

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

May 20 2020

S.C. SUPREME COURT

JANOBLIN M. BRACY-BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001261

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) 2012 GS 40 0347; 0350; 0356;
4) 0357; 0358

4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 JANOBLIN MAURICE BRACY-BROWN)
9 Defendant)

10 Columbia, South Carolina
11 March 14, 2013
12

13 B E F O R E :

14 HONORABLE G. THOMAS COOPER, Judge Presiding

15 A P P E A R A N C E S :
16

17 For the State: D. GARFIELD, Esq.
Assistant Solicitor

18 For the Defendant: J. COOPER, Esq.
Public Defender

19
20 Reporter Present: DAPHNE HELMS

21
22 HARRIET P. BENNETT
23 Reporter, S. C. Court Administration
24 46 Regency Oaks Drive
Summerville, S.C. 29485

25

1 (The within matter came before the Court for hearing
2 on March 14, 2013)

3 THE COURT: All right, Solicitor.

4 SOLICITOR: The State calls Janoblin Bracy-Brown, Your
5 Honor.

6 (Defendant sworn by the Clerk for purposes of this
7 proceeding)

8 SOLICITOR: May it please the Court, Your Honor?

9 Before the Court is Janoblin Bracy-Brown. He is with
10 his attorney, Mr. James Cooper of the Public Defender's
11 Office.

12 Your Honor, he's pleading guilty to, as charged, at-
13 tempted armed robbery and armed robbery. He is also plead-
14 ing guilty to, I think as charged, assault and battery in
15 the first degree, and two counts of assault and battery
16 in the first degree have been reduced from attempted mur-
17 der.

18 In exchange for his pleas and upon sentencing, the
19 State will dismiss three counts of possession of a weapon
20 in the commission of a violent offense and one count of
21 armed robbery.

22 Your Honor, we're asking that you defer sentencing in
23 this case until a later time.

24 THE COURT: Mr. Cooper, does Mr. Brown understand the
25 significance of his guilty pleas to most serious offenses,

1 no parole offenses, in this particular case?

2 MR. COOPER: Yes, he does, Your Honor.

3 THE COURT: Does he understand the possible sentences
4 he could get upon giving up his rights and waiving a jury
5 trial?

6 MR. COOPER: Yes, he does, Judge.

7 THE COURT: Mr. Brown, you are pleading guilty to at-
8 tempted armed robbery, and you can get up to twenty years
9 in jail for that offense. Do you understand that?

10 DEFENDANT: Yes, sir.

11 THE COURT: For armed robbery, you can get up to thirty
12 years in jail, and you must receive a sentence of at least
13 ten years in jail. None of that can be suspended. Do
14 you understand that?

15 DEFENDANT: Yes, sir.

16 THE COURT: Both of those offenses are most serious
17 offenses in the eyes of the law. That means that you use
18 up at least one of the strikes you have today, and if you
19 have any subsequent offenses when you get out of jail you
20 will use up your second strike and you would go to jail
21 for the rest of your life. Do you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: Upon entering a plea of guilty you give up
24 certain of your rights. You give up your -- excuse me.

25 Assault and battery carries up to ten years in jail.

1 Do you understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: If you give up your right to a jury trial
4 in this process, you give up your right to say nothing at
5 all. Do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: You have a right to a jury trial in each
8 of these charges. If you plead guilty you will not have
9 a jury trial as you give up that right. Do you understand
10 that?

11 DEFENDANT: Yes, sir.

12 THE COURT: If you had a jury trial, the State would
13 have to prove your guilty, and all members of the jury
14 must find you guilty of these charges beyond a reasonable
15 doubt.

16 You wouldn't have to prove you are not guilty, but the
17 State would have to prove the charges. If you plead
18 guilty you don't get a trial. You give up that right.
19 Do you understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: If you had a trial, you would have a right
22 to question the State's witnesses who testify against you.
23 You can call your own witnesses to testify for you, but if
24 you plead guilty you don't get to question witnesses and
25 you don't get to call witnesses. Do you understand all of

1 that, sir?

2 DEFENDANT: Yes, sir.

3 THE COURT: Have you understood the rights I have just
4 explained to you?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you want me to go over any of it with
7 you again?

8 DEFENDANT: No, sir.

9 THE COURT: Indictment Number 356 charges you with
10 attempted armed robbery, and it says that you did in Rich-
11 land County on or about July 2nd of 2011, while armed with
12 a deadly weapon, attempt to take and carry away goods or
13 moneys, which is stealing.

14 Do you understand the charge of attempted armed rob-
15 bery?

16 DEFENDANT: Yes, sir.

17 THE COURT: How do you plead to that?

18 DEFENDANT: Guilty.

19 THE COURT: Indictment 350 charges you with armed
20 robbery and says that you did in Richland County on or
21 about June 24th of 2011 commit a robbery by means of force
22 or intimidation and take away goods that did not belong to
23 you, specifically U. S. Currency, while you were armed
24 with a deadly weapon or something that looked like a
25 deadly weapon.

1 You are therefore charged with armed robbery. Do you
2 understand that charge?

3 DEFENDANT: Yes, sir.

4 THE COURT: How do you plead to that?

5 DEFENDANT: Guilty, sir.

6 THE COURT: Indictment Number 358 charges you with at-
7 tempted murder, and that Indictment says that you did in
8 Richland County on or about June 26, 2011, with the in-
9 tent to kill, attempt to kill Matthew Taylor with malice
10 aforethought.

11 Do you plead guilty to assault and battery in the
12 first degree on that, and do you understand that charge?

13 DEFENDANT: Yes, sir.

14 THE COURT: Indictment 357 charges you with another
15 count of attempted murder on July 2nd of 2011 with intent
16 to kill; that you intended to kill Hampton Johnson (inaud-
17 ible).

18 They are allowing you to plead guilty again to as-
19 sault and battery in the first degree. Do you understand
20 that charge?

21 DEFENDANT: Yes, sir.

22 THE COURT: How do you plead to it?

23 DEFENDANT: Guilty.

24 THE COURT: Indictment Number 347 charges you with
25 assault and battery in the first degree on June 24, 2011,

1 and this time an assault and battery upon the victim,
2 Mr. Harrison (inaudible), in committing an act of bodily
3 injury.

4 You are charged with assault and battery in the first
5 degree in connection with that. Do you understand that
6 charge?

7 DEFENDANT: Yes, sir.

8 THE COURT: How do you plead to that?

9 DEFENDANT: I plead guilty, sir.

10 THE COURT: Has anybody promised you anything or held
11 out any hope of reward to get you to plead guilty to these
12 charges?

13 DEFENDANT: No, sir.

14 THE COURT: Has anyone threatened you or in any way
15 forced you to plead guilty to these charges?

16 DEFENDANT: No, sir.

17 THE COURT: Are you pleading guilty freely and volun-
18 tarily?

19 DEFENDANT: Yes, sir.

20 THE COURT: Of your own will and accord?

21 DEFENDANT: Yes, sir.

22 THE COURT: Are you satisfied with everything Mr.
23 Cooper has done for you as your lawyer?

24 DEFENDANT: Yes, sir.

25 THE COURT: You are satisfied with his representation?

1 DEFENDANT: Yes, sir.

2 THE COURT: Have you had enough time to talk to him
3 about all of this?

4 DEFENDANT: Yes, sir.

5 THE COURT: Have you understood the talks you have had
6 with him?

7 DEFENDANT: Yes, sir.

8 THE COURT: Do you need some time to talk with him any
9 more?

10 DEFENDANT: No, sir.

11 THE COURT: Before we go forward with your pleas, do
12 you need to talk with him any more?

13 DEFENDANT: Yes, sir.

14 THE COURT: We'll give you whatever time you need to
15 talk to him.

16 DEFENDANT: I believe I understand it.

17 THE COURT: I don't mean to suggest to you that you
18 don't but . .

19 MR. COOPER: After it's over, I told him I would come
20 and talk to him but I think that's what he means. There
21 aren't any concerns right now and I will speak to him af-
22 ter it's over.

23 THE COURT: You understand what you're doing?

24 DEFENDANT: Yeah, I understand this.

25 THE COURT: You will have ten days from the date of

1 your sentencing -- not today but ten days from the date
2 of your sentencing -- to file for post conviction or an
3 appeal. You have to do that within ten days of your sen-
4 tencing to file an appeal to your sentencing and your
5 plea.

6 DEFENDANT: Yes, sir.

7 THE COURT: All right. Solicitor, let me hear from
8 you.

9 SOLICITOR: I'll be brief, Your Honor.

10 All of these incidents occurred on different dates
11 between June 24th and July second of 2011, where the De-
12 fendant and the passenger, the CoDefendant, made entry
13 into cabs with a gun.

14 He attempted to rob one cab driver and did rob the
15 others.

16 Judge, two times the victims were struck. One cab
17 driver was struck in the back of the head with a gun, and
18 the other two were actually shot at and sustained injury.

19 He was identified by photographic lineup or video sur-
20 veillance or the Defendant left personal items in the
21 cab.

22 I would reserve the right to go into further detail
23 at the time of sentencing.

24 MR. COOPER: Sure.

25 THE COURT: All right. I find there is factual support

1 for these charges and a factual basis on which they were
2 made.

3 The pleas have been freely and voluntarily made, and
4 he has had the services of a competent lawyer with whom he
5 has said he is satisfied.

6 I will accept the pleas today, and the sentencing will
7 be deferred until a later date.

8 SOLICITOR: Thank you, Judge.

9 THE COURT: Thank you all.

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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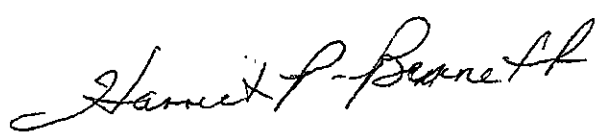
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CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared to the best of my ability from the records of Daphne Helms, having been heard in the Court of General Sessions for Richland County on March 14, 2013.

Further, I would certify that I am not related to or counsel of any party to the action, nor do I have any interest in the same.

October 29, 2016



1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
 2012-GS-40-00350

3
 4 STATE OF SOUTH CAROLINA,)
 5 Plaintiff,)
 6 vs.) TRANSCRIPT OF RECORD
 7 JANOBLIN BRACY-BROWN,)
 8 Defendant.)

9 June 4, 2014
 10 Columbia, South Carolina

11
 12 B E F O R E:

13 THE HONORABLE LETITIA HAMILTON VERDIN , JUDGE.
 14

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

16 DOLLY JUSTICE GARFIELD, ASSISTANT SOLICITOR
 17 Attorney for the Plaintiff

18 JENNIFER S. DAVIS, ASSISTANT PUBLIC DEFENDER
 19 Attorney for the Defendant

20
 21
 22
 23
 24 DEBORAH M. McCURDY, RPR
 25 Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

JUNE 4, 2014

MS. GARFIELD: Janoblin Bracy-Brown.

THE COURT: These look like deferred sentences --

MS. GARFIELD: They are, Judge.

THE COURT: -- on Mr. Brown for three counts of assault and battery first degree. They each carry up to 10 years. And attempted armed robbery and armed robbery, which carries 10 to 30. And the attempt, what does that carry?

MS. GARFIELD: Zero to 20.

THE COURT: Okay, zero to 20.

MS. DAVIS: Yes.

THE COURT: All right. And it looks like this plea was taken by Judge Cooper.

MS. GARFIELD: He did not retain jurisdiction.

THE COURT: He didn't. Okay, well, just tell me a little bit about the facts.

MS. GARFIELD: Absolutely, Your Honor. May it please the Court?

Before you is Janoblin Bracy-Brown. And he is pleading -- or being sentenced today to the charges you just referenced.

In exchange for that plea, he is having charges dismissed at the conclusion of sentencing

1 today: One count of armed robbery and three counts
2 of possession of firearm during the commission of a
3 violent offense.

4 Your Honor, back -- this plea was taken before
5 Judge Cooper on March 14th of last year. He was
6 represented at that time by Mr. James Cooper, of
7 the Public Defender's Office, who shortly
8 thereafter passed away.

9 Jennifer Davis, with the Public Defender's
10 Office, is now representing him for purposes of
11 sentencing.

12 His sentencing was deferred, Your Honor,
13 because Mr. Brown was in agreement with the State
14 to help in the prosecution of a Co-Defendant in one
15 of his offenses who had requested a trial,
16 Mr. Tyrek Givens. Mr. Givens' charges were
17 disposed of earlier this year.

18 We are here today for sentencing.

19 Would you like for me to give you background
20 facts at this time?

21 THE COURT: If you don't mind, yes, ma'am.

22 MS. GARFIELD: Judge, these facts arise out of
23 three separate incidents. And I'm actually going
24 to take them out of order to kind of explain to you
25 how law enforcement developed their investigation.

1 The first one involving -- he is pleading
2 guilty to an assault and battery in the first
3 degree, which is reduced from attempted murder.
4 And in this particular incident, he is having an
5 armed robbery and possession of a weapon during a
6 violent offense not-prossed.

7 The victim in this case is Mr. Matthew Taylor.
8 And I would just like to make sure. Is Matthew
9 Taylor in the courtroom?

10 (WHEREUPON, there was no response.)

11 MS. GARFIELD: Your Honor, that incident
12 occurred June 26th of 2011 at 36 -- actually, that
13 is not the right address -- at Carnegie
14 Street. Mr. Taylor was a driver of a Checker
15 Yellow taxi, and the Defendant, along with a
16 Co-Defendant, Tyrek Givens, made a phone call
17 asking him to come and pick them up.

18 They did arrive to that particular location.
19 When the Defendants approached them, did produce
20 weapons and did fire at them. He was not injured
21 in any way. They then stole some money from him
22 and then fled the scene.

23 That scene obviously -- that began an
24 investigation. And just a few days later, on
25 July 2nd, 2011, the same sort of scenario. A taxi

1 driver was called to Hammond Avenue. Well,
2 I'm sorry, called the Bay Shell area, picked up two
3 individuals, and then taken to Hammond Avenue.
4 The victim in that case was Robert Hampton.

5 The Defendant produced or asked him if he had
6 change for a \$50 bill. As Mr. Hampton looked for
7 some change, Mr. Brown changed his mind and said,
8 Nevermind, here is a 10-dollar bill, gave him the
9 10-dollar bill. At that time produced guns, him
10 and his Co-Defendant produced guns, in an effort to
11 rob him.

12 At that time it is alleged that Mr. Hampton
13 put his hand under the seat as if he were going to
14 somehow defend himself when the Defendant opened
15 fire on him and did strike him in his upper chest/
16 shoulder area.

17 At that time they did flee. However, the
18 Defendant left his cell phone in the car.

19 Law enforcement obviously arrived. They were
20 not able to identify -- interview the victim
21 initially because he was being treated by the
22 hospital, but they were able to get a search
23 warrant on his car where they found the cell phone.

24 The cell phone did come back registered to Mr.
25 Brown. And there were photographs of the Defendant

1 arming himself with guns on the phone.

2 With that they were able to identify from
3 those photographs, along with several members of
4 the Columbia Police Department who were familiar
5 with Mr. Brown were able to identify him as
6 Janoblin Bracy-Brown as someone that hung out in
7 the Bethel-Bishop and Colony communities in our
8 city. All this is in the City of Columbia. And,
9 Judge, you are not from here anymore. That is some
10 of our higher crime area.

11 They identified him as Janoblin Bracy-Brown.
12 At that time they go back and revisit another
13 incident.

14 Again, cab driver called on June 24th, 2011,
15 at High Circle. That victim's name was
16 Harrison Munywoki, for Madam Court Reporter.
17 Again, he was dispatched to a location and
18 immediately was struck. After he hears a large
19 laugh, he turns and sees a Co-Defendant shoot into
20 the air, and then immediately feels the back of his
21 head being hit by something that he believed to be
22 a handgun.

23 Approximately a hundred dollars was taken from
24 him, and people did flee.

25 Based on those cell phone pictures from the

1 post-robbery, he was shown a photographic line-up,
2 and he was able to identify the Defendant as the
3 person that did assault him.

4 Your Honor, the second robbery, or the one
5 involving Mr. Taylor, they then go back and they
6 are able to retrieve video footage from an
7 apartment complex where it determined the Defendant
8 lived.

9 They see the Defendant coming from his
10 apartment building, then they see a Tyrek Givens
11 coming from another apartment building. The two of
12 them leave. And then they are seen, the two
13 together, coming back. And that is where you see
14 the Checker Yellow come into play.

15 This video was shown to the Defendant's
16 mother. The Defendant's mother did identify him as
17 being the person in the video.

18 Also, Tyrek Givens' probation agent was shown
19 the video, and he identified Tyrek Givens as the
20 person in the video.

21 Tyrek Givens was then interviewed, and he did
22 implicate himself and the Defendant being involved
23 in the robbery. Of course, he pointed that Mr.
24 Brown was the more culpable person and the one that
25 actually that did the shooting.

1 When the Defendant himself was finally brought
2 in and interviewed, he initially denied for some
3 time having anything to do with this. He even
4 denied ever riding in a cab. He tried to place the
5 blame on other people, saying other people had
6 borrowed routinely his cell phone and that is how
7 it was used so many times. He never really gave an
8 implicating statement at that time.

9 Mr. Givens wanted a trial. He was willing to
10 cooperate. He did give law enforcement -- the
11 Defendant before you did give law enforcement a
12 statement. It was minimal statement. Can't say it
13 was the best against Mr. Givens, but he did give a
14 statement implicating Mr. Givens, and he would have
15 been cooperative and used in trial against
16 Mr. Givens.

17 Mr. Givens did, after that statement was
18 rendered, agree to plead guilty to the same charges
19 that Mr. Brown had already pled guilty to
20 previously in his deferred plea.

21 We have also had several people in the jail
22 that have come forward that have given statements,
23 their names will remain anonymous at this time, who
24 do report -- and they have this in discovery -- but
25 they do report that the Defendant admits to the

1 last shooting of the cab driver. Several
2 statements where the Defendant was trying to kill
3 the cab driver, and that kind of nature of the
4 statement.

5 His prior record, Judge, consists as an
6 adult -- a 2010 ABHAN conviction -- that would have
7 been three of the new ABHANS -- and a April of 2011
8 possession of controlled substance. He also has a
9 minimal juvenile record.

10 He has been in jail -- I'm sure Ms. Davis has
11 that right before her, I had it earlier -- over
12 1000 days. He has been in jail since July 7th,
13 2011.

14 And I believe that is all from the State,
15 Judge.

16 THE COURT: All right. And y'all are not
17 making any recommendation as to sentence?

18 MS. GARFIELD: Judge, the agreement at plea
19 was I would recommend a concurrent sentence.

20 THE COURT: Okay.

21 MS. GARFIELD: And there would be no other
22 negotiations.

23 THE COURT: All right. Yes, ma'am?

24 MS. DAVIS: Thank you, Your Honor. May it
25 please the Court?

1 And as Ms. Garfield stated, I became involved
2 in this case after Janoblin had already pled
3 guilty. My understanding was that the sentencing
4 was deferred so that he could cooperate. He did
5 follow through on that. He gave actually a 4-page
6 single-spaced statement.

7 He told us, from what I can review of the
8 discovery and his statement, everything that there
9 was to tell and corroborated everything that we
10 believe happened between him and Mr. Givens. I
11 don't believe there is anything else he could have
12 told them that he didn't in his statement.

13 He has been in jail, Your Honor, 1061 days.
14 That is almost three years day-for-day.

15 He was 18 at the time this happened. He was
16 fully prepared to go and testify against his
17 Co-Defendant had he gone to trial, but he ended up
18 pleading I think about three weeks ago.

19 Your Honor, Janoblin went through a Turning
20 Leaf program down at the jail. And I'm not sure if
21 Your Honor is familiar with that. It is something
22 that has been down at the jail for I think the last
23 year and a half or so. And he gave me all the
24 paperwork from that program. And I have been to
25 the graduation and watched the inmates get up and

1 talk about their poems and essays, and stuff like
2 that. But he also gave me the worksheet that he
3 did. And it is not something a defense attorney
4 gets to see a whole lot of, their work that they
5 have done.

6 But it was very effectual, Your Honor. I
7 think it speaks for his character.

8 He is 21 now. He was 18 when this happened.
9 He has done a lot of growing up. Unfortunately, he
10 has done it down at the Detention Center.

11 He spoke to me regularly about what that --
12 what he learned from that. Not only did he learn
13 once he got arrested, but learned what it is like
14 to see people coming in and out of the jail, what
15 happens at the jail. Being down there for three
16 years day-for-day, he, unfortunately, has seen a
17 lot.

18 Your Honor, one of the things I thought was
19 interesting in his paperwork that he did for that
20 program is it asked, if he was on probation or
21 parole what would you do and how could he repair
22 damages his actions had done in the community.

23 Now, granted, we understand he is not getting
24 probation today, and he's very aware of that. We
25 are asking Your Honor to consider the minimum

1 sentence concurrent.

2 But I did think that what he wrote was
3 interesting. He said: I will give my professional
4 painting and renovating skills to the community. I
5 will establish my credibility effective. They will
6 respect me and they can trust me again. While I
7 work, I can develop normalcy and be at peace. They
8 will not have to worry. I will experience and
9 accept all the wrongs that I have done. I have
10 learned important lessons at this point. And any
11 choice that will be made will be made with thoughts
12 of their actions. I am very sorry for the pain I
13 have caused everyone in my whole life. I have got
14 a lot of work to do, and I'm doing it with God
15 Almighty.

16 And that is something he wrote while at the
17 jail. It is not something I told him to say. It
18 is not something I had an influence on. I have
19 plenty of clients if they were asked that question
20 I don't know how they would respond, but I think
21 very few would have the foresight to say what he
22 said.

23 I think the fact that he said it in a program,
24 which he knew no one may ever see it, speaks to his
25 character and to what he can be once he is released

1 from the Department of Corrections.

2 I spoke with his mother and a girlfriend
3 repeatedly. They are in support of him. His
4 girlfriend could not get off work today. His
5 mother was actually going to be here and called me
6 this morning and had been admitted to the emergency
7 room for a stomach problem that she was having, and
8 so she could not be here either, but desperately
9 wanted to be and wanted to know what the outcome
10 was for Janoblin.

11 Your Honor, I'm asking you to consider the ten
12 years with 85 percent, as you know, come out on
13 community supervision. I think that is a
14 substantial amount of time for someone at 18 when
15 they get into trouble to have to go to the
16 Department of Corrections. I think that is enough
17 to rehabilitate him, enough to punish him, and to
18 meet any other goals that are supposed to be met in
19 the criminal system. And I would ask Your Honor to
20 consider that.

21 I know that he wants to address you at this
22 time.

23 THE COURT: Yes, sir?

24 THE DEFENDANT: Yes, ma'am, Your Honor. I'm
25 Janoblin Bracy-Brown. And I would like to mention

1 that I was 18 at the time and wasn't responsible
2 for my actions. And I would like to -- and I have
3 made plenty of mistakes and learned from them as
4 well as not to be a repeat offender. I have also
5 made bad decisions by hanging around the wrong
6 people that got me in a situation that I can't get
7 out.

8 Your Honor, while serving these 35 months, I
9 have learned lot of things that I have been allowed
10 to see, which was a wake-up call for me.

11 And also, while this is my first felony
12 charge, it also will be my last. But causing me
13 service time at Alvin S. Glenn Detention Center has
14 taught me a valuable lesson. I do not intend to
15 throw my life away to the system anymore.

16 Your Honor, by serving these months, I have
17 been praying and hoping for a second chance for
18 freedom to turn my life around and be the best I
19 can be and to be there to aid and assist my sick
20 mother as well.

21 And, Your Honor, I know I'm not perfect nor am
22 I special to any other. All I'm asking is for your
23 favoritism to hear me out while I speak from my
24 heart to let you know that I'm a changed man. I
25 want to do the right thing and be successful in

1 life.

2 And, Your Honor, one thing I -- another thing
3 I would like to say, I'm very sorry to the victim
4 for my behavior and my actions.

5 If they are here today, I will say, I'm very
6 sorry, and I wish I could take those things back.

7 And I want to say that I'm very sorry to you
8 as well for breaking the law here in the State of
9 South Carolina.

10 And I thank you for taking the time to hear me
11 out.

12 THE COURT: Thank you.

13 MS. DAVIS: And, Your Honor, actually he
14 failed to mention -- the probation agent was just
15 here. He has a probation violation as well, which
16 was a YOA not to exceed four years. He has done
17 three years day-for-day. And I would ask Your
18 Honor to terminate that.

19 And during the course of these events, I just
20 want to relay as well, he was not in his right
21 state of mind. He was using cocaine, marijuana,
22 alcohol, which is clear from his probation report
23 as well because he tested positive. In his right
24 state of mind, I don't think anything would have
25 happened, although he is very aware that that is

1 not an excuse, that is just what happened.

2 So I would ask Your Honor to consider the ten
3 years concurrent.

4 MS. GARFIELD: Your Honor, can I just put
5 something on the record as well?

6 THE COURT: Certainly.

7 MS. GARFIELD: Matthew Taylor, one of the
8 victims, he had told us he was going to be present,
9 and he has not appeared.

10 Also, the other two victims indicated they
11 were not going to be here because they didn't want
12 anything to do with the Defendant and did not want
13 to see him.

14 The investigator, lead investigator in this
15 case, is Sergeant Robert McCracken, with the
16 Columbia Police Department. He wanted to be here
17 today and was here for the plea, but he is wrapped
18 up in an incident that occurred in the Vista this
19 past weekend.

20 THE COURT: All right. The sentence of the
21 Court is 16 years, credit for the time that you
22 served, concurrent; and ten concurrent on all the
23 assault and batteries.

24 Good luck to you.

25 MS. GARFIELD: Thank you, Judge.

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(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit 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 and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 4th day of June, 2014.

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

November 5, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

Warrant Numbers: K689154, K689155, K689110, K689108, K689291

Indictment Numbers: 2012-GS-40-00357,

2012-GS-40-00356, 2012-GS-40-00347

2012-GS-40-00350, 2012-GS-40-00358

RECEIVED

JUL 20 2016

SC Court of Appeals

The State of South Carolina,)

vs.)

Janoblin Bracy-Brown,)
Defendant.)

MOTION TO RECONSIDER SENTENCE

2014 JUN 11 PM 3:23
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

TO: The Honorable Letitia H. Verdin, Presiding Circuit Court Judge
The Honorable Robert E. Hood, Chief Judge for Administrative Purposes
cc: Dolly Garfield, Assistant Solicitor

This matter comes before me on motion of Deputy Public Defender Jennifer Davis, Attorney for the Defendant, requesting this Court to reconsider the sentence imposed against the Defendant on the above referenced indictments.

It appears that the Defendant pled guilty before this Court in March 2013 when James Cooper represented him. His sentence was deferred at that time. He was sentenced on June 4, 2014. He received sixteen years on his Armed Robbery charge, sixteen years on his Armed Robbery charge, and ten years on the three counts of Assault and Battery First Degree all concurrent.

The Defendant respectfully requests this Court to reconsider the sentence imposed on the above-referenced case because Defendant believes the solicitor's position regarding sentencing was represented differently on the record than had been expressed to Defendant.

Respectfully submitted,



Jennifer Davis
Deputy Public Defender
Attorney for the Defendant

Columbia, South Carolina

This 11 day of June, 2014

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

2014 JUL 11 AM 10:11
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS

Warrant Numbers: K689154, K689155,
K689110, K689108, K689291

Indictment Numbers: 2012-GS-40-00357

2012-GS-40-00356, 2012-GS-40-00347

2012-GS-40-00350, 2012-GS-40-00358

RECEIVED

JUL 20 2016

SC Court of Appeals

The State of South Carolina,)

vs.)

Janoblin Bracy-Brown,)
Defendant.)

CERTIFICATE OF SERVICE

2014 JUN 11 PM 3:23
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

I certify that on this date I served the Motion to Reconsider Sentence in this case on The State of South Carolina by delivering a copy of this motion to the State's attorney of record, Assistant Solicitor Dolly Garfield, by delivering said copy to The Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201, and leaving it with a clerk or other person of authority at said office.

Deborah Zaidman

Deborah Zaidman
Paralegal

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

2014 JUL 11 AM 10:11
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

Columbia, South Carolina

This 11th day of June, 2014

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

138
357

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The State of South Carolina,

v.

Janoblin Bracy-Brown,

Defendant

IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

Warrant No.: K689154, K689155, K689110,
K689108, K689222

Indictment No.: 2012-GS-40-00347, -0356, -0357, and -0358

RECEIVED

JUL 20 2016

ORDER DENYING MOTION TO
RECONSIDER

SC Court of Appeals

This matter comes before the Court on the Defendant's timely Motion to Reconsider. In March 2013, the Defendant pled guilty to armed robbery, attempted armed robbery, and assault and battery in the first degree, but his sentence was deferred pending his cooperation at the trial of his co-defendant. The co-defendant pled guilty and no trial was held. On June 4, 2014, the Court sentenced the Defendant to serve 16 years in the South Carolina Department of Corrections. The Defendant argues the state presented a different position as to sentencing on the record than that which the state presented to the Defendant during plea negotiations. Specifically, the Defendant argues the state said prior to sentencing it would make no recommendation and would inform the Court about the extent of the Defendant's cooperation with law enforcement. The Court was informed of and considered the Defendant's cooperation with law enforcement at the time of sentencing. Finding no reason to reconsider or alter the sentence as imposed, the Court hereby denies Defendant's Motion to Reconsider.

IT IS SO ORDERED.

July 8, 2014

[Signature]

Letitia H. Verdin
Circuit Court Judge

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

RICHLAND COUNTY
FILED
2014 JUL 16 AM 11:14
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Richland)Janoblin Brown 360259)

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

v.)

State of South Carolina)

2017CP4006899

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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 Perry Correctional Institution
430 Oakland Road Pelzer, SC 29669
2. Name and location of Court which imposed sentence Richland County
Circuit Court
3. Name(s) of co-defendant(s) (if any) Tyrek Owens
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-40-00397 / ~~2012-GS-40-00398~~
 - (b) 2012-GS-40-0356 / 2012-GS-40-0358

RICHLAND COUNTY
 FILED
 2017 NOV -9 PM 3:38
 JEANNETTE W. HARRIS
 C.C.P. & C.D.

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (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. The court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 11, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion no. 2017-UP-372
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (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
- (b) counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) plea counsel failed to keep the plea
- (b) agreement were plea agreement receive
- (c) was not right
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? ✓
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Appellant's pro se; brief review
- ii. pursuant to Anders v. California
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Appeal Dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. October 11, 2017

ii. _____

iii. _____

iv. _____

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

i. unpublished opinion no. 2017-up-372

ii. submitted September 1, 2017 - Filed

iii. October 11, 2017

iv. _____

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

NO

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

(a) which grounds have been presented:

i. ~~_____~~

ii. ~~_____~~

iii. ~~_____~~

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

i. ~~_____~~

ii. ~~_____~~

iii. ~~_____~~

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? _____
 - (c) your sentencing? _____
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. _____
 - _____
 - _____
 - ii. _____
 - _____
 - _____
 - iii. _____
 - _____
 - _____
 - (b) the proceedings at which each such attorney represented you:
 - i. _____
 - _____
 - _____
 - ii. _____
 - _____
 - _____
 - iii. _____
 - _____
 - _____

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

Resentenced to the original ten years
agreement.

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

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Tanoblen Brown, 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.

Tanoblen Brown

SWORN to and subscribed before me this 27
day of October, 2017.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

2017 NOV -9 PM 3:48
FILED
RICHLAND COUNTY
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

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

I, Janablin Brown, 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.

Janablin Brown
Applicant

SWORN or affirmed to and subscribed before me this

27 day of October, 2017.

Tamara Conwell
Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

RICHARD C. BERRY
 FILED
 2017 NOV -9 PM 3:48
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Janoblin M. Bracy-Brown, #360259,	)	Case No.: 2017-CP-40-06899
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its return to the application for Post-Conviction Relief ("PCR") filed on November 9, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In January of 2012, the Richland County Grand Jury indicted Appellant for assault and battery, first degree (2012-GS-40-00347); armed robbery (2012-GS-40-00350); attempted armed robbery (2012-GS-40-00356); and two counts of attempted murder (2012-GS-40-00357, -00358). The charges stem from incidents occurring between June 24 and July 2, 2011, where Applicant and another forcibly entered taxi cabs with a gun. He attempted to rob one driver, and successfully robbed others. On two occasions, the drivers were struck with either the gun itself or bullets fired from it. He was identified in lineups or by personal items left in the vehicles. Tr. 9.

Applicant filed a timely notice of appeal. Taylor D. Gilliam, Esquire, of the South Carolina Commission on Indigent Defense - Office of Appellate Defense perfected the appeal

with the filing of a brief pursuant to Anders v. California.¹ The South Carolina Court of Appeals affirmed Applicant's conviction on October 11, 2017. State v. Brown, Op. No. 2017-UP-372 (S.C. Ct. App. filed October 11, 2017). Remittitur issued on October 27, 2017.

Attached to this return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

II.

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

1. "Ineffective assistance of counsel", in that:
 - a. "Plea counsel faled [*sic*] to keep the plea agreement were [*sic*] plea agreement receive [*sic*] was not right."

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must

¹ 386 U.S. 738, 87 S.Ct. 1396 (1967).

prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

individual authorized to file amendments to this application. See Rule 11, SCRC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRC.

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

V.

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

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of ineffective assistance of trial counsel.

Signature follows.

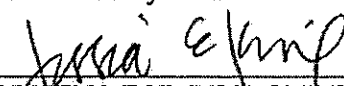
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

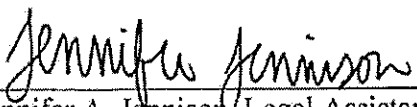
20 Feb, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2017-CP-40-06899
JANOBLIN M.B. BROWN, #360259	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

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

Jonathan D. Waller, Esquire
Waller Law Group, LLC
1116 Blanding Street, Suite 2B
Columbia, SC 29201

DATED this the 28th day of February, 2018.



Jennifer A. Jennison, Legal Assistant
For Respondent

State of South Carolina)
)
County of Richland) In the Court of Common Pleas
)
) Fifth Judicial Circuit

Janoblin M. Bracy-Brown,) 2017-CP-40-06899
)
 Plaintiff,)
)
vs.)
)
The State of South Carolina,)
)
 Defendant.)

July 17, 2018

Columbia, South Carolina

B e f o r e:

DeAndrea G. Benjamin, Judge

A p p e a r a n c e s:

Jonathan Waller, Esquire
Attorney for the Plaintiff

Lindsey McAllister, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/Ms. McAllister	4
DIRECT CROSS REDIRECT RECROSS	
JANOBLIN BRACY-BROWN	
Mr. Waller	5 25
Ms. McAllister	16
JENNIFER DAVIS	
Ms. McAllister	28
Mr. Waller	34
Closing/Mr. Waller	36
Closing/Ms. McAllister	37
Decision by the Court	39
Certificate Page	40

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
S-1	Five Sentencing Sheets		17

1 (On the record at 10:11 a.m.)

2 MS. MCALLISTER: May it please the Court, Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. MCALLISTER: This is Janoblin Bracy-Brown, 2017-
5 CP-40-6899. He was indicted in January, 2012, for assault
6 and battery in the first degree, armed robbery, attempted
7 armed robbery, and two counts of attempted murder.

8 He -- he was represented -- he -- he was represented
9 by James Cooper at his plea hearing, Your Honor, and then
10 is -- he had a deferred sentencing hearing at which he was
11 represented by Ms. Jennifer Davis.

12 He did file a timely notice of appeal of that plea and
13 Taylor Gilliam, of the South Carolina Commission on
14 Indigent Defense, Office of Appellate Defense, perfected
15 the appeal with the filing of a brief pursuant to *Anders*.

16 The South Carolina Court of Appeals affirmed his
17 convictions on October 11, 2017, and issued the remittitur
18 on October 27, 2017, and he filed this application for
19 post conviction relief timely on November 9, 2017.

20 Mr. Jonathan Waller has been appointed to represent
21 him, and both Mr. Brown and Mr. Waller are present in the
22 courtroom today.

23 My understanding from Mr. Waller is that there's only

DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 5

1 one allegation that we're going forward on today, and I'll
2 ask him to put that on the record briefly.

3 THE COURT: Yes, sir.

4 MR. WALLER: That -- that's correct, Your Honor. Mr.
5 Brown has filed the application, and the claims he has --
6 or the claim he has is that the -- there was a plea
7 agreement which was not honored and that his counsel was
8 ineffective for failing to object to it not being honored
9 or bringing it to the Court's attention or otherwise try
10 to enforce it.

11 I will tell the Court that there was a motion for
12 reconsideration filed in this case, but that's not -- it's
13 certainly talks about our allegations, but it's not the
14 extent of the allegations.

15 THE COURT: All right. Ready to get started?

16 MR. WALLER: Yes, ma'am. I would call Janoblin
17 Brown.

18 JANOBLIN BROWN, having been first
19 duly sworn, testifies as follows:

20 COURT CLERK: Have a seat up there in that witness
21 stand.

22 (The witness complies.)

23 COURT CLERK: State your name for the record.

24 THE WITNESS: Janoblin Brown.

25 DIRECT EXAMINATION

1 BY MR. WALLER:

2 Q Good morning, Mr. Brown. How are you today?

3 A I'm doing all right.

4 Q All right. Mr. Brown, you -- I'm going to take you
5 back, if I can, to when you were arrested on these
6 charges; do you remember that?

7 A Yes, sir.

8 Q Okay. And who was your attorney?

9 A James Cooper.

10 Q Okay. Mr. Cooper was your attorney all the way up
11 through your plea; is that right?

12 A Yes. We went in front of Judge Cooper, and then
13 after that it was -- they -- they prolonged my case
14 because I was willing to cooperate and tell them
15 everything that had happened within the majority of the --
16 the crimes that I've occurred; and then he passed.

17 I want to say he passed and they gave me Greg Collins
18 and then he -- he came through and he tell me that I was
19 looking at eight to nine, but I had other inmates jumping
20 on my case and stuff, you know, and he came back and said
21 I'm looking at a violent charge now.

22 So I -- so after that -- after him, he became -- he
23 went up -- he tells me he was going to be a paid lawyer;
24 and then they gave me another lawyer, which was Jennifer
25 Davis.

DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 7

1 Q Okay. I want to back you up a little bit to when Mr.
2 Cooper was still your attorney.

3 A Well --

4 Q Well, hang on one second. So you -- you pled guilty,
5 but your sentencing was deferred; is that right?

6 A Yes, sir.

7 Q For some cooperation with the State?

8 A Yes, sir.

9 Q Okay. And -- now, you had a co-defendant in these
10 charges; is that right?

11 A Yes, sir.

12 Q Okay. When Mr. Cooper was your lawyer, did you,
13 through Mr. Cooper and the Solicitor's Office, have any
14 negotiations about what type of sentence you might
15 receive?

16 A Yes, sir. He -- he did said [sic] that if I'm
17 willing to do ---

18 MR. MCALLISTER: Your Honor, I'm sorry. I -- I would
19 object to anything that the Solicitor or Mr. Cooper said
20 as hearsay.

21 THE WITNESS: Oh, you say Cooper?

22 THE COURT: Hold on one second.

23 THE WITNESS: Oh.

24 THE COURT: Are there any exceptions?

25 MR. WALLER: Your Honor, Mr. Cooper's obviously

1 unavailable.

2 THE COURT: Yeah. I think -- I'll have to look at
3 the rule, but I -- I'm pretty sure that --

4 MS. MCALLISTER: Your Honor, I don't think his -- I
5 don't think this falls under one of the exceptions where
6 the witness is -- is unavailable. It's that -- it's just
7 an out-of-court statement.

8 MR. WALLER: Your Honor, I can ask it in a different
9 way if I need to.

10 THE COURT: All right. I'm going to look at the
11 rules still just in case, but I -- there's an exception if
12 the witness -- I think under 804 -- 804(a)(4) where it
13 says that it's -- he's unavailable (as read): "... if
14 he's unavailable to be present or testify at a hearing
15 because of death." So that's 804(a)(4). That's still as
16 to Mr. Cooper.

17 Who was the other witness he was trying to ...

18 MS. MCALLISTER: The Solicitor.

19 THE COURT: He can't say what the Solicitor --

20 MR. WALLER: Certainly, Your Honor.

21 THE COURT: But the objection is overruled. So
22 804(a)(4).

23 DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q Mr. Brown, in talking to Mr. Cooper, what was your

DIRECT EXAMINATION BY MR. WALLER - JANOBILIN BROWN 9

1 understanding of pleading -- or plea negotiations?

2 A Well, he did said -- like, he was saying, like, there
3 can -- there can be some changes or whatnot, you know, and
4 that if I'm willing to give the State what they need or
5 whatnot, and what -- you know, what has been taking place
6 with the crimes or whatnot, you know, being that they
7 didn't have any statement from me at all, I was willing --
8 he said -- he said that if I'm willing to do that, it can
9 be a change -- a change or whatnot, that I can get 10 to
10 12 years. He said a minimum of 10 to 12 year -- 12 years.
11 I can't get no -- no more or no less.

12 And I was like -- I was like, cool, you know? And I
13 think after -- I think it was just a couple of weeks later
14 or -- I think it was two or -- or a couple of days that
15 I'd been called to court, and that's when I gave
16 statements.

17 Q Okay.

18 A You know, and after that, Mr. Cooper had passed and
19 they gave me Greg Collins.

20 Q Okay. So Mr. Cooper told you that you couldn't get
21 less than 10 years because that's what armed robbery
22 carried, the minimum; is that right?

23 A Yes, sir.

24 Q Okay. And you understood from talking to him, that
25 -- that 10 to 12 ---

1 A 10 to 12.

2 Q --- was what was already offered?

3 A In front of ---

4 Q Okay.

5 A Yes, sir. In front of Cooper, but they -- and Judge
6 Cooper, but they prolonged my -- my case.

7 Q Okay.

8 A And that's when ---

9 Q And -- and based on that understanding, after that,
10 you cooperated with the Solicitor's Office and law
11 enforcement?

12 A Yes, sir.

13 Q You gave how many statements?

14 A Four page.

15 Q Okay. You gave one four-page statement?

16 A Correct.

17 Q Okay. And then did you ever have to testify at a
18 trial or anything like that?

19 A No, sir. I was willing to, and they -- when they
20 asked me -- asked me if my co -- my co-defendant was going
21 to go to trial and stuff, the one who wrote statements on
22 me, you know? And I was like, "Yeah. I'm willing to go
23 to --" I was -- I was like, "Yeah. I'm willing to go
24 trial," you know, testify, you know? And that's when he
25 turned it down.

DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 11

1 Q Okay.

2 A So...

3 Q So he pled guilty as well?

4 A Yeah. He pled guilty. And he got, I -- I think, 79
5 violent.

6 Q Okay. So fast forward to when Ms. Davis is your
7 attorney. What -- what did you and -- what did you tell
8 Ms. Davis about what you'd done as far as cooperating?

9 A I tell her -- I basically told her everything what I
10 told y'all, you know, just now. And -- and she -- she was
11 -- she was okay with it, but she said that she -- she was
12 saying we -- we were going to try -- we were going to work
13 around that.

14 What -- whatever you and James Cooper had going on,
15 you know, she -- she don't really -- didn't know too much
16 about, though, but she said that she can help me along
17 with the corporation (sic) and whatnot, you know, what --
18 for what I've done.

19 Q Okay.

20 A And -- which that -- that had been spoken on, you
21 know, within court -- you know, when I went to court that
22 day.

23 Q Okay.

24 A Yeah.

25 Q What was your understanding of what the plea

DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 12

1 agreement was, as far as sentencing, when you got to court
2 to be sentenced?

3 A That they was going to con -- consider me to get 10
4 -- 10 years -- around 10 years..

5 Q Okay.

6 A All right.

7 Q Did you -- did you notice when the Solicitor did not
8 say that they would recommend that you get 10 years? Did
9 -- did that --

10 A Yeah. Yeah, I --

11 Q Did you hear that?

12 A I hear it -- I heard it, but you know, from me and
13 Ms. Davis -- Ms. Davis's understanding, that she didn't
14 fully, you know -- you know, give all the way in, and was,
15 like, representing me on a corporation, you know, like,
16 she didn't give her all. You know, with me, though, you
17 know, for --

18 Q Okay.

19 A -- being that I cooperated with them.

20 Q Okay. All right. After you received your sentence
21 of 16 years, did you and Ms. Davis talk about her filing a
22 motion for reconsideration?

23 A Yes, sir.

24 Q Okay. And she did that; is that right?

25 A Yes -- yes, sir.

DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 13

1 Q Okay.

2 A She did that, which that being denied from the same
3 judge, you know --

4 Q Okay. Did y'all talk about the reasons to put in
5 that motion?

6 A Yes, sir.

7 Q Okay. What was your understanding of why you were
8 asking Judge Verdin to -- to reconsider her sentence?

9 A Well, the reasons -- well, she -- Ms. -- Ms. Jennifer
10 Davis said she feel as if she -- that it wasn't right.
11 Like, that she didn't really put in -- put -- go -- went
12 -- went all the way hard for me to have, you know what I'm
13 saying, considering me to have that 10 years, being that I
14 co -- I was willing to cooperate with the State, you know?

15 And that's why she filed the -- the motion for
16 reconsideration and the judge -- the -- the same judge had
17 denied that though, you know?

18 And that's why she -- she just feel as if she wasn't
19 -- the -- the Solicitor ain't did [sic], you know, what
20 she was supposed -- what she expected her to do, you know,
21 at that time when I was getting sentenced. Like --

22 Q Okay.

23 A -- she didn't really represented [sic] me like, you
24 know, she wanted to being that my -- for my cooperation.

25 Q Okay. Let me kinda re-cap a little bit so we can

1 kinda sum all this up. When Mr. Cooper represented you,
2 he came to you with an offer of 10 to 12 years.

3 A Correct.

4 Q And -- and after that, you -- you pled guilty and
5 cooperated with law enforcement.

6 A Correct.

7 Q Okay. Mr. Cooper passed away, and Ms. -- first, Mr.
8 Collins and then Ms. Davis became your attorney?

9 A Yes, sir.

10 Q Okay. And do you -- was the 10 to 12 year offer ever
11 in writing or anything like that --

12 A And you --

13 Q -- that you're aware of?

14 A -- say, in writing?

15 Q Yes, sir. Did you ever see anything in writing?

16 A No, sir.

17 Q Okay.

18 A I didn't. I know I signed some papers and stuff when
19 I plead guilty --

20 Q Right.

21 A -- but he said -- Mr. James Cooper said that he was
22 -- they was going to hold off on that, you know? You
23 know, like, if -- if he was still -- if he was -- I wish
24 he was still here, though, but if he was here, he woulda
25 -- he woulda said the same; and you know, but it -- it

DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 15

1 wasn't no -- no paper right -- right there in front of my
2 face saying "10 to 12 years" because I had to cooperate
3 first, you know? And that's when -- when I cooperated, he
4 passed -- he all the sudden passed and --

5 Q Okay.

6 A -- and then I haven't seen a new lawyer until
7 probably a -- in the next couple of months later.

8 Q Okay. How long was it from when you pled guilty 'til
9 you got sentenced?

10 A When I plead guilty, I'm like -- that been like --
11 that been, like, a year apart --

12 Q Okay.

13 A -- I want to say.

14 Q I mean, it was a long time; is that right?

15 A Yes, sir.

16 Q Okay. And then when Ms. Davis became your attorney,
17 all that was left to do was to be sentenced. You'd
18 already cooperated and -- and everything.

19 A Yes, sir. 'Cause she really couldn't really go back
20 on -- on the deceased -- or Mr. James Cooper and whatnot,
21 though. She couldn't, you know? But she -- only thing
22 she could do is go by what I was telling her of what -- of
23 what happened and whatnot, and try to make things work out
24 that way.

25 Q Okay. Mr. Brown, I've asked you all the questions

DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 16

1 that I have for you. Is there anything that I've left out
2 or -- or the Court needs to be aware of Ms. Davis's
3 representation of you with regard to the sentencing and
4 the plea agreement?

5 A No, sir.

6 Q Okay. Please answer any questions Ms. McAllister
7 has.

8 A Yes, sir.

9 CROSS-EXAMINATION

10 BY MS. MCALLISTER:

11 Q Mr. Brown, you talked just a minute ago about some
12 papers that you signed when you pled guilty.

13 MS. MCALLISTER: Can I approach the witness, Your
14 Honor?

15 THE COURT: Yes.

16 (Counsel hands documents to the witness.)

17 Q Can you -- can you look at these and tell me if this
18 is your signature and this is what -- what you're talking
19 about?

20 A Right there (indicates). Yes, ma'am.

21 Q Okay. So these are all -- all -- all five of them.

22 A Yes, ma'am.

23 Q All right. Those are the sentencing sheets --

24 A Correct.

25 Q -- that you signed when you pleaded guilty, correct?

CROSS-EXAMINATION BY MS. MCALLISTER - JANOBLIN BROWN 17

1 A Yes, ma'am.

2 Q And do you see on here that this sentencing sheet --
3 this box that's checked here?

4 A Yes, ma'am.

5 Q And can --

6 A I'm not sure --

7 Q -- can you read what that says?

8 A Yes, ma'am.

9 Q Does that say (as read): "Without recommendation or
10 negotiation"?

11 A Yes, ma'am.

12 Q Okay. So you signed the sentencing sheets that were
13 checked saying that the State was not making any kind of
14 recommendation for your sentence, correct?

15 A Yes, ma'am.

16 Q Okay.

17 MS. MCALLISTER: And Your Honor, I would ask to make
18 these State's Exhibit No. 1.

19 THE COURT: Any objection?

20 MR. WALLER: Your Honor, I think they're already a
21 part of the record, but no objection otherwise.

22 (Marked State's Exhibit No. 1, five sentencing sheets.)

23 Q And -- and so you've testified that it was
24 approximately a year or so in between when you actually
25 pleaded guilty in front of Judge Cooper, and then you

CROSS-EXAMINATION BY MS. MCALLISTER - JANOBLIN BROWN 18

1 were sentenced in front of Judge Verdin, correct?

2 A Yes, ma'am. It was something like that because --

3 Q Okay.

4 A -- Greg Collins was my lawyer for a couple of months,
5 you know --

6 Q Okay.

7 A -- and that's when it came -- became Ms. Jennifer
8 Davis and whatnot, you know?

9 Q Okay.

10 A Yeah.

11 Q And so am I understanding you that -- that you went
12 and you pleaded guilty and you appeared in front of Judge
13 Cooper, correct? And he asked you some questions about
14 your guilty plea and if that's what you wanted to do,
15 correct?

16 A Yes, ma'am.

17 Q Did you ever tell Judge Cooper that there was an
18 agreement for you to be sentenced to 10 to 12 years?

19 A It wasn't no agreement yet until I had a corporate --
20 cooperated --

21 Q Okay.

22 A -- until I had to do what I -- what -- what I -- what
23 Mr. James Cooper wanted me to do.

24 Q Okay.

25 A And I got -- and they pulled me out of Richland

CROSS-EXAMINATION BY MS. MCALLISTER - JANOBLIN BROWN 19

1 County, or Alvin S. Glenn, since -- in a -- I think a
2 week or two later.

3 Q Okay.

4 A I don't -- I can't remember 'cause I been in a
5 incident -- a incident, you know, while I was at prison,
6 you know?

7 Q Okay. So at the time of the plea in front of Judge
8 Cooper, there was the -- you -- you didn't consider this
9 an agreement yet because you hadn't done your part --

10 A Correct.

11 Q -- of the agreement, correct?

12 A Yes, ma'am.

13 Q But your testimony is by the time you came to be
14 sentenced in front of Judge Verdin, you had cooperated at
15 that point?

16 A Yes, ma'am.

17 Q Okay. And you spoke to Judge Verdin ---

18 A I --

19 Q --- correct?

20 A I been cooperated, you know, I -- be -- before I went
21 in front of Judge Verdin.

22 Q Okay.

23 A And I told her -- I told her, even my Solicitor and
24 my -- and my lawyer, you know? Well, it's like -- well,
25 my -- she -- my -- the -- what the -- the understanding

CROSS-EXAMINATION BY MS. MCALLISTER - JANOBLIN BROWN 20

1 is that my lawyer feel that it's the Solicitor ain't did
2 [sic] what she -- you know what I'm saying, was supposed
3 to do, like, go hard as what -- you know, far as me
4 cooperating with the State.

5 Q Okay.

6 A You know, and --

7 Q I'm getting to that. I'm trying to ask you something
8 different right now, though.

9 When you came in front of Judge Verdin to be
10 sentenced, you spoke to her, right? She gave you a
11 chance to talk to her, correct?

12 A Yes, ma'am.

13 Q And at that point, at the time that you spoke, the
14 Solicitor had already made her presentation to the Court,
15 correct?

16 A Yes, ma'am.

17 Q And you didn't tell the Court -- you didn't tell
18 Judge Verdin, "Hey, I thought I was getting 10 to 12
19 years?"

20 A See -- see, Ms. Davis didn't really wanted [sic] me
21 to bring that up, you know, from what James Cooper and I
22 spoked [sic] about because this was her -- it was just
23 her and me, you know, and -- talking about my case and
24 whatnot, though. And it's like, I couldn't even bring --
25 I couldn't bring anything back up of the -- the deceased,

CROSS-EXAMINATION BY MS. MCALLISTER - JANOBLIN BROWN 21

1 some -- someone who passed, though, you know?

2 Q Okay. So --

3 A I couldn't --

4 Q So the answer then is no, you did not tell Judge
5 Verdin that you had an agreement for 10 to 12 years.

6 A No, I didn't tell her ---

7 Q Okay.

8 A --- that.

9 Q Okay. And then you did -- or Ms. Davis did file this
10 motion for reconsideration for you, correct?

11 A Yes, ma'am.

12 Q And have you seen that motion?

13 A Yes, ma'am.

14 Q And have you seen the order from that motion?

15 A Yes, ma'am.

16 Q Okay. And do you agree with me that the -- the only
17 thing that she put in the motion as -- as -- as the basis
18 for the agreement is that she felt like the Solicitor
19 didn't properly convey the extent of your cooperation to
20 the Court; is that right?

21 A Yes, ma'am.

22 Q Okay. And Judge Verdin ruled on that motion and
23 denied it and said that she did in fact consider your
24 cooperation in -- in -- in handing down your sentence,
25 correct?

CROSS-EXAMINATION BY MS. MCALLISTER - JANOBLIN BROWN 22

1 A Yes, ma'am.

2 Q Okay. And then Ms. Davis filed a notice of appeal
3 for you on this issue as well, correct?

4 A Yes, ma'am.

5 Q And you had an attorney appointed to represent you on
6 appeal, correct?

7 A Yes, ma'am.

8 Q Okay. And that attorney appealed this issue of
9 whether your sentence was correct or whether this plea
10 agreement -- if there was some kind of an agreement that
11 had been breached, correct?

12 A Yes, ma'am.

13 Q Okay. So you have had -- Judge Verdin has looked at
14 this issue and the Court of Appeals has looked at this
15 issue, correct?

16 A Yes, ma'am.

17 Q Okay. And Ms. -- Ms. Davis did that for you,
18 correct?

19 A Yes, ma'am.

20 Q Okay. And when you went in front of Judge Verdin to
21 be sentenced, Ms. Davis did ask Judge Verdin to give you
22 a minimum -- the minimum sentence, right? She asked for
23 10 years, correct?

24 A Yes, ma'am.

25 Q Okay. And the Solicitor didn't make a recommendation

CROSS-EXAMINATION BY MS. MCALLISTER - JANOBLIN BROWN 23

1 as to some other sentence, correct?

2 A She -- she did -- she -- she kinda -- she -- she
3 kinda -- she kind of was on the same pages with Ms.
4 Davis, but not as much as Ms. Davis. She wasn't going at
5 it as hard as Ms. Davis -- Ms. Jennifer Davis was,
6 though.

7 But that's why Ms. Davis feel as if, you know, the
8 Solicitor ain't really did her part, you know, being that
9 I was cooperating -- being cooperative, you know, and I
10 -- I -- I really gave -- gave the State what they really
11 needed.

12 Q Okay. So she -- so the Solicitor mentioned your
13 cooperation, but you and Ms. Davis didn't feel that it
14 was to the extent --

15 A Yes, ma'am.

16 Q -- that it should have been?

17 A Yes, ma'am.

18 Q Okay. And my question was, though, the Solicitor, it
19 wasn't that the Solicitor who came in there and asked for
20 20 years or some term of years. She didn't -- she didn't
21 ask for anything, correct?

22 A Yeah. She -- I -- she did -- she did ask -- she did
23 ask for, I think, 10 years. Yeah. She -- yeah.
24 Because --

25 Q Okay.

CROSS-EXAMINATION BY MS. MCALLISTER - JANOBLIN BROWN 24

1 A I -- I -- like I said, I can't remember. That was
2 like, four years ago, and I -- and I been in a incident
3 at the prison, you know? And I -- I was unconscious, I
4 got knocked beside my head, you know? What -- you know,
5 and I can't really remember a lot of things, you know? I
6 can't 'cause I been in the hospital for two weeks behind
7 -- behind the same incident for -- for cooperating with
8 the State.

9 Q Okay.

10 A The same incident. And --

11 Q Are you saying, though -- I'm sorry. Are you saying
12 the Solicitor asked for 10 years as well?

13 A She -- she -- she -- she consider -- considered, I
14 want to say. I'm -- I'm -- I want to say consideration,
15 under consideration, she -- she, you know on -- on my
16 cooperation. That's what I'm saying.

17 Q All right.

18 A Like, I can't -- I can't really remember everything,
19 though. But I know that that -- that was spoken and Ms.
20 Davis and the Solicitor was on -- was kinda like on the
21 same page, but that she didn't went as hard as Ms. Davis
22 was at -- was going, like, asking for 10 -- trying to
23 consider me to have 10 years, "I wanted you to have ten
24 years."

25 But the judge went over and gave -- gave me 16.

REDIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 25

1 Q Okay. And when you got the 16 years, did you tell
2 Ms. Davis, "Hey, we -- I had a -- I had an agreement to
3 get 10 to 12 years. You need to tell them -- you need to
4 say something to the judge."?

5 A Yeah. And we -- and we -- and she -- we -- I thought
6 we was going in front of the judge, yeah. I -- I -- I --
7 I got -- I got -- I woke up the next morning, and they
8 said, "Hey, you going to court again," you know?

9 And we was supposed to go in front of the same judge,
10 but she wasn't here. She went out -- I guess she went
11 out of town. Yeah, yeah. 'Cause Ms. Davis came and tell
12 me that she wasn't there. She wasn't present at all.

13 Q Okay.

14 A So that's when she put in a motion for a
15 reconsideration.

16 Q Okay. So -- so you told Ms. Davis, and Ms. Davis
17 filed the motion on your behalf as a way to deal with it?

18 A Yes, ma'am.

19 Q Okay. And the judge considered your motion?

20 A Yes, ma'am.

21 Q Okay. Thank you.

22 A You're welcome.

23 MS. MCALLISTER: That's all I have, Your Honor.

24 MR. WALLER: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

RE-DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 26

1 BY MR. WALLER:

2 Q Mr. Brown, you testified on the cross-examination
3 that there wasn't an agreement at the time you pled
4 guilty with Mr. Cooper. Okay? You testified on direct
5 that Mr. Cooper told you if you cooperated the -- the
6 sentence would be 10 to 12 years; is that right?

7 A Yes, sir.

8 Q Okay. And that's how you understood it?

9 A Yes, sir.

10 Q Okay. And that was conditional on your cooperation;
11 is that right?

12 A Yes, sir.

13 Q So you in -- in other words, if you hadn't
14 cooperated, you could've gotten that 10 to 12 years; is
15 that right?

16 A Correct.

17 Q Okay.

18 A 'Cause he -- when I -- I signed -- I plead guilty, I
19 -- I plead guilty first. You know, I signed the papers.
20 I plead guilty first.

21 Q Okay.

22 A You know, and after that, he tell me -- he tell me
23 this, "Hey, if you can do this or whatnot, you know, I'm
24 willing to put word in for you and -- you know, and do
25 whatever I can, you know, to help you out, you know, If

RE-DIRECT EXAMINATION BY MR. WALLER - JANOBLIN BROWN 27

1 you'll give the State what they need, you know, if you
2 cooperate or whatnot, though."

3 Q So you understood if you cooperated, you would get 10
4 to 12 years?

5 A Correct.

6 Q Okay. Now, the solicitor, at -- at the sentencing,
7 recommend a concurrent sentence; is that right?

8 A At the sentencing?

9 Q Yes, sir.

10 A Yes, sir.

11 Q Okay. You were charged originally with some
12 attempted murders --

13 A Yes, sir.

14 Q -- and you pled guilty to assault and battery first
15 degree; is that right?

16 A Yes, sir.

17 Q Okay. You still faced up to 30 on some of the other
18 charges, though; is that right?

19 A Yes, sir.

20 Q The armed robbery carried up to 30?

21 A Yes, sir.

22 Q Okay. So from a practical sense, the -- the
23 reduction in those charges didn't reduce your exposure of
24 the highest you could get; is that right?

25 A Yes, sir.

1 Q Okay. Nothing further. Thank you, Mr. Brown.

2 THE COURT: You can step down, sir.

3 (The witness complies.)

4 MR. WALLER: Nothing further from the Applicant, Your
5 Honor.

6 THE COURT: Thank you. Call your first witness.

7 MS. MCALLISTER: Thank you, Your Honor. We call
8 Jennifer Davis

9 JENNIFER DAVIS, having been first
10 duly sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MS. MCALLISTER:

13 Q Good morning, Ms. Davis.

14 A Good morning.

15 Q Where do you currently work?

16 A The Richland County Public Defenders Office.

17 Q And do you recall your representation of Mr. Brown in
18 this matter?

19 A I do.

20 Q And were you appointed onto this case through your
21 position at the Public Defenders Office?

22 A Yes.

23 Q Okay. And can you just describe briefly how you came
24 to be involved and when?

25 A I came -- I became involved in January, 2014. Mr.

DIRECT EXAMINATION BY MS. MCALLISTER - JENNIFER DAVIS 29

1 Collins represented Janoblin between -- I think it was --
2 would've been the end of March, 2013, through December.
3 And then I -- I think Mr. Collins left our office, which
4 is why I was then reassigned the case.

5 Q And you represented him only for the sentencing
6 portion, correct?

7 A Yes.

8 Q Okay. Did you received a file or documents from
9 either of his two previous attorneys?

10 A I did. I received the file from the office.

11 Q Okay. But both of those attorneys, Mr. Cooper and
12 Mr. Collins, were employed by the Public Defenders Office
13 at some point?

14 A Yes.

15 Q And they represented Mr. Brown?

16 A Yes.

17 Q Okay. So your office had a file that -- and you just
18 took over the file?

19 A Right.

20 Q Okay. Have you reviewed that file in preparation for
21 today?

22 A I did.

23 Q Okay. Is there any kind of written plea agreement or
24 documentation in that file for a 10 to 12 year plea offer

25 ---

DIRECT EXAMINATION BY MS. MCALLISTER - JENNIFER DAVIS 30

1 A No.

2 Q --- for Mr. Brown?

3 A No.

4 Q Okay. What was your understanding of the agreement
5 Mr. Brown had with the State in terms of his plea?

6 A Well, I can only go off of -- I mean, what he said
7 was accurate in the fact that I can only go off of what
8 Janoblin was telling me.

9 Unfortunately, there were not notes from Mr. Cooper
10 as to any understanding he had prior to Janoblin pleading
11 or after in terms of what he expected as a sentence. So
12 I don't know what Mr. Cooper's understanding was.

13 Janoblin did tell me when -- at least, one of the few
14 times in the beginning when we met, that he thought he
15 was getting a minimum 10. And I did follow up with that
16 with the Solicitor, and she -- or he indicated the
17 investigator, while he was cooperating, said that he
18 would recommend the minimum 10.

19 And so I did follow up with the Solicitor on that, in
20 which she, you know, emailed back saying that that was
21 not accurate and that the investigator had never made
22 that statement.

23 Q Okay. And -- okay. So it was an investigator he --
24 that Mr. Brown told you made that statement to him?

25 A Right.

DIRECT EXAMINATION BY MS. MCALLISTER - JENNIFER DAVIS 31

1 Q Okay. Not the Solicitor herself?

2 A I mean, but I'm just going off of my notes. I don't
3 remember he -- in a conversation, he may have said the
4 Solicitor also. I just, specifically in my notes, said
5 -- had noted that he said the investigator told him,
6 while he was giving his statement, that he would
7 recommend the minimum 10, and so I followed up on that.

8 Q Okay. So before the sentencing, you followed up on
9 that to find out if that was in fact an agreement?

10 A Right.

11 Q And you were told that that was not the agreement?

12 A Right.

13 Q Okay.

14 A I was told the -- that the investigator did not say
15 that.

16 Q Okay. So your understanding, when you went into --
17 when you -- when you went into this sentencing hearing,
18 did you have any understanding that the State was going
19 to recommend a particular sentence?

20 A No. The Solicitor was not recommending a sentence.
21 She did state that she would fully put on the record his
22 level of cooperation and that she would remain silent as
23 to sentencing.

24 Q Okay. And so she did -- she did put on the record
25 that he gave a statement, correct, to law enforcement,

DIRECT EXAMINATION BY MS. MCALLISTER - JENNIFER DAVIS 32

1 and that he was going -- he was prepared to testify in
2 the co-defendant's trial if it had gone to trial,
3 correct?

4 A She did say that, but I definitely agree that she
5 minimized his cooperation, which --

6 Q All right.

7 A -- is why we had a conversation right after the plea
8 about it.

9 Q Okay. Did -- but -- and she did not recommend any
10 kind term of years or ask for the maximum or anything
11 like that, correct?

12 A She did not. She just said concurrent, I believe.

13 Q Okay. And concurrent is beneficial to Mr. Brown,
14 correct?

15 A Yes.

16 Q Okay. So the only issue, from your perspective, in
17 the sentencing hearing was whether she minimized or fully
18 fleshed out the extent of his cooperation in the
19 investigation, correct?

20 A Correct.

21 Q Okay. And so you -- you talked to Mr. Brown about
22 that after the hearing, correct?

23 A Right.

24 Q And that's when you -- you decided to file the motion
25 for reconsideration?

DIRECT EXAMINATION BY MS. MCALLISTER - JENNIFER DAVIS 33

1 A Right. I'd actually talked to the Solicitor
2 immediately after, and she apologized and said she would
3 make clear her position on the record the next day if we
4 wanted to bring Janoblin back over; and which I told her,
5 "Yes. Let's please do." And then I had a conversation
6 with Janoblin explaining that.

7 And then what happened is he did get brought over the
8 next day, and we learned that Judge Verdin had left and
9 was not going to be holding court the rest of that week.
10 And so that's why I proceeded to file the motion so that
11 we could address it.

12 Q Okay. And so in your recollection, this alleged 10
13 to 12 year agreement was never something that you were
14 trying to get reconsidered by the -- by your motion, is
15 that -- it was never a basis for that motion; is that
16 correct?

17 A I never had anything other than some of the remarks
18 that Janoblin told me of course --

19 Q Okay.

20 A The Solicitor never stated that there was an offer,
21 she never had made any sort of number in terms of a
22 recommendation.

23 Q Okay.

24 A So when we went forward on the plea, I explained that
25 I was, you know, absolutely willing to ask for the 10

1 years, but I did not have any expectation that the
2 Solicitor was recommending that.

3 Q Okay. And when you went into the plea, did you
4 advise Mr. Brown that he was only going to get the
5 minimum or that the only sentence he could receive was 10
6 to 12 years when you went into sentencing?

7 A No. I would've explained what the cap was, what the
8 maximums were, but that we were going to be asking for
9 10.

10 Q Okay.

11 MS. MCALLISTER: It think that's all the questions.

12 THE COURT: Yes, sir.

13 MR. WALLER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WALLER:

16 Q Ms. Davis, how many, ballpark, cases do you handle in
17 a given year?

18 A It's changed wildy over the years. At this point, I
19 have a very low caseload. At that time, I probably
20 would've had anywhere from, I guess, 70 to 100 probably
21 at that point.

22 Q Okay. That -- okay. Is it standard to get a written
23 plea agreement in every case, or do y'all just talk about
24 stuff a lot of times?

25 A It's pretty unusual to get a written offer other than

1 if it's conveyed via email of course, but a lot of times
2 you're going to have conversations on the phone or email.

3 Q Okay. And you testified on direct that -- that you
4 didn't have any notes in the file from Mr. Cooper?

5 A No.

6 Q Okay. So you -- you don't know what conversations
7 Mr. Cooper may have had with the Solicitor on this?

8 A No.

9 Q Okay. Did you and Mr. Brown discuss what went into
10 him entering into the plea in the 14 months before you
11 represented him?

12 A I'm not sure what you're asking.

13 Q Did y'all discuss what led to him pleading guilty?

14 A I was aware that -- well, obviously he was -- I was
15 aware that he pled, and I was aware from, I think,
16 probably the Solicitor that it -- the sentencing was
17 deferred because they wanted him to cooperate.

18 Q Okay. And the attempted murders were reduced down to
19 assault and battery first degree; is that your
20 understanding?

21 A Yes.

22 Q Okay. But there was still a potential 30 year
23 sentence he could've gotten on the armed robbery?

24 A Sure.

25 Q Okay. So from a practical sense, there wasn't a --

1 there wasn't really a reduction in exposure?

2 A The maximum, in terms of if everything was
3 concurrent, was still going to be 30 ---

4 Q Okay.

5 A --- yes.

6 MR. WALLER: Beg the Court's indulgence, please.

7 (Brief pause.)

8 Q Nothing further, Ms. Davis. Thank you.

9 THE COURT: Anything else?

10 MS. MCALLISTER: No, Your Honor.

11 THE COURT: All right, ma'am. You may step down.

12 (The witness exits the stand.)

13 MS. MCALLISTER: That's all from the State, Your
14 Honor. We -- unless you would like to hear from us in
15 closing.

16 THE COURT: I will. Yes, sir.

17 MR. WALLER: Your Honor, obviously Mr. Cooper is not
18 here to testify.

19 Mr. Brown testified that the reason he entered into
20 his plea was that he believed from Mr. Cooper that he
21 would receive a sentence of 10 to 12 years if he
22 cooperated. The -- Ms. Davis has testified that the
23 Solicitor, you know, in -- in her dealings with the
24 Solicitor, did not say that.

25 But if Mr. Brown -- if that was his understanding

1 when he entered into the plea, he obviously detrimentally
2 relied on that by cooperating with law enforcement. He
3 testified that he was assaulted in prison based on it.
4 So Your Honor, I -- I certainly think that he
5 detrimentally relied on representations of his lawyer as
6 to what the plea was.

7 And Your Honor, I -- I think that once that happens,
8 it's up to his sentencing attorney to try and force that
9 plea deal. Certainly Mr. Brown testified and Ms. Davis
10 testified that he informed her that he thought he was
11 receiving a 10 to 12 year sentence, and she did follow up
12 on that.

13 I think it's incumbent upon her to present that to
14 the judge that it was his understanding that's what the
15 agreement was and object if it's not placed on the record
16 at least.

17 THE COURT: All right.

18 MR. WALLER: Thank you.

19 THE COURT: Yes, ma'am.

20 MS. MCALLISTER: Your Honor, Mr. Brown testified that
21 his understanding was that there was -- you know, that he
22 was going to receive 10 to 12 years if he cooperated, but
23 there's no written plea agreement. He signed a plea form
24 stating that the plea was without recommendations, and at
25 no time during either the plea or the sentencing did Mr.

1 Brown, when he had a chance to address the Court, say
2 that he thought he was getting 10 to 12 years.

3 He was asked if anyone had promised him anything to
4 get him to plead guilty and he answered no. And the
5 Solicitor, in the sentencing hearing, put on the record
6 that the only agreement was for her to recommend a
7 concurrent sentence and there were no other negotiations;
8 and Mr. Brown did not make any objection to that
9 statement. Even when he had a chance to personally
10 address Judge Verdin he did not tell her, "I thought
11 something else."

12 Your Honor, Ms. Davis testified that when Mr. Brown
13 informed her he thought that there was some kind of
14 agreement in that range, she followed up on that with the
15 Solicitor and was told that was never the agreement.

16 So Mr. Brown was aware, at least theoretically, that
17 -- that that was not the agreement based on -- he -- you
18 know, based on what he was telling Ms. Davis and based on
19 what the Solicitor said at the sentencing hearing and he
20 did not raise that issue.

21 They did raise the issue of, you know, whether his
22 cooperation was fully fleshed out. That was ruled on,
23 and this -- the issue of the plea agreement and whether,
24 you know, he -- whether the Solicitor did what she
25 should've done was raised on appeal as well, Your Honor.

1 So this issue has been looked at as to whether, you
2 know, the Solicitor or the State did something in
3 sentencing that was improper.

4 THE COURT: All right. I'll take a look at it and
5 get something back to you.

6 MS. MCALLISTER: Thank you.

7 MR. WALLER: Thank you, Your Honor.

8 (Off the record at 10:56 a.m.)

9
10 **-- END OF TRANSCRIPT OF RECORD --**
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 17th day of July, 2018.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

December 15, 2019

Richland County General Sessions

CASE HISTORY FOR CASE K689109

State of South Carolina vs Janoblin M B Brown

FILED DATE: 7/29/2011

CASE TYPE: GS

STATUS: Disposed

INDICTMENT NUMBER: 2012GS4000348

ASSIGNED JUDGE: Dennis, Steven Douglas

DISPOSITION JUDGE: Solicitor

ARRESTING AGENCY: Columbia Police Department

CASE PARTIES:

Defendant Brown, Janoblin M B

[REDACTED] Vanheist St Apt [REDACTED], Columbia, SC 29204

Defendant Attorney Cooper, James D III

Richland County Public Defender'S Office, Post Office Box 192, Columbia, SC 29202

Defendant Attorney Davis, Jennifer Cathryn

1701 Main St., Ste 103, Columbia, SC 29201

CASE HISTORY FOR CASE K689109

Brown, Janoblin M B

[REDACTED] Vanheist St Apt [REDACTED]

Columbia, SC 29204

Age: 25

DL#:

DOB: [REDACTED]

SSN: 000-00-0000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0549 Weapons / Poss. weapon during violent crime, if not also sentenced to life witho	6/24/2011	Nolle Prosequi Indicted	6/6/2014

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
8/1/2011	3:53 PM	Motion/Discovery and Disclosure of Evidence Inc K689156
8/1/2011	3:54 PM	Filing recorded: Certificate/Certificate Of Service
8/12/2011	12:00 AM	COCMCFALL recorded the following Case Note: Motion/Discovery and Disclosure of Evidence Inc K689156K-689155- K-689154- K-689108 -K-689110
6/10/2014	12:00 AM	VIVODD recorded the following Case Note: Discharge Issued REQ RICE
6/10/2014	12:57 PM	Filing recorded: Discharge Issued NP

Print Date: 11/01/2017
 Print Time: 4:44:58PM
 Requested By: DH234184

CaseHistory.rpt V6.1

Page 1 of 1

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Janoblin M B Brown

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: VAN HEISE ST APTCity, State, Zip: COLUMBIA, SC 29204DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault and Battery 1st

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4000357 ✓A/W#: K689154Date of Offense: 7/2/2011S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]13423[Signature]75388

GARFIELD, DOLLY

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by 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 PTUPTotal: \$ 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	\$
§ 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	\$
§ 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 (SCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid during probation.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,

Presiding Judge

Judge Code: Sentencing Date: J. G. C. R. S.
RICHLAND COUNTY
SOUTH CAROLINAClerk of Court/ Deputy Clerk
Court ReporterJoanette McBride
D. Helms

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

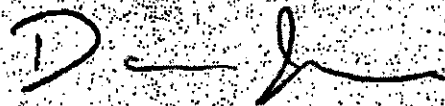
INDICTMENT

At a Court of General Sessions, convened on JANUARY 18, 2012,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That JanoblIn M B Brown did in Richland County on or about July 2, 2011,
did with the intent to kill, attempt to kill ROBERT HAMPTON with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

VS.

Janoblin M B Brown

AKA:

Race: BLACK Sex: M Age: 20

DOB: SS#:

Address: VAN HEISE ST APT A

City, State, Zip: COLUMBIA, SC 29204

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed, or allegedly armed, robbery

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

GARFIELD, DOLLY

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by 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 PTUPTotal: \$ 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
§ 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
§ 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
3% to County (if paid in installments)	\$
TOTAL	\$

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed on
§ 47.12 requires \$500 be paid to
during probation.

Presiding Judge

Judge Code:

Sentance Title:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4000356 ✓

A/W#: K689155

Date of Offense: 7/2/2011

S.C. Code § : 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSClerk of Court/ Deputy Clerk
Court ReporterJeanette McBride
DiHelms

Presiding Judge

Judge Code:

Sentance Title:

6/4/14

JEANETTE MCBRIDE

C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA

ARREST WARRANT

K689154 **K-689154** 1119330

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
COLUMBIA

THE STATE
against

JONOBILIN M BRACY-BROWN
Address: 1728 A VAN HEISE ST
COLUMBIA SC 29202
Phone: _____ SSN: _____
Sex: B Race: B Height: 5 09 Weight: 155
DL State: _____ DL#: _____
Agency ORI#: SC0400100
Prosecuting Agency: CITY OF COLUMBIA
Prosecuting Officer: INV MCCracken
Offense: ATTEMPTED MURDER
Offense Code: HDM
Code/Ordinance Sec: 16-3-29

This Warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☒ Municipality of
COLUMBIA. The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Jonoblin Bracy Brown
on 12 July 2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
City of Columbia
Municipal Court
811 Washington Street
Columbia, SC 29201

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
COLUMBIA)

AFFIDAVIT

Personally appeared before me the affiant INV R.C. MCCracken who
being duly sworn deposes and says that defendant JONOBILIN M BRACY-BROWN
did within this county and state on 07/02/2011 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA)
in the following particulars:
DESCRIPTION OF OFFENSE: ATTEMPTED MURDER 16-3-29

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON 07/02/11 WHILE AT 3100 HAMMOND AVE COLUMBIA SC DEF ALONG WITH
UNKNOWN CO-DEF DID ATTEMPT TO ROB VICTIM HAMPTON OF MONEY AT GUN
POINT. VICTIM HAMPTON WAS SHOT WITH THE INTENT TO KILL VICTIM WITH
MALICE AFORETHOUGHT. VICTIM SUSTAINED LIFE THREATENING INJURIES.
DEF'S PERSONAL CELL PHONE WAS USED TO CALL THE CAB COMPANY TO
REQUEST THE CAB. DEF LEFT HIS PERSONAL PROPERTY IN THE VICTIM'S CAB
AFTER VICTIM WAS SHOT AND FORENSIC EVIDENCE WAS RECOVERED FROM THE
VEHICLE IDENTIFYING DEF.

Signature of Affiant

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
COLUMBIA)

Affiant's Address #1 JUSTICE SQUARE
COLUMBIA, SC 29201
Affiant's Telephone 5453500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/02/2011 defendant JONOBILIN M BRACY-BROWN
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: ATTEMPTED MURDER 16-3-29

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 07/11/2011)

Signature of Issuing Judge (L.S.))

Judge's Address _____)

Judge's Address CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202
Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 JUNE 27 2011
 C.C. P & G
 RICHMOND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Janoblin M B Brown

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: VAN HEISE ST APCity, State, Zip: COLUMBIA, SC 29204DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADSTO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponin violation of § 16-11-0330(A)of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]13433

GARFIELD, DOLLY

SC Bar#

Defendant

Attorney for Defendant

SC Bar# 75388

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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 PTUPTotal: \$ 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	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
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§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk
Court ReporterJeanette McBride
D. Helms

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4000350 ✓A/W#: K689108Date of Offense: 6/24/2011S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

[Signature] 2/16/12
☐ Appointed PD or appointed other conditions
 § 47.12 requires \$500 be paid to C.A.P. during probation.

**CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 J. Jeanette McBride
 C.C.C. P.A.G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA**

Presiding Judge [Signature]
 Judge Code: Defendant
 Sentence Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

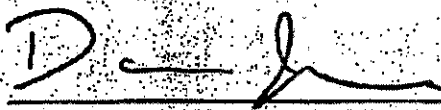
INDICTMENT

At a Court of General Sessions, convened on JANUARY 18, 2012,
the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Janoblin M B Brown did in Richland County on or about June 24, 2011, ✓
commit robbery by feloniously taking from the person or presence of HARRISON
MUTUA MUNYWOKI, by means of force or intimidation, goods or monies of
HARRISON MUTUA MUNYWOKI, such goods or monies being described as
US CURRENCY, with the intent to deprive the owner permanently of such
property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other
deadly weapon, or while alleging, either by actions or words, that he or she was
armed while using a representation of a deadly weapon or any object which a
person present during the commission of the robbery reasonably believed to be a
deadly weapon. All in violation of §16-11-330(A), SC 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.


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Janoblin M B Brown

AKA:

Race: BLACK Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: VAN HEISE ST APT [REDACTED]City, State, Zip: COLUMBIA, SC 29204DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st degree

in violation of § 16-03-600(c)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ 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: Garfield, Dolly 13433 Janoblin M B Brown Jan 75388
GARFIELD, DOLLY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by 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
§ 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
§ 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
3% to County (if paid in installments)	\$
TOTAL	\$

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4000347 ✓

A/W#: K689110

Date of Offense: 6/24/2011

S.C. Code § : 16-03-600(c)(1)

CDR Code #: 3412

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date: Deferral

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JANUARY 24, 2013
C.C.C. S.S.
RICHLAND COUNTY
SOUTH CAROLINA

Clerk of Court/ Deputy Clerk
Court Reporter

Jeanette McBride
D. Helms

ARREST WARRANT
K-689110
STATE OF SOUTH CAROLINA
County/ Municipality of
COLUMBIA

THE STATE
against

JANOBILIN M. B. BROWN
Address: 1728 VANHEIST ST. APT A
COLUMBIA SC 29204
Phone: SSN:
Sex: Race: Height: 5 08 Weight: 155
DL State: DL#:
Agency ORI#: SC0400100
Prosecuting Agency: CITY OF COLUMBIA
Prosecuting Officer: DOW INV. N/SHENKAR
Offense: ASSAULT & BATTERY 1ST
Offense Code: ABS
Code/Ordinance Sec: 16-3-600C

This Warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of
COLUMBIA The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN
A copy of this arrest warrant was delivered to
defendant JANOBILIN M. B. BROWN
on 07-07-2011
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
CITY OF COLUMBIA
MUNICIPAL COURT
P. O. BOX 644
COLUMBIA, S. C. 29202

STATE OF SOUTH CAROLINA
County/ Municipality of
COLUMBIA

AFFIDAVIT

Personally appeared before me the affiant INV. N. DOW who
being duly sworn deposes and says that defendant JANOBILIN M. B. BROWN
did within this county and state on 06/24/2011 violate the laws of the
State of South Carolina (or ordinance of County/ Municipality of COLUMBIA)
in the following particulars:
DESCRIPTION OF OFFENSE: ASSAULT & BATTERY 1ST 16-3-600C

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON 06/24/11 AT APPROX 0528 HRS AT 3622 HIGH CIR. CITY OF COLA. CTY OF
RICHLAND, VICTIM HARRISON MUTUA MUNYWOKI CAB DRIVER FOR BLUE RIBBON
CAB CO. WAS DISPATCHED TO 3622 HIGH CIRCLE UPON ARRIVAL THE UNMASKED
DEF OPENED THE DRIVERS SIDE DOOR, TOOK AN UNKNOWN TYPE CALIBER HAND-
GUN, STRUCK THE VICTIM ON THE BACK OF THE HEAD WITH IT THEN TOOK
APPROX. \$100.00 IN US CURRENCY WITH THE INTENT TO DEPRIVE THE VICTIM
OF SAME. THEN AN UNIDENTIFIED MASKED CO-DEF PRESENTED AND POINTED AN
UNKNOWN TYPE CALIBER GUN AT THE VICTIM FROM THE RIGHT FRONT

Signature of Affiant

STATE OF SOUTH CAROLINA
County/ Municipality of
COLUMBIA

Affiant's Address #1 JUSTICE SQUARE
COLUMBIA SC 29201
Affiant's Telephone 5453500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds believe that
on 06/24/2011 defendant JANOBILIN M. B. BROWN
did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: ASSAULT & BATTERY 1ST 16-3-600C

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 07/07/2011

Signature of Issuing Judge

Ministerial Recorder
Judge Code: 403003

Judge's Address CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202
Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JUL 20 2011
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Janoblin M. Bracy-Brown, #360259,

) C.A. No. 2017-CP-40-06899
)

) Applicant,
)

) **ORDER OF DISMISSAL**
)

) v.
)

) State of South Carolina,
)

) Respondent.
)

RICHLAND COUNTY
FILED
2019 JUL 25 AM 9:58
JEANETTE W. MARRINE
C.C.P., G.S., & F.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Janoblin M. Bracy-Brown (Applicant) on November 9, 2017. Respondent made its Return on February 28, 2018. An evidentiary hearing into the matter was convened on July 17, 2018, at the Richland County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Lindsey A. McCallister represented Respondent.

At the hearing, Applicant testified on his own behalf. Jennifer C. Davis, Esquire, Applicant's plea counsel, was also called to testify. This Court also had before it a copy of the records of the Richland County Clerk of Court, records from the South Carolina Department of Corrections, Applicant's appellate records, the application, Respondent's Return, and the guilty plea and sentencing transcripts. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application for relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In January of 2012, the Richland County Grand Jury indicted Applicant for one count of first-degree assault and battery (2012-GS-40-00347), two counts of armed robbery (2012-GS-40-00345, -00350), attempted armed robbery (2012-GS-40-00356), two counts of attempted murder (2012-GS-40-00357, -00358), and two counts of possession of a weapon during the commission of a violent crime (2012-GS-40-00346, -00348). The charges stem from incidents occurring between June 24 and July 2, 2011, wherein Applicant and a codefendant forcibly entered taxi cabs with a gun. They attempted to rob one driver and successfully robbed others. On two occasions, the drivers were struck with either the gun itself or bullets fired from it. Applicant was identified in photos lineups and by personal items left in the vehicles. Sent. Tr. 9.

Applicant was initially represented on these charges by James D. Cooper, III, Esquire. Assistant Solicitor Dolly Garfield prosecuted the case. On March 14, 2013, Applicant appeared before the Honorable G. Thomas Cooper and pleaded guilty to attempted armed robbery, armed robbery, and three counts of first-degree assault and battery.¹ In exchange for the plea, the State dismissed one count of armed robbery and two counts of possession of a weapon during the commission of a violent crime. Judge Cooper accepted the guilty plea and deferred sentencing at the parties' request to allow for Applicant's cooperation in the prosecution of his codefendant. On

¹ As part of the plea agreement, the State reduced the two attempted murder charges to the lesser-included first-degree assault and battery.

June 4, 2014, Applicant appeared before the Honorable Letitia H. Verdin for sentencing. Jennifer C. Davis (Counsel), Esquire, represented Applicant at sentencing, as Mr. Cooper had passed away. The State explained Applicant's cooperation in its case against his codefendant and recommended a concurrent sentence. Judge Verdin sentenced Applicant to sixteen years' imprisonment. Counsel filed a motion to reconsider the sentence on June 11, 2014, which Judge Verdin denied by written order dated July 8, 2014, after a hearing.

Applicant filed a timely notice of appeal. Taylor D. Gilliam, Esquire, of the South Carolina Commission on Indigent Defense - Office of Appellate Defense, perfected the appeal by filing of a brief pursuant to Anders v. California.² The sole question raised was whether the trial court erred in denying Applicant's motion for reconsideration where the State's position at sentencing was different than Applicant expected. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Brown, Op. No. 2017-UP-372 (S.C. Ct. App. filed October 11, 2017). The remittitur issued on October 27, 2017.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that:
 - a. "Plea counsel failed [*sic*] to keep the plea agreement were [*sic*] plea agreement receive [*sic*] was not right."

² 386 U.S. 738 (1967).

SUMMARY OF TESTIMONY

Applicant testified Cooper represented him at the guilty plea, but Counsel represented him at sentencing because Cooper died. Applicant testified there was approximately a year between his guilty plea and the sentencing hearing. According to Applicant, he expected to receive ten-to-twelve years if he pleaded guilty and cooperated with the State. Applicant testified he understood the minimum sentence he could receive was ten years, and that is what he expected to receive. Applicant testified an investigator conveyed the ten-year offer to him. Applicant explained he ultimately did not testify against his codefendant because the codefendant also pleaded guilty, but he was prepared to do so and gave the State a four-page statement. Applicant testified he told Counsel his understanding of the agreement was that he would receive a ten-year sentence. He testified he spoke to Counsel after sentencing, and they discussed filing a motion to reconsider. Applicant testified they discussed the reasons for reconsideration to include in the motion.

Applicant conceded the sentencing sheets did not reflect a ten-to-twelve-year offer or recommendation, and he explained he had to cooperate with the State first. Applicant also agreed that although he realized the solicitor did not inform the plea court of the alleged deal, he did not tell the sentencing court of his understanding of the agreement when he spoke at the sentencing hearing. Applicant further conceded the solicitor informed the sentencing court he had cooperated with the State, but Applicant testified her presentation was not as strong as he anticipated.

Counsel testified she assumed representation of Applicant in January 2014 and reviewed the file. According to Counsel, the file did not contain any notes from Cooper regarding a plea offer, nor was there any written documentation of an offer in the file. Counsel testified Applicant

informed her he believed he would receive a ten-year sentence, and she was aware sentencing had been deferred pending Applicant's cooperation against the codefendant. Counsel testified Applicant told her an investigator offered him the ten-year sentence, but according to Counsel, there was no documentation in the file to substantiate Applicant's claim. Counsel testified she understood the State would not make a recommendation for sentencing, and no one ever talked about a ten-year offer except Applicant.

Counsel testified she spoke to the solicitor after the hearing to explain she and Applicant felt the State had downplayed Applicant's cooperation. According to Counsel, the solicitor offered to go back in front of Judge Verdin to clarify the record. However, the judge had already left the courthouse, so Counsel filed a motion for reconsideration instead.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code.

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the 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). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286

S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness

claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

For the reasons stated below, the Court denies relief and dismisses the allegation with prejudice.

Breach of plea agreement

Applicant alleges Counsel was ineffective for failing to object when the State breached the plea agreement by failing to recommend a ten-year sentence. This Court disagrees and finds the plea and sentencing transcripts are dispositive as to this issue. The Court finds the record clearly establishes Applicant pleaded guilty freely and voluntarily, and the State did not violate its agreement with Applicant.

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). However, a defendant has no constitutional right to plea bargain, nor is a trial judge required to accept a plea. Id. Nonetheless, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored. Id. at 686, 511 S.E.2d at 401. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (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 plea transcript reflects no agreement was made between Applicant and the State at the time the plea was entered except to defer sentencing pending Applicant's cooperation in the State's case against the codefendant. Tr. pp. 2, 9. Applicant testified there was no agreement with the State at the time of the guilty plea, which is corroborated by the plea colloquy wherein he affirmed no one had promised him anything in order to influence him to plead guilty. Tr. p. 9. At sentencing, however, the solicitor informed the court of Applicant's cooperation and recommended a concurrent sentence. Sent. Tr. pp. 4, 9-10. Applicant spoke directly to the sentencing judge and did not mention any agreement with the State, although he testified during the evidentiary hearing he realized the solicitor had not informed the plea court of the purported agreement. Sent. Tr. pp. 14-16. Further, even though Applicant, through Counsel, filed a motion for reconsideration of his sentence, Applicant never alleged he was promised a ten-year sentence. Instead, the motion was based on the fact Applicant believed the State downplayed the extent of his cooperation.

Accordingly, this Court finds Counsel's representation of Applicant was not deficient, nor was Applicant prejudiced by Counsel's representation. The plea transcript reflects the State relayed Applicant's cooperation to the sentencing court and did not make any recommendation except for concurrent sentences. Applicant testified he heard the solicitor explain this was the only agreement with Applicant, and even though Applicant directly addressed the sentencing judge, he never mentioned a ten-year agreement or told the court he believed the State was not upholding its promise to him. This Court finds the State honored the only agreement it made with Applicant – to inform the court of his cooperation and to ask for a concurrent sentence. See, e.g., Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (finding the solicitor breached the plea agreement by opposing a probationary sentence after agreeing to neither oppose or recommend probation); State

v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (Ct. App. 2006) (finding solicitor did not breach plea agreement by asking for maximum sentence during “straight up” guilty plea). Further, although Applicant filed a motion for reconsideration, the only ground presented was Applicant’s assertion the State did not fully convey the extent of his cooperation. This Court therefore finds Counsel was not deficient because there was no basis for an objection to the State’s recitation of the plea agreement, nor was Applicant prejudiced because he received the benefit of the bargain he actually struck – the State dismissed multiple charges, informed the court of his cooperation, and recommended concurrent sentences. Therefore, this Court denies relief and dismisses this allegation with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel’s representation. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). 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. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant’s behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.



DEANDREA G. BENJAMIN
Presiding Circuit Court Judge
Fifth Judicial Circuit

7-8, 2019

WITNESSES

(S) INV. DOW - Columbia Police
Department

McCracken

ARREST WARRANT NUMBER

K689110

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JAN 19 2012

VERDICT

Foreperson of Grand Jury

Date:

DOCKET NO. 2012GS40 00347

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

87

THE STATE
vs.

Janoblin M B Brown

Indictment for
ASSAULT AND BATTERY 1ST DEGREE

SC Code: 16-03-600(c)(1)
CDR Code: 3412

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

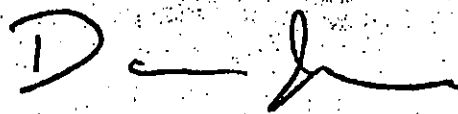
INDICTMENT

At a Court of General Sessions, convened on JANUARY 18, 2012,
the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That Janoblin M B Brown did in Richland County on or about June 24,
2011, commit an assault and battery upon the victim, HARRISON MUTUA
MUNYWOKI, constituting and unlawful act of injuring the victim likely
producing death and/or great bodily injury. All in violation of S.C. Code of
Laws, §16-03-0600(c)(1)

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) INV. DOW - Columbia Police
Department

McCracken

ARREST WARRANT NUMBER

K689108

ACTION OF GRAND JURY

TRUE BILL

Margaret K. Dickerson
Foreperson of Grand Jury
Date: **JAN 19 2012**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS40 **00350**

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

87

**THE STATE
vs.**

Janoblin M B Brown

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-0330(A)
CDR Code: 0139

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Margaret K. Dickerson
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JANUARY 18, 2012,
the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Janoblin M B Brown did in Richland County on or about June 24, 2011, ✓
commit robbery by feloniously taking from the person or presence of HARRISON
MUTUA MUNYWOKI, by means of force or intimidation, goods or monies of
HARRISON MUTUA MUNYWOKI, such goods or monies being described as
US CURRENCY, with the intent to deprive the owner permanently of such
property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other
deadly weapon, or while alleging, either by actions or words, that he or she was
armed while using a representation of a deadly weapon or any object which a
person present during the commission of the robbery reasonably believed to be a
deadly weapon. All in violation of §16-11-330(A), SC 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.


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Robert Mccracken - Columbia Police
Department

ARREST WARRANT NUMBER

K689155

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JAN 19 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS40

00356

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

87

**THE STATE
vs.**

Janoblin M B Brown

**Indictment for
ATTEMPTED ARMED ROBBERY**

SC Code: 16-11-0330(B)

CDR Code: 0026

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 19 2012
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

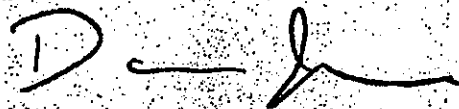
INDICTMENT

At a Court of General Sessions, convened on JANUARY 18, 2012,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Janoblin M B Brown did, along with co-defendants in Richland County on or about July 2, 2011, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of ROBERT HAMPTON with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Robert Mcracken - Columbia Police
Department

ARREST WARRANT NUMBER

K689154

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JAN 19 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012GS40 00 357

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

87

THE STATE

vs.

Janoblin M B Brown

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 19 2012
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JANUARY 18, 2012,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Janoblin M B Brown did in Richland County on or about July 2, 2011,
did with the intent to kill, attempt to kill ROBERT HAMPTON with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

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



DAN JOHNSON, SOLICITOR

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

The State of South Carolina

County of

Richland

Defendant

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

ARREST WARRANT NUMBER

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

87

THE STATE VS.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Janoblin M B Brown

TRUE BILL

Foreperson of Grand Jury

Date:

JAN 19 2012

VERDICT

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-03-0029

CDR Code: 3410

Foreperson of Petit Jury

Date:

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
 March 22, 1999
 20 CRAGS.
 HIGHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

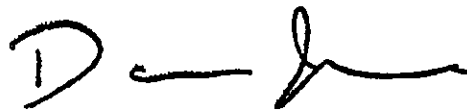
INDICTMENT

At a Court of General Sessions, convened on JANUARY 18, 2012,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Janoblin M B Brown did in Richland County on or about June 26, ✓
2011, did with the intent to kill, attempt to kill MATTHEW TAYLOR with
malice aforethought, either expressed or implied. All in violation of SC
Code of Laws § 16-3-29 (1976, as amended).

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



DAN JOHNSON, SOLICITOR