long time before anybody saw Mr. Powell  
22 outside of the system, but perhaps at some point, this will  
23 help him to get on track, and I would ask the Court to  
24 consider a 10-year sentence.

25 His mother is here, but she doesn't want to be heard.

1 But she is here and she loves her son. I'd ask the Court to  
2 consider a 10-year sentence.

3 THE COURT: Mr. Powell, is there anything you want to  
4 tell me prior to sentencing?

5 MR. POWELL: No, sir.

6 THE COURT: Solicitor, I understand that you have  
7 someone that wishes to be heard. Is this a victim or a  
8 member of the family?

9 ASST. SOL. KNIGHT: Yes, sir.

10 THE COURT: And who is this?

11 ASST. SOL. KNIGHT: Give them your name, please.

12 MR. WILLIAMS: My name is Kevin Williams.

13 THE COURT: It's W-I-L-L-I-A-M-S?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: Mr. Williams, happy to hear from you.

16 MR. WILLIAMS: Thank you. To Mr. Powell, I feel for  
17 you. My nephew, Ervin, is paralyzed.

18 THE COURT: I see him in the courtroom in a wheelchair.  
19 I'm aware of that and I'm going to take the severity of the  
20 injury that he received into consideration in the sentence I  
21 impose. Is that what you want me to consider?

22 MR. WILLIAMS: Yes, sir, exactly.

23 THE COURT: Thank you for taking the time to tell me  
24 that. What else do you want to tell me?

25 MR. WILLIAMS: Ervin is like a son to me. I helped

1 raise Ervin from a hand baby, and I will continue to help  
2 him in any way that I can. I feel sorry for this man; I do.

3 THE COURT: He's going to jail, Mr. Williams. I can  
4 assure of you that.

5 MR. WILLIAMS: Yes, sir. He deserves it.

6 THE COURT: He knows he is.

7 MR. WILLIAMS: I've been where he is, sir. I was  
8 sentenced back in 2009 to 18 years in the South Carolina  
9 Department of Corrections, which I had it overturned. I got  
10 out of prison April 1st of this year. And it took a trip to  
11 prison to turn me around. And I pray that he can turn  
12 himself around. I really do.

13 THE COURT: Thank you. I appreciate you taking the  
14 time to talk to me. And good luck to you.

15 MR. WILLIAMS: Thank you.

16 THE COURT: Anyone else, Solicitor?

17 ASST. SOL. KNIGHT: Yes, sir. This is Mr. Walters's  
18 mother. THE COURT: Yes, ma'am, if you would give me your  
19 name for the record, please, ma'am.

20 MRS. GEATHERS: Karen Geathers.

21 THE COURT: Mrs. Geathers, be happy to hear from you.

22 MRS. GEATHERS: On the night of January 30th, 2013,  
23 Raymond Powell, he took something away from Ervin. You  
24 know, what Ervin has told me when he came to, that it was a  
25 confrontation he tried to walk away from. Raymond's

1 intention it was to kill my son. Ervin will never, never  
2 ever walk again. He has the bullet still there, you know,  
3 that can't be removed. And as far as Mr. Willie Lemon, his  
4 intention was to do harm, and he did harm. He did more than  
5 harm; he took something away from Ervin. And where he's  
6 going as of today, I want him to go through. I wish, you  
7 know, whatever comes to him, he deserves it. He deserves  
8 that and more, because he hunt my son down like a deer. And  
9 it's just something he did to the family. You know, Ervin  
10 was raised in a single family home. There's no excuse for  
11 him. Bipolar, whatever this stuff that's coming out on him,  
12 there's no excuse. He was raised by a single parent and he  
13 didn't turn out to be, you know -- he's finished school, he  
14 worked, he's always worked. The only thing he had -- when  
15 he came home from MUSC that day he was released, he was  
16 worrying about a traffic ticket. Did I pay his traffic  
17 ticket. Your Honor, take into consideration what he did to  
18 my son so he won't, you know, be back out and do it to  
19 someone else. That's all I'm asking.

20 THE COURT: I understand exactly. I thank you for  
21 taking the time and coming to share your thoughts with me  
22 prior to sentencing. Anyone else?

23 ASST. SOL. KNIGHT: I believe that's it.

24 THE COURT: Mr. Mathews, anything further from the  
25 defendant?

1 MR. MATHEWS: No, sir.

2 THE COURT: Let me say this, because I realize I have a  
3 mother here and Mr. Williams came to speak. On behalf of  
4 Mr. Walters, Mr. Williams tells me he's been in jail and  
5 just got out and it took that to make him turn his life  
6 around. I don't blame any mother who loves their son for  
7 feeling something was taken from them by this act.

8 Mr. Powell, there is absolutely no reason -- you have a  
9 history of having guns and you see what happens. That's the  
10 reason you're here and that's the reason you've been in jail  
11 for the last almost two years. And you're going to jail,  
12 but it's not going to be in Colleton County, you're going to  
13 be in the Department of Corrections.

14 On the other side of that fence, now that Mr. Knight  
15 has explained his situation to me, I now well understand  
16 what Mr. Knight had to do as a prosecutor. He had to  
17 balance the fact that he had a terrible injury to Mr.  
18 Walters. I assume, is Mr. Lemon here, Mr. Knight?

19 ASST. SOL. KNIGHT: Yes, sir.

20 THE COURT: Mr. Lemon has recovered from his shoulder  
21 injury, so I've got one victim that's recovered somewhat,  
22 although shot, and I have one who's never going to be able  
23 to recover according to the momma. I take that into  
24 consideration, but I also consider, the Solicitor asked me  
25 for a max sentence of 20 years and the reason was he has to

1 balance what he can prove, because he knows good and well if  
2 this case went before a jury, that anything could happen  
3 where you got people, even seven people that were standing  
4 at the Chase Lounge and not a single one of them would  
5 testify that the defendant did the shooting. Were it not  
6 for your son, Ms. Geathers, his testimony, he couldn't even  
7 get the case to a jury. He has no ballistics that confirms  
8 the gun. He has no DNA. He can't even, from the fragment  
9 of the shells that were recovered, identify the gun that  
10 fired the shells. So I completely understand the situation  
11 that the Solicitor was in.

12 I understand also, if I had the power, I would  
13 certainly try to restore your son's health first, so I  
14 understand exactly how you feel. Obviously, I don't have  
15 that power, but I do have the power to see that he is put in  
16 jail, which is exactly where he should go for what happened  
17 to your son.

18 Anything further from the State?

19 ASST. SOL. KNIGHT: Nothing, Your Honor.

20 THE COURT: Anything further from the defendant?

21 MR. MATHEWS: No, sir.

22 THE COURT: On Indictment 2013-GS-15-00166, and  
23 Indictment 2013-GS-15-00165, both charging the defendant,  
24 Raymond Powell, with the offense of attempted murder, the  
25 State is recommending 20. The sentence of the Court is the

1 defendant is committed to the State Department of  
2 Corrections for 19 years. On Indictment 2013-GS-15-00163,  
3 possession of a weapon during the commission of a violent  
4 crime, the sentence of the Court is defendant is committed  
5 to the State Department of Corrections for a term of five  
6 years. Mr. Mathews, does your client admit by my accepting  
7 his plea that there has been a willful violation of  
8 conditions of his probation?

9 MR. MATHEWS: Yes, sir.

10 THE COURT: Lisa?

11 AGENT: Your Honor, we're going to stand down on that  
12 matter. If my math is correct, it actually expired while he  
13 was in jail. So therefore, we won't have to address it.

14 THE COURT: Well, Mr. Mathews, just to be safe, I'm  
15 going to run the probation matter, 2012-GS-15-00682,  
16 concurrent, as I'm running all of the sentences concurrent.  
17 So he's receiving the max on possession of a weapon during  
18 the commission of a violent crime. Out of the 20 years the  
19 Solicitor is recommending, he's receiving 19 of the 20 on  
20 the attempted murders on each, and I will run all of them  
21 concurrent, and I will also run his probation matter, which  
22 I am now being told at the end of the plea, that it might  
23 have expired while he's been in jail the last two years,  
24 2012-GS-15-682 is also concurrent.

25 Mr. Mathews, the defendant is to be given credit for

1 the time that he's been in jail, but that would be pursuant  
2 to 24-13-40. That is to be calculated and applied by the  
3 State Department of Corrections. Thank you very much.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 17<sup>th</sup> day of November 2014.

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

April 7, 2016

*Rebecca H. Hill*

Rebecca H. Hill,  
 Official Court Reporter

# The South Carolina Court of Appeals

The State, Respondent,

v.

Raymond P. Powell, Appellant.

Appellate Case No. 2014-002561

---

## ORDER

---

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

*V. Claire Allen, Deputy*  
FOR THE COURT

Columbia, South Carolina

cc:

David S. Mathews, Esquire  
Robert Michael Dudek, Esquire  
Steven H. Knight, Esquire  
Alan McCrory Wilson, Esquire  
Salley W. Elliott, Esquire  
The Honorable Perry M. Buckner, III

**FILED**

*May 21, 2015*



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

June 08, 2015

The Honorable Patricia C. Grant  
PO Box 620  
Walterboro SC 29488-0028

### REMITTITUR

Re: The State v. Raymond P. Powell  
Lower Court Case No. 2013GS1500163, 2013GS1500165, 2013GS1500166  
Appellate Case No. 2014-002561

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: David S. Mathews, Esquire  
Robert Michael Dudek, Esquire  
Steven H. Knight, Esquire

Alan McCrory Wilson, Esquire  
Salley W. Elliott, Esquire

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of Colleton )  
 # 346648 )  
Raymond Powell )  
 Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

16-CP-15-199

v.

State of South Carolina )  
 )  
 )  
 )  
 )  
 )

APPLICATION FOR  
POST-CONVICTION RELIEF

2016 FEB 10 AM 11:06  
 PATRICIA C. GRANT  
 COLLETON COUNTY  
 COMMON PLEAS

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution

---

2. Name and location of Court which imposed sentence Waterboro  
South Carolina, Colleton County

---

3. Name(s) of co-defendant(s) (if any) n/a

---

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2013 G S 1500165, Attempted Murder
  - (b) 2013 G S 1500166, Attempted Murder

(c) <sup>Ⓟ</sup> 2013GS1506164, <sup>Ⓟ</sup> 2013GS1506163 <sup>WEAPONS/</sup> ~~pass~~. weapon during

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

(a) NOVEMBER 17, 2013 - 19 years

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

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

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

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

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

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

YES

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

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

i. South Carolina court of appeals

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

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

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

i. Denied

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

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

(c) the date of each such result:

i. The week of March 10, 2015

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

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

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

i. n/a

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

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

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

(a) n/a

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

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

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

- (a) Ineffective assistance of counsel
- (b) Ineffective assistance of counsel
- (c) \_\_\_\_\_

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

- (a) Failure to investigate; prepare for trial
- (b) violation of 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> amendments of the us constitution
- (c) Involuntary plea

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

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

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

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

(c) the disposition thereof:

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

n/a

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

(a) which grounds have been presented:

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) not the proper venue
- (b) not the proper venue
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? n/a
- (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. David Matthews; 115 Benson street  
walterboro sc 29488
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea and sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

Vacated sentence and new trial

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

NO

STATE OF SOUTH CAROLINA )  
County of ~~Colleton~~ Colleton )

VERIFICATION

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

Raymond Powell

SWORN to and subscribed before me this 24<sup>th</sup> day of November, 2015.

Luhecia Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

16-CR-15-199

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

I, Raymond Powell, 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.

Raymond Powell  
Applicant

2016 FEB 10 AM 11:06  
PATRICIA C. GRANI  
COLLETON COUNTY  
COMMON PLEAS

SWORN or affirmed to and subscribed before me this  
24<sup>th</sup> day of November, 2015.

Luchean Bryant  
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	
Raymond Powell, #346648,	)	2016-CP-15-199
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed February 10, 2016, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the March 2013 of the Colleton County Grand Jury for two (2) counts of Attempted Murder and one (1) count of Possession of a Weapon During the Commission of a Violent Crime (2013-GS-15-165, -166, -163). The Applicant was represented by David Matthews, Esquire. On November 17, 2014, the Applicant plead guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced Applicant as recommended by the State to incarceration for nineteen (19) years for each count of Attempted Murder and five (5) years for the count of Possession of a Weapon During the Commission of a Violent Crime. The sentences run concurrently.

A notice of appeal was filed on Applicant’s behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals

dismissed the Applicant's appeal. State v. Powell, Appellate Case No. 2014-2561 (filed on May 21, 2015). The Remittitur was issued on June 9, 2015.

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

## II.

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

1. "Ineffective Assistance of Counsel"
  - a. "Failure to investigate and prepare for trial (sic)"
2. "Violation of 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Amendments of the U.S. Constitution"
3. "Involuntary Guilty Plea"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

## III.

For purposes of this Return, Respondent interprets the Applicant's first allegation to be allegations of ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground

for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

The Respondent interprets Applicant's second claim as an allegation that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. 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 the 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). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

#### V.

The Applicant also alleges his guilty plea was involuntary. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

## VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

Respectfully submitted,

ALAN WILSON  
Attorney General

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Chief Deputy Attorney General

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By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211


June 7, 2016.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	
	)	2016-CP-15-0199
	)	
RAYMOND POWELL, #346648	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

James K. Falk, Esquire  
Falk Law Firm, LLC  
Post Office Box 1058  
Charleston, South Carolina 29402

DATED this 7<sup>th</sup> day of June, 2016.

  
Brianna Arnone, Legal Assistant  
For Respondent

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In the Court of Common Pleas for the  
State of South Carolina, County of Colleton

Case No.: 2016CP1500199

Raymond Powell,  
Plaintiff(s),

vs. Transcript of Record

State of South Carolina,  
Defendant(s).

October 10, 2017

Beaufort, South Carolina

BEFORE:

The Honorable Thomas Russo

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APPEARANCES

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1 PROCEEDINGS

2 THE COURT: Mr. Neely.

3 MR. NEELY: Thank you, Your Honor. The first case  
4 the State would call is Raymond Powell versus State of  
5 South Carolina. Case No. 2016-CP-15-0199. The  
6 applicant was indicted on March 7th, 13th term of the  
7 Colleton County grand jury for two counts of attempted  
8 murder and one count of possession of a weapon during  
9 the commission of a violent crime. Applicant was  
10 represented by David Mathews.

11 On November 17th, 2013, the applicant pled guilty  
12 as indicted. The Honorable Markley Dennis sentenced  
13 applicant as recommended by the State of South Carolina  
14 to incarceration for 19 years for each count of  
15 attempted murder and five years for the count of  
16 possession of a weapon during the commission of a  
17 violent crime. Sentences to run concurrently.

18 Notice of Appeal was perfected on applicant's  
19 behalf, and was filed pursuant to Anders v California.  
20 The State of South Carolina Court of Appeals dismissed  
21 the appeal, and remitter was issued on June 9, 2015.

22 THE COURT: All right. Mr. Powell here?

23 MR. FALK: Mr. Powell is here.

24 THE COURT: All right. Mr. Powell. If you will  
25 please come around, sir.

## CALLING OF THE CASE

1           MR. FALK: Your Honor, Mr. Powell filed an  
2 application for post conviction relief where he alleged  
3 ineffective assistance of trial counsel.

4           THE COURT: Yes.

5           MR. FALK: Ineffective assistance of appellate  
6 counsel. His allegations are, as a result of trial  
7 counsel's failure to investigate and prepare for trial,  
8 he was forced into a position of really feeling like he  
9 had to -- it was an involuntary guilty plea because he  
10 felt as though he was either going to go to trial  
11 without an unprepared lawyer or he could cut his losses  
12 by pleading. So it's an involuntary guilty plea  
13 allegation based on the trial counsel's ineffective  
14 preparation for trial.

15          THE COURT: Okay.

16          MR. NEELY: And I'd like to call Mr. Powell as my  
17 first witness.

18          THE COURT: All right. Let me first ask, though,  
19 Mr. Falk, is Mr. Powell -- I know you have talked with  
20 Mr. Powell extensively. Do you -- does he understand  
21 what relief this court can give? That I can't do  
22 anything regarding reducing his sentence or reducing  
23 anything? All I can do is put him back in the position  
24 he was in before this all started, so that if there  
25 were any -- if there were any charges dismissed as a

## COLLOQUY

1 result of his plea, those charges come back. If there  
2 was any charges or any plea offers or plea deals that  
3 he made with the Solicitor's office, that those deals  
4 would be off the table. They would no longer be bound  
5 by those deals.

6 In other words, what was he originally charged  
7 with? I know you told me, but --

8 MR. NEELY: Two counts of attempted murders were  
9 the main charges, Your Honor.

10 THE COURT: And those carry what?

11 MR. NEELY: Zero to 30 years.

12 THE COURT: Up to 30 each.

13 MR. NEELY: And it was a -- I believe it was a  
14 recommended cap of 20, with the Solicitor recommending  
15 the max of 20, and he received 19.

16 THE COURT: Okay. So does he understand that if I  
17 were to agree with his application, and that he has  
18 proven his allegations to the Court's satisfaction,  
19 that all I could do is put him back where he'd be  
20 facing, again, two attempted murders and of course the  
21 --

22 MR. NEELY: And one possession of a weapon during  
23 the commission of a violent crime.

24 THE COURT: And one possession of a weapon during  
25 the commission of a violent crime. Two attempted

## COLLOQUY

1 murders carry, I believe, 30 each; the weapons charge  
2 is a five-year maximum.

3 MR. FALK: Five years, yes.

4 THE COURT: So he'd be exposed to a 65-year -- it  
5 would be a 65-year exposure. But that's all I can do,  
6 if I agree with him, is to put him back where he was  
7 before all this began. Does he understand that?

8 MR. FALK: If I could have a moment, Your Honor.

9 THE COURT: All right.

10 (Pause.)

11 MR. FALK: Your Honor, we have discussed this with  
12 him in writing, and he says he fully understands the  
13 limitations of remedies that this Court has today.

14 THE COURT: Okay. Mr. Powell, let me ask you  
15 this: If I were -- like, for example, you filed your  
16 PCR application. What is it you would like for me to  
17 do for you? Let's say I agree with everything that  
18 you've alleged, what are you looking for me to do for  
19 you?

20 THE DEFENDANT: Chance to go back to trial.

21 THE COURT: All right. And you understand, that's  
22 all I can do?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Sir, do you want to go  
25 forward with your application?

## COLLOQUY

1 THE DEFENDANT: Yes.

2 THE COURT: All right. Awesome. Great.

3 Well, I just want to make sure, and for those  
4 gentlemen sitting over here, just -- I just want  
5 everyone to understand that this Court has limited  
6 authority as to what I can do in a PCR application.

7 Some folks have filed their application in the  
8 hopes that I could reduce their sentence, and I don't  
9 have any authority to do that. The only authority I  
10 have is, if I agree with your application, is to put  
11 you back where you were before all this occurred. And  
12 so, as I was telling Mr. Falk -- or Mr. Powell, is if  
13 there were any charges dismissed, those charges come  
14 back. If there were any charges that were reduced,  
15 they go back to their full whatever they were before  
16 the negotiations.

17 If the State made any plea offers, they are no  
18 longer bound by those plea offers. So all I can do is  
19 put you back for a second bite at the apple. That's  
20 the only relief I can give. So I just want everyone to  
21 be clear on that so that you are not -- you are not  
22 under the mistaken idea that you can get your sentence  
23 reduced, or you can get something changed or altered.

24 So, I just thought I would cover that now so we  
25 won't have to the cover it again.

## COLLOQUY

1           So, Mr. Falk, I'll be happy -- call Mr. Powell as  
2           your first witness.

3           Mr. Powell, if you would come around and be sworn.  
4           And if you have anything -- I don't know if you have  
5           any documents or paperwork with you, but if you have  
6           that, you can bring it with you; or if you don't, just  
7           come on and around.

8    Thereupon,

9                                            RAYMOND POWELL

10   was called as a witness, having been first duly sworn,  
11   was examined and testified as follows:

12                                           DIRECT EXAMINATION

13   BY MR. FALK:

14       Q    Are you ready, Mr. Powell?

15       A    Yes, sir.

16       Q    I guess, state your name so it's on the record.

17       A    Raymond Powell.

18       Q    Mr. Powell, who represented you on these charges?

19       A    David Mathews.

20       Q    And was he always your lawyer on these charges?

21       A    Yes.

22       Q    How many times did you speak with Mr. Mathews  
23   about your case?

24       A    Two times, to be exact.

25       Q    Were you in custody?

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 A Yes.

2 Q So you were given a -- did they set a bond, or did  
3 they just set a bond that was too high?

4 A I asked for a bond, but he didn't try to take me  
5 up to get a bond.

6 Q Okay. So about how long did you speak with  
7 Mr. Powell -- Mr. Mathews each time?

8 A One time it was like 30 minutes. That was the  
9 longest. The next time it was like 15 minutes.

10 Q Did he ask you to fill out any kind of information  
11 form?

12 A No.

13 Q Did he ask you about your health condition?

14 A No. I -- I came out and told him that I had a  
15 bipolar disorder and depression disorder.

16 Q When did you tell him that?

17 A I told him that I -- around the first time he came  
18 to see me.

19 Q Okay. Now, I thought you said you came by to tell  
20 him that, but you were in custody the whole time until right  
21 at the trial, right?

22 A Yes.

23 Q And how many days were you in custody?

24 A Two years.

25 Q Okay. What was his response when you told him

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 about the bipolar disorder?

2 A He said that's something maybe we might need to  
3 look into, but he never said anything else on it.

4 Q Did you -- were you taking medication?

5 A Yes.

6 Q Were you taking medication for the bipolar?

7 A Yes.

8 Q And what was the other thing that you had?

9 A Depression.

10 Q Depression. What are you taking for your -- what  
11 were you taking for your depression?

12 A They had me on Remeron, because they said it was  
13 really anxiety that was causing me to be depressed.

14 Q Okay. And you were taking what for the bipolar?

15 A 2400 milligrams of Depakote.

16 Q Were you taking that on the day that you were  
17 sentenced?

18 A No.

19 Q Were you getting any medicine while you were in  
20 the Colleton County Detention Center?

21 A Yes.

22 Q What were you taking?

23 A Depakote and Remeron. Same medications.

24 Q Okay. But you weren't taking it the day that you  
25 went in and pled?

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 A No.

2 Q Why was that?

3 A Because they didn't have the order for my Depakote  
4 for that whole month.

5 Q Okay. So the last time you had taken your  
6 depression medicine was one month prior to the plea?

7 A Yes.

8 Q And how about the anxiety medicine?

9 A Same.

10 Q Okay. How does the anxiety medicine, how does it  
11 make you feel?

12 A It makes me feel sleepy.

13 Q And how about the Depakote?

14 A It is like -- it is not, it is not really like --  
15 it just helps me stabilize my mood. It just keeps me calm,  
16 at bay. But sometimes it can make my depression go deeper.

17 Q I guess a better question would be --

18 A And I --

19 Q When you're not on the anxiety medicine, how do  
20 you feel?

21 A Antsy, hyper.

22 Q Are you taking any medicine today?

23 A Yes.

24 Q What did you take today?

25 A I took -- last night I took, Depakote, Remeron,

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 and Geodon.

2 Q And Geodon?

3 A Geodon, for hearing voices.

4 Q What is that for?

5 A Hearing voices.

6 Q Oh, hearing voices.

7 A And I have a correction. I wasn't on no Depakote  
8 when I was in the County. That happened after that, in SCDC  
9 on November 17, 2014.

10 Q So the only thing that you were on when you were  
11 in county --

12 A Remeron.

13 Q -- was the Remeron?

14 A Yes.

15 Q Prior to your arrest, were you on any medication?

16 A No.

17 Q Were you receiving disability?

18 A No.

19 Q Where had been working prior to your arrest?

20 A I was working with a preacher on a crab boat.

21 Q You were working on a crab boat, you say?

22 A Yes.

23 Q How many days a week would you work?

24 A Everyday of the week except Sunday.

25 Q Okay. And then was that seasonal?

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 A Yes.

2 Q So when is the crabbing season?

3 A I think it was around when it be start getting  
4 cold; around November, December.

5 Q What did you explain to Mr. Mathews about your  
6 mental health issues? You said that you were on it, and he  
7 said he'd have to investigate it. Did it -- how do you  
8 think it might have affected --

9 A I mean, it affected it a lot. Because my grandma  
10 was sick, I tried to commit suicide several times before I  
11 went to court. I mean, I didn't really -- I really wasn't  
12 talking to nobody.

13 Q You attempted suicide while you were at?

14 A The CCJ. Cut myself multiple times. Still have  
15 the cuts on my hands and my wrists.

16 Q And just so you -- you said while you were at --  
17 and I think you said "CCJ"?

18 A Colleton County jailhouse.

19 Q Yeah, okay.

20 A Yeah.

21 Q Were you ever put in any type of -- you said you  
22 attempted suicide several times, sir? Two or three times,  
23 sir?

24 A Yes.

25 Q Were you put in any type of protective custody, on

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 any type of watch?

2 A Suicide watch.

3 Q How many -- when was the last time you were on  
4 suicide watch relative to when you pled guilty?

5 A Probably two weeks prior to that.

6 Q Okay. So you went in and pled on November 17th,  
7 2014?

8 A Yes.

9 Q And you were on a suicide watch, you said, two  
10 weeks before that?

11 A Yes. Because I had just got off lockdown, and I  
12 tried to cut myself.

13 Q Okay. How were you able to cut yourself when you  
14 were in the jail?

15 A I asked for a razor to shave with, took the razor  
16 out and cut myself.

17 Q Did you talk to your lawyer about these?

18 A No. Every time I said something about it, he was  
19 just annoyed with it. I wrote letters about it.

20 Q You sent letters to him?

21 A Yes.

22 Q So you think he was aware of your suicide attempts  
23 based on letters that you had sent him?

24 A He was aware of my mental health illness.

25 Q Did you have any family talking with him?

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 A No, because I have family issues. That's why  
2 nobody is currently in the courtroom today.

3 Q I see. So you allege that Mr. Mathews failed to  
4 investigate your case?

5 A Yes.

6 Q So I'm assuming that you mean he failed to  
7 investigate the possible impact that your mental health may  
8 have had on your plea or your --

9 A He didn't discuss any trial strategy, nothing. He  
10 wouldn't even give me my whole -- my whole motion.

11 Q What part of the motion did he share with you?

12 A He read over it, but he didn't give it to me so I  
13 could actually read it and get a fully understanding for  
14 myself. I didn't have an education around that time.

15 Q What was -- prior to your arrest, what was your  
16 highest level of education?

17 A Ninth. I completed eighth, and I was in ninth.

18 Q And why did you leave school in the ninth?

19 A Family issues.

20 Q Okay. You filled out a PCR application?

21 A I had assistance from another inmate.

22 Q Did somebody read this to you?

23 A Yeah. They went over it with me.

24 Q Just --

25 MR. FALK: Your Honor, I'm showing him the

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 application that he prepared.

2 BY MR. FALK:

3 Q So how did you answer the questions? Did somebody  
4 read the questions to you?

5 A Yeah. Somebody read it and helped me prepare it.

6 Q Okay. I know your SCDC records show what your  
7 reading level is, but do you recall what they said?

8 A I don't recall.

9 Q Could you understand everything that Mr. Mathews  
10 was telling you about your case?

11 A Somewhat.

12 Q What part didn't you understand?

13 A I mean, it was multiple parts, like some of the  
14 statements and stuff, I was asking him how -- how could some  
15 people say this? And, like, he said -- and one statement  
16 that was said that, "he was standing beside his cousin at  
17 the car." Then his cousin stated that "somebody walked past  
18 his car that was getting shot at," and he was just ignoring  
19 a lot of things.

20 Q Ignoring inconsistencies in the statement?

21 A Yes.

22 Q Where somebody says something on one day and  
23 something else on the next?

24 A Yes.

25 Q Was there anything else about that that -- you

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 know, any of the paperwork that you couldn't understand  
2 because you couldn't read?

3 A Yes.

4 Q Well, do you know what that was about?

5 A I had to plea, I really didn't know that it was  
6 really going to get me 19 years. Like I was signing over.

7 Q What did he tell you about it?

8 A He told me I was going to get a zero to 23. He  
9 said, "You could get 20 years, but most likely you'll  
10 probably get 10 years."

11 Q Did he tell you what the -- did he tell you that  
12 the Solicitor was looking for a cap of 20?

13 A Yes, at the last minute.

14 Q "At the last minute," what does that mean?

15 A Like the Friday -- like the Friday before I went  
16 to court on that Monday.

17 Q Why did you go to court that day to plea?

18 A Because I felt he wasn't doing enough for me, and  
19 I felt that -- or he told me that if I go to trial I was  
20 going to get 70 years.

21 Q He told you you could get 70 years?

22 A He said that he really thinks I would get 70  
23 years. It's really complicated to beat this case.

24 Q What did he tell you was complicated about the  
25 case?

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1           A     He didn't elaborate.

2           Q     Now, I'm only asking you these questions because I  
3 know Mr. Neely is going to ask you these questions.

4                     Now, you stood before the Judge and you told  
5 him that you wanted to plead guilty, because there's a  
6 transcript of your plea hearing before Judge Buckner. And  
7 you told him that you wanted to plead guilty, and I'm sure  
8 you told him that you were happy with Mr. Mathews.

9                     Why did you answer that way? Why did you  
10 tell Judge Buckner you wanted to plead guilty?

11          A     I was told that was what was needed to be said for  
12 my plea to be accepted.

13          Q     What do you mean by that? You were told that  
14 "that's what was needed to be said." Who told you that?

15          A     Mr. Mathews. If you say any -- he said, "If you  
16 say no to any of these questions, they're not going to  
17 accept the plea."

18          Q     Okay. So if you said no, that you weren't happy  
19 with your lawyer, he told you they wouldn't accept your  
20 plea?

21          A     Yeah.

22          Q     And he told you that when the Judge asked you  
23 whether or not there was anything else the lawyer could do  
24 for you, you had to say, "no," otherwise they wouldn't  
25 accept your plea?

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 A Yes.

2 Q And he told you that you're pleading -- he told  
3 you that when the Judge says, "Are you pleading guilty  
4 because you are, in fact, guilty" --

5 A Say yes.

6 Q And, again, that was the same response, that that  
7 was the only way that you were going to get your plea done?

8 A Yes.

9 Q Why do you want a new trial?

10 A Because I feel that I wasn't represented right.

11 Q Now, on the day that you pled, that would be  
12 November 17th, how was the medicine -- how was the fact that  
13 you weren't on your medicine, how did that affect you that  
14 day?

15 A I mean, I have a severe mood disorder. I mean,  
16 I'm pretty sure the officers at the county jail could tell  
17 you that, like, any little thing can set me off.

18 Q Uh-huh. (Indicating affirmatively.)

19 A Yeah.

20 Q Did you understand what was going on that day?

21 A Yes, a little bit.

22 Q Had you been on your medicine, what would have  
23 happened?

24 A I mean, I probably would have be able to  
25 understand things more better, because I could sit down and

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 be calm, and actually listen. Take time to get a fully  
2 understanding.

3 Q So the Remeron is your anxiety medicine?

4 A Yeah.

5 Q Were you anxious when you went into court that  
6 day?

7 A Yes.

8 Q Does that affect your ability to think?

9 A Yes. Bipolar is something that affects your  
10 ability to think, because it's like you're bouncing off the  
11 wall constantly. You're constantly wanting to move, change  
12 this here.

13 Q But I'm talking to you right now, you seem calm  
14 and you're responsive to my questions.

15 A Yes, because I took the medicine last night.

16 Q What could Mr. Mathews have done other than  
17 possibly have a better handle on your mental health? What  
18 else did you want him to investigate?

19 A I mean, he could at least get me an examination.  
20 Probably better, probably put me on my medicine, and then  
21 would have took me up to trial. It probably would have been  
22 a better outcome.

23 Q What about your case did you want -- just actually  
24 your case, what did you want him to investigate?

25 A The statements. There's a lot stuff. The

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 evidence. The bullet -- well, the gun ballistics. It's a  
2 lot of stuff.

3 Q Did he show you any ballistic testing, gunshot  
4 testing, results of that?

5 A He sent me one, but he didn't really go over it.

6 Q You said before that he handed this stuff and read  
7 it to you. Did he give you any paper while you were in the  
8 jail?

9 A No. He gave me my full discovery on Friday, that  
10 same Friday that I told him I didn't want to see him. And  
11 he came and he gave me that, and he offered me the plea.

12 Q You told him you didn't want to see him?

13 A Yeah.

14 Q Why was that?

15 A Because I felt like he wasn't representing me. I  
16 wrote the Captain Jody Taylor this. I told her I didn't  
17 want to see him because I felt like he wasn't representing  
18 me.

19 Q Who was Captain Jody Taylor?

20 A She's who was over the county jail around that  
21 time.

22 Q Did you ask for a new lawyer?

23 A I was going to, but he told me if I would have  
24 said my lawyer wasn't doing nothing, then they was going to  
25 say, oh, no, still continue with trial, this, that, and

## DIRECT EXAMINATION OF RAYMOND POWELL BY FALK

1 third. I don't know.

2 Q Did you write him and tell him that you were not  
3 satisfied with his --

4 A Multiple times.

5 Q You were in jail for two years. So what does  
6 "multiple times" mean?

7 A Probably over ten or 15 times.

8 Q And what relief are you seeking today?

9 A To be able to go back up and have a trial by jury.

10 Q And you had said that your guilty plea was  
11 involuntary. Why are you saying that your guilty plea was  
12 involuntary?

13 A Because I did not fully understand, and I was  
14 pressured into it. And I was not even on my medication.

15 MR. FALK: I have no further questions, Your  
16 Honor.

17 THE COURT: All right. Cross-examination?

18 MR. NEELY: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. NEELY:

21 Q Now, Mr. Powell, do you recall your guilty plea?

22 A Yes.

23 Q And do you recall the Judge going over your mental  
24 illness with you?

25 A I recall him saying it. He didn't go over it. He

## CROSS EXAMINATION OF RAYMOND POWELL BY NEELY

1 asked me a question, was I on -- did I have any mental  
2 issues.

3 Q Do you remember what your response was?

4 A Yes.

5 Q What was your response?

6 A Bipolar and depression.

7 Q Well, the transcript says you said, "mental  
8 health." Does that sound right?

9 A Yeah.

10 Q And the Judge, you know, went over with you and  
11 said -- and asked you if you had been able to understand  
12 everything going on, even though you had this mental  
13 illness. Do you remember that?

14 A No.

15 MR. NEELY: Your Honor, may I approach?

16 THE COURT: Yes.

17 BY MR. FALK:

18 Q I'm going to show you the transcript, it's Page 9  
19 of the guilty plea transcript. If you would just look from  
20 Line 11 to Line 18 -- are you literate now? Can you read?

21 A I can read.

22 Q Okay.

23 A I see what it says.

24 Q And you assured the Court during your guilty plea  
25 that you were competent and that you understood the

## CROSS EXAMINATION OF RAYMOND POWELL BY NEELY

1 communication between yourself and your attorney, and the  
2 Court's communications?

3 A Because that's what I was told what to say.

4 Q Okay. And earlier you said, you know, without  
5 your medications even the littlest thing can set you off,  
6 and that that's part of your bipolar; is that correct?

7 A Yes.

8 Q Were you on your meds the day the shooting took  
9 place?

10 A Sir?

11 Q Were you on your meds the day the shooting took  
12 place?

13 A I mean, I don't have no clue, because I wasn't  
14 around the shooting.

15 Q So you weren't even there, you are saying?

16 A Huh-uh. (Indicating negatively.)

17 Q So the two witnesses that were shot that  
18 identified you, they just made the whole thing up; is that  
19 what you are asserting?

20 A Yes.

21 Q And when you told the Judge that you understood  
22 and were satisfied with your counsel, that was just to get  
23 the guilty plea through?

24 A Yes.

25 Q And why were you answering all these questions in

## CROSS EXAMINATION OF RAYMOND POWELL BY NEELY

1 the affirmative to push the guilty plea through?

2 A Because I was told I was going to get 70 years if  
3 I go to trial.

4 Q But going into the guilty plea --

5 A He said --

6 Q -- you understood that the State was recommending  
7 a cap of 20 years, and they were going to recommend the 20  
8 years?

9 A No.

10 Q Well, didn't you just say Mr. Mathews that --

11 A I said Mr. Mathews said it was going to be a  
12 zero/20 cap, but most likely, he said, "I'm pretty sure  
13 you're going to get about ten years."

14 Q Okay. But he said that you were facing up to 20  
15 years, based on the State's recommendation; is that correct?

16 A He said I was facing up to 20 years, yeah.

17 Q Okay. And the Judge told you that same thing,  
18 right?

19 A I guess.

20 Q If that's -- you wouldn't deny this would happen?

21 A (Nods in the affirmative.)

22 Q Say yes or no.

23 A Yes.

24 Q So what you are telling the Court today is that  
25 you pled guilty because you were scared that you would

## CROSS EXAMINATION OF RAYMOND POWELL BY NEELY

1 receive the maximum sentence in the trial?

2 A No. I pled guilty because I felt like my lawyer  
3 wasn't doing what he was suppose to do. Instead of  
4 preparing for trial, all he did was tell me, "Well, you can  
5 get the maximum sentence," because I was really going to  
6 really go to trial and changed my mind to that Friday.

7 Q So you --

8 A When he presented the paperwork about the 20-year  
9 plea and told me that, "Oh, I can't really do nothing for  
10 you in the Court."

11 Q So he told you, based on his advice, that you  
12 would probably be found guilty?

13 A It wasn't fact -- he told me that was fact. It  
14 wasn't advice. He made a statement.

15 Q He told you, without a doubt, you would be found  
16 guilty?

17 A Yes.

18 Q And then you took the 20-year plea offer the day  
19 he offered it to you, that Friday before?

20 A I told him I wanted a new lawyer, and he said,  
21 "Well, if it's this late in the case, well, if you want a  
22 new lawyer, they're probably just going to say, come on, and  
23 go ahead and do trial. You're going to get 70 years. So I  
24 advised you this, to take the plea."

25 Q And then you told him that you would take it?

## CROSS EXAMINATION OF RAYMOND POWELL BY NEELY

1 A Yes.

2 Q And that was the Friday before the plea?

3 A Yes.

4 MR. NEELY: That's all that I have, Your Honor.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION

7 BY MR. FALK:

8 Q Just, I'm not sure I -- I don't know if this more  
9 for the court reporter -- he was telling you you were going  
10 to get a 70-year sentence; is that right?

11 A Yes.

12 Q Seven, zero?

13 A Yes.

14 Q Okay. And when you -- and that Friday you told  
15 him you wanted a new lawyer?

16 A Yes.

17 Q And he told you, "Well, then, if you do it this  
18 late, you're going to" --

19 A Proceed anyway.

20 Q Okay. So was your case going to be called for  
21 trial on Monday?

22 A Yes.

23 MR. FALK: No redirect -- no further re-direct.

24 THE COURT: Mr. Powell, you said that Mr. Mathews  
25 told you that the plea offer was zero to 20, but he



## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 was called as a witness, having been first duly sworn,  
2 was examined and testified as follows.

## DIRECT EXAMINATION

4 BY MR. FALK:

5 Q Mr. Mathews.

6 A Mr. Falk.

7 Q Mr. Powell said that you saw him twice when he was  
8 in custody?

9 A I saw him four times. And the last time was for  
10 two hours.

11 Q And timing-wise, you said the last -- he said the  
12 last time he saw you was the Friday before he pled on that  
13 Monday?

14 A That might be true. I don't -- I don't have my  
15 paper file. I have my computer file, and I was looking at  
16 that. I can actually look at that on my phone. If you'd  
17 like, I could look at my notes.

18 But I talked to him -- I went over all the  
19 evidence with him the last time. It might have been the  
20 Friday before. Our investigator went to see him there twice  
21 also. And a year of that time he was in a Youthful Offender  
22 Act on a violation of probation. So he was in jail a long  
23 time, but a year of that he was at Department of  
24 Corrections.

25 Q Okay. Are you able to skype with him, or are you

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 able to communicate with the Department of Corrections  
2 there? I mean, I know --

3 A I talked to him before he had his YOA violation of  
4 probation considered, and he said he wanted to do that first  
5 and then consider the other thing after he got back.

6 Q Okay. Did you get full discovery in this case?  
7 Do you feel like you got --

8 A As far as I -- I don't -- I didn't -- if there is  
9 anything missing, I -- there wasn't anything in the incident  
10 report or the witness statements or anything that suggested  
11 there was more out there.

12 I also asked Mr. Powell if he had any  
13 witnesses that he wanted me to talk to, and he said no.  
14 Actually he told that to Mr. Horton, according to the notes.

15

16 Q Told that to whom?

17 A Our investigator.

18 Q Oh, okay. Do you recall the witness statements in  
19 this case?

20 A I don't know where my paper file -- I got an  
21 affidavit, or Rocky -- Raquel Booth, our administrator,  
22 tried to find the file. We can't locate it. I have what's  
23 in the computer file on Offender data, but I don't have the  
24 paper file.

25 Q Okay. What kind of conversations did you have

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 with him about his mental health?

2 A I mean, I knew Raymond. I represented him five  
3 times before this. I -- I knew him pretty well. I felt  
4 like he was competent. I knew he wasn't 100 percent, but I  
5 did not feel he was incompetent. He seemed to understand  
6 what was going on.

7 Q You said you represented him five times prior to  
8 this?

9 A Right. And Harris Beach represented him once.

10 Q Over what period of time?

11 A I think probably from -- Harris would have been  
12 probably, I'm guessing, 2009 or something. 2011 through  
13 2014, somewhere around in there. Again, I can check my  
14 computer notes on that, but ...

15 Q Is it accurate that the case could have been  
16 called for trial on November 17th?

17 A Yes.

18 Q Were you ready for trial?

19 A I think I was. I mean, I had -- again, I don't  
20 have my paper file, which would be a help. But I know that  
21 I reviewed all of the evidence and reviewed all of it with  
22 Mr. Powell. And I talked to, or tried to talk to Cornbread,  
23 who was one of the witnesses on the list, David -- I can't  
24 remember his last name. So I think I was ready.

25 Q Did you tell him that you thought he could get

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 convicted?

2 A Yes.

3 Q And why -- and did you think he would get  
4 convicted?

5 A Yes.

6 Q Why do you think he would have gotten convicted?

7 A Well, I -- I mean, like I said, I -- again, I  
8 don't have the paper file, but I -- I don't mind trying  
9 cases. And I don't like to lose them, but I understand that  
10 sometimes you do.

11 But, you know, I tell most of my clients, and  
12 I don't remember specifically telling Mr. Powell, but I  
13 probably did, and that is the best thing about this is, you  
14 know, you can do what you want, but I give my assessment on  
15 whether I think they're likely to win or not.

16 And I tried to get Steve Knight, who was the  
17 prosecutor on that, to agree to a cap of 15, and he did not.  
18 But, you know, I would not have advised him to plea if I  
19 thought he could win at trial.

20 Q Did you tell him that you thought he would get  
21 ten?

22 A I don't have my paper file, I don't see anything  
23 in the notes. I don't know whether I did or not. I talked  
24 to Steve about a cap of 15. So, you know, it's possible I  
25 did, but if I talked to Steve about a cap of 15, I probably

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 thought that was about as well as I was going to do. I  
2 could have though.

3 Q Would you have told him that whenever this last  
4 time you met with him two hours -- we can agree that was  
5 relatively close in time?

6 A Yes, a couple of weeks before.

7 Q And so it was at that time that you may have told  
8 him that he could get ten?

9 A If I told him that, that would have been in that  
10 -- yeah. Well, I mean, it depends some. I mean, some of it  
11 is, you know, it's give and take. You know, I'm -- I --  
12 I'll -- I'll call, say, "Have you talked to your victim?  
13 How are they feeling about things?"

14 I'm just -- you know -- and some of it's  
15 going to depend on the state of the victim, the kind of  
16 noise they're making, how much weight the sentencing Judge  
17 was going to give to what the victim says, and their  
18 appearance and other things. So, you know, it's possible  
19 that at one point it might have looked like ten was  
20 reasonable, and at another point, you know, more or less,  
21 would be depending on the state of where things were,  
22 whether you got a Judge that has a reputation as being a  
23 light sentencer, one that has a reputation of being a heavy  
24 sentencer, or whether the victim is somebody that's vocal  
25 and pushing things, or whether they are pretty good with

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1     whatever.

2                     And I mean, these are things generally --  
3     like I said, I don't have my paper file -- I don't know that  
4     my paper file would whether reflect that anyway, but I know  
5     that I talked to Mr. Knight several times about trying to  
6     get a decent cap, where there would be some room to go down,  
7     and obviously the sentencing Judge would give a little bit  
8     of room -- 19 is less than 20, if not by much.

9             Q     Obviously you spend a lot of time before Judge  
10    Buckner?

11            A     He is -- Walterboro is his home. So I do.

12            Q     So you had a -- you should have had a level of  
13    experience of what you would expect from him if he's going  
14    to be, you know --

15            A     Yes. He generally goes by the recommendation.  
16    And pretty much, you know, for better or for worse, you know  
17    what you are getting. Generally speaking, if you have got a  
18    recommended sentence, a cap of, he went a little bit below  
19    that, which was -- it's -- that's not a shocking result.

20            Q     Knowing Judge Buckner, do you think there's any  
21    way that he would have gotten 70 years if he had gotten  
22    convicted?

23            A     I don't think 70, no. I mean, when I talk about  
24    the possibility, if they run consecutively, in one incident,  
25    it's unusual. But, no, I have had cases that I've tried

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 where the Judge has sentenced consecutively on one incident.  
2 Not a lot. And then that is normally -- the only time  
3 that's ever happened is when I've, you know -- I've heard  
4 Judge Buckner say on a number of occasions that he never  
5 punishes somebody for exercising their constitutionally  
6 guaranteed right to trial by jury.

7           However, he does reward people for taking  
8 responsibility for their actions. It all looks the same to  
9 me. But at one seminar I actually had one -- heard one  
10 Judge say, I can't remember who it is right now, but who  
11 said -- he admitted to imposing a trial tax. That was a  
12 shocking moment for me.

13           But it's entirely possible he could have  
14 gotten consecutive time. Seventy years, probably not, but  
15 it's entirely possible after trial he could have gotten  
16 consecutive time.

17           Q     Well, not getting into too much specifics, was  
18 there anything -- granted these were serious charges -- was  
19 there anything particularly egregious about this case  
20 that -- maybe the identity of the victims, maybe special  
21 needs victims or --

22           A     My -- and it's without my -- without having my  
23 paper file, and I don't -- you know, we looked. I had Rocky  
24 scour the office, don't have it. I don't know where it is.  
25 But I don't know whether -- I don't -- I think the victim

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 was in a wheelchair here. I'm not positive of that, but I  
2 believe -- unless I'm getting mixed up with another case.  
3 Like I said, I don't have my paper file, but I think there's  
4 a -- I think that the victim was in a wheelchair.

5 Q Y'all moved offices, right?

6 A We have, yeah. We moved from 119 Benson Street to  
7 319 North Lucas Street. It's a nice building. I don't know  
8 how long we are going to be there, but it is a nice  
9 building. We did change buildings. And we had somebody  
10 else move all the files. We had a moving company. I  
11 don't -- there's not any reason on earth I could imagine  
12 that somebody would take it, but some stuff may have been  
13 left behind, and the building has been demolished now.

14 I don't -- all I know is that I asked Rocky  
15 to find it, and she filled out an affidavit saying she was  
16 unable to.

17 Q When he told you about his bipolar and the anxiety  
18 medicine, did you tell him, "Well, maybe that's something we  
19 will look into"?

20 A I don't remember. I mean, it -- I don't -- I  
21 don't remember.

22 Q Did you know specifically what his mental health  
23 problems were?

24 A I knew he had some. As far as what they were  
25 specifically, I talked to somebody in his family, and I

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 talked to the -- Louise Slater, who was the Youthful  
2 Offender Act parole agent. I don't remember who in his  
3 family I talked to, but I've got a note in there that I  
4 talked to somebody in his family. So it would have been  
5 discussed, but I don't know -- I don't have no specifics.

6 Q Did he tell you that he wanted a new lawyer?

7 A Yes.

8 Q And so his testimony was that day, whenever that  
9 day was, you're on your last visit, he had told you he  
10 wanted a new lawyer?

11 A Well, he had written me before that, and I went to  
12 talk to him. And in my -- I referred to my notes just  
13 before I came up here. In my notes, I said that I had told  
14 him that I would bring it before the Judge if he'd like.  
15 But probably, it probably would not be granted and probably  
16 would not be the basis for a continuance.

17 A lot of times, and particularly -- there are  
18 occasions, and there's the perception among -- among the  
19 chunk of the Bench that sometimes motions for -- to replace  
20 a lawyer is just another way to get a continuance. And  
21 whether that's true or whether it's not, if there's that  
22 perception, it impacts the ability to -- you know, it makes  
23 it harder to. Unless you've got an actual conflict or, you  
24 know, the fact that I don't like the job you are doing, and  
25 at the time there weren't but two public defenders there.

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 And it's a burden on the private bar to have them do it or  
2 burden on the public defender's office to the extent that  
3 they got to pay out.

4 But I was prepared to present that. I don't  
5 know whether I did or not. But it was -- I discussed it  
6 with him, and I told him that it's unlikely it would be  
7 granted, but I would bring it in front of the Judge.

8 MR. FALK: I need one moment, please, Judge.

9 (Pause.)

10 BY MR. FALK:

11 Q Do we think this file is lost forever or possibly  
12 just misplaced?

13 A I don't have any idea. Like I said, I just -- I  
14 mean, as you might imagine, we've got lots and lots and lots  
15 of them. We have been trying to get some of the older ones  
16 destroyed, but, you know, more than -- say more than ten  
17 years. I know we can destroy them after seven, but we have  
18 got two decent-sized rooms filled with boxes of files, and  
19 it's entirely possible that it's there, but misplaced. Or  
20 it's possible it didn't make the trip. I don't know.

21 Q How many files are missing?

22 A Are missing?

23 Q Yes.

24 A This is the first one I know of, because this is  
25 the first one that's been requested that we couldn't find.

## DIRECT EXAMINATION OF D. MATHEWS BY MR. FALK

1 MR. FALK: I have no further questions.

2 THE COURT: Re-cross?

3 CROSS EXAMINATION

4 BY MR. NEELY:

5 Q Just to clarify, there's no way Mr. Powell could  
6 have gotten 70 years, right? I mean, the maximum sentence  
7 he could have gotten was 30 plus 30 plus 5.

8 A Right, yeah. That's true.

9 Q So there's no way that you would have told him --

10 A Well, I wouldn't have -- no, I wouldn't have told  
11 him -- I wouldn't have told him -- when we have a file we  
12 put the statutes in there so we can look at them and say  
13 it's this plus this plus this. So that's just math.

14 Q Right. So there's no way that you told him 70; is  
15 that right?

16 A It's unlikely.

17 Q And you said that the trial was being called on  
18 Monday?

19 A It was -- if we were not first up, we were -- we  
20 may have been first up, but I know that trial was  
21 supposed -- the case was going to get resolved that term, is  
22 what I got, unless there was some compelling reason to  
23 continue it.

24 Q And is it your practice or policy to wait until  
25 the last week to begin to prepare for a trial?

## CROSS EXAMINATION OF D. MATHEWS BY MR. NEELY

1           A     No. No, I always get ready before that. I -- you  
2 know, it's a -- and I mean, I've been -- from my notes, for  
3 months before I had been -- I think Raymond had gotten back  
4 probably in like April, and I talked to him shortly after he  
5 got back, and would have been preparing it.

6                     You know, normally when I come up for trial I  
7 prepare a trial notebook. If it's on the trial docket for  
8 every case I have that's on the trial docket, if it's in at  
9 least the top ten cases, I open up a trial notebook. And I  
10 don't specifically remember that, don't have a paper file,  
11 but that's what I always do.

12           Q     So that is likely happened here, just on paper  
13 file?

14           A     That is likely what happened here, yes.

15           Q     Did Mr. Powell raise concerns about your lack of  
16 preparation to you probably before?

17           A     He didn't want me -- he told me didn't want me to  
18 represent him. I mean, as far as my lack of preparation,  
19 the only thing I know to do is -- I went over all the  
20 evidence with him. Like I said, I spent two hours going  
21 over all the interviews and everything, and explained where  
22 I thought things were going.

23                     And then our investigator, C.T. Horton, went  
24 to talk to him shortly thereafter and double checked to see  
25 if there were any witnesses that he wanted us to call, and

## CROSS EXAMINATION OF D. MATHEWS BY MR. NEELY

1 C.T.'s notes said that he said no.

2 Q Would it be fair to characterize this as a fairly  
3 simple case?

4 A I mean, I don't know that any case is -- you know,  
5 you always look for something, you know. And so sometimes  
6 it's beneficial for it to be simple and sometimes it's not.  
7 But every case -- you know, every case you look at on the --  
8 I don't remember whether it's -- you know, whether a witness  
9 is lying or telling the truth or mistaken and things like  
10 that, those can always be complicated, or they can always be  
11 simple. It just sort of depends on the -- I don't know how  
12 to answer that. It didn't involve, you know, a great  
13 scientific debate or anything like that. I don't think -- I  
14 think it's just a matter of who you believe.

15 Q Okay. I guess to rephrase, what was the evidence  
16 in this case the State was going to use to --

17 A I don't -- I honestly don't remember.

18 Q Okay. Do you recall during the guilty plea at the  
19 sentencing stage asking Judge Buckner to sentence him to ten  
20 years?

21 A You have the notes. Whatever I said, I said. I  
22 have no reason to doubt them.

23 Q Okay. And you mentioned that one of the victims  
24 was in a wheelchair. I believe on Page 27, the victim was  
25 in a wheelchair, the Court noted that. The victim was

## CROSS EXAMINATION OF D. MATHEWS BY MR. NEELY

1 paralyzed. Does that sound right?

2 A Right.

3 Q And I think that it is a have fair  
4 characterization to say that the case came down to two  
5 witnesses who were wounded by gunfire identified Mr. Powell  
6 as the shooter?

7 A That sounds right. Like I said, I don't have the  
8 paper file, but that sounds right.

9 Q And what is in the visual file for -- on the  
10 defender data?

11 A I have got -- I mean, my notes. I mean, and I  
12 don't note everything I do, but if I -- but I note many  
13 things I do. I typically note when I see somebody at the  
14 jail. Let's see here.

15 Okay. What do you want to know? I got --  
16 there are -- there are notes, charges, related cases,  
17 documents, documents sometimes -- we have only recently  
18 gotten good at scanning things in.

19 Now, as of perhaps eight months ago, we  
20 scanned whatever we can scan into the document section of  
21 offender data, but we were not -- the information was still  
22 given to us in CDs and stuff at the time, and so we didn't  
23 have to do that and didn't do that now.

24 Now, through evidence dot com and other  
25 things, they send us a link and it's all digital. And so we

## CROSS EXAMINATION OF D. MATHEWS BY MR. NEELY

1 -- unless the file is too big to put in -- for us to  
2 download, you know, we move everything. We weren't doing  
3 that then, so probably I can look and see what is in  
4 documents here.

5 Q Would your notes indicate whether you told him you  
6 believe that Judge Buckner would give him a ten-year  
7 sentence?

8 A What I typically say is, I will ask for and try to  
9 get. That is typically what I say. As far as what a Judge  
10 will do, I do say typically that generally speaking, Judge  
11 Buckner goes by the recommendation. That only on rare  
12 occasions does he go up or down from that.

13 And that is something that I pretty much  
14 always say. And like I say, I'm very familiar with Judge  
15 Buckner, and he almost always goes by whatever the  
16 recommendation is. With a cap, you know, he went lower than  
17 that, but not a lot lower than that. I asked Mr. Knight to  
18 consider a 15-year cap, and he did not do that.

19 As far as ten, what I would typically say is  
20 I will try to get you ten, I will ask for ten. As far as  
21 what a Judge is likely to do, it is unlikely that Judge  
22 Buckner would take a cap and cut it from 20 to ten. And if  
23 that -- you know, perhaps if there were, you know, some --  
24 if it were a different Judge, depending, maybe Judge Cooper  
25 or somebody like that, I would say, well, you maybe can hope

## CROSS EXAMINATION OF D. MATHEWS BY MR. NEELY

1 to do a little bit better than that. But when you see  
2 somebody roll up in a wheelchair, that changes the calculus  
3 a little bit, too. And if you think somebody is not going  
4 to show up, the victim is not going to show up then that --  
5 but I don't -- it's unlikely I would have said that Judge  
6 Buckner will likely cut that in half. What I probably said  
7 is, "I will to get you ten."

8 Q And that would be reflected by you asking for ten  
9 at the guilty plea?

10 A Yeah.

11 Q But you would -- is it your practice to clarify  
12 that and tell your client that they can always receive the  
13 maximum penalty?

14 A Well, on a -- yes. And, in fact, that was one of  
15 the things. I mean, typically -- and when I say unless it  
16 is a negotiation, which the Judge can generally most -- a  
17 judge will take or leave it. But, you know, if they are not  
18 going to take the negotiation, they just won't take the  
19 plea. On a recommendation, they are always free to go  
20 higher or lower than that. When it comes with Judge  
21 Buckner, I said, he almost goes with the recommendation, you  
22 know.

23 Q And if you had a recommendation from the State was  
24 a cap of 20, and the State was asking for the max, you would  
25 have advised --

## CROSS EXAMINATION OF D. MATHEWS BY MR. NEELY

1           A     I would advise that -- what I typically would have  
2 done is said that he might go a little lower, but he's not  
3 going to go a lot lower. But I'll ask. I mean, that's  
4 usually what I say, and that's probably what I said.

5           Q     And speaking to the egregiousness part of this,  
6 other than the victim being paralyzed, in a wheelchair,  
7 Mr. Powell's prior run-ins with law enforcement that you  
8 represented him on, had that taken place over a fairly short  
9 period of time?

10          A     Let me see. Okay. I got a -- Mr. Beach  
11 represented him in 2008. I represented him in 2012, 2011,  
12 2011, 2011, 2013, which would have been this case, and 2014.

13          Q     So it's fair to characterize that as a fairly  
14 consistent criminal history?

15          A     I got one guy I represented 14 times. I mean,  
16 it's not -- you know, that's not typical. I would say I  
17 always -- my -- with the people that I have represented a  
18 bunch of times, I say, "I'm sorry, to see you again." I  
19 mean, you get to like a lot of your clients. Not all of  
20 them. I like Raymond.

21                     But, you know, it's a -- it doesn't matter.  
22 I mean, you do the job that you do, it doesn't matter  
23 whether you like the people or you don't. And on balance,  
24 that is probably better, but -- you know.

25          Q     Do you recall what happened at his other pleas, in

## CROSS EXAMINATION OF D. MATHEWS BY MR. NEELY

1 regard to --

2 A I can look it up. I mean, I know that he got --  
3 the 2014 one, I guess would have been the violation of  
4 probation on the YOA. And then the one before that,  
5 immediately before that, would have been the Youthful  
6 Offender Act, suspended Youthful Offender Act sentence.  
7 Let's see ...

8 Q Do you recall or know whether he was received a  
9 mental competency evaluation for any other cases?

10 A I don't recall ever asking for it.

11 Now, when Mr. Beach had him as a juvenile,  
12 there would have been some assessment done.

13 Q And during your conversations with Mr. Powell,  
14 even though he had told you that he wanted a new attorney,  
15 you felt like he understood your conversations?

16 A I felt like he did.

17 Q He was responsive and -- during these  
18 conversations?

19 A Yes.

20 Q He seemed to follow and track along with the logic  
21 that you were telling him about his case?

22 A Yes.

23 MR. NEELY: That is all the questions that I have.

24 Thank you.

25 MR. FALK: Your Honor, I really should have

## CROSS EXAMINATION OF D. MATHEWS BY MR. NEELY

1 covered this originally.

2 REDIRECT EXAMINATION

3 BY MR. FALK:

4 Q Did you suggest to him how he should answer the  
5 questions?

6 A What I typically say -- probably. But what I say  
7 is the judge is going to ask you a bunch of questions. If  
8 the answer is no, then he's not going to -- if the answer is  
9 wrong, he's not going to take it, and you probably shouldn't  
10 plea. You know, I'll say that I -- I don't always, but I  
11 frequently say, "The judge is probably going to ask you are  
12 you pleading guilty because you are guilty? And if you  
13 can't answer that yes, then you should not be pleading  
14 guilty."

15 So, you know, I said something like that, but  
16 there is a little bit of difference. I'm not saying -- I'm  
17 saying don't lie to the judge. These are the questions he's  
18 going to ask, if you can't answer these questions yes, then  
19 the judge is not going to take your plea, and you shouldn't  
20 plea.

21 Q Did you tell him how to answer the questions about  
22 satisfied with your service?

23 A I -- not specifically. I go through -- usually  
24 I'll say the judge is going to ask you a bunch of questions  
25 to make sure you know what you're doing and you know what

## REDIRECT EXAMINATION OF D. MATHEWS BY FALK

1 your rights are. I say the judge -- and the judge is going  
2 to ask you are you satisfied with your lawyer, have you got  
3 any complaints against law enforcement, are you on any  
4 medication right now that will affect your ability to  
5 understand what is going on? Do you understand you've got a  
6 right to a jury trial? You don't have to prove you didn't  
7 do it, they have to prove you did. That's the elevator  
8 speech.

9 Q That is your stump speech, but you don't  
10 specifically remember saying --

11 A No. And it's something that I frequently say, but  
12 I don't specifically remember having that discussion.

13 Q But you probably left him with the impression that  
14 if he doesn't follow along, he is not going to accept the  
15 plea?

16 A Well, I mean, that's the truth of it. The only  
17 difference is the implication of it. I mean, you know, if  
18 you answer -- and particularly in front of Judge Buckner, if  
19 you say, you know, unless it is a -- an Alford plea or a  
20 best interest plea or something like that, you're not -- you  
21 know, the judge should not accept a plea if the answer to  
22 those questions is no. I mean ...

23 Q Buckner doesn't like Alford pleas, does he?

24 A He will do them. He doesn't do them a lot.

25 Q You have a lot of experience with Judge Buckner?

## REDIRECT EXAMINATION OF D. MATHEWS BY FALK

1 A Yes.

2 Q What would have happened had the plea blown up,  
3 and he said, "I'm not happy with my lawyer," or he would  
4 have said --

5 MR. NEELY: Your Honor, I think that calls for  
6 speculation. I think he --

7 MR. FALK: I think that he has got some experience  
8 here.

9 THE COURT: Sustained the objection.

10 A I think the trial would have gone forward.

11 MR. FALK: Thank you.

12 THE COURT: When I sustain the objection, don't  
13 respond to the question.

14 THE WITNESS: I'm sorry, Your Honor.

15 THE COURT: Strike that from the record, that  
16 response.

17 MR. FALK: No further questions.

18 THE COURT: All right. Anything further?

19 MR. NEELY: Nothing further, Your Honor.

20 THE COURT: Thank you, sir. You may step down.  
21 Anything further, Mr. Falk?

22 MR. FALK: No, Your Honor.

23 THE COURT: Anything from the State, Mr. Neely?

24 MR. NEELY: No, sir, Your Honor.

25 THE COURT: All right. Gentlemen, I'll be happy

## REDIRECT EXAMINATION OF D. MATHEWS BY FALK

1 to hear your summations.

2 MR. FALK: Your Honor, I believe that my client  
3 has established that he felt coerced into making this  
4 plea that day. He had already expressed that he was  
5 dissatisfied with his lawyer. His lawyer told him  
6 that -- I believe the record shows that his lawyer told  
7 him that if he goes to trial, he's going to get bunches  
8 of years, whether it's 60, 70, whatever.

9 His lawyer also, when he says he wants to get a  
10 new lawyer, I believe the testimony is that he was  
11 advised that, "Well, you won't get a new lawyer, you're  
12 probably going to have to go forward anyways."

13 But at the end of the day, my client was in the  
14 position that he knew that he was going to get the  
15 trial was going to get taken care of that term.  
16 Mr. Mathews was pretty clear on that point, that that  
17 case was going to get resolved that term. And so my  
18 client was even going to have to go forward with a  
19 lawyer who he was not satisfied with, or he was going  
20 to have to accept the plea. Whether or not he was  
21 promised a ten-year plea or was assured of a ten-year  
22 plea, the record can show that.

23 But at the end of the day, my client has already  
24 testified that he was taking medication, he was not on  
25 his medication at the time. It is anxiety medicine

## SUMMARY ARGUMENT BY COUNSEL

1 that could have affected his ability to sort of sort  
2 through the situation. And I believe that Mr. Mathews  
3 said that he does typically give his clients a speech,  
4 or advice, that if, you know, if you don't -- of  
5 course, they all say -- you know, don't say anything  
6 that's not true, but if you don't abide by the  
7 questioning, he will not accept your plea.

8 Then there goes my client's anxiety, too, having  
9 to go forward with a trial that week, with a lawyer he  
10 feels is not prepared.

11 So I do think that we have shown that he felt  
12 coerced into pleading guilty on that day. It's  
13 exacerbated by the fact that he wasn't on his  
14 medication, and he felt that the best way to cut his  
15 losses was to take the plea rather than run the risk of  
16 a trial.

17 THE COURT: Thank you, sir. Mr. Neely.

18 MR. NEELY: Thank you, Your Honor.

19 I think it's fairly common for a client or a  
20 defendant not to like the advice they're getting from  
21 counsel; when the advice from counsel is "they will  
22 find you guilty at trial." Period.

23 The Defendant is entitled to a constitutionally  
24 confident attorney, not an attorney of their own  
25 choosing. I feel like in this case, that's what

## SUMMARY ARGUMENT BY COUNSEL

1 happened. It's really obvious from Mr. Mathews'  
2 testimony, he told Mr. Powell -- or not Mr. Powell,  
3 excuse me -- yes, it is Powell -- that he believes he'd  
4 be found guilty at trial due to the evidence against  
5 him. And that's not something clients like to hear.

6 He attempted to negotiate with the Solicitor for a  
7 better deal, a cap of 15, and the Solicitor would not  
8 come down from a cap of 20 and a recommendation of the  
9 max.

10 Mr. Mathews did do mitigation. He mentioned again  
11 something that Mr. Powell had brought up, which was the  
12 tension might not have happened if Mr. Powell had been  
13 on his medication, and that's certainly a possibility.

14 But the fact we've got two witnesses,  
15 eyewitnesses, that identified him as the shooter, and  
16 it is just a very clear-cut case. There's no reason  
17 for them to lie. They identified Mr. Powell that he  
18 did do it. One of the witnesses is permanently  
19 paralyzed, in a wheelchair. I think that makes this  
20 case a fairly serious one.

21 It's logic, Buckner states post recommendation.  
22 Obviously he did come down from a recommendation, at  
23 least a little bit, due to the mitigation. They would  
24 argue Mr. Mathews -- Mr. Mathews testified that he was  
25 prepared to go to trial, and that over double the

## SUMMARY ARGUMENT BY COUNSEL

1 conversation with Mr. Powell, and Mr. Powell, we're  
2 told. And also the investigator spoke with Mr. Powell  
3 on two separate occasions, and Mr. Powell could not  
4 provide the investigator with any witnesses in his  
5 defense. That would certainly -- two alibi witnesses.

6 It's seems like a fairly open and shut case for  
7 the State. And I believe that Mr. Mathews gave him the  
8 best advice possible, which is pleading is your best  
9 interest to reduce your exposure for this crime.

10 Certainly with the record that Mr. Powell had been  
11 accruing at that point in time, including a burglary  
12 was his YOA charge, and he was on probation when this  
13 incident took place from unlawful carrying a pistol.  
14 It shows that he had the tendencies for violent  
15 behavior, and to be around guns unlawfully.

16 I believe that he would certainly have faced  
17 potential consecutive sentence from Judge Buckner if he  
18 had gone to trial. And Judge Buckner gave him the  
19 benefit of the bargain in plea in taking  
20 responsibility.

21 Mr. Mathews testified that Mr. Powell was able to  
22 follow along with his logic and was responsive in his  
23 conversations with him. He would have been reviewed as  
24 a juvenile, for his juvenile charges from incompetency.  
25 He had been found mentally competent for at least three

## SUMMARY ARGUMENT BY COUNSEL

1       pleas plus this plea, and I think that he was correctly  
2       found competent.

3               Certainly, being anxious and having anxiety,  
4       without attempting a 20-year recommendation for a  
5       guilty plea, I don't think that would be incompetent.  
6       I think I would be -- really I, just myself, if I were  
7       in his shoes.

8               But he answered the Court correctly, and as Mr.  
9       Mathews stated that he would never tell a defendant or  
10      a client to lie, he told him to tell the truth, and if  
11      that if they couldn't answer the Court's questions  
12      truthfully, they shouldn't be pleading guilty, and be  
13      prepared to go to trial, with that trial being prepared  
14      months in advance.

15              Thank you, Your Honor.

16              THE COURT: You know, the difficult thing about  
17      practicing law is -- or one of the difficult things is  
18      -- and prior to coming on the bench, I was the public  
19      defender for Aiken, Edgefield, and Palmer Counties for  
20      several years, and then I also worked with the  
21      Solicitor's office for a term under that. So I've been  
22      on both sides.

23              And the difficulty, when I was representing  
24      clients, was being candid with them and telling them  
25      the truth as a counselor, and we often refer to

## DECISION OF THE COURT

1 attorneys as counselors. I felt that was my role. And  
2 I would tell my clients what I thought their  
3 probabilities were of being successful at trial, and  
4 made it clear to them that that's completely  
5 speculative, that no one can predict what a jury can  
6 do.

7 You never know what twists and turns will occur  
8 when you go to trial. All you need to understand is  
9 that when you go to trial, that I'll fight my tail off  
10 for you. And we'll do everything in our power, but the  
11 State has this and the State has that, this is where  
12 your problems are, this is what we'll focus on. And  
13 you tell them your best guess. And then they have to  
14 make a decision, because it's always going to be a  
15 gamble. And I believe that's what occurred here.

16 I don't think Mr. Mathews tried to pull any  
17 punches. I think he was candid in his testimony. The  
18 easy thing would have been to come in and say, "No, I  
19 never promised him ten years; I never told him he might  
20 get ten years;" or, you know, "No, I never told him he  
21 would lose at trial. I wouldn't do that."

22 But I think he was candid. He gave his honest  
23 opinion back then, and that's what Mr. Powell needed to  
24 be able to make the decision as to whether or not to  
25 plea.

## DECISION OF THE COURT

1           And here's the thing that young men and women --  
2           or not young men, just any person charged with a  
3           criminal offense and who comes forward on whether or  
4           not -- it can seem, if you sit in court long enough, it  
5           can seem that the procedure of going through guilty  
6           pleas is very rote. It's very repetitive. It doesn't  
7           seem -- you're asking the same questions of the same  
8           people, and over and over and over, and it just seems  
9           like there's no meaning there. But there's a  
10          tremendous amount of meaning there.

11          There's a reason we put people under oath before  
12          we ask questions, when we deal with guilty pleas. And  
13          there's a reason that we ask, "Do you swear or affirm  
14          to tell the truth, the whole truth, and nothing but the  
15          truth," and we place them under oath. We expect them  
16          to answer our questions honestly.

17          Mr. Powell has indicated that most all of his  
18          responses to Judge Buckner were not honest. That all  
19          he was doing was wanting to do what he was told to do,  
20          and that is get the plea done.

21          The allegation in his application is that it was  
22          an involuntary plea. Well, he -- if I believe what he  
23          tells me here today, he wanted this plea to go through  
24          so badly, he was willing to lie under oath to make it  
25          go through. So it's kind of hard to understand why

## DECISION OF THE COURT

1 that plea -- his plea was involuntary. He specifically  
2 went to great lengths to make it go through.

3 Now, I think he's going to -- I think his position  
4 is that, well, it was involuntary because I really  
5 wanted a trial, but I didn't think my lawyer was ready,  
6 and so I think I was going to expose myself to a lot  
7 more years.

8 Yet, Mr. Mathews had represented him on numerous  
9 past occasions. Nothing in this record to indicate  
10 that he was never prepared before, and really nothing  
11 in this record to indicate that he wasn't prepared on  
12 this occasion.

13 Throughout the plea, and as I read through the  
14 plea colloquy, and I've read the whole thing, Judge  
15 Buckner was extremely thorough in his questioning. And  
16 he even asked a question -- I think I'm going to change  
17 the way I do it. Usually I will ask someone, "How do  
18 you plead to this offense, guilty or not guilty?"

19 Well, Judge Buckner asked it a little differently.  
20 He asked, "Understanding your rights to a jury trial,  
21 do you want a jury trial or do you want to plea?" And  
22 - I think that's significant.

23 Mr. Powell indicated, "I want to plead guilty."  
24 And, again, throughout this, he's under oath.

25 And then he's asked, this is on Page 17 at the

## DECISION OF THE COURT

1 bottom, "Other than the plea negotiations that are  
2 recommendations we talked about, has anyone promised  
3 you anything in order to try to get you to plead  
4 guilty?" And he indicated, "No, sir."

5 "Has anyone threatened you in any manner?"

6 "No, sir."

7 "Are you completely satisfied with your attorney?"

8 "Yes, sir."

9 "Do you have any complaints against law  
10 enforcement, the court officials, Solicitor's office?"

11 "No, sir."

12 "Are you pleading on your own free will?"

13 "Yes, sir."

14 Then he goes, "Have your answers to my questions  
15 been truthful answers?"

16 "Yes, sir."

17 "Have they been your own answers and not suggested  
18 to you by anyone else?"

19 "Yes, sir."

20 "Your own answers?"

21 "Yes, sir."

22 Then he asked, "Are you, in fact, guilty of  
23 shooting Mr. Walters?"

24 He says, "Yes, sir."

25 Now, that is allegedly all under oath, and what

## DECISION OF THE COURT

1 Mr. Powell is telling us today is, those answers are  
2 not truthful. That he was just doing it because he was  
3 afraid he'll fall into a lawyer that he felt was not  
4 prepared.

5 And I see very little in the record to indicate --  
6 or why he felt that way. He didn't get responses that  
7 he was hoping to get, I would assume, from Mr. Mathews.  
8 But everything on the record appears as though Mr.  
9 Mathews, he's an experienced attorney, experienced  
10 trial lawyer, indicated that he was prepared to go  
11 forward. There was nothing that he was aware of that  
12 would prevent it.

13 And I thought it was significant that even during  
14 his conversations with Mr. Powell, and his  
15 investigator's conversations with Mr. Powell, that Mr.  
16 Powell had no witnesses that he wished to call or  
17 wished for them to investigate.

18 So I think it -- I don't see anything in the  
19 record that would help me to understand why Mr. Powell  
20 felt that this -- that Mr. Mathews would not be ready  
21 to go to trial. The case was coming up for trial and,  
22 yes, Mr. Neely mentioned it in your closing there, that  
23 you don't get to select your own attorney if you're  
24 going to proceed with court appointed counsel. There's  
25 nothing here to indicate that Mr. Mathews was anything

## DECISION OF THE COURT

1 other than prepared and competent, and a competent  
2 trial lawyer.

3 He wanted another lawyer. Mr. Mathews was even  
4 candid with him to tell him that, "Well, we certainly  
5 can bring that before the Court, but more than likely  
6 the judge is not going to allow it."

7 Well, that's true. More than likely, it wouldn't  
8 have been. I'm not saying it wouldn't have been, but  
9 more than likely it wouldn't have been. But it is my  
10 understanding that he did bring that up before the  
11 Court.

12 The thing is that what I have in front of me here  
13 today is Mr. Powell, again, placed under oath to tell  
14 the truth. I don't know if what was told to me today  
15 is the truth, or what was told before the Court back in  
16 2014 was the truth. And that's the problem we run into  
17 when we don't have any problems lying under oath.

18 I don't know if that was a lie back in 2014, or if  
19 it's a lie here today. But everything that I've heard  
20 in this record, nothing here causes me any concern that  
21 Mr. Mathews' representation of Mr. Powell during this  
22 procedure was deficient in any fashion. Nothing that  
23 he shared with him does not appear, in my opinion, to  
24 be out of line or inappropriate. Sometimes the answers  
25 we have to give our client aren't the ones they want to

## DECISION OF THE COURT

1 hear, but we have to be honest and candid with them.  
2 And it seems that Mr. Mathews was headed in that way.

3 And then I think it would was, finally,  
4 significant, and I appreciate -- and this, I do think,  
5 Mr. Powell was absolutely honest with me when I asked  
6 this last question, and that is, "If the judge would  
7 have given you five years, would you have even filed  
8 this application?" And he says he's not sure.

9 So I'm not sure that this application is being  
10 filed because he actually felt that Mr. Mathews was  
11 deficient in his representation, or if he was hoping to  
12 get a better sentence from the judge, and he didn't get  
13 it.

14 But in any case, I'm going to respectfully deny  
15 the application. I don't think he's carried a burden,  
16 or shown that Mr. Mathews' representation was  
17 deficient, ineffective. His allegation that his plea  
18 was involuntarily entered into, I don't believe it's  
19 been proven beyond the fact that people are sometimes  
20 forced -- and maybe "forced" shouldn't be the word --  
21 people are sometimes to the point where you got to make  
22 a decision whether you go to trial or whether you plea,  
23 and that decision always has to be made.

24 And I don't think anybody necessarily wants to  
25 plead guilty, but when the time comes, you have to --

## DECISION OF THE COURT

1 the old saying is, "It's either time to fish or cut  
2 bait." And it came time to fish. And it appears that  
3 Mr. Powell made a knowing and voluntary decision to  
4 limit his exposure, and I believe his plea was  
5 voluntarily entered into. I don't think he was under  
6 any coercion or undue duress. I just don't feel that  
7 his application has been -- that he has proven the  
8 allegations contained, and I'm going to respectfully  
9 deny his application.

10 MR. FALK: Thank you, Your Honor.

11 MR. NEELY: Thank you, Your Honor.

12 (Whereupon, proceedings concluded.)

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## DECISION OF THE COURT

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was  
7 authorized to and did stenographically report the foregoing  
8 proceedings and that the transcript is a true and complete  
9 record of my stenographic notes.

10 DATED this 24th day of April, 2018.

9

10

11

*Mona L. Manley /s/*

12

MONA L. MANLEY

13

Official South Carolina Court Reporter  
Circuit Reporter for the 14th Circuit

14

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STATE OF SOUTH CAROLINA )  
 COUNTY OF COLLETON )  
 )  
 Raymond Powell, #346648 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-15-0199

**ORDER OF DISMISSAL**

2018  
 AUG 32 AM 9:04  
 FAIRLIEA C. GRAHNT  
 COLLETON COUNTY  
 COMMON PLEAS

The above-captioned matter is before the court based on a post-conviction relief (PCR) application filed by Raymond Powell on February 10, 2016. This Court convened an evidentiary hearing into this matter on October 12, 2017 at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was David Mathews (Counsel), Esquire, who was present and testified. This Court had the opportunity to listen to the testimony of Applicant and Counsel. This Court had before it the records of the Colleton County Clerk of Court regarding the subject conviction, the guilty plea transcript, direct appellate records, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. Applicant was indicted at the March 2013 <sup>term</sup> of the Colleton County Grand Jury for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime (2013-GS-15-165; 166; 163). On November 17, 2014, Applicant pleaded guilty as indicted. The Honorable R.

Markley Dennis, Jr. sentenced Applicant, followed <sup>ing</sup> the State's recommended cap of twenty years, to incarceration for nineteen years for each count of attempted murder and five years for the count of possession of a weapon during the commission of a violent crime. The sentences were ordered to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Powell, Appellate Case No. 2014-2561 (filed on May 21, 2015). The remittitur was issued on June 9, 2015.

## II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
  - a. Failed to properly investigate and prepare for trial.
2. Involuntary Guilty plea

## III. SUMMARY OF TESTIMONY

Applicant testified he spoke with Counsel twice while incarcerated. Applicant claimed he wasn't taking the medication he was supposed to be taking when he pleaded guilty. Applicant claimed he feels dizzy and anxious when not on medication and has been diagnosed with depression and schizophrenia. He testified Counsel told him the sentencing ranges. He testified the Friday before his guilty plea, Counsel showed him his discovery and told him that the State would be seeking the maximum of the recommended cap of twenty years. He testified he pleaded guilty because he was scared to go to trial. He also testified he only said what the judge wanted to hear so the plea court would accept his plea. He testified he wanted Counsel to get him a mental evaluation. Applicant testified Counsel told him he would receive seventy years if he

went to trial. Applicant testified he only plead because he felt Counsel was not prepared. Applicant testified he wasn't sure if he would have filed a PCR application if he had received a five-year sentence instead of nineteen years.

Counsel testified he spoke with Applicant four times and the investigator spoke with him twice as well. Counsel testified Applicant told the investigator he did not have any witnesses. Counsel did tell Applicant he thought he would be convicted at trial, but Counsel was ready to go to trial on Applicant's behalf if he wished for a trial. Counsel testified he attempted to negotiate a cap of fifteen years for Applicant, but the lowest the State would go was a cap of twenty years. Counsel had represented Applicant five times in the past from 2009-2014. Counsel believed Applicant was competent and understood what was going on. Counsel testified Applicant was able to speak with him, understand him, was responsive, followed his logic, and ask<sup>ed</sup> questions about his case during their conversations. The maximum potential sentence was sixty-five years. Counsel testified he did not tell Applicant he could receive seventy years' incarceration, where the maximum consecutive sentence was sixty-five years. Counsel testified he had been reviewing Applicant's case for months in preparation for trial and had a trial notebook prepared. Counsel requested a ten year sentence at the guilty plea. Counsel testified it is his practice to tell his clients there is always a chance they receive the maximum sentence.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. This Court finds Counsel's testimony was credible and persuasive and

Applicant's testimony lacked credibility. Therefore, this Court dismisses Applicant's application for the reasons set out below:

**A. Ineffective Assistance of Plea Counsel**

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). 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. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v.

Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4<sup>th</sup> Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. For the reasons set out below, this Court finds the record and credible testimony support Applicant had a full understanding of the charges and consequences of his guilty plea:

Failed to properly investigate and prepare for trial.

Based on Counsel's credible testimony, this Court finds Counsel reasonably investigated and prepared for trial. At the guilty plea, Applicant testified he did not need additional time with Counsel and was satisfied with his representation. Tr. 18. Counsel testified he was prepared to go to trial and had been preparing for trial for months. This Court finds Applicant's assertion he pleaded guilty because he did not trust Counsel's trial preparation lacks credibility. This Court notes Applicant testified he was not sure if he would have filed for PCR if he had received a better sentence. Further, Applicant presented no evidence on how further preparation and investigation would have helped his case. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Here, Applicant's assertion Counsel should have investigated further is supported by mere speculation.

Therefore, this Court finds Applicant failed to prove Counsel was deficient. This Court finds Applicant failed to prove he would have gone to trial, but for Counsel's alleged deficiency. This Court also finds the record clearly reflects Applicant's plea of guilty was knowingly,

intelligently, and voluntarily entered into. Accordingly, this allegation is denied and dismissed.

**B. Involuntary Guilty Plea**

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford, 519 F.2d at 350. Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness, and there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. See Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a

claim of ineffective assistance of counsel, and it will be treated as such.

An applicant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy, 339 S.C. at 34, 528 S.E.2d at 421. "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376 S.C. at 138, 654 S.E.2d at 874. Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the plea transcript and testimony provided at the evidentiary hearing, this Court denies Applicant's request for post-conviction relief. Counsel testified Applicant was able to speak with him, seemed to understand him, was responsive, followed his logic, and asked questions about his case during their conversations. Counsel further testified he represented Applicant on many occasions through past years and believed he was competent. Applicant testified he understood how to answer the judge's questions and answered the questions so that the plea judge would not stop his plea. Applicant opined his medical conditions could have rendered him incompetent. Without an expert witness to show what the results of a competency evaluation would have been, any prejudice is purely speculation on the part of Applicant. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005).

This Court finds Applicant's assertion he was not on medication and, therefore, anxious and prone to outbursts, lacks credibility. Neither anxiousness nor outbursts prevented Applicant

from understanding the plea judge's questions well enough to answer them correctly. Further, any allegation of mental incompetence is speculation without an expert. This Court finds Applicant has failed to prove his plea was involuntary, unknowing, or unintelligent. Therefore, this Court finds Applicant has failed to prove Counsel was deficient or he was prejudiced by any alleged deficiency of Counsel. Accordingly, this Court denies and dismisses this allegation.

#### IV. CONCLUSION

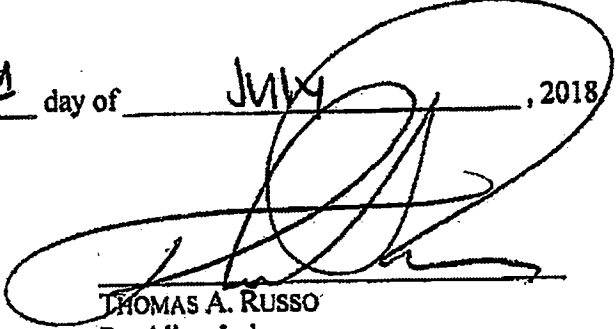
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from 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), SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are 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 must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23<sup>rd</sup> day of JULY, 2018

  
 THOMAS A. RUSSO  
 Presiding Judge

Florence, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Colleton )

INDICTMENT

2013GS1500163

At a Court of General Sessions, convened on 28, the Grand Jurors of Colleton County present upon their oath:

**Weapons / Poss. weapon during violent crime, if not also sen**

That in Colleton County, South Carolina, on or about January 30, 2013, the Defendant, Raymond Powell, did possess a pistol or visibly display what appeared to be a pistol during the commission, or attempted commission, of Attempted Murder, a violent crime. 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.



Isaac M. Stone  
Solicitor

FILED  
MAR 15 2016  
CLERK OF COURT  
COLLETON COUNTY  
SOUTH CAROLINA

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2013 MAR 28 PM 12:32

DOCKET NO. 2013GS1500163

The State of South Carolina  
County of Colleton

COURT OF GENERAL SESSIONS

March Term 2013

THE STATE

vs.

Raymond Powell

Indictment for

Weapons / Poss. weapon during violent crime,  
If not also sen

SC Code: 16-23-0490  
CDR Code:0549

WITNESSES

J. Taylor

ARREST WARRANT NUMBER

2013A1510100071

February 11, 2013

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury

Date: 3/28/13

VERDICT

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Colleton )

INDICTMENT

2013GS1500165

At a Court of General Sessions, convened on 28, the Grand Jurors of Colleton County present upon their oath:

**Attempted Murder**

That in Colleton County, South Carolina, on or about January 30, 2013, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Willie Lemon, to wit: the Defendant did shoot victim; all in violation of the Common Law of South Carolina and Section 16-03-0029 of the Code of Laws of South Carolina (1976, as amended).

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



Isaac M. Stone  
Solicitor

Vertical handwritten text, possibly a date or initials, located to the left of the signature block.

COLLETON COUNTY  
GENERAL SESSIONS COURT

2013 MAR 28 PM 12:32

DOCKET NO. 2013GS1500165

**The State of South Carolina**  
**County of Colleton**

COURT OF GENERAL SESSIONS

March Term 2013

THE STATE

VS.

Raymond Powell

Indictment for

Attempted Murder

SC Code: 16-03-0029  
CDR Code:3410

WITNESSES

J. Taylor

ARREST WARRANT NUMBER

2013A1510100073

February 11, 2013

ACTION OF GRAND JURY

**TRUE BILL**

*Christopher West*

Foreperson of Grand Jury

Date: 3/28/13

VERDICT

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Colleton )

INDICTMENT  
2013GS1500166


At a Court of General Sessions, convened on 28, the Grand Jurors of Colleton County present upon their oath:

**Attempted Murder**

That in Colleton County, South Carolina, on or about January 30, 2013, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Ervin T. Walters, to wit: the Defendant did shoot the victim; all in violation of the Common Law of South Carolina and Section 16-03-0029 of the Code of Laws of South Carolina (1976, as amended).

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

FILED  
MAR 15 2016  
CLERK OF COURT  
COLLETON COUNTY  
SOUTH CAROLINA

  
Isaac M. Stone  
Solicitor

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2013 MAR 28 PM 12:32

DOCKET NO. 2013GS1500166

**The State of South Carolina**  
**County of Colleton**

**COURT OF GENERAL SESSIONS**

**March Term 2013**

**THE STATE**

**vs.**

**Raymond Powell**

**Indictment for**  
**Attempted Murder**

SC Code: 16-03-0029  
CDR Code:3410

**WITNESSES**

J. Taylor

**ARREST WARRANT NUMBER**

2013A1510100076

February 11, 2013

**ACTION OF GRAND JURY**

**TRUE BILL**

*Christopher West*

*Foreperson of Grand Jury*

*Date: 3/28/13*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

**INDICT**

COUNTY OF Colleton  
 STATE VS.  
Raymond Powell  
 AKA:  
 Race: AFRICAN AME Sex: M Age: 20  
 DOB: [REDACTED] SS#: [REDACTED]  
 Address:  
 City, State, Zip:  
 DL#: SID#:

INDICTMENT/CASE#: 2013GSI500163  
 A/W#: 2013A1510100071  
 Date of Offense: 1/30/2013  
 S.C. Code § : 16-23-0490  
 CDR Code #: 0549

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: Weapons / Poss. 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: [Signature] Knight, Steve SC Bar# 3584 [Signature] Defendant [Signature] Attorney for Defendant [Signature] SC Bar# 11929

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: 2013-GS-15-00165, 2013-GS-15-00166, 2012-GS-  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied 15-00682  
 by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 (Criminal  
 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: \$ \_\_\_\_\_  
 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 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

\_\_\_\_\_ days/hours Public Service Employment  
 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,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/Deputy Clerk Patricia C. Hunt  
 Court Reporter: M. Rebecca Hill  
 SCCA/217 (03/2011)

Presiding Judge [Signature]  
 Judge Code: 2122  
 Sentence Date: November 17, 2014

COUNTY OF Colleton  
 STATE VS.  
Raymond Powell  
 AKA: \_\_\_\_\_  
 Race: AFRICAN AME Sex: M Age: 20  
 DOB: [REDACTED] SS#: [REDACTED]  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_  
 \*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: Attempted Murder

INDICTMENT/CASE#: 2013GS1500165  
 A/W#: 2013A1510100073  
 Date of Offense: 1/30/2013  
 S.C. Code § : 16-03-0029  
 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: Steve Knight 354 SC Bar# Raymond Powell Defendant [Signature] Attorney for Defendant 11929 SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 19 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: 2013-GS-15-0066 2013-GS-15-20163 2012-GS-15-00082  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

PTUP \_\_\_\_\_  
 \_\_\_\_\_ days/hours Public Service Employment  
 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: \_\_\_\_\_

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 47.9 (Public Def/Prob)	\$500	\$
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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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

Clerk of Court/ Deputy Clerk Patricia C. Grant  
 Court Reporter: M. Rebecca Hill  
 SCCA/217 (03/2011)

Presiding Judge [Signature]  
 Judge Code: 2122  
 Sentence Date: November 17, 2014

COUNTY OF Colleton )  
STATE VS. )  
Raymond Powell )

AKA: \_\_\_\_\_ )

Race: AFRICAN AME Sex: M Age: 20 )

DOB: [REDACTED] SS# [REDACTED] )

Address: \_\_\_\_\_ )

City, State, Zip: \_\_\_\_\_ )

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_ )

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

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

INDICTMENT/CASE#: 2013GS1500166

A/W#: 2013A1510100076

Date of Offense: 1/30/2013

S.C. Code § : 16-03-0029

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 w/minor 1st or Lewd Act)  §17-25-45

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: Knight, Steve SC Bar# 3584 Defendant Raymond Powell Attorney for Defendant SC Bar# 11924

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 90 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: 2013-GS-15-00165, 2013-GS-15-00163

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 2012-GS-15-00002

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 10.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

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

pnmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

\_\_\_\_\_

Presiding Judge \_\_\_\_\_

Judge Code: 2122

Sentence Date: November 17, 2014

Clerk of Court/Deputy Clerk Patricia C. Grant

Court Reporter: M. Rebecca Hill

SCCA217 (03/2011)