

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Frank R. Addy, Circuit Court Judge

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S.C. SUPREME COURT

TERRANCE JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000891

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 TEVIS JOHNSON,)
)
 DEFENDANT.)

2014-GS-39-01609 & 01610
TRANSCRIPT OF RECORD

-----)
)
 STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 TERRANCE JOHNSON,)
)
 DEFENDANT.)
 _____)

2015-GS-39-00640 & 00641
TRANSCRIPT OF RECORD

APRIL 6, 2016
PICKENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR.

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

ATTORNEY FOR PLAINTIFF:

GRAHAM BUCKNER
ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANTS:

CHRIS BRUMBACK, ESQ.
DOROTHY MANIGAULT, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Produced During This Hearing)

1 **MADAME CLERK:** 2014-GS-39-1610, the State versus Tevis
2 Johnson, pleading to attempted armed robbery. 2014-GS-39-
3 1609, pleading to attempted murder.

4 2015-GS-39-640, the State versus Terrance Johnson,
5 pleading to attempted armed robbery. 2015-GS-39-641,
6 pleading to attempted murder.

7 Raise your right hands, please. Do you swear to tell
8 the truth, the whole truth and nothing but the truth so help
9 you God?

10 **TEVIS JOHNSON:** Yes, ma'am.

11 **TERRANCE JOHNSON:** Yes, ma'am.

12 **MADAME CLERK:** Thank you.

13 **MR. BUCKNER:** Judge, it is armed robbery. It's the
14 same charge regardless, but she said attempted armed
15 robbery.

16 **THE COURT:** Okay. So it's armed robbery instead of
17 attempted?

18 **MR. BUCKNER:** Yes, sir.

19 **THE COURT:** Okay.

20 **MR. BUCKNER:** Judge, it is attempted armed robbery.

21 **THE COURT:** It is attempted?

22 **MR. BUCKNER:** Yeah.

23 **MS. MANIGAULT:** Yes, sir.

24 **THE COURT:** Okay. Okay. Which one of y'all is
25 Terrance?

1 **TERRANCE JOHNSON:** (Raised his hand).

2 **THE COURT:** Okay. Got to keep it straight.

3 **TERRANCE JOHNSON:** Yes, sir.

4 **THE COURT:** All right. Gentlemen, I'm going to ask you
5 \ some questions. And what I'll do is ask the question and
6 start with -- this is Tevis?

7 **TEVIS JOHNSON:** Yes, sir.

8 **THE COURT:** Start with you first and then Terrance.
9 Have either one of you had any drugs or alcohol within the
10 last twenty-four hours?

11 **TEVIS JOHNSON:** No, sir.

12 **TERRANCE JOHNSON:** Medication.

13 **THE COURT:** What are you taking?

14 **TERRANCE JOHNSON:** Remeron.

15 **THE COURT:** What's that for?

16 **TERRANCE JOHNSON:** It's an anti-psychotic for Post
17 Traumatic Stress Disorder and schizophrenia.

18 **THE COURT:** Okay. Does it prevent you from knowing
19 what's going on here today?

20 **TERRANCE JOHNSON:** No, sir.

21 **THE COURT:** Okay. Let me ask you something real quick.

22 (Whereupon a bench conference was held off the record)

23 (Whereupon the bench conference was ended)

24 **THE COURT:** Okay. So that drug doesn't prevent you
25 from knowing that you're here to plead guilty today to

1 attempted armed robbery and attempted murder?

2 **TERRANCE JOHNSON:** No, sir.

3 **THE COURT:** Okay. Has anybody threatened either one of
4 you or promised you anything to get you to plead guilty?

5 **TERRANCE JOHNSON:** No, sir.

6 **TEVIS JOHNSON:** No, sir.

7 **THE COURT:** No, sir?

8 **TEVIS JOHNSON:** No, sir.

9 **THE COURT:** Okay. Do you understand if you want to
10 plead guilty you have to waive your constitutional rights?

11 **TEVIS JOHNSON:** Yes, sir.

12 **TERRANCE JOHNSON:** Yes, sir.

13 **THE COURT:** And in particular are you waiving your
14 right to a jury trial?

15 **TEVIS JOHNSON:** Sir?

16 **THE COURT:** Are you waiving your right to a jury trial?

17 **TEVIS JOHNSON:** Yes, sir.

18 **TERRANCE JOHNSON:** Yes, sir.

19 **THE COURT:** Are you waiving your right to remain
20 silent?

21 **TEVIS JOHNSON:** Yes, sir.

22 **TERRANCE JOHNSON:** Yes, sir.

23 **THE COURT:** Are you waiving your right to put up a
24 defense to these charges?

25 **TEVIS JOHNSON:** Yes, sir.

1 **TERRANCE JOHNSON:** Yes, sir.

2 **THE COURT:** You also have the right to require the
3 State to bring in witnesses to testify against you, and your
4 lawyers can question them. That's your right of
5 confrontation under the Constitution. But if you want to
6 plead guilty today, you have to waive those rights. Are you
7 waiving your right?

8 **TEVIS JOHNSON:** Yes, sir.

9 **TERRANCE JOHNSON:** Yes, sir.

10 **THE COURT:** Okay. How far did you go in school?

11 **TEVIS JOHNSON:** Graduated high school, sir.

12 **THE COURT:** Okay. What about you?

13 **TERRANCE JOHNSON:** I have received my GED.

14 **THE COURT:** Okay. Have both of you had plenty of time
15 to speak with your lawyers and are you satisfied with their
16 services?

17 **TEVIS JOHNSON:** Yes, sir.

18 **TERRANCE JOHNSON:** Yes, sir.

19 **THE COURT:** Okay. Do you have any questions for me
20 today about your plea?

21 **TEVIS JOHNSON:** No, sir.

22 **TERRANCE JOHNSON:** No, sir.

23 **THE COURT:** My understanding is that the negotiations
24 have led us here today with a cap of twenty. Is that right?

25 **MR. BUCKNER:** That's correct, Your Honor.

1 **THE COURT:** Which means that I've got to come up with a
2 sentence between zero and twenty. Do you understand that?

3 **TEVIS JOHNSON:** Yes, sir.

4 **TERRANCE JOHNSON:** Yes, sir.

5 **THE COURT:** Okay. And have both attorneys had plenty
6 of time to speak to your clients? You think they understand
7 the elements of the charges and their waiver of
8 constitutional rights?

9 **MR. BRUMBACK:** I do, Your Honor.

10 **MS. MANIGAULT:** Yes, sir.

11 **THE COURT:** Okay. Do either one of you have any
12 questions for me?

13 **TEVIS JOHNSON:** No, sir.

14 **TERRANCE JOHNSON:** No, sir.

15 **MS. MANIGAULT:** Your Honor, I will say for the record
16 that regarding my client's medication, ---

17 **THE COURT:** Yeah.

18 **MS. MANIGAULT:** --- every time I've met with him, he's
19 been coherent, understanding and asked a series of
20 questions. So he is aware.

21 **THE COURT:** Okay. So there's no question of competency
22 here?

23 **MS. MANIGAULT:** No question.

24 **THE COURT:** Okay. All right. Do each of you want to
25 plead guilty to these charges?

1 **TEVIS JOHNSON:** Yes, sir.

2 **TERRANCE JOHNSON:** Yes, sir.

3 **THE COURT:** And are you guilty?

4 **TEVIS JOHNSON:** Yes, sir.

5 **TERRANCE JOHNSON:** Yes, sir.

6 **THE COURT:** Okay. I'm going to accept the pleas, find
7 they were freely, voluntarily made based upon the advice of
8 counsel. Find that each have waived their constitutional
9 rights knowingly and voluntarily. And Terrance Johnson,
10 even though he's being treated, appears to be competent and
11 his lawyer assures me he is. Okay. Yes, sir.

12 **MR. BUCKNER:** Thank you, Judge. And I'll give a
13 factual summary for both defendants ---

14 **THE COURT:** Sure.

15 **MR. BUCKNER:** --- if that's all right with the Court.
16 On September 10th of 2013 both Tevis and Terrance Johnson
17 along with co-defendant Rosa Martinez decided to go to the
18 Plez U located within the Easley City limits. They parked
19 in a -- what I believe is a trailer park right behind the
20 Plez U, and Rosa Martinez was driving the car.

21 At that point both Terrance and Tevis got out of the
22 vehicle, went inside the Plez U. And working the register
23 that day was the victim in this case. Her name is Asha
24 Tuprani (ph).

25 They went inside. They had masked themselves and had

1 bandanas on. One of them was carrying a pistol. They also
2 had pepper spray. There is surveillance video that captures
3 them immediately threatening her, asking her to go to a safe
4 and give them money.

5 A shot was fired over her head in the process. They
6 also pepper sprayed her in her eyes. And then they gathered
7 up a few hundred dollars in cash as well as a bunch of
8 cigarettes and made their way out of the store and got back
9 to the car and left.

10 An eyewitness -- police were eventually called and an
11 eyewitness gave police a description of the vehicle. So
12 Easley police were able to find them in a short time
13 thereafter in the vehicle that matched the description.

14 When they approached the vehicle, Ms. Martinez decided
15 to speed off and a chase ensued. Eventually the vehicle
16 wrecked and all of -- both Terrance, Tevis and Rosa were
17 injured. And they were arrested at the time and taken to
18 the hospital.

19 When they were taken to the hospital they were treated
20 for a while. Terrance and Tevis eventually were able to
21 escape and made their way all the way to Louisiana before
22 they were actually picked up a few months later.

23 Those are the facts, Your Honor. I do have criminal
24 history for both. I don't know when you'd like to hear
25 that. I also ---

1 **THE COURT:** Now's okay so I can -- yeah.

2 **MR. BUCKNER:** Okay. As far as Tevis, he just has a
3 2013 CDV, first. Terrance has a 2006 strong arm robbery,
4 2008, ABHAN, and a 2013 simple possession of marijuana.

5 And, Judge, the victim is not here today. She -- I
6 spoke with her. She said she only want -- she would show up
7 for trial, but she's a little -- she's very fearful still
8 and didn't want to have to face them unless she had to. I
9 have a brief statement that I'd like to read to the Court if
10 that's all right ---

11 **THE COURT:** Yeah.

12 **MR. BUCKNER:** --- from her.

13 Your Honor, the victim could not be present today
14 because she still has feelings of fear for the defendants in
15 this case. She's seventy-two years old and was an African
16 refugee who has survived a lot in her life.

17 She loves to work and wants people in her community --
18 and knows a lot of people in her community, but now lives in
19 fear of new customers because of the injuries and trauma she
20 endured from the defendants. The victim has tried to move
21 on and have a positive outlook on life with her husband,
22 children and grandchildren. She asks that you please
23 provide justice for everything she endured in sentencing the
24 defendants in this case.

25 And, Judge, I will say the original offer in this case

1 was a sixteen year sentence. However, the attorneys and
2 defendants in this case have elected to go straight up with
3 a cap of twenty years on these charges.

4 **THE COURT:** Okay. All right. Tevis Johnson, you agree
5 with those facts?

6 **TEVIS JOHNSON:** Sir?

7 **THE COURT:** Do you agree with the facts he just told me
8 about what happened?

9 **TEVIS JOHNSON:** Not -- not particularly all of them,
10 sir.

11 **THE COURT:** What do you not agree with?

12 **TEVIS JOHNSON:** The fact that -- that when we were
13 arrested at the hospital, we were not under arrest, sir.

14 **THE COURT:** Okay. But I'm talking about the stuff that
15 happened at the store, you agree with all that?

16 **TEVIS JOHNSON:** Yes, sir.

17 **THE COURT:** Okay. And, Terrance, do you agree ---

18 **TERRANCE JOHNSON:** Yes, sir.

19 **THE COURT:** --- with that too? Okay. All right.

20 However y'all want to do this. I'll be happy to hear from
21 you on Tevis. I mean, he's got the lesser record.

22 **MR. BRUMBACK:** Certainly, Your Honor. As you noted,
23 Tevis Johnson does have a more limited record, Your Honor,
24 but I believe this is a situation -- my client acknowledges
25 the seriousness of these charges. And I believe this is a

1 situation where a younger man was influenced by, you know,
2 his older brother.

3 Everybody looks up to their older brother, your older
4 sibling. And I think this was a situation where Tevis, you
5 know, was sort of following after his older brother, found
6 himself in a situation where things got out of control. And
7 he found himself in a situation that was quite serious. And
8 he does acknowledge the seriousness of these charges and
9 would like to take responsibility for it, but he would ask
10 for leniency with regard to the sentencing.

11 He has a young child as well, four years of age. And
12 he would like to be a part of that child's life and see this
13 child grow up.

14 Your Honor, we also have a statement from his mother as
15 well as his step-father, who'd like to say something on his
16 behalf. I believe they would like to say something probably
17 on both clients or both defendants we have. So I don't know
18 how you would like to do that, but we would ask for a
19 sentence of five years with credit for time served given my
20 client's secondary role in this event.

21 **THE COURT:** Okay. Since they're all testifying the
22 same, y'all want to -- you want to just go ahead, I mean,
23 I've already accepted the pleas. Yeah. Yes, ma'am.

24 **MS. MANIGAULT:** May it please the Court, Your Honor.
25 My client is Terrance. He's twenty-six years old. And he

1 has an eleventh grade education, but he did get his GED.
2 His last employment was at the chicken farm in Greenville
3 County. He also worked at a furniture store in Mauldin.

4 Your Honor, you've heard his record. It is not an
5 absolutely atrocious record. We know that it is serious,
6 Your Honor. And he has two children ages five and four.

7 And as the Court has heard, he has -- he's taking
8 psychotic medication for stress and other conditions. But
9 again, I would tell the Court that I have no reservation as
10 to his competence ---

11 **THE COURT:** Okay.

12 **MS. MANIGAULT:** --- in this case.

13 Your Honor, he has been in detention since January
14 23rd, 2015. And we're asking the Court for that time. He's
15 also asked me to ask the Court for a minimum sentence in
16 this case.

17 In all my discussions with him, he's very
18 straightforward admitting his guilt to me. This case is a
19 reassignment to me. His first attorney was Attorney
20 Caroline Horlbeck. But since I've gotten the case up in
21 April of this year, we have had numerous conversations, and
22 he has admitted his guilt. He's remorseful about what he's
23 done. He says it was stupid, he shouldn't have done it. So
24 he's asking the Court for a minimum sentence in this case.

25 **THE COURT:** All right. Terrance, I didn't really ask

1 you, but do you agree with all those facts that he stated?

2 **TERRANCE JOHNSON:** Yes, sir.

3 **THE COURT:** Okay. One of y'all want to tell me what
4 you were thinking that night? I mean, seriously. Have you
5 ever had a gun pulled on you? Seriously.

6 **TEVIS JOHNSON:** Yes, sir.

7 **THE COURT:** Have you?

8 **TERRANCE JOHNSON:** I couldn't hear what you said.

9 **THE COURT:** Have you ever had a gun pulled on you?

10 **TERRANCE JOHNSON:** Yes, sir.

11 **THE COURT:** Yeah, me too. It stinks, doesn't it?

12 **TEVIS JOHNSON:** Yes, sir.

13 **TERRANCE JOHNSON:** Yes, sir. Can I speak to you, sir?

14 **THE COURT:** Yeah. I'd be happy to hear from either one
15 of you.

16 **TERRANCE JOHNSON:** I just want to first start off by
17 saying I'm sorry for what I did. And I want to apologize to
18 my mother because she didn't raise us to be like that. I
19 got at a low point in my life. And I'm not here to make a
20 excuse for what I did because I was wrong. And, you know, I
21 wouldn't want anybody to do that to my mother. And I know I
22 messed up.

23 But I'm not -- I'm not that person that those charges
24 are describing me. Just because I made a bad decision
25 doesn't mean I'm a bad person. I just went the wrong way at

1 a point in my life, you know. And I've been going through a
2 lot. And that's, like I said, no excuse for what I did.

3 But I just want to be there for my kids and grow up and
4 -- while they're growing up and show them how to be a man
5 because I know that I've been -- done done things in my life
6 that I shouldn't have done, and I could teach them. You
7 know, I done been sitting here all this time and I've had
8 enough time to reevaluate my life and my situation, and I
9 know that's not what I want to do, it's not what I want to
10 be.

11 **THE COURT:** How old are your children?

12 **TERRANCE JOHNSON:** My kids are four -- well, one of
13 them -- they five and five now. They just made they
14 birthday. One of them's birthday is next month. He'll be
15 six.

16 I just -- I want to be there for them and show them the
17 right way to live because I know that like if I'm not there,
18 I'm going to go -- they going to go through the same thing I
19 went through without my father being there. And, like I
20 said, no excuse for what I did. And I know I've done wrong.
21 I'm better now. And I know that I'm not going to go out
22 there and do the same thing anymore.

23 **THE COURT:** Yeah, let me -- let me tell you my fear.
24 My fear is that I'm going to do this job long enough to see
25 one of your kids in front of me. And they're going to say

1 like I've had people say, you know, my daddy was in jail and
2 I've never had anybody to teach me. And ten years ago it
3 hit me that I was young enough that I could theoretically
4 hear two generations of pleas, and it scared me. I mean, it
5 scared me bad.

6 **TERRANCE JOHNSON:** Yes, sir.

7 **THE COURT:** Because your kids don't deserve this. And
8 your mama doesn't deserve it for sure. Tevis, anything you
9 want to say before I hear from your mama because I ---

10 **TEVIS JOHNSON:** Yes, sir.

11 **THE COURT:** --- don't want to ...

12 **TEVIS JOHNSON:** I'm sorry, mama. I'm sorry for the
13 decisions that we made. And I want to apologize to you too
14 for putting you in the position that you're in, sir,
15 everybody in this courtroom. And I wish that the lady was
16 here so I could apologize to her face-to-face because I know
17 what I did was wrong. And I shouldn't have been in that
18 position, and I shouldn't have put anybody else in that
19 position.

20 And I wish my son was here. I would want to tell him
21 and his mother that I'm sorry for being out of their life
22 this whole time. And I've had a lot of time to sit back and
23 think about all the decisions that I made and how to better
24 myself in the future and how to, you know, work with myself
25 and with the community and everything.

1 So I just wanted to say I'm sorry for everything that I
2 did. And I've had a lot of time to sit back and think about
3 all the decisions that I've made. And I know that it was
4 wrong. And I accept everything and I truly ---

5 **THE COURT:** Well, y'all are manning-up. I appreciate
6 it. I mean, you're looking at twenty years in prison. You
7 understand that?

8 **TERRANCE JOHNSON:** Yes, sir.

9 **TEVIS JOHNSON:** Yes, sir.

10 **MR. BUCKNER:** And, Judge, I just, for the record, as
11 far as the jail days, we had a conversation about this.
12 Tevis has eight hundred and thirty-three days. And Terrance
13 has five hundred and eighty-seven.

14 **THE COURT:** Five what?

15 **MR. BUCKNER:** Eighty-seven.

16 **THE COURT:** Okay. I'll be happy to hear from you,
17 ma'am. Just give us your name for the record and tell me
18 whatever you want to tell me.

19 **MS. JENNINGS:** My name is Tesha Jennings (ph). I'm
20 Tevis and Terrance's mother. Terrance and Tevis wasn't
21 raised that way. Our family's a close-knit family. But we
22 have a close-knit family. But we're from New Orleans.
23 We've been through a lot, come from Katrina. And ...

24 **THE COURT:** That's all right. Take your time. I mean,
25 I want to hear you, but ...

1 **MS. JENNINGS:** I said they weren't raised that way.
2 And I don't know what was going through they minds for them
3 to do something like that. And I couldn't even imagine, you
4 know, them doing that. If somebody would have said that to
5 me, I would -- I would be saying, no, that's not my kids
6 because that's not their personality.

7 And I just -- I just -- the way we live, you know, it's
8 not with violence, none of that. And, I mean, my whole
9 family, you know, we haven't -- we've never, you know, been
10 through anything like this.

11 **THE COURT:** Right.

12 **MS. JENNINGS:** I don't know, but since I've been going
13 to see them and talking to them on the phone, they have
14 grown up. I think they just really needed to grow up, you
15 know, and become like real men. And, you know, since
16 they've been there in jail, I've seen a real change with
17 them. And I feel -- I really feel that they have, you know,
18 learned their lesson. And I do feel that they, you know,
19 they're really sorry for what they did to that lady ---

20 **THE COURT:** Yeah.

21 **MS. JENNINGS:** --- and what they did altogether. I
22 can't think ---

23 **THE COURT:** Well, that's okay. I understand. I mean,
24 it isn't your fault.

25 **MR. JENNINGS:** I'm Ronnie, Ronnie Jennings. I'm their

1 step-father.

2 **THE COURT:** Yes, sir.

3 **MR. JENNINGS:** I've been in their life for about seven
4 years. And I've been talking to them during the time that I
5 have been with them. And I do work with a lot of inmates
6 and law enforcement. And during the times me and these boys
7 were talking, I never seen this one here coming.

8 I think they really regret what they did. And I think
9 they really felt like they made a mistake in their life. I
10 think the road that they took, they found out that the
11 choices you make in life can affect you for the rest of your
12 life and not only their life, but other people's life too,
13 they child, they mother, aunt, uncle.

14 But the thing is, they was wrong in what they did.
15 They're man enough to admit it. And I think that that
16 taught them a lesson right there from what they're seeing
17 that they could face in life because the decisions you make
18 and the roads you do go down can take a toll on your whole
19 outcome of life. And you can mess up your life in just a
20 matter of seconds. But I think they have learned what they
21 did was very wrong.

22 **THE COURT:** Okay. Anything else?

23 **MR. BRUMBACK:** No, Your Honor.

24 **THE COURT:** I mean, I don't take any pleasure in this
25 at all to be honest with you. These sentences are a little

1 bit different based upon the record, but I suspect nobody
2 will be happy.

3 So, anyway, I've accepted the plea. The sentence for
4 Tevis is a little bit different than for Terrance just
5 because of the record.

6 For Tevis the sentence is twenty years provided upon
7 the service of nine. The balance is suspended for probation
8 for five. Credit for the full eight thirty-three. Run them
9 concurrent. On the attempted murder is thirty suspended to
10 nine and then five years probation.

11 And on Terrance, just because of the record, I mean,
12 I'm sort of stuck here. You got a good lawyer, but not much
13 anybody can do. The sentence is twenty years provided upon
14 the service of eleven and five years probation.

15 Although, I'm ordering specifically that he get mental
16 health counseling in prison because if I don't put this on
17 this order, they don't do it. And if it turns out they
18 don't do it and you're not getting any kind of counseling,
19 let me know, and I'll take care of it.

20 And on the murder it's thirty suspended to eleven and
21 five and mental health counseling. I'm really kind of
22 serious about you keeping up with the mental health
23 counseling while you're there, okay?

24 I mean, look, here's the deal. This is going to take a
25 chunk out of your life, but you're both young enough so you

1 can be back. You know better than I do how much time you
2 really do, but if you screw up when you get out, you're just
3 gone. I mean, your kids will be forty when you get out.
4 That's the bottom line.

5 **TERRANCE JOHNSON:** Yes, sir.

6 **MS. MANIGAULT:** Your Honor, I missed it, you probably
7 did give him credit for time served since January 23rd?

8 **THE COURT:** Yeah.

9 **MS. MANIGAULT:** Okay.

10 **THE COURT:** Yeah, five eighty-seven?

11 **MS. MANIGAULT:** Yes, sir.

12 **MR. BRUMBACK:** And same thing for ---

13 **THE COURT:** Eight thirty-three, yep.

14 **MR. BRUMBACK:** Absolutely.

15 **THE COURT:** All right. Good luck to y'all, okay?

16 **MR. BRUMBACK:** Thank you, Judge.

17 **MS. MANIGAULT:** Thank you, Judge.

18 **THE COURT:** Good luck, ma'am. Thank you, sir.

19 (Whereupon court was in recess at 11:26 am)

20 (Whereupon court reconvened at 11:47 am)

21 **THE COURT:** We're back on the record with the State
22 versus Terrance and Tevis Johnson. I messed up. And I knew
23 it when I was doing it and should have stopped, but I can't
24 -- on the attempted murder charge, I can't suspend a
25 sentence. In other words, I can't do the twenty/nine and

1 twenty/eleven. It's just the way the law is.

2 So what I'm going to do on that, and I wanted to make
3 sure y'all understood, is I'm just going to do a straight
4 eleven and a straight nine, which should be the same. It's
5 six one way, half a dozen the other. It does give y'all a
6 chance to get out and live your life, but, you know, live it
7 well, okay? Okay.

8 **MS. MANIGAULT:** Thank you.

9 **THE COURT:** So I'm going to just scratch all over this.
10 And I apologize.

11 **MR. BRUMBACK:** Thank you, Judge.

12 **THE COURT:** Thank y'all. Good luck to you, okay?

13 (Hearing Ended at 11:48 am)

14 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 31st day of August 2016.

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

October 20, 2017

s/Susan W. Hudgins

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of Pickens)

IN THE COURT OF COMMON PLEAS

2017-CP-39- 1030

Terrance Johnson #326086)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2017 AUG 30 AM 10 58

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 Pickens County L.E.C
2. Name and location of Court which imposed sentence Pickens County Court house 220 NW Main St, Easley, SC 29640
3. Name(s) of co-defendant(s) (if any) Tevis, C. Johnson ? Rosa martinez
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) _____

(b) _____
(c) _____

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

(a) 8/31/16
(b) 20 years suspended to 11y 3 5 year's probation
(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

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

no

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

(a) the name of each Court to which you appealed:
i. _____
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:
i. _____
ii. _____
iii. _____

(c) the date of each such result:
i. _____
ii. _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____

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

(a) Because I took a plea

- (b) _____
- (c) _____

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

- (a) I was Denide the Right to Trial.
- (b) I was forced to take a unintelligent plea.
- (c) my lawyers fail to advise me of my options correctly.

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

- (a) I was told that I could not tak one of my charges to trial w/o the other
- (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? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

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

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

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

a.
b.
c.

D. My lawyer was not giving sufficient time to prepare my case

E. I was ill advised by my lawyer

F. Ineffective assistance of counsel

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

a.

B. Because of the fact that I was told I could not take ^{only} one of my charges to trial, I was forced to take a plea for something I did not do.

C. My counsel did not tell me that I could in fact take one charge to trial; I take a plea for the other

D. After having Ms. Carolin Halbrook for about 15 months, the clerk of courts in Easley switch me to Dorothy Manigault about two and a half months ^{before} I was to go to trial or take a plea.

E. I was told that it was best I take the plea because I would be giving 25 to 35 years at trial.

F. My counsel did not advise me on all of my possible choices, knowing that I was unaware of the legal system.

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) This is
 (b) _____
 (c) _____

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

- (a) your arraignment and plea? yes
 (b) your trial, if any? _____
 (c) your sentencing? yes
 (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. Dorothy Mangault
522 N Church St, Greenville, SC 29601
 ii. _____

- iii. Caroline M Horlbeck
101 Whitsett St, Greenville, SC 29601

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

- i. my arraignment and plea
 ii. my sentencing
 iii. Arraignment, Bond Hearing

16.

- A, I was Denied the Right to Trial. (I was unable into now)
- B, I was forced to take a Unintelligent plea, (I was unable into now)
- C, my lawyer fail to advise me of my Options Corectly.
(I was unable into now)
- D, my lawyer was not giving sufficient time to prepare my case.
(I was unable into now)
- E, I was ill advised by my lawier (I was unable into now)
- F, ~~my counsel~~ Ineffective assistance of counsel
(I was unable into now)

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

I am seeking a New Trial, or a Sentence Reconsideration.

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Pickens)

VERIFICATION

I, Terrance A Johnson, 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.

Terrance A Johnson
Terrance A Johnson

SWORN to and subscribed before me this 25 day of August, 2017.

Sereah Ferguson (L.S.)
Notary Public

My Commission Expires: 10-1-25

2017 AUG 30 AM 10 58

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

I, Jerraine Johnson, 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.

Terrance Johnson
 Applicant
Jerraine Johnson

SWORN or affirmed to and subscribed before me this

25 day of August, 2017.

Dorely Frasier
 Notary Public

My Commission Expires: 10-1-25

STATE OF SOUTH CAROLINA)
 COUNTY OF PICKENS)
)
 Terrance Johnson, 326086)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)
)
)
)
)
)
)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT

2017-CP-39-1030

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on August 30, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In August of 2015, the Pickens County Grand Jury indicted Applicant for attempted murder (2015-GS-39-641) and armed robbery (2015-GS-39-640). Dorothy Manigault, Esquire, represented Applicant. On April 6, 2016, plead guilty to attempted armed robbery and attempted murder before the Honorable J. Cordell Maddox Jr. Judge Maddox sentenced Applicant to twenty years imprisonment provided upon the service of eleven the balance would be suspended for five years' probation for the attempted armed robbery charge. On the attempted murder charge, Judge Maddox sentenced Applicant to eleven years imprisonment to run concurrent with the other charge. Applicant did not appeal his sentences or convictions.

Attached to this Return and incorporated by reference are the records of the Pickens

County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections and plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. I was denied the right to trial
 - a. I was told that I could not take one of my charges to trial without the other.
2. I was forced to take a unintelligent plea.
3. My lawyer failed to advise me of my options correctly.

III.

Respondent construes Applicant's first allegation as a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

IV.

Respondent interprets Applicant's second allegation that as a result of ineffective assistance of counsel, his guilty plea was entered unknowingly and involuntarily. Respondent submits this allegation is without merit. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the

court and defendant's counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective

assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

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

VI.

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), SCRPC. 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, SCRPC. 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), SCRPC.

VII.

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

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel and involuntary guilty plea .

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: DJM
ATTORNEYS FOR RESPONDENT

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

January 16, 2018

I N D E X

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

Page No.

(AW) TERRANCE ANTHONY JOHNSON:

Direct Examination by Mr. Ariail.....10
Cross-Examination by Mr. Mitchell.....19
Examination by the Court.....24

(AW) DOROTHY A. MANIGAULT:

Direct Examination by Mr. Ariail.....25
Cross-Examination by Mr. Mitchell.....38
Examination by the Court.....41

INDEX (CONTINUED)E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1 THE COURT: Attorney General, what's the next case?

2 MR. MITCHELL: May it please the Court, Your Honor.

3 This is 2017-CP-39-1030, Terrance Johnson v. the
4 State of South Carolina. The Applicant is presently
5 confined in the South Carolina Department of Corrections
6 pursuant to orders of commitment of the Pickens County
7 Grand Jury -- Pickens County Clerk of Court.
8

9 In August of 2015, the Pickens County Grand Jury
10 indicted the Applicant for attempted murder and armed
11 robbery. Ms. Dorothy Manigault represented the Applicant.

12 On April 6th, 2016, the Applicant pled guilty to
13 attempted murder -- pardon me, attempted armed robbery and
14 attempted murder before the Honorable J. Cordell Maddox.
15 Judge Maddox sentenced the Applicant to 20 years in
16 prison, provided upon the service of 11, the balance will
17 be suspended for five years probation for the attempted
18 armed robbery charge. On the attempted murder charge,
19 Judge Maddox sentenced the Applicant to 11 years
20 imprisonment to run concurrent with the other charge.

21 The Applicant did not appeal his sentence or
22 conviction. He filed his post-conviction relief
23 application on August 30th, 2017. He's present in the
24 courtroom today and represented by Mr. Ariail.

25 THE COURT: All right. Mr. Ariail, before we went on

1 the record, I think that you told me that there was a
2 brief motion that you and/or your client wanted to make
3 concerning your representation, sir.

4 MR. ARIAIL: Correct, Your Honor.

5 I just notify the Court that I have been appointed to
6 represent both Terrance Johnson, who's seated here today,
7 and his brother, Tevis. They were both sentenced in
8 regards to the same criminal charges.

9 I have discussed this with him in depth. And I have
10 told him that I didn't see anything which prohibited me
11 from representing them at this time creating a conflict.
12 I've explained that to him. However, based upon my
13 conversations with him, it is my understanding that he
14 would like to have separate counsel appointed.

15 And I will let him address the Court on the reasons
16 he believes that I can't adequately represent him, or why
17 he believes another attorney should be appointed.

18 THE COURT: Okay. Mr. Johnson, I'm happy to hear
19 from you.

20 I have reviewed the application for post-conviction
21 relief that -- that you filed. And I think that the
22 primary grounds that you filed were that you -- or the
23 primary grounds that you allege were that you were denied
24 a right to a trial, that you were forced to take an
25 uninformed plea, and that you had been failed -- or that

1 you were failed to be advised of your correct options.

2 Your attorney today, Mr. Ariail, is telling me he
3 does not really see where there's a conflict.

4 What's the situation, sir, that you feel presents
5 itself?

6 MR. TERRANCE JOHNSON: I -- I want -- I really want
7 to get my own lawyer. I'm already going through the
8 process of getting my own counsel. It's been a problem
9 since the beginning of the case of them giving me and my
10 brother the same lawyer every time. Like, this happened
11 every last time since the beginning when I was appointed a
12 lawyer. And I just feel more comfortable with retaining
13 my own lawyer.

14 THE COURT: Okay.

15 MR. TERRANCE JOHNSON: And I'm on that now as we --
16 as we speak. I'm going through that process now.

17 THE COURT: Who have you -- who are you talking to?

18 MR. TERRANCE JOHNSON: Patricia -- how can I say her
19 last name? I can't remember her last name. It's Miss
20 Patricia. She's from Orangeburg.

21 THE COURT: Okay. Obviously, you're in prison,
22 Mr. Johnson. Do you have the resources to retain an
23 attorney?

24 MR. TERRANCE JOHNSON: Yeah, my family. Yeah, my
25 family.

1 THE COURT: Okay. Well --

2 MR. TERRANCE JOHNSON: You see, the only reason I
3 didn't have them come from out of town is because I didn't
4 know if we was coming in or not. So they didn't come
5 down. So we wasn't sure if this was going to be, like, a
6 hearing, or a continuance, or whatever the situation was.

7 THE COURT: You filed this in August of last year.
8 So we're kind of going on six months that this matter has
9 been filed. And you didn't talk to your family before you
10 filed this about retaining this lawyer out of Orangeburg.

11 MR. TERRANCE JOHNSON: See, I -- I didn't, but then I
12 did after, like -- after the -- the process went on.
13 Because, at first, I wasn't in contact with them, like --
14 not like I was -- was wanting to be in contact with them.
15 At the very beginning of the SCDC process, you know,
16 you've got to get the phone stuff and all that stuff
17 situated. And I wasn't in contact with them. But, now,
18 like, everything is okay.

19 THE COURT: So you've talked to this attorney?

20 MR. TERRANCE JOHNSON: Yeah, yeah. I've talked to
21 them.

22 THE COURT: What's her name again?

23 MR. TERRANCE JOHNSON: Patricia -- I think it's
24 Hodges [phonetic] or -- Hodges. It's something like that.
25 It's just Patricia is all I know. I can't remember her

1 last name.

2 THE COURT: So you've spoken to her on the phone?

3 MR. TERRANCE JOHNSON: Yes, ma'am -- I mean, yes,
4 sir.

5 THE COURT: Okay. You can't recall her last name?

6 MR. TERRANCE JOHNSON: No, sir.

7 THE COURT: It's a Patricia out of Orangeburg is all
8 you know?

9 MR. TERRANCE JOHNSON: Uh-huh.

10 THE COURT: All right.

11 MR. TERRANCE JOHNSON: It starts with an "H."

12 THE COURT: Does that ring any bell for anybody? I'm
13 trying to -- I don't get down to Orangeburg very often.

14 MR. ARIAIL: No, Your Honor. I don't either.

15 THE COURT: Do you have her card or any sort of
16 information --

17 MR. TERRANCE JOHNSON: I didn't bring that we me.
18 Because I didn't think I was coming in here. Because when
19 I spoke with him last time about him not being my
20 lawyer -- I wasn't even sure.

21 (Pause.)

22 THE COURT: All right. My clerk --

23 Mr. Johnson, my clerk has pulled up any Patricia H's.
24 Two of them are out of state, one is in Columbia, one is
25 located in Aiken County. And then --

1 MR. TERRANCE JOHNSON: I think it's Hodges, Hodges or
2 something like that.

3 THE COURT: There is no Hodges. We've got a Patricia
4 Logan Harrison, Patricia Hinshaw, Patricia Sliker
5 Holsenback, S-L-I-K-E-R, H-O-L-S-E-N-B-A-C-K, Patricia
6 Farmer Hosmer, H-O-S-M-E-R, and a Patricia Alexander
7 -Howard. But there is no Patricia H in Orangeburg.

8 MR. TERRANCE JOHNSON: Well, that's not it right
9 there. But that's her name, though.

10 THE COURT: Okay. Well, you've got appointed
11 counsel, Mr. Johnson. He's ready to proceed. I'm hearing
12 he doesn't have a conflict from him. I'm inclined to go
13 forward today, because we've got everybody here.
14 Everybody is available. And if you want to pursue this
15 PCR, your attorney is ready to do so.

16 And I assume, Attorney General, you have not gotten
17 any sort of letter of representation from any private
18 attorney.

19 MR. MITCHELL: I have not, Judge.

20 THE COURT: Okay. We're going to move forward then.
21 I've reviewed the file.

22 Mr. Ariail, do you want to call your first witness?

23 MR. ARIAIL: Yes, Your Honor.

24 I call Mr. Johnson to the stand.

25 THE COURT: Come on up, sir.

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

3 WHEREUPON,

4 TERRANCE ANTHONY JOHNSON,
5 after first having been duly sworn, testified as follows:

6 THE COURT: Thank you.

7 You may be seated.

8 Please state your full name for the record.

9 THE WITNESS: Terrance Anthony Johnson.

10 DIRECT EXAMINATION

11 BY MR. ARIAIL:

12 Q Mr. Johnson, you were represented by Dorothy
13 Manigault in regards to two charges, which were attempted
14 armed robbery and attempted murder; correct?

15 A Yes, sir.

16 Q Okay. And was she appointed as your counsel in those
17 charges?

18 A I mean, I had -- yeah. Secondly, after the first
19 lawyer that I had appointed to me.

20 Q So that was Caroline Horlbeck was the first one;
21 correct?

22 A That's who I had from the initial process from the
23 beginning all the way till two months before I went to
24 court.

25 Q Okay. And during that period of time after you were

1 arrested for these charges, were you incarcerated?

2 A Yes, sir.

3 Q Did you ever get out on bond?

4 A No, sir.

5 Q Okay. Now, how long after you were incarcerated did
6 you I guess -- was Ms. Manigault a part of your case?

7 A Almost three years it took -- the whole time -- I got
8 her two months -- like, two months before I went. I was
9 locked up since December 23rd of 2013. And I saw her the
10 5th -- 2016 when I got her at, like, May, or June,
11 something like that.

12 Q Okay. Now, before that, Ms. Horlbeck represented you
13 that whole time; correct?

14 A (Witness nodded.)

15 Q Did she provide you any discovery or any information
16 in regards to your charges?

17 A Yeah. She gave me a partial discovery.

18 Q Partial discovery. Did you understand the charges
19 that you were facing at that time?

20 A No, not really. I didn't understand, like, the --
21 what they really meant as far as -- I understand, like,
22 reading it, you had armed robbery and attempted murder. I
23 understand that. But I didn't understand, like, the
24 concept behind that.

25 Q I guess -- did she go over what the facts of the case

1 were with you?

2 A Not really. It was just, like, she didn't really get
3 into no detail with me as far as, like, who did what, or
4 this is what consists of armed robbery, and this is what
5 consists of attempted murder, like, never none of that.

6 Q Okay. Now, that -- that was Ms. Horlbeck; correct?

7 A Her or Ms. Manigault.

8 Q Okay. So neither of them explained to you what I --
9 what we like to call the elements of each --

10 A Exactly.

11 Q -- of the cases?

12 A No, sir.

13 Q Or each of the charges; is that correct?

14 A Yes, sir.

15 Q So Ms. Manigault -- how many times do you think you
16 met with Ms. Manigault --

17 A Two.

18 Q How many?

19 A Two.

20 Q Two times?

21 A Maybe one time, and then a time at the court.

22 Q One time at the law enforcement center?

23 A Yeah. And then when I went to court, I saw her and
24 talked to her.

25 Q Okay. And what did y'all discuss during these times?

1 A That they're not trying to drop the attempted murder
2 charge, and not -- I mean, nothing much, really, just that
3 this is what they're trying to do, and this and that.
4 Nothing really about the charges, like, nothing really
5 explaining to me what the charges were, like, what I was
6 looking at as far as -- the only thing she explained to me
7 is what I could get. That's the only thing I heard, just
8 what you could get, not what it is, or anything else.

9 Q All right. Tell me what she told you about what you
10 could get.

11 A That I could get 30 years, plus 30 years if I was to
12 go to trial. And I could -- I mean, it's been so long,
13 man. I know she said I could get 30 years for each one of
14 them if I go to trial. She was, like, you might as well
15 take the -- take the plea. You might as well take the
16 plea. Because it's not looking too good on the other
17 side. And, you know, I really -- that's it, stuff like
18 that. I just can't quote word for word, but things like
19 that.

20 Q Okay. Now, I mean, you, at some point in time, made
21 a decision to go to plea -- or to do a plea; correct?

22 A Yeah. Because I was -- I was sitting there all that
23 time. And I didn't know what was going on. I didn't have
24 no idea, you know. I'm thinking I sit here -- I sit here.
25 They're going to give me 30 plus 30 years. And I didn't

1 know what was going on, you know. I never told -- was
2 told anything otherwise, you know.

3 I wasn't never helped. That's what I -- I was never
4 really helped. Because I was ignorant of the law and what
5 was going on. I was never advised that that's right and
6 that's wrong. That's the elements -- like you said, the
7 elements are not there, so.

8 Q Okay. And you put down, I was denied the right to a
9 trial. I was forced to take an unintelligent plea --

10 A Yeah.

11 Q My lawyer failed -- my lawyer failed to advise me of
12 my options correctly. What do you mean by those items --
13 items right there?

14 A I was told that I couldn't take a plea for -- I mean,
15 I couldn't go to trial for the attempted murder without
16 going to trial for the armed robbery. And that's the only
17 reason I took the plea. Because they were saying if I
18 went to trial for one, I had to go to trial for both of
19 them, you know. And I...

20 Q Okay. So you were, basically, trying to get her to
21 separate the charges and let you go to trial on one and
22 not the other?

23 A Yeah.

24 Q I mean, why -- why did you want to do that?

25 A Because the attempted murder was never attempted

1 murder. I know that's not the place to discuss that.
2 But, I mean, that's the reason -- the reason why I wanted
3 them to get that taken care of the right way, instead
4 of -- because they wasn't trying to get -- they was trying
5 to just, like, this, like, put it altogether and just go
6 with it.

7 Q Right.

8 A But that's not the way it was.

9 Q Did you tell her I don't want to go to trial on the
10 attempted murder?

11 A No, no. I told her I want to go to trial on the
12 attempted murder --

13 Q Okay. That's what I meant. Did you tell her you
14 want to go to trial on that --

15 A Yeah.

16 Q Then, I guess, my question, which you're going to be
17 asked, is --

18 A And that's where the 30 plus 30 come in.

19 THE COURT: If you could, let him finish. Because
20 she has to write everything down. If you speak at the --

21 THE WITNESS: Oh, excuse me.

22 THE COURT: -- same time, then it's really impossible
23 for the court reporter to take everything down. Okay, Mr.
24 Johnson.

25 THE WITNESS: I'm sorry.

1 THE COURT: Go ahead.

2 BY MR. ARIAIL:

3 Q And I'll try to finish mine before you start. That'd
4 be good.

5 When -- when you told her that, what was her reaction
6 in regards to that?

7 A I mean, it really wasn't -- she really just really
8 looked.

9 Q She just what?

10 A Just looked.

11 Q She just looked at you?

12 A Like just an uneasy look. She never said really
13 anything. She was just, like, you could get this much,
14 you know. If you want to do that -- but then she was,
15 like, they wouldn't do it. They wouldn't -- it was either
16 I go for all that and I take a plea for this, or I go to
17 trial for this. It was no...

18 Q Okay. So when you went forward, you went and did a
19 plea on both of the charges; correct?

20 A (Witness nodded.)

21 Q Why didn't you tell the Judge at that time, I don't
22 want to plead to the attempted murder charge?

23 A Because I was told that if I was to say that I wasn't
24 guilty of it, they'd take the whole thing back. And I --
25 you know, I was -- I was in a hard spot. I didn't know

1 what was going on.

2 Q Okay. Now, you say you weren't given sufficient time
3 to prepare your case?

4 A At all, not with Ms. -- with Ms. Manigault, like, not
5 at all.

6 Q What additional things did you want her to do to
7 prepare your case?

8 A Talk to me. Come see me. Let's talk about the case.
9 We didn't talk about nothing.

10 Q Okay. Did you want her to do additional stuff for
11 you?

12 A As far as, like, my motions, and stuff like that.

13 Q Motions, hiring an investigator --

14 A Yeah --

15 Q -- find witnesses --

16 A -- I asked her -- I asked her about -- really before
17 I knew anything of the elements and stuff, I was asking
18 her can she get someone or get people to help me, I mean,
19 understand the concept of what I was going through.
20 Because, like I said, it was the first -- first time for
21 us being in something serious like that. And we didn't
22 know anything about it.

23 But, yeah, I asked her to do -- what's the -- I'm
24 trying to think of the name of it. I'll come back to it
25 when I think about it. I can't think right now exactly

1 the motion I asked her to do. But it was a motion as far
2 as an evidence hearing, an evidence motion. And I didn't
3 get to see any of that.

4 Q You didn't see your discovery?

5 A I mean, I saw the discovery. But I wanted to, you
6 know, like, the video -- I never saw the video. I never
7 saw any of that stuff that they had -- like, they said
8 they had the video.

9 Q Right.

10 A I never saw any of that. But they gave it to her.
11 And she put it in her thing. And she said it didn't work.
12 And they never tried to give it to her again. I never saw
13 it even put in there to say it didn't work.

14 Q Okay. Did she tell you what was on the video?

15 A She told me what they said was on the video. I don't
16 know if she said what she saw. I know she told me what
17 they said was on the video. Because, from my last
18 knowledge, the video wouldn't work in her computer, DVD
19 player, or whatever the situation may be.

20 Q Okay. Now, I've gone through and this is the items
21 we've discussed and things that I've seen as part of your
22 case. Are there other things that you'd like for this
23 Court to be aware of when they consider your -- your PCR
24 application?

25 A I'm good.

1 MR. ARIAIL: You're good. Okay.

2 I'm going to let you -- answer any questions

3 Mr. Mitchell has for you.

4 THE WITNESS: Yes, sir.

5 THE COURT: Attorney General.

6 MR. MITCHELL: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MITCHELL:

9 Q Good morning, Mr. Johnson. How are you?

10 A I'm good.

11 Q Let me ask you, I heard you testify just now about
12 you wanted to go to trial on the attempted murder, but not
13 on the armed robbery. Is it correct in me interpreting --
14 or understanding your testimony that Ms. Manigault told
15 you that they would not separate the charges?

16 A Yes, sir.

17 Q Okay. So you knew that they wouldn't -- would not
18 separate the charges?

19 A I can't hear you.

20 Q So you knew that they would not separate the charges?

21 A Yeah. After -- after the fact, like, when we went up
22 there to go -- like, when we went up there for the open
23 plea that we took, they told us that -- she was, like,
24 we're going to see if we can do it today.

25 When she went in there, she came back out and was,

1 like, no, they're not going to separate. Either y'all are
2 going in now or you're going to trial tomorrow.

3 Q Okay. So before you pled guilty, you knew that they
4 wouldn't separate the charges and you still decided to
5 plead guilty?

6 A I didn't have no choice. I was going to trial
7 tomorrow.

8 Q So it was your decision; right?

9 A I mean, not really. I was forced.

10 Q Okay. Do you remember the guilty plea that day?

11 A Yeah.

12 Q Okay. Do you remember the Judge explaining to you
13 your rights, your Constitutional rights, your right to a
14 jury trial, right to testify, right for your attorney to
15 cross-examine all your witnesses? Do you remember those
16 questions?

17 A Yes, sir.

18 Q Okay. And you -- did you understand when the Judge
19 told you that you had the right to all these things?

20 A (Witness nodded.)

21 Q Do you remember the Judge telling you -- asking you
22 if you were satisfied with your attorney?

23 A Yeah, probably so.

24 Q Okay. Would I be correct in saying that you told the
25 Judge, yes, that you were satisfied with Ms. Manigault?

1 A Yeah.

2 Q Okay. Now, let me ask you about the discovery in
3 this case. I know you said that Ms. Horlbeck was your
4 attorney prior to Ms. Manigault. So you got the discovery
5 of the case; correct?

6 A Yeah, partial.

7 Q Okay. Did you review it?

8 A Yeah.

9 Q Okay. So you got the discovery. You reviewed it.
10 You talked to Ms. Manigault. You said you met her how
11 many times?

12 A Once and then once when I went to court that day,
13 like, the 30th -- the 31st.

14 Q Okay. Did she relay to you the plea offer of the
15 State?

16 A Huh?

17 Q Did she relay to you the plea offer?

18 A Yeah. She offered me -- she told me that they
19 offered me an open plea.

20 Q So she told you that they offered --

21 A They were offering me an open plea with a cap of
22 something -- 20, something like that.

23 Q What was your response?

24 A I just looked. I didn't really say much.

25 Q But you ended up pleading. So --

1 A Yeah. I ended up pleading. Because I was told that
2 if I don't take this, I'm going to trial tomorrow and I'm
3 getting 30 years plus 30 years by my lawyer.

4 Q , Okay. Let me ask you, when the Judge asked you if
5 anybody threatened you, or promised you anything, or were
6 making you do this, what was your response to the Judge?

7 A No.

8 Q Okay. So -- and, again, you -- you remember being
9 there; right?

10 A Uh-huh.

11 Q Okay. So these are your answers. Nobody is not
12 making this up, are they?

13 A Huh-uh.

14 THE COURT: That's a "no."

15 BY MR. MITCHELL:

16 Q Did you not ever understand anything that the Judge
17 was saying to you at all?

18 A I mean, I understand when the Judge -- when the
19 lawyer tells me one thing that I can't say this if I'm
20 guilty, and the Judge gets in there and says this, that --
21 oh, if you feel like you're not guilty, they'll take the
22 whole thing back. And the lawyer's telling me not to say
23 that I'm not guilty so that they could accept the plea,
24 you know, I mean...

25 Q While I appreciate that answer, the question I asked

1 you was, when the Judge was explaining to you and asking
2 you questions, did you understand his questions?

3 A Most of them.

4 Q So what didn't you understand?

5 A I mean, I don't know them.

6 Q Okay. Now, let me ask you, when you were meeting
7 with Ms. Manigault, did you guys ever discuss any defenses
8 or --

9 A Huh-uh.

10 Q Okay. You know, you didn't tell her any witnesses
11 that you wanted her to call or talk to?

12 A Yeah.

13 Q Who -- who'd you tell?

14 A I told her -- actually, first of all, to go talk to
15 the victim. It never happened.

16 Q You wanted her to go talk to the victim?

17 A Yes. It never happened.

18 Q Why did you want her to go talk to the victim?

19 A I mean, is -- is right now the appropriate time to
20 speak on that?

21 Q If you'd just answer my question, please. Why'd you
22 want her to go talk to the victim?

23 A I wanted her to get the victim's side of the story,
24 like, personally to talk to her about how she felt about
25 this, and whatever the situation was.

1 MR. MITCHELL: Thank you, Judge.

2 That's all the questions I have for the Applicant.

3 THE COURT: All right.

4 MR. ARIAIL: No redirect, Your Honor.

5 THE COURT: No redirect. All right.

6 EXAMINATION

7 BY THE COURT:

8 Q Just a point -- a couple points of clarification,
9 Mr. Johnson. First, you indicated that -- that you didn't
10 understand the nature of these charges, the armed robbery,
11 the attempted murder. I noted from your plea transcript,
12 though, that, apparently, you have a conviction for strong
13 armed robbery from 2006, and assault and battery high and
14 aggravated nature from 2008.

15 So I assume that this particular incident wasn't the
16 first time that you'd been involved with law enforcement
17 or the courtroom process; correct?

18 A Yes, sir.

19 Q All right. And, additionally, out of curiosity, you
20 said that, initially, Ms. Horlbeck had been appointed to
21 represent you, or had she been retained? She had been
22 appointed?

23 A Uh-huh.

24 Q Okay. Did -- did you seek -- did she seek to be
25 relieved, or did you ask that she be --

1 A None of them. They just switched them.

2 Q Okay.

3 A They just switched them. I don't know what happened.

4 THE COURT: All right. Good enough.

5 Thank you, sir.

6 You can step down.

7 Any additional witnesses?

8 MR. ARIAIL: Yes, Your Honor.

9 I call Ms. Manigault to the stand.

10 THE COURT: Come on up, please.

11 THE CLERK: Ms. Manigault, please, place your left
12 hand on the Bible and raise your right hand.

13 WHEREUPON,

14 DOROTHY A. MANIGAULT,

15 after first having been duly affirmed, testified as follows:

16 THE CLERK: Thank you.

17 You may be seated.

18 And, please, state your full name for the record.

19 THE WITNESS: Dorothy A. Manigault.

20 DIRECT EXAMINATION

21 BY MR. ARIAIL:

22 Q Ms. Manigault, how are you doing today?

23 A Doing good.

24 Q Okay. Going back to Mr. Johnson. You represented
25 him -- or were appointed to represent him on the attempted

1 murder and attempted armed robbery charge; is that
2 correct?

3 A That's correct.

4 Q Do you know your date of when you were appointed to
5 represent him?

6 A I received the appointment from the clerk's office
7 via fax on April 4th, 2016.

8 Q Okay. He -- from my understanding, he pled guilty --
9 how long did you represent him?

10 A We -- he entered the plea on August 31st, 2016,
11 before Judge Maddox.

12 Q Okay. So you represented him somewhere close to
13 about, I guess, four months, or so; is that right?

14 A Correct.

15 Q Somewhere in that range?

16 A Uh-huh.

17 Q Okay. During that period of time -- I guess
18 Ms. Horlbeck had represented him previously; is that
19 correct?

20 A Yes. Caroline -- the case was reappointed to me
21 because Ms. Horlbeck became a probate judge.

22 Q Okay. And at that time when she became a probate
23 judge, were you given all of the discovery and information
24 that she had in regards to Mr. Johnson's case?

25 A I did not get any discovery from Ms. Horlbeck. I got

1 the discovery from the solicitor's office.

2 Q Okay. And as part of that, when you got that
3 information, did you -- I guess you reviewed it, first of
4 all. Did you discuss it with Mr. Johnson?

5 A Yes, I did.

6 Q Okay. And tell me, based upon your notes and your
7 records, how many times did you discuss this case with him
8 during the time you represented him?

9 A I received the appointment, as I said, on April the
10 4th, 2016. I went to see Mr. Johnson at Pickens detention
11 on April 5th, 2016. We discussed the case at that first
12 meeting. And I asked him about the discovery, had he
13 gotten anything from Ms. Horlbeck. And he indicated that
14 he had gotten the discovery from Ms. Horlbeck. He says he
15 would plead guilty because he was guilty of the charges,
16 but he wanted a good offer.

17 I went to see him on May 11, 2016. He, again, says
18 he wanted a good offer. He would consider something under
19 10 years as an offer for a plea. He said he'd been in
20 jail since 2013 in Greenville County for other charges.
21 And that he got to Pickens County in 2014 on these
22 charges.

23 Then on May 26, 2016, I had a jail visit with
24 Mr. Johnson. We reviewed the discovery, discussed the
25 facts of the case, discussed the fact that his girlfriend,

1 Rosa, was one of the co-defendants. His brother was a
2 co-defendant, Tevis. And they had given statements
3 against him. On -- and he told me on May 26th that he did
4 not want to rush to court..

5 Then in June, it looks like, 23rd of 2016, I went
6 back to the jail. We discussed the discovery. He asked
7 me to check on mental health, because he needed -- he
8 needed his meds, make sure it was available. He did
9 receive mental health and meds at the jail.

10 On July 15th of 2016, I wrote a letter to the
11 Defendant -- yeah. I wrote a letter to Mr. Johnson. It
12 was mailed to the Pickens County jail re-explaining his
13 plea offer and, also, the upcoming trial for the September
14 term of court.

15 Then on August 8th, 2016, I had a jail visit with the
16 Defendant discussing what he wanted. When I received the
17 appointment, the offer was 16 years. He did not want
18 that. He was adamant he wanted something under 10.

19 So, of course, I e-mailed back and forth to Graham
20 Buckner, the Solicitor. The best he would do was he would
21 change the armed robbery to attempted armed robbery and
22 the attempted murder.

23 He would -- he had two other charges, possession of a
24 weapon during a violent crime and unlawful carrying of a
25 pistol. He would dismiss those two charges, if he wanted

1 to accept the plea. Otherwise, he could plead for a
2 20-year cap, and let the Judge decide what the sentence
3 would be.

4 Then on -- on the August 8th visit, Mr. Johnson asked
5 me to ask the Solicitor to have the attempted murder
6 dismissed or reduced to an attempted assault, and have the
7 attempted -- the armed robbery reduced to a strong armed
8 robbery.

9 On August 22nd, 2016, I met at the jail with the
10 Defendant. He -- the Defendant -- my note says, The
11 Defendant wants to go with the cap of 20 years, which is a
12 better choice he thought. The Defendant wants to plead
13 and let the Judge decide.

14 Then on August 25th, I had a jail visit with the
15 Defendant to make sure that he wanted to go forward with
16 the plea. The Defendant signed the sentencing sheets.

17 Q Okay. Now, I know we've heard, you know, the
18 information about you going through with him in regards to
19 discussions of the plea. Did you discuss with him the
20 facts of the case and the elements of the case about what
21 he was charged with?

22 A Yes. I went over the discovery with him. The facts
23 of the case are this: Three defendants, Tevis, his
24 brother, Terrance, my client, and Terrance's girlfriend,
25 Rosa, was the driver. They went to the -- the Plez U, I

1 believe, in Easley. The girlfriend parked behind the --
2 the store in -- near some apartments.

3 Tevis and Terrance, my client, went to the store.
4 They had on hoodies. They had a gun. They went in the
5 store. They had pepper spray. They sprayed the victim in
6 her eyes. Somebody shot up in the air. According to
7 Tevis, some -- one of them shot in the air.

8 Now, Terrance, when he was talking to me, said that
9 Tevis had nothing to do at all with the armed robbery,
10 that it was him. Okay. The facts of the case did not
11 prove out. Because two black males went in the store.
12 They took liquor, cigarettes, lighters, everything that
13 they could get their hands on and dumped it in a trash
14 bag.

15 They went back to -- ran out of the store, went to
16 the car. While they were running out of the store, an
17 eyewitness saw them running out. He saw them go to the
18 car because he came past the car when he came to -- the
19 eyewitness to the store. He saw the car parked and
20 noticed a woman in the car.

21 So they -- the two males ran back to the car, that's
22 Tevis and Terrance. They threw the stuff they had stolen
23 in the trunk of the car and took off.

24 The police were called and talked to the eyewitness,
25 who described the car. They followed the car -- or found

1 the car and followed them. They tried to pull the car
2 over. The -- Rosa, the driver, the female, stopped the
3 car. When the officers were approaching -- two officers
4 approaching the car, Rosa drove off. A chase ensued.
5 Rosa was trying to make a turn and crashed the car.

6 Terrance Johnson was in the front seat. He was the
7 front seat passenger.

8 The gun, according to Rosa, was her gun. She gave
9 the gun to Tevis and when -- before they went to the
10 robbery. And when they came back from the robbery, Tevis
11 gave her the gun back. But when the police was behind
12 them, she threw the gun back into the backseat where Tevis
13 was sitting.

14 Terrance was taken to the hospital. Tevis was taken
15 to the hospital. And Rosa was taken to the hospital.
16 Those two were released. But Terrance stayed for awhile.
17 Terrance left the hospital without permission, and he went
18 to Louisiana.

19 So it took them a couple of months to find him down
20 in Louisiana. His thing was he didn't know he was under
21 arrest. They had -- according to the police, they had
22 police guards at the door. So I don't -- they never
23 figured out how he got out. But, anyhow, he left the
24 hospital without permission.

25 Q All right.

1 A And that's a brief summary of the case itself.

2 Q Okay. So during your discussions with Mr. Johnson,
3 was he aware of the facts and elements that --

4 A Oh, yes.

5 Q -- you just set forth right there?

6 A Yes.

7 Q And, in fact, you're saying that he indicated that he
8 was guilty of this and wanted the best deal that you could
9 get him?

10 A Correct.

11 Q Okay. So he wanted to plead guilty?

12 A That's right.

13 Q Was there any discussion with you in regards to
14 separating the charges and trying one versus trying the
15 other?

16 A None.

17 Q Okay. So you never talked to him about, well, let me
18 go forward on the attempted murder charge, and have a
19 trial on that versus pleading guilty only to the attempted
20 armed robbery?

21 A Correct. What -- what he wanted was reduced charges.

22 Q Okay.

23 A He'd been through the system before. He had had a
24 strong armed robbery before. So he wanted the armed
25 robbery reduced to a strong armed. Well, I couldn't get

1 Graham Buckner, the Solicitor, to agree to that. The only
2 thing he would agree to is reduce the armed robbery to an
3 attempted armed robbery.

4 Q Okay. So explaining all that to him, it sounds like
5 you went back from a cap of 20 to 16 -- or 16 to a cap of
6 20. You couldn't get a reduction for the -- to strong
7 armed robbery. And, at some point, he went and pled
8 guilty to these charges; is that correct?

9 A Correct.

10 Q Okay. Now, was he aware that going in for this, I
11 mean, he had a cap of 20? He was aware of that; correct?

12 A Yes.

13 Q Okay. And he knew, I could get 20 or I could get
14 less than that?

15 A Correct.

16 Back to my letter to him. On July 15th of 2016, it
17 says, The plea offer is still 16 years on attempted
18 murder, attempted armed robbery, and possession of a
19 weapon during a violent crime. If you prefer a cap on
20 sentencing on these three charges, it would be 20 years.

21 Q Okay.

22 A And we would present our side to convince the Judge
23 to any sentence ranging from one to 20 years, or you can
24 enter a plea without a recommendation straight up to
25 attempted murder and attempted armed robbery.

1 So I discussed it with -- the plea offer with him
2 several times. And I decided to reduce it to writing so
3 he could have it to meditate on, and read over, and
4 understand what we were looking at.

5 Q Okay. Do you think you had adequate time to prepare
6 his case under -- to understand the facts and discuss it
7 with him?

8 A Yes. Because from the first appointment, he said he
9 was guilty.

10 Q Okay.

11 A I mean, he said -- he told me some of what happened.
12 And when I got the discovery and went over -- read the
13 discovery, went over it with him, he says that he and his
14 brother went in the store. But he's trying -- he tried to
15 clear his brother from the robbery part, but it didn't
16 work.

17 Q Okay. And so, at that point in time, when he said
18 he's guilty, you transferred into trying to get him the
19 best possible deal out of --

20 A Correct.

21 Q Okay. Now, he raised an issue that there was a video
22 that you weren't able to review, I guess, the Plez U
23 video. Do you remember that, or were you able --

24 A Yes.

25 Q Okay. Were you able to look at that and see that?

1 A I didn't -- I couldn't get the video to work. But
2 they gave me still shots from the video.

3 Q Okay.

4 A And he had the still shots inside of the store. But
5 I did tell them -- excuse me, tell him what the Solicitor
6 gave me was two black males coming in the store.

7 Q Okay.

8 A The same thing that the -- that the cashier of the
9 store had described in her statement.

10 Q And you said -- and I want to make sure and clarify
11 it for the record. You said "he" had a copy. Are you
12 talking about Terrance Johnson?

13 A Yes.

14 Q He had the still shots?

15 A Yes.

16 Q Okay. Did he ever tell you, this is not me, I'm not
17 the individual, or any --

18 A No.

19 Q Okay.

20 A No. He said he went in the store. I mean, he never
21 denied that part.

22 Q Okay. Now, did y'all ever discuss -- and -- and I
23 know there was this issue in regards to attempted murder,
24 whoever had the gun, the hand of one, the hand of all. I
25 mean, did y'all discuss how he was going to be -- I mean,

1 I guess there was some discussion about who fired the gun
2 at some point?

3 A Yes. It was back and forth.

4 Q Back and forth. Either him or his brother; is
5 that --

6 A Yes.

7 Q Did he understand that, I guess, they both were in
8 this criminal action together and both could be held
9 responsible for that, I guess?

10 A Uh-huh.

11 Q Did he understand --

12 A Yes. I'm sorry.

13 Q Did he understand that?

14 A Yes.

15 Q Okay. And so he was willing to and knew that he, I
16 guess, wanted to plead guilty to these and get the best
17 sentence he could get?

18 A Yeah. Well, the thing about who had the gun, it
19 started out that he -- that his brother did not have the
20 gun. Then he said he had the gun. Then he would say his
21 brother had the gun. So it was back and forth.

22 Q All right.

23 A So I just explained to them -- to him that all three
24 of them, although Rosa didn't go in the store, could be
25 charged with the same thing.

1 MR. ARIAIL: Sure.

2 Ms. Manigault, I have no further questions.

3 Thank you.

4 THE COURT: Attorney General.

5 MR. MITCHELL: Very briefly, Judge.

6 THE COURT: Before you -- let me put one thing on the
7 record real quick. Based upon her testimony, I just want
8 to make sure that the record is clear. The transcript of
9 the plea that's been provided to me, the date on the cover
10 page for the transcript indicates April the 6th of 2016 as
11 being the date of the plea.

12 I've compared that against the sentencing sheet. And
13 I think the transcript must simply have a typo. Because,
14 clearly, Mr. Johnson pled guilty on August 31st of 2016.

15 And I simply mention that because the witnesses
16 current testimony is that she, initially, had been
17 appointed to represent Mr. Johnson on April the 4th of
18 2016. And so I didn't want, at some future point in time,
19 there being some question about that, based upon what the
20 face of the transcript reflects, as compared to what the
21 sentencing sheet reflects.

22 Of course, Mr. Johnson, in his petition, actually,
23 does state that the date of the plea was August 31st, as
24 opposed to April the 6th.

25 So let's just -- I want that on the record in the

1 event that that became a question in the future.

2 Attorney General, go ahead, please.

3 MR. MITCHELL: Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MR. MITCHELL:

6 Q Good morning, Ms. Manigault.

7 How are you?

8 A I'm fine.

9 Q Good.

10 I just want to ask you a couple preliminary
11 questions. How long have you practiced law here in South
12 Carolina?

13 A Oh, good grief, more than 35 years.

14 Q Okay. Has most of that been dedicated to criminal
15 law?

16 A Yes.

17 Q Okay. And you said during your testimony that you
18 were retained on this case; right?

19 A No. I was appointed.

20 Q Appointed. Pardon me.

21 A 608.

22 Q I apologize. 608 contract.

23 A Yes.

24 Q I apologize.

25 And, based on my -- my notes, I think you met with

1 Mr. Johnson six or seven times. Does that sound about
2 right?

3 A Yes. About eight times.

4 Q About eight times. And during those conversations,
5 those eight times that you met with him, did he ever --
6 did you ever -- let me rephrase the question.

7 Did he ever seem to not understand anything that you
8 were saying to him at all?

9 A No. He understood. To my perception, he understood
10 very well.

11 Q Okay. And I heard you testify about mental health
12 medication that he was on. Was it any type of medication
13 that affected his ability to respond to any questions that
14 you had?

15 A No. He -- he was very clear and adamant about what
16 he wanted. So he understood our conversations very well.

17 Q Okay. And I think your testimony on direct
18 examination -- you went through a lot of stuff. But let
19 me ask you the -- ask you some questions about the
20 evidence and the actual case.

21 A Yes.

22 Q Would you consider the evidence in this case
23 overwhelming, or would you not?

24 A I would consider the evidence in this case
25 overwhelming.

1 When the car, finally, stopped, they took -- the
2 police did a search warrant, went into the trunk, found
3 all the stuff that was taken from the store, found the
4 money that the lady -- the victim had described that was
5 taken out of the cash register, the denomination of the
6 bills.

7 And they had the eyewitness that saw the car leave,
8 and saw the car parked behind the store before the robbery
9 occurred. So I think the evidence was pretty -- pretty
10 good.

11 Q Okay. And I heard you testify, you said that during
12 your consultations or you meetings with him, he wanted to
13 plead straight off and never wanted to go to trial?

14 A That's right. He never -- he never offered to me
15 that he wanted a trial on either charge -- well, either of
16 the four charges. He -- his interest was getting the best
17 plea offer that he could, getting the charges reduced to
18 something that he thought was palatable for him.

19 Q And once you reduced that offer that you received
20 from the Solicitor to writing, he accepted the offer?

21 A Correct.

22 Q Okay.

23 A But we -- we about talked the offer a few times once
24 we received it from the Solicitor. So that's why I
25 reduced it to writing, so he could understand what the

1 Solicitor is saying and what I was telling him. So he
2 could look -- read it and have no excuses and say I didn't
3 tell him that it was -- he could get the 16, or he could
4 get a cap of 20, or he could just plead straight up.

5 Q Okay. And I'm going to wrap up here shortly. But I
6 wanted to ask you about the separation of charges. Did he
7 ever indicate to you that he wanted to file a motion to --
8 to sever anything?

9 A Never, never.

10 Q Okay. Would you -- is that something that you think
11 that you would have done on your own or --

12 A If he asked me to, I would have done it. Whether I
13 thought it was meritorious or not, I would have filed the
14 motion for him.

15 MR. MITCHELL: Thank you, Ms. Manigault.

16 THE COURT: All right. Just one quick question.

17 EXAMINATION

18 BY THE COURT:

19 Q In terms of the actual outcome involved in this
20 case -- you've been practicing for 35 years. And,
21 apparently, Mr. Johnson received a sentence of 11 years
22 active on these charges from Judge Maddox. Overall, how
23 do you feel like that outcome compares to other
24 individuals similarly situated with similarly strong cases
25 against them?

1 A Judge, I thought his sentence was a very good
2 sentence. I thought Judge Maddox was lenient towards him.
3 That the 11 years was a good sentence. Because if he'd
4 pled to armed robbery, the minimum would have been 10
5 anyhow. So I thought the 11 years was a good sentence.

6 THE COURT: Any redirect?

7 MR. ARIAIL: No, Your Honor.

8 THE COURT: Thank you very much.

9 You are -- I don't think you have any other cases
10 today.

11 THE WITNESS: No, sir.

12 THE COURT: So you're free to go.

13 Thank you very much.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: All right. Any additional witnesses?

16 MR. ARIAIL: No, Your Honor.

17 That's our case.

18 THE COURT: Mr. Johnson [sic], anything from the
19 State?

20 MR. MITCHELL: No, Your Honor.

21 THE COURT: All right. Any -- I feel like I have a
22 pretty good -- I have a pretty good feel for the -- the
23 allegations.

24 Anything from anybody in terms of argument on this
25 case?

1 MR. ARIAIL: No, Your Honor. I don't think there's
2 any reason for argument.

3 THE COURT: All right. Well, I rarely rule from the
4 bench on PCRs, but this is one of those that I really
5 don't see any reason to keep anyone in suspense. I cannot
6 in any way, shape, or form find that there was any
7 deficient performance of any kind by Ms. Manigault.

8 The allegations that are outlined in Mr. Johnson's
9 application for post-conviction relief are -- and this is
10 being charitable -- baseless. I have no idea where he's
11 under the impression that any of these things ever took
12 place.

13 His testimony was completely incredible. And the
14 deal that he got -- or the sentence that he got from Judge
15 Maddox was similarly incredible.

16 So this petition will be denied and dismissed with
17 prejudice.

18 I'll prepare a brief Form 4 order to that effect.

19 And, Attorney General, I'll need a formal order
20 probably within 30 days. Okay.

21 MR. MITCHELL: Thank you, Judge.

22 THE COURT: Very good.

23 *****END OF TRANSCRIPT OF RECORD*****
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 21st day of February, 2018.

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

July 31, 2018

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
 COUNTY OF PICKENS)
)
 Terrance Johnson, 326086)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)
)
)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT

2017-CP-39-1030

ORDER OF DISMISSAL

CLERK OF COURT
 MAY 14 P 1:58

This matter comes before the Court by way of an application for post-conviction relief filed on August 30, 2017 by Terrance Johnson (Applicant). Respondent made its Return on or about January 16, 2018. An evidentiary hearing into the matter was convened on February 21, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by R. Mills Ariail Jr., Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General’s Office.

At the hearing, Applicant testified on his own behalf. Applicant’s Plea Counsel Dorothy A. Manigault, Esquire also testified. This Court had before it a copy of the records of the Pickens County Clerk of Court regarding the Applicant’s convictions, the transcript from Applicant’s guilty plea, the PCR application, Respondent’s Return and Applicant’s records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In August of 2015, the Pickens

County Grand Jury indicted Applicant for attempted murder (2015-GS-39-641) and armed robbery (2015-GS-39-640). Dorothy Manigault, Esquire, represented Applicant. On April 6, 2016, plead guilty to attempted armed robbery and attempted murder before the Honorable J. Cordell Maddox Jr. Judge Maddox sentenced Applicant to twenty years imprisonment provided upon the service of eleven the balance would be suspended for five years' probation for the attempted armed robbery charge. On the attempted murder charge, Judge Maddox sentenced Applicant to eleven years imprisonment to run concurrent with the other charge. Applicant did not appeal his sentences or convictions.

FACTUAL HISTORY

On September 10, 2013, Applicant along with his brother and another co-defendant decided to go to the Plez U located within the Easley City limits of Pickens County. They parked in a trailer park right behind the Plez U, and the other co-defendant was driving the car. At that point both Applicant and his brother got out of the vehicle and went inside the Plez U. Inside working the register that day was the victim in this case. They went inside with masks on and bandanas. One of them was carrying a pistol and they also had pepper spray. There was a surveillance video which captured them immediately threatening the victim and asking her to go to a safe and give them money. A shot was fired over her head in the process. They also pepper sprayed her in her eyes, gathered up a few hundred dollars in cash as well as a bunch of cigarettes, made their way out of the store, got back to the car, and fled. An eyewitness saw them; the police were eventually called, and the eyewitness gave police a description of the vehicle. Easley police were able to find them shortly thereafter in the vehicle that matched the description. When police approached the vehicle, the other co-defendant sped off and a chase ensued. Eventually the vehicle wrecked, injuring all three occupants. They were arrested at the scene and taken to the hospital for

treatment. While in the hospital, Applicant and his brother were eventually able to escape and made their way to Louisiana where they were subsequently picked up a few months later by police. (GP. Tran. p. 9-10).

ALLEGATIONS

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

1. I was denied the right to trial
 - a. I was told that I could not take one of my charges to trial without the other.
2. I was forced to take an unintelligent plea.
3. My lawyer failed to advise me of my options correctly.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified he was initially represented by Caroline Horlbeck, Esquire but Plea Counsel took over his case. He testified neither attorney explained the elements of the crimes with which he was charged. Applicant testified he met with Plea Counsel twice, and she told him he could get thirty years for each charge if he went to trial. He testified Plea Counsel never helped him and told him he could not separate the charges which is why he ending up pleading guilty. Applicant testified he wanted to go to trial on the attempted murder charge, but Plea Counsel told him it was "all or nothing." He testified that he was not given enough time to prepare for trial and that he never saw the video of the incident.

Plea Counsel's Testimony

Plea Counsel testified she was appointed to represent Applicant on April 4, 2016. She testified Applicant's previous attorney, Caroline Horlbeck, became a probate judge and she took over the case after that. Plea Counsel testified she got Applicant's discovery and discussed it with him. She testified Applicant told her he would plead guilty if he got a good offer. Plea Counsel

testified that, when she received the order of appointment to represent Applicant, there was a plea offer of sixteen years. She testified she emailed back and forth with the Solicitor working the case in an effort to obtain a better offer for Applicant. Plea Counsel testified she met with Applicant on seven different occasions between April 2016 and August 2016. She testified that, during her seventh visit with Applicant, he wanted to take an open plea deal with a cap of twenty years and let the plea judge decide the sentence. Plea Counsel further testified Applicant and his brother robbed the store and stole money and cigarettes. After the robbery, a car chase ensued resulting in Applicant and his brother crashing their car. Plea Counsel testified Applicant was hospitalized but somehow managed to escape and flee to Louisiana. She testified Applicant was aware of the allegations against never requested to sever his charges. Plea Counsel testified she could not get the video of the incident to play for Applicant, but she did provide still shots of the video to Applicant.

On cross-examination, Plea Counsel testified she had been practicing law for over thirty-five years. She testified she met with Applicant eight times during her representation. Plea Counsel testified Applicant never mentioned he wanted to sever his charges, and if he had made such a request, she would have filed the appropriate motion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 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, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742,

747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of

the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel.

As an initial matter, at the call of the case, this Court was informed that Applicant wanted to have his PCR counsel R. Mills Ariail Jr., Esquire, relieved because he had represented Applicant’s brother, Tevis C. Johnson, on Tevis Johnson’s PCR (2017-CP-39-1002) which he withdrew earlier on February 21, 2018. Applicant indicated that he had been in conversation with an attorney from Orangeburg by the name of “Patricia H.”¹ about representing him in this matter. Supposedly, Applicant’s family was hoping to retain this attorney at some point in the future.

Upon a check of the South Carolina Bar online attorney listing, five lawyers had a name matching “Patricia H.” but none of them practiced in Orangeburg. This Court read the names to Applicant, and he did not indicate that any of those names jogged his memory. This Court also inquired of Mr. Ariail as to whether he had any conflict in representing both brothers in their civil PCR actions. Mr. Ariail informed the Court that, having reviewed both cases, no ethical conflict arose from his representation of the Johnson brothers and that he was prepared to proceed. Accordingly, this Court denied Applicant’s motion to relieve Mr. Ariail.

¹ Applicant maintained he could not recall the last name of the attorney.

7


Ineffective Assistance of Counsel

Applicant maintains that his Plea Counsel denied him a right to trial, forced him to take an ill-advised plea, and failed to advise him of his options. Put succinctly, this Court finds Applicant's allegations and testimony wholly incredible. This Court finds that, not only did Plea Counsel competently and adequately represent Applicant, in fact she did a fantastic job, an absolutely incredible job. The case against Applicant was about as strong as any this jurist has ever seen. Plea Counsel met with Applicant on multiple occasions, fully advised Applicant of all his rights, the ramifications of a plea, and the options available to him. Furthermore, this Court finds that the fact that Plea Counsel was able to achieve an eleven year active sentence for Applicant in light of his record, the aggravating nature of the charges, and his flight to Louisiana in an effort to escape the consequences of his actions was nothing less than miraculous.² In short, no factual basis exists for any of the allegations contained in Applicant's PCR; they are wholly spurious.

Moreover, this Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant, including the maximum penalties for each. The plea judge also went through Applicant's constitutional rights and questioned Applicant extensively as to whether he understood those rights and wished to waive them. Applicant agreed that he did. Applicant admitted he was guilty of these offenses told the plea judge that he was satisfied with his attorney. Applicant further told the plea judge that no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant told the plea judge he did not have any physical or mental issues which would prevent him from understanding the proceedings, and Applicant indicated he understood all of the plea judge's questions and had answered them

² And I mean like Old Testament miraculous.

honestly. This Court therefore finds that Applicant understood the terms of the plea and the possible sentences he could receive.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court also finds that the record fully supports the knowing and voluntary nature of Applicant’s guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.”). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 (“[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.”). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance.

CONCLUSION

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

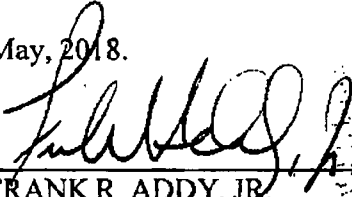
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRPC. Reffer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

IT IS SO ORDERED this 8th day of May, 2018.



 FRANK R. ADDY, JR.
 Presiding Judge
 Thirteenth Judicial Circuit

CLERK OF COURT
 STATE OF SOUTH CAROLINA
 THIRTEENTH JUDICIAL CIRCUIT

2018 MAY 14 P 1:59

Greenwood, South Carolina

WITNESSES

David B Sudduth

Easley Police Department

1/23/2015

ARREST WARRANT NUMBER

2013A3920400968

ACTION OF GRAND JURY

TRUE BILL

Date: AUG 23 2016

David B Sudduth
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-39-0640

WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2015

THE STATE

vs.

TERRANCE ANTHONY JOHNSON

Indictment for

0026

ARMED ROBBERY

VIOLATION § 16-11-0330(B)

Certified Copy

Harold P. Walker
Clerk of Court
Pickens County, SC
Dated *Aug 23 2016*

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS VS. STATE

INDICTMENT/CASE#: 2015GS3900640

Terrance Anthony Johnson

A/W#: 2013A3920400968

AKA:

Date of Offense: 9/10/2013

Race: BLACK Sex: M Age: 26

S.C. Code §: 16-11-0330(B)

DOB: [redacted]-1989 SS#: [redacted]

CDR Code #: 0026

Address: [redacted]

City, State, Zip: Greenville, SC 29605

DL#: [redacted] SID#: [redacted]

SENTENCE SHEET 0 - 20 years

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

[] CONVICTED OF or [X] PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Robbery, Attempted Armed Robbery

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026 [] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

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

The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: [Signature] 100344 [Signature] Defendant Attorney for Defendant SC Bar# 3615

WHEREFORE, the Defendant is committed to the [] State Department of Corrections, [] County Detention Center, for a determinate term of 20 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 120 days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 9/31/10 plea [X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-16-40 to be calculated and applied by the State Department of Corrections. 587 dec [] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Handed P. Wellon Clerk of Court Pickens County, SC

Obtain GED [] Attend Voc. Rehab. or Job Corp. Dated 8/31/10 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: Mental Health Counseling while incarcerated

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

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforc. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BLI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$18.75, TOTAL \$643.75

Clerk of Court/ Deputy Clerk: Harriet P. Wellon Court Reporter: Susan Higgins SCCA/217 (03/2011)

Presiding Judge: [Signature] Judge Code: 21311 Sentence Date: 8/31/10

ARREST WARRANT

W78247407

2013A3920400968

STATE OF SOUTH CAROLINA

County/ Municipality of EASLEY, SC

THE STATE

Hold @ Jefferson Parish against Greenville Co. Greenville SC

JOHNSON, TERRANCE ANTHONY

Address: GREENVILLE, SC 29605

Phone: SSN: Sex: M Race: B Height 5 ft. 8 in. Weight 142 DL State: SC DL#: DOB: /1989 Agency ORI#: SCO390300

Prosecuting Agency: EASLEY POLICE DEPARTMENT

Prosecuting Officer: SUDDUTH, D B

Offense: ARMED ROBBERY

Offense Code: 26

Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of EASLEY, SC The Accused is to be arrested and brought before me to be Dealt with according to law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

Defendant JOHNSON, TERRANCE ANTHONY

On 1/23/2015

Signature of Constable/Law Enforcement Officer E-46

RETURN WARRANT TO:

D. S. WALSH, MUNICIPAL JUDGE 220 NW MAIN STREET EASLEY, SC 29640

Court date/Time Bond Amount Type OCA Number

STATE OF SOUTH CAROLINA

County/ Municipality of EASLEY, SC

AFFIDAVIT

Form approved by SC Attorney General April 21, 2013 SCCA 618

Personally appeared before me the affiant D B SUDDUTH

being duly sworn deposes and says that defendant JOHNSON, TERRANCE ANTHONY

did within this county and state on 9/10/2013

Violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of EASLEY, SC

in the following particulars:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit The crime set forth and that probable cause is based on the following facts: THE ACCUSED DID, WHILE ARMED WITH A DEADLY WEAPON, ROB THE CONVENIENCE STORE LOCATED AT 602 LIBERTY DRIVE WITHIN THE CITY LIMITS OF EASLEY, S.C. THE CLERK WAS PUT IN FEAR FOR HER LIFE AS SHE WAS PEPPER SPRAYED AND A GUN POINTED AT AND FIRED IN HER DIRECTION. 1-POLICE REPORT AND INVESTIGATION (CASE #2013-04253) 2-THE ACCUSED IS IDENTIFIED AS TERRANCE ANTHONY JOHNSON

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of EASLEY, SC

Affiant's address 220 NW MAIN STREET EASLEY, SC 29640

Affiant's Telephone 864-859-4025

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 9/10/2013 defendant JOHNSON, TERRANCE ANTHONY

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of EASLEY, SC

) as set forth below:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY

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

Sworn to and subscribed before me

On 9/11/2013

Signature of Issuing Judge

Judge Code: 6634

Judge's Address

220 NW MAIN STREET EASLEY, SC 29640

Judge's telephone 864-855-7915

Issuing court: Magistrate Municipal Circuit

Certified Copy

Clark of Court

Pickens County, SC

Dated

FEB - 7 2015

WITNESSES

David B Sudduth
Easley Police Department
1/13/2015

ARREST WARRANT NUMBER
2013A3920400972

ACTION OF GRAND JURY
~~TRUE BILL~~
~~Date~~ **AUG 23 2016**

David Sudduth
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-39- **0641**
WDR

The State of South Carolina
County of Pickens

COURT OF GENERAL SESSIONS
TERM 2015

THE STATE
vs.
TERRANCE ANTHONY JOHNSON

Indictment for
3410
ATTEMPTED MURDER
VIOLATION § 16-03-0029

Certified Copy
Harold P. Walker
Clerk of Court
Pickens County, SC
Dated *Aug 23 2016*

COUNTY OF Pickens
STATE VS.
Terrance Anthony Johnson

INDICTMENT/CASE#: 201⁵GS3900641
A/W#: 2013A3920400972
Date of Offense: 9/10/2013
S.C. Code § : 16-03-0029
CDR Code #: 3410

AKA:
Race: BLACK Sex: M Age: 26
DOB: [REDACTED]-1989 SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Greenville, SC 29605
DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

0-30 years

*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

CONVICTED OF or PLEADS

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

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

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

ATTEST: [Signature] 100344 [Signature] [Signature] 3615
Buckner, Daniel Graham SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

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 30 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: 01/31/16 plea
 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. 587 da
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

Certified Copy

[Signature]

Clerk of Court

Pickens County, SC

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

PTUP _____ days/hours Public Service
Obtain GED Dated 10/20/13
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: Mental Health Counseling while in custody

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	\$
§ 36-5-2995 (DUI Assessment)	\$12	\$
§ 36-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% in County (if paid in installments)		\$ 3.75
TOTAL		\$ 178.75

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

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2161
Sentence Date: 8/31/10

ARREST WARRANT

2013A3920400972

STATE OF SOUTH CAROLINA

County/ Municipality of EASLEY, SC

THE STATE

against

JOHNSON, TERRANCE ANTHONY

Address: [REDACTED]

GREENVILLE, SC 29605

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height 5 ft. 8 in. Weight 142

DL State: DL#: [REDACTED]

DOB: [REDACTED]/1989 Agency ORI#: SCO390300

Prosecuting Agency: EASLEY POLICE DEPARTMENT

Prosecuting Officer: SUDDUTH, D B

Offense: ATTEMPTED MURDER

Offense Code: 3410

Code/Ordinance Sec. 16-3-0029

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Signature of Constable/Law Enforcement Officer

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ATTEMPTED MURDER

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Signature of Affiant

[Signature]

STATE OF SOUTH CAROLINA

County/ Municipality of

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on 9/10/2013

defendant

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County/

Municipality of

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Sworn to and subscribed before me

On 9/11/2013

[Signature]
Signature of Issuing Judge

Judge Code: 6634

Judge's Address

220 NW MAIN STREET

EASLEY, SC 29640

Judge's telephone

864-855-7915

Issuing court:

Magistrate

Municipal

Circuit

Form approved by
S C Attorney General
April 21, 2003
SCCA 618

Certified Copy
[Signature]
Clerk of Court
Pickens County, SC
Dated 1/23/2015

FEB - 7 2015

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