

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

May 22 2020

S.C. SUPREME COURT

MARCUS LAMONT SHEARIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000149

APPENDIX

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) GENERAL SESSIONS
3 COUNTY OF SPARTANBURG) OF THE SEVENTH
4) JUDICIAL CIRCUIT
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STATE OF SOUTH CAROLINA
Plaintiff,
vs.
MARCUS LAMONT SHEARIN,
Defendant.

TRANSCRIPT OF RECORD
2016-GS-42-2272
2016-GS-42-2273

September 5, 2017
Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, Judge.

A P P E A R A N C E S

JENNIFER E. WELLS, ASSISTANT SOLICITOR
For The State

MICHAEL C. MORIN, ESQUIRE
For Defendant

Julie A. Ashbrook,
Circuit Court Reporter
Seventh Judicial Circuit

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EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED

1 THE STATE VERSUS MARCUS LAMONT SHEARIN

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

3 THE COURT: Yes, ma'am.

4 MS. WELLS: Your Honor, standing before you is
5 Marcus Lamont Shearin. He's here to enter a guilty plea
6 on two indictments. First is 2016-GS-42-2272. That's a
7 true billed indictment for attempted murder.

8 The second is 2016-GS-2273. That's a true bill
9 of indictment for possession of a firearm during
10 commission of a violent crime. Your Honor, there is a
11 negotiated sentence in this case. May I approach?

12 THE COURT: Yes, ma'am. Thank you.

13 THE CLERK: Raise your right hand, please.

14 THE DEFENDANT: (Complies.)

15 THE CLERK: Do you solemnly swear that the
16 testimony you're about to give will be the truth, the
17 whole truth and nothing but the truth so help you God?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Sir, you are Mr. ---

20 MR. MORIN: Just a moment, Your Honor.

21 THE COURT: Yes, sir.

22 (Whereupon, a discussion was had off the record.)

23 MR. MORIN: Thank you, Your Honor.

24 THE COURT: Yes, sir. Sir, you are Marcus Lamont
25 Shearin?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Shearin, you are in custody.
3 Have you taken my medication or substance that
4 interferes with your ability to think clearly?

5 THE DEFENDANT: No, sir.

6 THE COURT: You're represented by Mr. Morin?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you know what you're doing here
9 this morning?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Indictment 2016-2272, the State says
12 that you did in Spartanburg County, South Carolina,
13 on/or about February 13 of 2016, with malice of
14 forethought, attempt to kill the victim, Daryl Thompson,
15 by shooting him with the intent to kill him in violation
16 of state law. That matter was presented to the grand
17 jury and a true bill was returned.

18 It is my understanding you're offering to plead
19 to the indictment as indicted. It is violent and it is
20 most serious for sentencing purposes. You, your lawyer
21 and the government have negotiated a sentence, which
22 looks like to be 30 years suspended to 15 years and
23 5 years of probation.

24 MS. WELLS: That's correct, Your Honor.

25 THE COURT: Okay. Is that your understanding?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Shearin, on 2016-2273, the State
3 says that you did in Spartanburg County, South Carolina,
4 on/or about February 13, 2016, visibly display a firearm
5 and/or a knife during the commission or attempted
6 commission of a violent crime in violation of state law.
7 That matter was presented to the grand jury and a true
8 bill was returned.

9 It is my understanding you're pleading as
10 indicted. It is non-violent. That carries with it --
11 Solicitor.

12 MS. WELLS: Five years, Your Honor.

13 THE COURT: Zero -- that carries zero to five
14 years, sir. But you and your lawyer and the government
15 negotiated a sentence that would run concurrent with the
16 other indictment. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Shearin, there are certain rights
19 that you must waive and give up in order to enter these
20 pleas. You have a right to a trial by jury, and you
21 know that. We're here for a trial by jury. I've
22 qualified the jury panel and they have -- they're ready
23 to go. Do you waive and give up your right to a trial
24 by jury?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You have the right to remain silent
2 under both the United States constitution and the state
3 of South Carolina constitution. Do you give up that
4 right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Sir, you have the right to call any
7 witness you choose up here to testify for you and you
8 have the right to confront, through cross-examination,
9 any witness who would testify against you. Do you give
10 up that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Shearin, how do you offer to plea
13 to the Indictment 2016-2272?

14 THE DEFENDANT: Guilty.

15 THE COURT: And 2273?

16 THE DEFENDANT: Guilty.

17 THE COURT: Sir, do you plead guilty to both
18 indictments freely, intelligently and voluntarily?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Did any family member or
21 friend pressure you in any way to plead guilty?

22 THE DEFENDANT: No, sir.

23 THE COURT: Is it true it's your decision to
24 plead guilty?

25 THE DEFENDANT: (Nods head up and down.)

1 THE COURT: Yes?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I'm sorry, you have to -- she's
4 recording, that's why I need you to answer. Sir, have
5 you had sufficient time to speak with Mr. Morin?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did he answer all of your questions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you satisfied with his services?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Has he done everything he can for
12 you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You have ten days to appeal. If you
15 do so, you must file it in writing with the clerk of
16 court. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Please listen to the Solicitor.

19 MS. WELLS: Thank you, Your Honor. Your Honor,
20 this incident occurred on February the 13th of 2016.
21 That occurred here in the City of Spartanburg, in the
22 County of Spartanburg.

23 Mr. Shearin and the victim in this case, Daryl
24 Thompson, had known each other for a period of time.
25 Mr. Thompson had helped Mr. Shearin get employment over

1 the course of the time that they had known each other.

2 Judge, on this particular evening -- during the
3 course of the day leading up to this evening,
4 Mr. Thompson, as well as his long time girlfriend, Ms.
5 Gentry, had had contact with Mr. Shearin, who had
6 reached out about possibly getting a ride from
7 Mr. Thompson later that day. Mr. Thompson had agreed to
8 do that.

9 Mr. Thompson went to a residence on Massachusetts
10 Boulevard. That's the residence of Wayne Wright. And
11 he met up with Mr. Shearin there. They left that
12 residence together. Mr. Thompson was using a vehicle
13 that he had been loaned to -- had been loaned to him by
14 his employer at the time, Dr. Friedman and his wife.

15 He drove Mr. Shearin to around the area of Deals
16 Market where Mr. Shearin said he wanted to get out of
17 the vehicle, that that was far enough. Mr. Thompson
18 stopped the vehicle, let him get out. Mr. Shearin
19 exited the vehicle, then came back into the vehicle and
20 fired multiple gunshots at Mr. Thompson, striking him
21 multiple times.

22 9-1-1 was called. They had a hard time locating
23 Mr. Thompson originally because he was still mobile. He
24 was -- the vehicle was still moving. They finally found
25 him in front of a residence in the City of Spartanburg.

1 Just inside of his vehicle, Judge, testimony at trial
2 would have shown that there were gun -- that bullets, as
3 well as shell casings, 380, were recovered from in and
4 around the vehicle.

5 Mr. Thompson was transported to Spartanburg
6 Regional where he was treated for massive internal
7 injuries. He stayed in the hospital for weeks. He has
8 a half-million dollars in medical bills and more
9 surgeries to come as a result.

10 And if I may, Your Honor, I'm gonna show you, The
11 Court, a picture of the end result that defense counsel
12 has seen and would have been one of the exhibits we
13 would have presented at trial. At the end of the day,
14 Judge, doctors were never able to completely -- one,
15 they thought he was gonna die. And once they realized
16 he was gonna live, doctors were never able to completely
17 close the incision across his stomach that they had to
18 make between all of his injuries.

19 They had to call in a specialist who usually only
20 does cancer treatments, a very specific type of cancer
21 surgery to deal with an injury to his pancreas. It was
22 very, very labor intensive for the professionals. And,
23 obviously, personally intensive for Mr. Thompson.

24 Judge, those are some of the facts. Mr. Shearin
25 was later apprehended. Mr. Thompson identified

1 Mr. Shearin, both from have a photo lineup and also from
2 knowing each other. He knew him as his street name,
3 which was Polo. Additionally, Keith Wright, who was at
4 Wayne Wright's residence that evening, said that Mr.
5 Shearin and Mr. Thompson had left together just shortly
6 before the shooting happened that night of February the
7 13th, 2016.

8 Judge, those are some of the facts the State
9 would rely upon at trial in this case. And at the
10 appropriate time I'd like to address Mr. Shearin's prior
11 criminal history, as well as some of the victim impact
12 information.

13 THE COURT: All right. Mr. Shearin, did you hear
14 what the Solicitor told me?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that accurate?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. The Court accepts your plea as
19 being freely, intelligently and voluntarily given.

20 Mr. Morin?

21 MS. MORIN: Your Honor, he's been in jail for
22 558 days. He was arrested on February 25th, 2016. We'd
23 ask that you accept the negotiated plea. You know, we'd
24 probably -- I'd also like to recognize on the right
25 side, on your right side of the courtroom he has his

1 aunts, his father, his sister, his brother and some
2 cousins. They've all come to support him. He'll have
3 support when he completes his sentence.

4 THE COURT: Sir, would you like to speak?

5 THE DEFENDANT: I made a mistake. If I can get
6 15 years I have to do that. I'm in school and getting
7 my GED. I just want to get it over with. I'm sorry,
8 Daryl, man. I apologize, man.

9 THE COURT: Thank you, sir.

10 Anything else, Mr. Morin?

11 MR. MORIN: No, Your Honor.

12 THE COURT: Yes, ma'am, Solicitor.

13 MS. WELLS: Just briefly, Your Honor. He does
14 have a prior criminal history going back into the early
15 2000's. A couple of trespassings from 2002 and one from
16 2003. He has a misdemeanor marijuana from 2004. He's
17 got a burglary second degree from 2007. Judge, he
18 received a sentence on that, as well as a charge of
19 escape in 2007. He received a five-year straight
20 sentence for that it appears.

21 Judge, he's got a 2014 unlawful carrying of a
22 weapon. And it looks like from a separate -- it looks
23 like he may have plead to -- no, Judge, it looks like
24 those are the same charges. There's two unlawful
25 carryings of a weapon, but it appears that they have the

1 exact same sentence and were entered on the same date.

2 And then in 2015 a malicious injury to personal
3 property and a criminal domestic violence third offense.
4 And then the instance before the Court.

5 Judge, Mr. Thompson is present in the courtroom
6 today. I spoke with him just prior to the plea. He
7 understands the reason for the plea and is in agreement
8 with it as much as he can. I think that this has been a
9 very, very difficult time for him, Judge. He is here
10 with his long-time girlfriend, basically his wife, Kathy
11 Gentry. They've been together for upwards of 15 years.

12 And he wanted -- he didn't feel like he could
13 address the Court without becoming emotional, so I told
14 him I would do that for him. He wants the Court to
15 understand how greatly his life has been affected by
16 this. He can't play with his grandchildren, playing
17 basketball or football the way he used to be able to do.
18 And that's been very, very difficult for him.

19 He worked in construction for 30 years and he can
20 no longer work. He gets short of breath. Has a
21 difficult time staying on his feet for long periods of
22 time as a result of the injuries he sustained. And he
23 needs more surgery, Judge. Due to some complications,
24 he has to go back on the 22nd of this month and will
25 have to have another surgery.

1 And like I said during the plea portion, he's got
2 over a half-million dollars in medical bills. And I
3 understand -- and I told him, I said, I don't think
4 you'll see a penny of restitution in this case. But I
5 did want to make the Court aware of that. He just wants
6 the Court to understand how much this took away from
7 him.

8 Ms. Gentry, she normally works two jobs. She's
9 worked and worked and worked. She has had to take now
10 just one job to be able to help take care of him. And
11 that's not a position that they have ever been in
12 before, Judge. So this was very difficult for them.

13 I do want to recognize Spartanburg Police
14 Department. They've put in a lot of hard work in this
15 case and those officers are here. And I wanted to make
16 sure that the Court was aware of that as well.

17 If I could have one moment to speak with
18 Mr. Thompson and then I think that's the State's
19 presentation.

20 (Whereupon, a discussion was held off the
21 record.)

22 That's all, Your Honor.

23 THE COURT: Okay. Are we addressing the
24 restitution?

25 MS. WELLS: Judge, I don't have a specific

1 number, so I just -- however the Court wants to handle
2 that. I think it's a moving target, quite frankly,
3 because he still has surgeries left to go.

4 MR. MORIN: I don't see how my client's gonna be
5 in a position. I understand that you convert it to a
6 civil judgment. There's just not gonna be any reason to
7 run it out, I don't think, Your Honor.

8 MS. WELLS: That satisfies the State.

9 THE COURT: Okay. Anything from anybody?

10 MS. WELLS: (Shakes head back and forth.)

11 THE COURT: All right, sir. Your lawyer -- you
12 and your lawyer negotiated a sentence on this. This
13 Court will follow the negotiations that you entered
14 into, sir.

15 THE DEFENDANT: Thank you.

16 THE COURT: I hope you appreciate everything that
17 Mr. Morin did because he did a fine job for you here.

18 2016-2272, sir, you're confined to the State
19 Department of Corrections for 30 years, provided upon
20 the service of 15 years. The balance is suspended with
21 probation for five years. It is concurrent, as per the
22 agreement. Credit for 558 days. \$500 to the Public
23 Defense fund.

24 2016-2273, the state Department of Corrections
25 for five years. It will run concurrent with the other

1 one, as per your agreement. Credit for 558 days. Best
2 of luck to you.

3 MS. WELLS: Thank you, Your Honor.

4 MR. MORIN: Thank you, Your Honor.

5 (Whereupon, hearing concluded at 12:10 p.m.)
6
7

8 --- THIS ENDS REQUESTED TRANSCRIPT ---
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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the court of General Sessions for Spartanburg County, South Carolina, on the 5th day of September, 2017.

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

s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

MARCUS LAMONT SHEARIN)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018-CP-42-2596

APPLICATION FOR

POST-CONVICTION RELIEF

2018 JUL 24 PM 12:38
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention _____ MCCORMICK CO.
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) 0
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-ES-40-2272 POSS. OF DEATH
 - (b) 2016 ES 40 2273 ATTEMPTED
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SEPT. 2017 15 YEARS
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____ N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____ N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____ N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____ N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____ file
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2018 JUL 24 PM12:38
H.1062 LLASALLY

- (a) _____ SEE ATTACHED
- (b) _____
- (c) _____

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

SEE ATTACHED

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

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (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. _____ ϕ
- ii. _____
- iii. _____
- iv. _____

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

- i. _____ ϕ
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____ ϕ
- ii. _____
- iii. _____

FILED

2018 JUL 24 PM 12:38

CLERK

- iv. _____
- (d) the date of each such disposition:
- i. _____ *C*
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: *C*
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? *W/O*
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____ *C*
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____ *O*
- 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) _____ *C*
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

2018 JUL 24 PM 12:38
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

- (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. _____ MICHAEL MORAN, PUBLIC DEFENDER
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____ HE STOOD BY AT PLEA BUT PROVIDED
- ii. _____ ABSOLUTE NO REPRESENTATION WHICH
- iii. _____ MADE TO ALLOW PLEA OFFER TO EXPIRE WITHOUT NO OFFER APPLICANT

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

TO BE ABLE TO ACCEPT ORIGINAL PLAN OFFER
PLAN BE VACATED

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

2013 JUL 24 PM12:38
H. ROPE BLANKLEY

STATE OF SOUTH CAROLINA

County of Spartanburg, S.C.

VERIFICATION

I, _____, 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.

Harold E. Egan

SWORN to and subscribed before me this 11
day of July, 2018.

J. A. Finkler (L.S.)
Notary Public

My Commission Expires: 12/16/2019

2018 JUL 24 PM 12:33
NOTARY CLERK

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

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

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Marcus Menie
Applicant

SWORN or affirmed to and subscribed before me this
11 day of July, 2018

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

2018 JUL 24 PM 12:39
NOTARY PUBLIC

ISSUES

TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO NOTIFY HIS CLIENT THAT STATE OFFERED A PLEA BARGAIN FOR "Restitution" had counsel related this offer to his client he would have accepted the plea offer of Restitution, AND BUT FOR COUNSEL'S INEFFECTIVE ASSISTANCE he would ~~also~~ have resolved charges thru Restitution AND NOT have STATE withdraw the offer AFTER GIVEN PERIOD OF TIME AND END UP PLEADING to 15 years

The FACTS OF THIS CASE ARE DIRECTLY ON POINT MISSOURI V. FRYE ~~was~~ march 21, 2012 US SUPREME COURT DECISION which held when Attorney fails to RELAY A plea offer to client AND client pleads GUILTY to A more ~~severe~~ ^{SEVERE} PENALTY UNKNOWING OF EARLIER plea offer the US SUPREME COURT held DEFENDANT MUST be ALLOWED to ACCEPT the ORIGINAL plea offer HE WAS NOT ADVISED OF. (PSX)

The APPLICANT ASSENTS per MISSOURI V. FRYE AND THE FACTS OF THIS CASE HIS UNKNOWING plea to 15 YEARS MUST BE VACATED AND DEFENDANT HAVE THE OPTION AS TO WHETHER to accept the ORIGINAL plea offer of Restitution to RESOLVE CRIMINAL CHARGES.

The FACT Michael Morini was a Former 7th Circuit Asst. Solicitor in Spartanburg plays a significant role in his FAILURE to RELAY A VERY FAVORABLE plea offer to a client in a case where Alleged victim made several conflicting statements as to events and NO physical evidence existed

The plea for to MISSOURI v. FITE must be vacated

ISSUE

TRIAL COUNSEL FAILED to do ANY PRETRIAL INVESTIGATION or do ANYTHING AT ALL to REPRESENT his client AND FOR to US v. CRONIC 104 SCT (1984) the TOTAL LACK of ANY REPRESENTATIONAL the prejudice is PER SE REQUIRING REVERSAL. This is evidenced in FACT he DID NOT EVEN RELAY STATE OFFER to PAY RESTITUTION to RESOLVE the complaint.

FOR to U.S. v. CRONIC INEFFECTIVE ASSISTANCE this plea WAS INVOLUNTARY FOR HILL v. LOCKHART - (1983) (US Supreme Court)

11:00 PM 24 JUL 2013
2013 JUL 24 PM 12:30

~~RECEIVED~~

MARCUS Shearin #323389

MCI F3(B)ISO
386 Redemption

MCC41111 SC
3519

RECEIVED

JUL 19 2018

MCCI
MAIL ROOM

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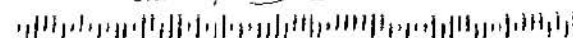
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Marcus Lamont Shearin,	)	Case No.: 2018-CP-42-02596
S.C.D.C. No. 323389,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR A MORE
v.	)	DEFINITE STATEMENT
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Marcus Lamont Shearin (Applicant) on July 24, 2018, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May 2016 term of the Spartanburg County Grand Jury for attempted murder (2016-GS-42-02272), and possession of a weapon during the commission or attempt of a violent crime (2016-GS-42-02273). Michael C. Morin, Esq. represented Applicant, and Jennifer E. Wells, Esq., of the Seventh Circuit Solicitor's Office, prosecuted the case. On September 5, 2017, Applicant pled guilty as indicted above. Accepting terms negotiated between Applicant and the State, the Honorable R. Keith Kelly sentenced Applicant to imprisonment for concurrent terms of 30 years for attempted murder, provided that upon service of 15 years, the balance would be suspended with probation for 5 years, and 5 years for the weapon. Applicant did not appeal his plea or his sentence.

II. STATEMENT OF THE FACTS

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

Your Honor, this incident occurred on February the 13th of 2016. That occurred here in the City of Spartanburg, in the County of Spartanburg.

Mr. Shearin and the victim in this case, Daryl Thompson, had known each other for a period of time. Mr. Thompson had helped Mr. Shearin get employment over the course of the time that they had known each other.

Judge, on this particular evening – during the course of the day leading up to this evening, Mr. Thompson, as well as his long time girlfriend, Ms. Gentry, had had contact with Mr. Shearin, who had reached out about possibly getting a ride from Mr. Thompson later that day. Mr. Thompson had agreed to do that.

Mr. Thompson went to a residence on Massachusetts Boulevard. That's the residence of Wayne Wright. And he met up with Mr. Shearin there. They left that residence together. Mr. Thompson was using a vehicle that he had been loaned to – had been loaned to him by his employer at the time, Dr. Friedman and his wife.

He drove Mr. Shearin to around the area of Deals Market where Mr. Shearin said he wanted to get out of the vehicle, that that was far enough. Mr. Thompson stopped the vehicle, let him get out. Mr. Shearin exited the vehicle, then came back into the vehicle and fired multiple gunshots at Mr. Thompson, striking him multiple times.

9-1-1 was called. They had a hard time locating Mr. Thompson originally because he was still mobile. He was – the vehicle was still moving. They finally found him in front of a residence in the City of Spartanburg. Just inside of his vehicle, Judge, testimony at trial would have shown that there were gun – that bullets, as well as shell casings, 380, were recovered from in and around the vehicle.

Mr. Thompson was transported to Spartanburg Regional where he was treated for massive internal injuries. He stayed in the hospital for weeks. He has a half-million dollars in medical bills and more surgeries to come as a result.

...

Mr. Shearin was later apprehended. Mr. Thompson identified Mr. Shearin, both from have [sic] a photo lineup and also from knowing each other. He knew him as his street name, which was Polo. Additionally, Keith Wright, who was at Wayne Wright's residence that evening, said that Mr. Shearin and Mr. Thompson had left together just shortly before the shooting happened that night of February the 13th, 2016.

(Tr. 8-11). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 11, 11. 13-17)

III. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (excerpts verbatim):

1. Ineffective assistance of plea counsel, in that:
 - a. "[H]e failed to notify his client that State offered a plea bargain for 'restitution' had counsel relayed this offer to his client he would have accepted the plea offer of restitution, and but for counsel's ineffective assistance he would have resolved charges through restitution and not have state withdraw the offer after given period of time and end up pleading to 15 years."
 - b. "Trial counsel failed to do any pretrial investigation or do anything at all to represent his client and pur[suant] to [United States v. Cronin, 466 U.S. 648 (1984)] the total lack of any representation the prejudice is per se requiring reversal. This is evidenced in fact he did not even relay state offer to pay restitution to resolve the complaint."

Applicant requests relief as follows:

- "To be able to accept original plea offer"
- "Plea be vacated."

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Plea Counsel, Generally

Applicant's allegations 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, 686 (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. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; 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). 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 Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant

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

Failure to Communicate Plea Offer

The right to the effective assistance of counsel extends to the plea bargaining process. Davie v. State, 381 S.C. 602, 607, 675 S.E.2d 416, 419 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). Consequently, defense attorneys have a constitutional duty to communicate formal, favorable plea offers from the prosecution to their clients. Missouri v. Frye, 566 U.S. 134, 145 (2012); Bell v. State, 410 S.C. 436, 765 S.E.2d 4 (Ct. App. 2014). To show prejudice where a plea offer has lapsed or been rejected because of counsel's deficient performance, "defendants must demonstrate a probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel." Frye, 566 U.S. at 147. "Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it[.]" Id. "[I]t is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." Id.

Upon information and belief, there was *never* an offer to permit Applicant to plead guilty in exchange for a restitution-only sentence. Applicant's demand for relief by way of this allegation can and will be refuted, at which point it should be denied.

Failure to Investigate

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other

defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant does not assert with any specificity what it is that Counsel should have investigated, but rather broadly claims Counsel failed to investigate anything at all. Mere speculation is not enough. Applicant's claim for relief should be denied.

Ineffective Assistance of Counsel under Cronic

Applicant contends he should be entitled to a presumption of prejudice under United States v. Cronic, 466 U.S. 648 (1984). "[T]he right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial." Id. at 658. Generally speaking, attorneys are presumed competent to provide "the guiding hand that the defendant needs," such that "the burden rests on the accused to demonstrate" a violation of the Sixth Amendment. Id. However, there are "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." Id. Prejudice may be presumed *per se* in three circumstances: (1) when a defendant is completely denied counsel at a critical stage of his trial; (2) when there has been a constructive denial of counsel from an attorney's complete failure to subject the prosecution's

case to meaningful adversarial testing; and (3) when circumstances of trial are such that the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that the presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006); Cronic, 466 U.S. at 659-60. "A finding of *per se* prejudice under any of these three prongs is 'an extremely high showing for a criminal defendant to make.'" Nance, 367 S.C. at 552, 626 S.E.2d at 880 (quoting Brown v. French, 147 F.3d 307, 313 (4th Cir. 1998)). Presumption of prejudice as a standard is only used for those cases where counsel fails to "function in any meaningful sense as the Government's adversary." Id., 367 S.C. at 552, 626 S.E.2d at 881 (quoting Florida v. Nixon, 543 U.S. 175, 190 (2004)).

Applicant does not claim the denial of counsel at a critical stage of trial, nor does he claim the circumstances of his prosecution were such that no counsel could have been competent. As to the remaining Cronic prong, the plea transcript clearly refutes any claim that Counsel failed to subject the case to meaningful adversarial testing. Applicant's claim for treatment under Cronic should be denied.

Conclusion and Action Requested

Applicant can satisfy neither requirement of the Strickland or Cronic tests. However, the allegations of ineffective assistance of counsel raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. MOTION FOR MORE DEFINITE STATEMENT

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts

upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Namely, what is it that Counsel should have investigated?

Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. ASSERTION OF RIGHTS TO NOTICE OF AMENDMENTS, EXPERTS

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; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). 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, SCRCP. 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), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests

that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII. GENERAL DENIAL

Respondent denies each allegation not expressly admitted, qualified, or explained.

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement as set forth in Section V, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:

Samuel L. Key Jr. P. JET
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

2019 MAY -6 AM 10:15

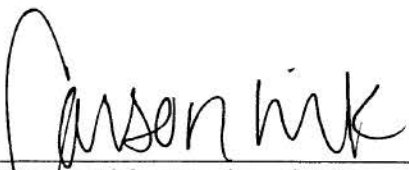
May 1, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2018-CP-42-2596
	)	
MARCUS LAMONT SHERIN, #323389,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Rodney Wade Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

DATED this the 1st day of May, 2019.


 Carson Kirk, Legal Assistant
 For Respondent

2019 MAY -6 AM 10:15

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

3
4 MARCUS L. SHEARIN,)
5 APPLICANT,) TRANSCRIPT OF RECORD
6 -vs-) 2018-CP-42-02596
7 STATE OF SOUTH) OCTOBER 8, 2019
8 CAROLINA,) SPARTANBURG, SOUTH CAROLINA
9 RESPONDENT.)

10
11 B E F O R E:

12 THE HONORABLE G. THOMAS COOPER, JUDGE.
13
14

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

16 RODNEY W. RICHEY, ESQUIRE
17 ATTORNEY FOR THE APPLICANT

18 JACOB A. ISENBERG, ASSISTANT ATTORNEY GENERAL
19 ATTORNEY FOR THE RESPONDENT
20
21

22 MICHAEL R. WATTS
23 CIRCUIT COURT REPORTER
24
25

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EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
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1 (PROCEEDINGS, OCTOBER 8, 2019)

2 THE COURT: You may proceed.

3 MR. ISENBERG: Thank you, Your Honor.

4 Your Honor, the next case the state would call is
5 Marcus Shearin versus the State of South Carolina, Case
6 Number 2018-CP-42-02596.

7 Mr. Shearin is currently confined in the South
8 Carolina Department of Corrections pursuant to orders of
9 commitment of the Spartanburg County Clerk of Court.

10 He was indicted the May 2016 term of the
11 Spartanburg County Grand Jury for attempted murder and
12 possession of a weapon during the commission of or attempt
13 of a violent crime.

14 Michael Morin represented him and Jennifer Wells
15 of the Seventh Circuit Solicitor's Office prosecuted the
16 case.

17 On September 5th, 2017 he pled guilty as indicted.

18 Accepting the terms negotiated between applicant
19 and the State the Honorable R. Keith Kelly sentenced him to
20 imprisonment for concurrent terms of 30 years for attempted
21 murder, provided that upon 15 years, the balance would be
22 suspended with probation for five years, and five years for
23 the weapon.

24 He did not appeal his plea or sentence.

25 I will turn it over to his counsel Rodney Richey

1 to present their case.

2 MR. RICHEY: We will call Mr. Shearin.

3 THE COURT: All right.

4 Place your left hand on the Bible and raise your
5 right hand.

6 MARCUS L. SHEARIN, having been first duly sworn,
7 testified as follows:

8 THE WITNESS: Yes, sir.

9 THE COURT: Have a seat.

10 DIRECT EXAMINATION BY MR. RICHEY:

11 Q. Sir, state your name, please.

12 A. Marcus Shearin.

13 Q. And Mr. Shearin, you understand that you are here today
14 for a post-conviction relief hearing, correct?

15 A. Yes, sir.

16 Q. And is it your intent to go forward with this hearing?

17 A. No, sir, I don't want to go forward.

18 Q. Now, do you understand that today is the day that you
19 have to have this PCR?

20 A. Yes, sir.

21 Q. And you understand if you don't go forward today and
22 withdraw it, then you can't come back at a later day and do
23 it?

24 A. Yes, sir.

25 Q. So, in other words, in six months, three months you

1 decide hey, I want to go back, that you can't do that. Do
2 you understand that?

3 A. Yes, sir.

4 Q. And you understand that this will also prevent you from
5 doing some Federal Court action?

6 A. Yes, sir.

7 Q. So you will be barred from that as well?

8 A. Yes, sir.

9 Q. And is that what you want to do?

10 A. Yes, sir.

11 Q. Has anybody forced you or threatened you to do it?

12 A. No, sir.

13 Q. Now, have you done it with a clear mind?

14 A. Yes, sir.

15 Q. Are you under the influence of any drugs, alcohol, or
16 anything that will alter your decision?

17 A. No.

18 Q. Have you had -- have you had any opportunity to discuss
19 this with me?

20 A. Yes, sir.

21 Q. And did you understand those discussions?

22 A. Yes, sir.

23 Q. And those discussions did not lead you to withdraw this
24 case, did they?

25 A. No, sir.

1 Q. You did this independently yourself?

2 A. Yes, sir.

3 Q. And in knowing all that, do you want to withdraw your
4 case?

5 A. I want to withdraw my case.

6 Q. Okay. And you understand we are here today and we are
7 ready for the case?

8 A. Yeah, I understand.

9 Q. Okay. But you are telling this court you do not want
10 to do it?

11 A. I don't want -- I don't want to do it.

12 Q. Thank you.

13 Answer any questions the judge has for you or the
14 State.

15 CROSS EXAMINATION BY MR. ISENBERG:

16 Q. Just one question.

17 Mr. Shearin, no one made any promises to you in
18 exchange for withdrawing this application, correct?

19 A. No, sir.

20 Q. Okay. No further questions.

21 Answer any questions that the judge may have for you.

22 THE COURT: Sir, I would ask you the same
23 questions that Mr. Richey just asked you, but you are
24 absolutely sure that this is what you want to do?

25 THE WITNESS: Yes, sir.

1 I really came back because when I was in the
2 county Roger Poole was my attorney. He was my attorney at
3 the time and I had filed for a motion to dismiss all my
4 cases. And at the hearing the solicitor said "we're
5 offering you restitution and you wouldn't take it," but Mr.
6 Pool never did tell me about that plea.

7 THE COURT: Uh-huh.

8 THE WITNESS: And I asked him about the plea. He
9 said that the last solicitor offered me that last summer,
10 because I wouldn't -- I wouldn't -- I wouldn't have took
11 15 years over the first plea if I would have knowed about
12 the plea.

13 THE COURT: But you -- did you -- did he make a --
14 ask for a recommendation from the -- did he recommend
15 something to the judge?

16 THE WITNESS: Who, Mr. Poole?

17 THE COURT: Whoever your lawyer was at that time.

18 THE WITNESS: No, sir.

19 THE COURT: So how did the 15 years come about?

20 THE WITNESS: The 15 years came when I got Mr.
21 Morin.

22 THE COURT: Okay. Do you want to look into that?

23 THE WITNESS: Yeah, I want to look into that. I
24 want to look into that.

25 THE COURT: All right.

1 He's not going with withdraw it.

2 THE WITNESS: Yeah, I want to look into that right
3 there.

4 THE COURT: Okay. Let's go forward. He's got a
5 basis for a PCR and I think he needs to be heard on it.

6 MR. RICHEY: Yes, sir.

7 CONT'D DIRECT EXAMINATION BY MR. RICHEY:

8 Q. Sir, you are in the Department of Corrections, correct?

9 A. Yes.

10 Q. And what are in there for?

11 A. Attempted murder.

12 Q. Okay. And who represented you on those charges?

13 A. Mr. Morin.

14 Q. And you filed an application for post-conviction relief
15 because you believed that he did not properly represent you?

16 A. Mr. -- he -- I had somebody else to do my law work, but
17 they supposed to file for Mr. Poole.

18 Q. Okay. We will get to that.

19 So you believed that Mr. Poole -- you believe Mr.
20 Morin -- do you believe Mr. Morin effectively represented
21 you at the time that with what he had to work with?

22 A. At the time -- at the time, Mr. Morin, he -- he
23 wouldn't give me -- he wouldn't give me -- from the cell
24 phone company, he -- he wouldn't give me the -- he wouldn't
25 give me my location from the cell phone company. It would

1 have showed me exactly where I was at. And every time I --
2 every time I told him my defenses, he will start -- we will
3 be going through the motions of discovery in the county and
4 he -- he will -- he will just leave. He will leave and he
5 will -- he will -- he will just leave. Once I tell him
6 what's going on in my defenses, he just --

7 THE COURT: Did they have cell phone records?

8 THE WITNESS: He gave me -- he gave me the cell
9 phone records that was -- that was -- that was the call, but
10 he wouldn't give me -- he wouldn't give me my location from
11 the cell phone records. He -- he wouldn't give me that. He
12 said the cell phone company did not have it. That's what he
13 kept telling me.

14 THE COURT: Okay.

15 BY MR. RICHEY:

16 Q. And so you believe that you had defenses and he did not
17 adequately present those defenses?

18 A. Yes, sir, but I ain't -- yes, sir, but them right
19 there, I'm -- I'm -- I'm -- I'm -- I'm past all that right
20 there. I -- my issue is about the plea of restitution that
21 I didn't get to take.

22 Q. Okay. So your position is that Mr. Poole, when he was
23 representing you, you had some type of hearing, correct?

24 A. I had a -- I had a motion of dismissal hearing.

25 Q. Okay. And at that hearing the solicitor said that you

1 were going -- that she was offering you restitution only,
2 correct?

3 A. She said -- that's all she said. She said -- she said
4 we are offering them a plea of restitution. She didn't say
5 nothing else.

6 Q. Okay.

7 A. She said he wouldn't take it.

8 Q. So your -- so what you believe that offer was was you
9 just pay the guy's medical bills?

10 A. Yes, sir.

11 Q. There was no charge going to be -- you pay his medical
12 bills and you are out scott free?

13 A. Yes. Yes, sir.

14 Q. Okay. And that -- and you believed that Mr. Poole did
15 not relay that offer to you?

16 A. Yes, sir.

17 Q. Okay. Thank you.

18 Answer any questions that the Attorney General has for
19 you.

20 CROSS EXAMINATION BY MR. ISENBERG:

21 Q. Good morning, Mr. Shearin.

22 A. Good morning.

23 Q. I'm kind of confused on your direct examination.

24 So you don't have any issues with Mr. Morin?

25 A. No -- no. I don't, no.

1 Q. Okay. So you are withdrawing all allegations against
2 him?

3 A. Yes, sir.

4 Q. Okay. And that withdrawal of all allegations against
5 Mr. Morin is free and voluntary?

6 A. Yes, sir.

7 Q. Okay. No threats or anything? No promises for your
8 withdrawal of the allegations against Mr. Morin?

9 A. No. No, no, no, my allegation was against -- because I
10 had Mr. Poole at the time.

11 Q. Right.

12 And so that plea that Mr. Poole did not get for you was
13 just for restitution, correct?

14 A. Correct.

15 Q. Okay.

16 MR. ISENBERG: No further questions for this
17 witness, Your Honor.

18 MR. RICHEY: No other questions.

19 THE COURT: Well, let me ask a question.

20 Tell me about Mr. Poole. When did he -- was he
21 appointed to represent you?

22 THE WITNESS: Yes, sir.

23 THE COURT: And you say he had some kind of a plea
24 worked out with the solicitor?

25 THE WITNESS: He -- he -- this is exactly what

1 happened right here. I went to my hearing. I filed for a
2 motion of dismissal and a bond hearing. I withdrawn my bond
3 hearing because I felt like I wasn't going to get no bond,
4 so I just went on with the motion of dismissal hearing.
5 During that time the solicitor, she said "we are offering
6 him restitution and he wouldn't take it."

7 THE COURT: How do you know that?

8 THE WITNESS: Because I was in court that day when
9 she said it.

10 THE COURT: Oh, she said it --

11 THE WITNESS: Yeah.

12 THE COURT: -- in court?

13 THE WITNESS: She said it in court. It was the
14 month of February 2017.

15 THE COURT: Okay.

16 THE WITNESS: Those are what her exact words was.

17 And then when Mr. Poole came -- when he came to
18 see me at the county jail, I said "Mr. Poole -- because I
19 think it was Jennifer Jordan. I said "Mr. Poole, she said
20 restitution, because the case -- the case was all messed up.
21 Dude, we got two totally different stories."

22 THE COURT: Okay.

23 THE WITNESS: And all type of stuff.

24 And Mr. Poole said "well, the last solicitor
25 offered just last summer." He never told me -- he never

1 told me about that. He never told me about that plea.

2 THE COURT: Now -- okay.

3 Now -- and Poole -- when did Poole stop
4 representing you and Mr. Morin start to represent you?

5 THE WITNESS: In March 2017.

6 THE COURT: How did that happen? Why did that
7 happen?

8 THE WITNESS: That happened because Mr. Poole --
9 Mr. Poole, he wasn't -- he wouldn't -- he wouldn't get me
10 the things that I needed and I kept writing the Bar
11 Association and he just filed to get off my case.

12 THE COURT: Okay. You notified the Bar
13 Association?

14 THE WITNESS: I notified the Bar Association.

15 THE COURT: All right.

16 Now, here is the question I want to know. Did you
17 tell Mr. Morin about that?

18 THE WITNESS: Yes, sir.

19 THE COURT: About the restitution offer?

20 THE WITNESS: No, I didn't tell Mr. Morin about
21 it.

22 THE COURT: Why not?

23 THE WITNESS: I don't -- I don't -- I don't
24 recall -- I don't recall. Did I tell you?

25 THE COURT: He's going to get on the stand here in

1 a minute.

2 THE WITNESS: I don't -- I don't -- I don't
3 remember. I don't remember telling him. I don't -- I
4 don't -- I don't -- because -- because --

5 THE COURT: You didn't tell him, then he
6 couldn't -- he couldn't know about it.

7 Anyway, that's what it wanted to -- if Mr. -- I
8 wanted to know if you told Mr. Morin about it and Mr. Morin
9 tried to do anything about it. You say that you don't
10 remember telling him anything about it?

11 THE WITNESS: I --

12 THE COURT: You see, you filed this application
13 against Mr. Morin and that's all I have got to -- that's all
14 I got to go on. You see what I'm saying?

15 THE WITNESS: Uh-huh.

16 THE COURT: All right. You may come down. Thank
17 you very much.

18 MR. RICHEY: We call Mr. Morin.

19 MICHAEL MORIN, ESQUIRE, having been first duly
20 sworn, testified as follows:

21 THE WITNESS: Yes.

22 THE COURT: Please be seated.

23 DIRECT EXAMINATION BY MR. RICHEY:

24 Q. Mr. Morin, you were in the courtroom and heard the
25 testimony?

1 A. Yes.

2 Q. Do you recall discussing it with Mr. Shearin about a
3 restitution only offer?

4 A. I do remember having that conversation with him.

5 Q. You do?

6 A. Uh-huh.

7 Q. And what was the conversation?

8 A. He told me that he had previously been offered, before
9 I started representing him, a restitution offer, which --
10 which seemed crazy is the best way I can describe it.

11 I contacted the solicitor's office and they denied ever
12 making that offer.

13 Q. Okay. So -- so he did talk to you about it?

14 A. Yes, we talked about it.

15 Q. And you did an investigation into that?

16 A. Well, so far as calling the solicitor's office and
17 saying "is it true that you made this offer" and they deny
18 it. They said "no, we never made such an offer."

19 Q. Okay. You heard Mr. Shearin talk about his phone
20 records and all that. Did you provide that information to
21 him?

22 A. There were phone records in the discovery and I
23 provided him a copy of all his discovery.

24 Q. Okay. So -- so was there any type of offer made with
25 restitution contingent upon it?

1 A. The only offer I recall is the negotiated sentence that
2 we did.

3 Q. Okay.

4 A. And as far as the restitution, that whole thing, the
5 solicitor's office said "Mike, that's crazy. We never did
6 that."

7 Q. Okay. Thank you.

8 A. I don't know where it came from, but we discussed it
9 and I checked with them and they said no.

10 Q. Okay. And how long had you been representing him
11 before you looked into that?

12 A. Not too long, because he fired Mr. Poole and then I got
13 appointed and that was one of the first things that came up,
14 so obviously I checked with that, just to be sure of it, but
15 they said no, and I had no expectation that they were going
16 to go yeah, we made that offer, so I don't know where it
17 came from and it was happening.

18 Mr. Poole -- it was happening before I ever -- he says
19 that it happened before I started representing him. He
20 mentioned it to me and I went to the solicitor and said is
21 this -- was this ever made and they said no.

22 Q. When you say he, you mean --

23 A. Mr. Shearin.

24 Q. Okay. Thank you.

25 Answer any questions the State may have.

1 CROSS EXAMINATION BY MR. ISENBERG:

2 Q. Good morning.

3 A. Good morning.

4 Q. In this case did you prepare any defenses on your
5 client's behalf?

6 A. Yes, I believe it was -- it was in a trial notebook
7 based on what I see. It was also, as I testified
8 previously, when it goes in -- getting ready for trial it
9 goes into a binder, then it's clearly that that's what had
10 happened to that file.

11 Q. Okay. And you reviewed your defenses with your client?

12 A. Yes.

13 Q. Okay. And even after reviewing those defenses with
14 your client, he still decided to plead guilty?

15 A. Yes.

16 Q. Do you know why he ultimately decided to plead guilty?

17 A. I mean, we talked about the case. The offer was made
18 that he -- that we had a negotiated sentence and he made a
19 decision that that was in his best interests.

20 Q. So you discussed your defenses, you discussed the
21 negotiated sentence, and then in the end he ultimately
22 accepted the negotiated sentence?

23 A. Yes.

24 Q. Okay. And do you remember any specific defenses off
25 the top of your head?

1 A. As he testified, he wanted to -- well, I don't
2 remember -- I know that he wanted to -- he had a belief that
3 his cell phone could be tracked minute by minute time
4 stamped kind of thing, which is not -- that's not how it
5 works. And not only that, but it wasn't going to provide
6 him an alibi that he was somewhere else. So that was the
7 thing that we went back and forth about that he referred to
8 me leaving, because I kept saying "you are not helping.
9 That's not getting you out of this."

10 Q. So you are saying he proposed a trial strategy of an
11 alibi defense?

12 A. Sort of, yeah, based on the phone record that wouldn't
13 exists. I mean, if it had existed, it would not have
14 exonerated him. So, I -- that was the thing that he
15 referred to us having trouble with.

16 Q. Right.

17 Okay. So just to summarize, you advised him of that
18 alibi defense through the phone records that he was alleging
19 was just not reasonable?

20 A. Yes.

21 Q. Okay.

22 MR. ISENBERG: No further questions for this
23 witness.

24 THE COURT: Anything further?

25 MR. RICHEY: No other questions.

1 THE COURT: All right.

2 Thank you, sir.

3 THE WITNESS: Thank you.

4 MR. ISENBERG: Your Honor, we would ask that Mr.
5 Morin be excused. He's done with all of his.

6 THE COURT: Without objection.

7 THE WITNESS: Thank you, judge.

8 THE COURT: Proposed orders in 30 days.
9 I'm sorry.

10 MR. ISENBERG: Your Honor --

11 THE COURT: Go ahead and make it.

12 MR. ISENBERG: Your Honor, the State would call
13 Jennifer Wells, the assistant solicitor on the case.

14 THE COURT: All right.

15 MR. ISENBERG: Very quick, just a couple of
16 questions.

17 THE COURT: I'm jumping the gun there.

18 MR. ISENBERG: I apologize.

19 JENNIFER WELLS, ASSISTANT SOLICITOR, having been
20 first duly sworn, testified as follows:

21 THE WITNESS: Yes, sir.

22 DIRECT EXAMINATION BY MR. ISENBERG:

23 Q. Good morning, Ms. Wells.

24 A. Good morning.

25 Q. Thank you for taking the time out for us this morning.

1 Did you handle the case for the Seventh Circuit
2 Solicitor's Office against Mr. Shearin?

3 A. I did. I took this case over from the previous
4 prosecutor in the case Timi Poulos.

5 Q. Okay. And based upon your review of the case and your
6 working the case, did y'all ever make an offer of only
7 restitution to Mr. Shearin?

8 A. No, we did not.

9 Q. Okay. So you are saying you reviewed all the records
10 in the case, correct?

11 A. That's correct.

12 Q. And after that review, you found that there were no
13 offers of restitution only, correct?

14 A. That's correct. Ms. Poulos had made an offer prior to
15 me taking the case over, but that was for ABHAN and for him
16 to pay restitution to SOVA, but it was not an offer of
17 restitution only.

18 Q. Okay. So that previous offer is for ABHAN and
19 restitution, correct?

20 A. Yes.

21 Q. Not --

22 A. It would be paid to a specific place, not for a -- not
23 in lieu of time in the case.

24 Q. Okay. So even if -- even if there was a failure to
25 communicate this offer to his client, the solicitor would

1 have never went through with an offer of restitution only on
2 this case?

3 A. No, I would never have made that offer, and I would --
4 it was not extended at any point in time that I handed the
5 case.

6 Our plea negotiations were, as Mr. Morin described
7 during his testimony, he -- well, with the exception that
8 they had reached out to me and offered to do a negotiated
9 five years, which after talking to the victim we rejected
10 that offer.

11 Q. Okay. So they reached out to you, you talked to the
12 victim and you rejected that five year negotiation?

13 A. That's correct. They offered -- and I mean, the
14 time -- I can walk it all out. I have a timeline of the
15 negotiations in this case, but -- but they did come to us
16 first and offered a negotiated five prior to trial when Mr.
17 Morin was representing Mr. Shearin, which I did take to the
18 victim and discussed it with him and he did not want to take
19 it. I didn't want to take it either, frankly. And then we
20 negotiated the plea, Mr. Morin and I did, but basically it
21 was all got dealt with the morning of trial.

22 Q. Let me ask you this. Is it common practice for y'all
23 to discuss the plea offers, plea negotiations, with the
24 victims before you decide whether to finalize the offer?

25 A. I can't speak for anybody else in our office --

1 Q. Right.

2 A. -- I can only speak for myself, but it is my practice
3 to -- in cases that are of gravity like this one was to
4 discuss those type negotiations. I make it clear to our
5 victims that we have the final say and that's our case to
6 make the decision in, but I do like for them to feel like
7 they have had input into our negotiations.

8 Q. Right.

9 A. And this was something that I felt was -- you know, it
10 was an offer from the defense and that I would like to have
11 the victim's input into that. It impacts their lives much
12 more than it impacts mine when they have to testify at
13 trial.

14 Q. Right.

15 And you are saying the victim was not comfortable with
16 five years?

17 A. He was absolutely not.

18 Q. Based upon your discussion, you don't believe the
19 victim would have been comfortable with restitution only?

20 A. No.

21 Q. Okay.

22 No further questions. Thank you. I appreciate you
23 being here.

24 CROSS EXAMINATION BY MR. RICHEY:

25 Q. This offer of restitution and ABHAN, do you know

1 whether it was accepted or declined?

2 A. It was not accepted. It had a deadline on it. It was
3 made in writing to Mr. Poole and that -- it was in an e-mail
4 and that e-mail had a deadline and that deadline passed
5 without the offer being accepted.

6 Q. And so the offer would have been that would have been
7 accepted would have been an ABHAN?

8 A. It would have been to ABHAN.

9 Q. So it would not have been "you just pay the guy's bills
10 and you are out of there?"

11 A. No, no, that is not my -- that is not my reading nor my
12 understanding of it from talking to Ms. Poulos.

13 Q. And do you know what ABHAN carries?

14 A. This would have been new ABHAN, so -- gosh, I'm sorry,
15 I'm old. I keep thinking I can always make old ABHAN, but I
16 believe that the new ABHAN is zero to 20 now.

17 Q. Okay. And so you are saying that based off your
18 review, that that would not have been any kind of
19 recommendation in the case or anything?

20 A. No, I think that Ms. Poulos was trying to clarify that
21 the restitution would not be paid to the victim, because
22 SOVA had taken over payment of the victim's medical bills --

23 Q. Right.

24 A. -- so there was -- but there was never an offer either
25 to ABHAN or to attempted murder where the recommendation

1 from the State was for it to just be restitution and no
2 active time or no exposure to active time.

3 Q. So that was some -- that was an offer that included
4 restitution?

5 A. That's correct.

6 Q. Okay. Thank you.

7 MR. RICHEY: No other questions.

8 MR. ISENBERG: Just --

9 THE COURT: Go ahead.

10 MR. ISENBERG: May it please the court.

11 REDIRECT EXAMINATION BY MR. ISENBERG:

12 Q. One question quick about that offer.

13 Was there any -- in that ABHAN plus restitution offer
14 was there any sentence recommendation along with the
15 sentence to ABHAN from the State?

16 A. No, there was not.

17 Q. So it would have been pleading straight up to ABHAN,
18 correct?

19 A. That's correct, and that is consistent with our
20 office's practices as to plea negotiations.

21 Our solicitor feels very strongly, and I'm not saying
22 this happens in every case, but it is certainly the best
23 practice in our office is you either charge negotiate or you
24 sentence negotiate. So you would plead to ABHAN and the
25 reduction, therefore, and via the reduction you would not

1 get --

2 Q. Right.

3 A. -- a recommendation outside of that reduction in
4 sentence; or you could plead to as charged and then we would
5 negotiate with that charge. That is generally -- again, I
6 can't speak for everybody, but that is generally the best
7 practice in our office.

8 Q. And to the best of your knowledge, if he would have
9 pled guilty to that, he would have been exposed to a 20 year
10 sentence, as opposed to the negotiated 15?

11 A. That's correct.

12 Q. Okay.

13 MR. ISENBERG: No further questions.

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

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Anything further?

17 MR. ISENBERG: Nothing further, Your Honor.

18 Nothing further, Your Honor, just requesting a
19 brief closing argument.

20 THE COURT: You may proceed.

21 MR. ISENBERG: Your Honor, the elements of the
22 failure to communicate a plea offer are, one, the actual
23 failure to communicate the plea offer; but, also, two, the
24 indication or evidence presented that the solicitor would
25 have went through with the plea offer and finalize the plea

1 offer that was failed to communicate -- or there was a
2 failure to communicate; and, three, the judge would have
3 accepted the offer.

4 I'm -- in this case I would look at number two
5 with the solicitor would have went through with the plea
6 offer. The applicant has alleged that there was an offer of
7 restitution only. The solicitor who handled the case just
8 got up here and said there would have never went through an
9 offer of restitution only.

10 The solicitor did say that there was an offer of
11 ABHAN and also of restitution, but she said that that
12 sentence could have carried up to 20 years, could have made
13 it -- exposed him to 20 years, while right now he's serving
14 a negotiated sentence of 15 years.

15 Some of the case law in the failure to communicate
16 plea offers said that the sentence actually received has to
17 be worse than the sentence offered. The sentence offered
18 that he's discussing exposed him to 20 years. He received a
19 negotiated sentence of 15 years. I don't know that he's
20 presented the evidence to prove that the sentence that they
21 actually initially offered him was more beneficial; and also
22 the solicitor would not have gone through with the sentence
23 that he's alleging right now as an, i.e., restitution only.
24 Therefore, I don't believe he's met his burden of proof that
25 this offer of restitution only was communicated, would have

1 been finalized and would have been accepted, and with that
2 the State rests their case.

3 If I spoke too fast, please ask me any questions.

4 THE COURT: Anything from the applicant?

5 MR. RICHEY: Thank you, Your Honor.

6 Let me just tell you, Your Honor, my client was
7 right, in that there was an offer of restitution made. I
8 don't know if the communication between him and Mr. Poole
9 were off, and I understand Mr. Morin saying that he called
10 them and they said there was no offer of restitution only,
11 but it's his position is that that's the offer was that
12 made.

13 I will tell the court my client instructed me
14 that -- he gave me a date when this hearing was supposed to
15 have taken place in the transcript. I will just tell the
16 court the day he provided me, there was no court that day,
17 so I was unable to get a transcript for the day he was
18 talking about. So -- but it just sounds like to me that the
19 solicitor may have said "I offered him restitution and not
20 added the other one on."

21 I think that at the time him and Mr. Poole was not
22 communicating well enough that I think he might have
23 thought, hey, this is only restitution only, and Poole was
24 off the case sometime right after that that this incident
25 happened.

1 THE COURT: All right. Thank you very much.
2 Proposed order in 30 days.
3 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 8th day of October, 2019.

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

MARCH 26, 2020



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Marcus Lamont Shearin,	)	Case No.: 2018-CP-42-02596
S.C.D.C. No. 323389,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Marcus Shearin ("Applicant") on July 24, 2018. Respondent made its return on May 1, 2019. The Court convened an evidentiary hearing into the matter on October 8, 2019, at the Spartanburg County Courthouse in South Carolina. Applicant was present at the hearing and represented by Rodney Richey, Esquire. Jacob A. Isenberg, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Michael Morin, Esquire. ("Counsel") also testified. The assistant solicitor, Jennifer Wells testified as well. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, and the pleadings. After a thorough review of the evidence and testimony in the record, this Court finds the application should be dismissed with prejudice.

I. PROCEDURAL HISTORY

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Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the May 2016 term of the Spartanburg County Grand Jury for attempted murder (2016-GS-42-02272), and possession of a weapon during the commission or attempt of a violent crime (2016-GS-42-02273). Michael C. Morin, Esquire, represented Applicant, and Jennifer E. Wells, of the Seventh Circuit Solicitor's Office, prosecuted the case. On September 5, 2017, Applicant pled guilty as indicted above. Accepting terms negotiated between Applicant and the State, the Honorable R. Keith Kelly sentenced Applicant to imprisonment for concurrent terms of 30 years for attempted murder, provided that upon service of 15 years, the balance would be suspended with probation for 5 years, and 5 years for the weapon. Applicant did not appeal his plea or his sentence.

II. FACTUAL BASIS FOR THE GUILTY PLEA

The underlying facts of the crimes for which Applicant is incarcerated were articulated by the State during the plea proceeding as follows:

Your Honor, this incident occurred on February the 13th of 2016. That occurred here in the City of Spartanburg, in the County of Spartanburg.

Mr. Shearin and the victim in this case, Daryl Thompson, had known each other for a period of time. Mr. Thompson had helped Mr. Shearin get employment over the course of the time that they had known each other.

Judge, on this particular evening – during the course of the day leading up to this evening, Mr. Thompson, as well as his long time girlfriend, Ms. Gentry, had had contact with Mr. Shearin, who had reached out about possibly getting a ride from Mr. Thompson later that day. Mr. Thompson had agreed to do that.

Mr. Thompson went to a residence on Massachusetts Boulevard. That's the residence of Wayne Wright. And he met up with Mr. Shearin there. They left that residence together. Mr. Thompson was using a vehicle that he had been loaned to – had been loaned to him by his employer at the time, Dr. Friedman and his wife.

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He drove Mr. Shearin to around the area of Deals Market where Mr. Shearin said he wanted to get out of the vehicle, that that was far enough. Mr. Thompson stopped the vehicle, let him get out. Mr. Shearin exited the vehicle, then came back into the vehicle and fired multiple gunshots at Mr. Thompson, striking him multiple times.

9-1-1 was called. They had a hard time locating Mr. Thompson originally because he was still mobile. He was – the vehicle was still moving. They finally found him in front of a residence in the City of Spartanburg. Just inside of his vehicle, Judge, testimony at trial would have shown that there were gun – that bullets, as well as shell casings, 380, were recovered from in and around the vehicle.

Mr. Thompson was transported to Spartanburg Regional where he was treated for massive internal injuries. He stayed in the hospital for weeks. He has a half-million dollars in medical bills and more surgeries to come as a result.

...

Mr. Shearin was later apprehended. Mr. Thompson identified Mr. Shearin, both from have [sic] a photo lineup and also from knowing each other. He knew him as his street name, which was Polo. Additionally, Keith Wright, who was at Wayne Wright's residence that evening, said that Mr. Shearin and Mr. Thompson had left together just shortly before the shooting happened that night of February the 13th, 2016.

(Tr. 8-11). Upon inquiry by the Court, Applicant confirmed the above articulated facts. (Tr. 11, 11. 13-17)

III. CURRENT APPLICATION

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

1. Ineffective assistance of counsel, in that:
 - a. "[H]e failed to notify his client that State offered a plea bargain for restitution. Had counsel relayed this offer to his client he would have accepted the plea offer of restitution, and but for counsel's ineffective assistance he would have resolved charges through restitution and not have state withdraw the offer after given period of time and end up pleading to 15 years."

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- b. "Trial counsel failed to do any pretrial investigation or do anything at all to represent his client and pur[suant] to [United States v. Cronin, 466 U.S. 648 (1984)] the total lack of any representation the prejudice is per se requiring reversal. This is evidenced in fact he did not even relay state offer to pay restitution to resolve the complaint."

Applicant requests relief as follows:

- "To be able to accept original plea offer"
- "Plea be vacated."

At the evidentiary hearing, Applicant withdrew all allegations against Counsel except: 1) failure to review relevant cellphone records; and 2) failure to communicate a plea offer for restitution.

IV. SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant

Applicant testified on his own behalf at the evidentiary hearing. Applicant testified he did not believe Counsel was ineffective. However, Applicant testified Counsel did not provide cellphone records from the night of the incident. Applicant testified the Assistant Solicitor offered restitution only. However, this offer was rejected without his consent. Applicant then testified another attorney represented him when this offer was made. Applicant testified he could not remember telling Counsel about this offer.

Applicant reiterated he had no issue with Counsel. Thereafter, Applicant withdrew all allegations against Counsel and that this withdrawal was free and voluntary.

Counsel

Counsel testified on behalf of Respondent at the evidentiary hearing. Counsel testified Applicant did tell him about the previous offer for restitution only. However, Counsel stated the Solicitor's Office claimed this offer was never made.

Counsel testified they received the cellphone records in discovery and he shared these cellphone records with Applicant.



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Counsel testified he reviewed potential defenses with Applicant. He further testified he made a trial notebook in preparation for a trial or plea. Counsel testified Applicant wanted to use cellphone tracking of his location but Counsel advised Applicant that this was not going to provide him with an alibi. Counsel investigated cellphone records as directed by Applicant, but testified he concluded these cellphone records did not exist.

Counsel testified Applicant pled guilty based upon it being in his best interest.

Assistant Solicitor Wells

Assistant Solicitor Wells testified on behalf of Respondent at the evidentiary hearing. She testified she never offered Applicant restitution only. However, Wells testified Counsel did propose a five year sentence along with restitution. She said this deal was not offered at the victim's request. Assistant Solicitor Wells said she customarily talks to victims before making plea offers and said this victim would have never agreed to restitution only based upon the circumstances.

Assistant Solicitor Wells testified they eventually offered to allow Applicant to plead straight up to ABHAN, along with restitution. She testified Applicant would have been subject to twenty years at the time.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel



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Applicant's allegations 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, 686 (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. First, Applicant must prove that counsel's performance was deficient. Strickland, 466 U.S. at 686; 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). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Eullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees

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reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). 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 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. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he/she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusively, unless an Applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. Dalton v. State, 376 S.C. 130, 137-38, 652 S.E.2d 870, 874 (Ct. App. 2007) (citing Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975)).

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. Strickland, 466 U.S. at 696. 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. Id. at 696-97.

1. Failure to Review Cellphone Records

Applicant contends Counsel failed to review relevant cellphone records with him. Specifically, Applicant testified Counsel never showed him the records reflecting his location at the time of this incident. In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court's principle concern is whether the investigation "was itself reasonable." Taylor v. State, 404 S.C. 350, 364, 745 S.E.2d 97, 104 (2013). Additionally, Counsel is not deficient in conducting a reasonable investigation as long as they interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011).

On the other hand, Counsel testified they reviewed the cellphone records that were provided in discovery but Applicant wanted separate cellphone records that would provide an alibi. Counsel testified no such cellphone records existed. Counsel testified the alibi defense was not viable based upon the circumstances.

Accordingly, this Court finds Counsel provided credible testimony on the cellphone records. At the plea hearing, Applicant agreed with the following facts: (1) the victim knew Applicant before the shooting. (Tr. 8-11); (2) the victim successfully identified him in a photo lineup as the shooter. (Tr. 10-1); and (3) an additional witness saw them together just before the

shooting occurred. (Tr. 10-1). Accordingly, this Court finds Counsel strategically decided not to pursue an alibi defense. As a result, this Court finds Counsel reasonably decided not to further investigate cellphone records for such a defense. As a result, this Court finds Applicant has failed to overcome the burden to prove Counsel was deficient in this regard.

Applicant contends exculpatory cellphone records would provide a sufficient alibi for him. However, speculation is insufficient to establish prejudice. Dalton v. State, 376 S.C. 130 at 143, 654 S.E.2d 870 at 877. Applicant did not provide physical evidence to support this claim. Therefore, this Court finds he insufficiently speculated about exculpatory cellphone records. As a result, this Court finds Applicant has failed to overcome the burden to prove prejudice.

2. Failure to Communicate Plea Offer for Restitution

Applicant contends Counsel failed to finalize an offer for a plea that would merely provide restitution to the victim. "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution and to accept a plea on terms and conditions that may be favorable to the accused." Missouri v. Frye, 566 U.S. 134, 145 (2012); see also Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009) (adopting "rule that counsel's failure to convey a plea offer constitutes deficient performance"). When alleging plea counsel was deficient in his or her handling of a plea offer, an applicant "must demonstrate a reasonable probability that: (1) he 'would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it,' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (citing Missouri v. Frye, 566 U.S. 134, 147 (2012)); see Lafler v. Cooper, 566 U.S. 156, 164 (2012) (stating "a

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defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed"). If an applicant is able to meet the requirements set forth above, the appropriate relief is to require the State to re-extend the previous plea offer to Applicant. Lafler, 566 U.S. at 174. ("The correct remedy in these circumstances, however, is to order the State to reoffer the plea agreement.").

Here, Applicant testified he was offered a plea deal which only required him to pay restitution. However, Applicant testified this happened before Counsel began representing him. Applicant testified he did not remember talking about this offer with Counsel.

On the other hand, Counsel testified they discussed the alleged offer. However, Counsel testified he contacted the Solicitor's office to see if such an offer was made. The Solicitor's office said no such offer was made.

Additionally, the Assistant Solicitor Wells testified she never made an offer for restitution only. She said she customarily consults with the victim before making a formal plea offer. In this case, Assistant Solicitor Wells testified the victim did not approve an offer as low as five years. Therefore, she concluded she would not have made an offer that failed to include incarceration.

Accordingly, this Court finds the Assistant Solicitor Wells provided credible testimony about this issue. She never made an offer that merely required Applicant to pay restitution. Th

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As a result, Applicant has failed to overcome the burden to prove he is now entitled to accept this offer based upon legal representation deficiencies.

VI. CONCLUSION

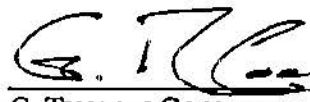
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203; SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14 day of January, 2020.


G. THOMAS COOPER
Presiding Judge
Seventh Judicial Circuit

C. Austin, South Carolina

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SOUTH CAROLINA
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

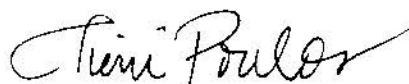
INDICTMENT

At a Court of General Sessions, convened on MAY 05 2016, the
 Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Marcus Lamont Shearin, did in Spartanburg County on or about February 13, 2016, with malice aforethought attempt to kill Daryl Thompson, by shooting him multiple times, with the intent to kill the said victim, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


 ASSISTANT SOLICITOR

WITNESSES

Spartanburg City Police Department

Anthony S. [Signature]

ARREST WARRANT NUMBER

2016A4210100812

ACTION OF GRAND JURY

MAY 06 2016

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

16-GS-42-2272

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 09 2016

TERM

THE STATE
vs.

MARCUS LAMONT SHEARIN

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

pk

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 06 2016, the
Grand Jurors of Spartanburg County present upon their oath:

**POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That the defendant, Marcus Lamont Shearin, did in Spartanburg County on or about February 13, 2016, visibly display a firearm and/or knife during the commission or attempted commission of a violent crime, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

SPTBG. CITY PD.

Anthony S. McInnis

ARREST WARRANT NUMBER

2016A4210100813

ACTION OF GRAND JURY

MAY 06 2016

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

16-GS-42-2273

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 09 2016

TERM

THE STATE

vs.

MARCUS LAMONT SHEARIN

Indictment for

POSSESSION OF FIREARM OR KNIFE
DURING COMMISSION OF OR ATTEMPT
TO COMMIT A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 549

Class FEL/F

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

83

COUNTY OF SPARTANBURG

STATE VS.

Marcus Lamont Shearin

AKA:

Race: BLACK Sex: M Age: 33

DOB: [REDACTED] SS# [REDACTED]

Address: 127 Broad St.

City, State, Zip: Spartanburg, SC

DL#: [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: Murder / Attempted Murder

INDICTMENT/CASE#: 2016GS4202272

A/W#: 2016A4210100812

Date of Offense: 2/13/2016

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

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

ATTORNEY: JENNIFER E. WELLS

69498 SC Bar#

Defendant

Attorney for Defendant

65094 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 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 15 days/months/years and/or payment of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for 54

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

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

SPECIAL CONDITIONS:

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

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 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ca
3% to County (if paid in installments)	\$ 18.75

TOTAL

\$643.75

PTUP

___ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ___

May serve W/E beginning ___

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ ___ paid to Public Defender Fund

Other: ___

☒ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter: J. Ashbrook

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2165

Sentence Date: 5 September 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

84
COUNTY OF SPARTANBURG
STATE VS.
Marcus Lamont Shearin

INDICTMENT/CASE#: 2016GS4202273

A/W#: 2016A4210100813

Date of Offense: 2/13/2016

S.C. Code § : 16-23-0490

CDR Code #: 0549

AKA:

Race: BLACK Sex: M Age: 33

DOB: [REDACTED] SS# [REDACTED]

Address: 127 Broad St.

City, State, Zip: Spartanburg, SC

DL#: [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 ☒ PLEADS

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

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

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

ATTEST: JENNIFER E. WELLS 09498

WELLS, JENNIFER E. 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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years

and/or to pay a fine of \$ 0; provided that upon the service of 0 days/months/years and/or payment

of \$ 0; plus costs and assessments as applicable*; the balance is suspended with probation for 0

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. 559 (1/1/15)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ 0 plus 20% fee: \$ 0

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

0 days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 0 beginning

\$ 0 paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter: J. Ashbrook

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date: 5 September 2017