

S.C. SUPREME COURT

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

CHARLES J. DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002066

APPENDIX

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Appellate Defender

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2013-GS-21-01345
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Charles J. Davis,	)	
	)	
Defendant.	)	
	)	

June 9, 2014
 Florence, South Carolina

B E F O R E:

The Honorable William H. Seals Jr., Judge

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

John Jepertinger, Esquire
 Attorney for the Plaintiff

Karen Parrott, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

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NO.DESCRIPTIONID.EV.

(No Exhibits Presented)

1 JUNE 9, 2014

2 (WHEREUPON, the proceedings began at 10:17 a.m. with
3 constitutional rights being given to all defendants
4 present as follows.)

5 THE COURT: All right. Everybody in the courtroom that
6 is here and you're signed up to plead guilty, before you think
7 about pleading guilty, I want to go over certain rights that
8 you have and I want you to understand these rights.

9 It's that you do not have to plead guilty. If you would
10 rather have a jury trial instead, all you have to do is ask me
11 and I'll make sure you get one. I want you to understand that
12 if you have a jury trial, the burden of proof is on the State
13 of South Carolina to prove you guilty beyond a reasonable
14 doubt.

15 Furthermore, if you have a trial, you would have a jury
16 made up of 12 people and it would have to take all 12 members
17 of that jury to agree unanimously to convict you before the
18 Court could sentence you.

19 Furthermore, if you had a trial, you would have a lawyer
20 and your lawyer would have the right to cross-examine and
21 confront each and every one of the State's witnesses.

22 Furthermore, if you had a trial, I want you to understand
23 that you could be sworn in and you could testify. However,
24 it's important to understand that you do not have to testify
25 because you have the constitutional right to remain silent.

1 And if you chose to exercise that right and not take the
2 stand and not testify, I want you to understand that I would
3 tell the jury they could not use that against you in any way.
4 I would tell the jury the fact that you did not testify is to
5 have absolutely no prejudice against you. I would even tell
6 the jury they cannot even talk about that fact in the jury
7 room.

8 Furthermore, if you had a trial or if you pled guilty in
9 front of me and you're not happy with something that takes
10 place, you can appeal it, but you've got to do so within 10
11 days.

12 These are your rights. I want you to understand these
13 rights. If you come before me and you have any questions
14 about your rights to a trial, do not hesitate to ask me and
15 I'll make sure they're cleared up.

16 With that being said, Solicitor, I'm ready.

17 (WHEREUPON, the proceedings for this defendant continued
18 at 10:56 a.m. as follows.)

19 MR. JEPERTINGER: May it please the Court, Your Honor.
20 Standing in front of you is Charles Jeffrey Davis on 2013-GS-
21 21-1345.

22 Your Honor, in that particular indictment, Your Honor,
23 Mr. Davis was charged with burglary in the 1st degree, armed
24 robbery, attempted murder, and possession of a weapon during
25 the commission of a violent crime. Your Honor, he's pleading

1 to attempted murder on that case.

2 Your Honor, the State is recommending a cap of 25 years.
3 Your Honor, he's represented by Ms. Parrott.

4 Your Honor, in that regard, Your Honor, there is another
5 case on 2013-1091 where Mr. Davis was charged with armed
6 robbery, attempted murder, and burglary in the 1st degree and
7 possession of a weapon during a violent crime. That case is
8 being dismissed in its totality against Mr. Davis.

9 THE COURT: All right.

10 MR. JEPERTINGER: And the victim, Missy Talbland
11 [phonetic] is present in the courtroom today, Your Honor.

12 THE COURT: All right. Mr. Davis, you are pleading
13 guilty to attempted murder, which carries up to 30 years in
14 jail; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Also, were you in the courtroom when I went
17 over your rights to a jury trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you understand those rights?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you want to give up your right to a trial
22 and plead guilty today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you satisfied with your lawyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has she answered all of your questions and
2 done everything that you've asked her to do?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Other than the State's recommendations and a
5 cap of 25 years, has anybody promised you anything to get you
6 to plead guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Anybody threatening you in any way to make
9 you plead guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you under the influence of any drugs or
12 alcohol at this time?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you understood all of my questions?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have your answers been truthful?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Thank you. Solicitor?

21 MR. JEPERTINGER: Your Honor, on April the 21st, 2013,
22 Missy Talbland [phonetic] was over on Snookum Lane and it's a
23 mobile home park, Your Honor. She was there at the house with
24 two children that she was babysitting. The children were not
25 hers, Your Honor. The children were approximately 6 and 2.

1 She got a knock at the door. She was expecting someone
2 to come to the house and when she opened the door, the
3 defendant was there and without lengthy conversation -- Mr.
4 Davis had a .22 pistol, Your Honor, and started firing at her,
5 Your Honor, hitting her what we assume was at least four times
6 about the throat and head area, Your Honor. She fell into the
7 laundry room. The scene there, Your Honor, as you can imagine
8 with where she was shot, was a blood pool, Your Honor.

9 After -- after he shot her, Your Honor, he left the
10 location. He had come there with at least three other
11 individuals. One individual has not yet been arrested. Two
12 others are charged with varying levels of offenses in this
13 crime, Your Honor.

14 He left her for dead, Your Honor. I think he thought she
15 was dead. After he left, some of the children came out and,
16 even in that state of being shot, she kind of gathered up the
17 kids and she staggered over to a neighbor's house and banged
18 on the door. The neighbor came to the door and saw the dire
19 straits she found herself in and they called 9-1-1.

20 The police got there. EMS got there and they carried her
21 to a hospital, Your Honor, and, Your Honor, when talking to
22 law enforcement, they had an idea, Your Honor, of maybe who
23 was involved in this, Your Honor.

24 When she got out of the hospital, Your Honor, she came up
25 to law enforcement with a picture of this defendant, saying

1 this was the gentleman that shot me. She was -- was aware
2 that he had kinship to someone she knew, Your Honor, but she
3 identified him. She brought the picture. They didn't bring
4 one to her, Your Honor. I think they got it off the booking
5 website.

6 Your Honor, when they finally arrested this gentleman --
7 they arrested him back about two months after the crime on
8 June the 11th, 2013. He did initially act like he didn't know
9 who did it, Your Honor, thinking that she was dead. Law
10 enforcement said, look, she's going to come in because, look,
11 she's not dead. She's going to come in and testify. She's
12 going to identify you.

13 He then did confess to the crime, Your Honor, and from
14 that point on, he gave not only that initial statement to the
15 police, Your Honor, he also spoke with law enforcement on two
16 other occasions, cooperating with law enforcement with
17 whatever questions they had about this matter and the other
18 crimes that he was involved in and whatever else he might help
19 law enforcement with, Your Honor. He has been cooperative
20 since, Your Honor, talking to law enforcement when they've
21 asked him to.

22 Your Honor, he had a prior strong-armed robbery in 2008,
23 Your Honor. This crime is completely senseless, Your Honor,
24 and you can't try to gild the lily, so to speak, trying to
25 make it look better than it is. It is horrible. He tried to

1 kill her. He thought she was dead. If he had had a larger
2 caliber gun, she would have been dead, but it's by the grace
3 of God that she's here, Your Honor.

4 I would ask that you consider anything she might want to
5 tell you.

6 THE COURT: Sure. I'd be glad to hear from you.

7 THE VICTIM: It just -- it's been a -- it's been hard
8 recovering. I don't know the shooter personally, but being in
9 intensive care and fighting for my life and knowing that kids
10 was there and -- and I just went to three trying to get help
11 when I was shot.

12 Doctors didn't even think I was going to make it, you
13 know. When I came to, I had to talk again and walk again.
14 It's been -- it's just -- it's been a trying and hard time and
15 it's been a year after. Still, it's hard being -- seeing his
16 face and knowing and hearing him talk about this incident is
17 hard.

18 I wouldn't wish this on my worst enemy. It's something I
19 wish nobody has to go through. Thank you, Judge.

20 THE COURT: All right. I'll accept the plea and find
21 that he's given same freely and intelligently, with the advice
22 of competent counsel. Yes, ma'am?

23 MS. PARROTT: Your Honor, in representing Mr. Davis, I
24 have met with him now multiple times. This is something that
25 he has been in jail on ever since arrest. In fact, he was in

1 on the first -- the other incident that was also being
2 dismissed, and then they charged him with this.

3 If you go back to the original, it would be since April
4 the 23rd, and that would give him a total of 413 days now. If
5 you do it just since the time that he was actually charged
6 with this offense, then he believes that that was around June
7 the 12th and that would be 362.

8 He was interviewed by law enforcement in regards to not
9 only this, but also the other incident. And in the other
10 incident, his brothers were also involved and he gave up his
11 brothers. They are in on 10-year sentences on that offense on
12 that case.

13 But it's because of his cooperation that all this
14 information was given, basically whenever he realized that the
15 life that he was leading was not the life he needed to live.
16 I think sometimes it's easy for us to stand up here and not
17 understand the circumstances of our clients and the life that
18 they lead and the choices they make based on what their
19 history has been and how he's been raised or what games
20 they've been initiated in and the difference as to
21 circumstances in life that that even leads them to.

22 Because it's not usual for me to hear gunfire outside of
23 my house, but all these years with all my clients, including
24 Mr. Davis, it's extremely usual for them to not only have the
25 gunfire outside of their house, but to be the ones involved in

1 that gunfire. And I'm not saying it makes sense, but I am
2 saying it's a different perspective in how you lead your life.

3 And even speaking with Ms. Anderson, who's been his
4 probation and parole officer, she tells me that he's been
5 nothing but good with her as well and very kind in every
6 conversation we've ever had. I wouldn't expect anything
7 different.

8 So having said that, Your Honor, I don't -- given his
9 lack of history and given how he's presented himself to me, I
10 don't believe that this incident would have occurred but for
11 other circumstances, and that being that he was ordered to do
12 a hit and that's what I mean by sometimes I think we don't
13 understand because I don't think anybody could come to me and
14 say you need to go shoot this person and me go do it, but
15 whenever it's an order of this proportion, you either go do
16 it, you handle that situation, or I'm coming after you.
17 That's why you don't hang around, Your Honor.

18 But I also think it's easier to step away when you're not
19 in the middle of everybody. I think probably it's a little
20 bit easier for him to step away now, but I do think it's
21 easier right now than it would be if he were free out on the
22 street.

23 But he is doing it and has done good to make this a
24 better situation. He cannot take away what his actions were.
25 He is extremely sorry for the actions that he did, but he has

1 cooperated with law enforcement to try and make it right, to
2 try and make it better, although he knows he'll never be able
3 to fully satisfy what everyone wants, which is to take those
4 shots back.

5 He has cooperated as far as the other people that were
6 involved. Some have been arrested. A third arrest is still
7 out there to be made and he's given them information regarding
8 that. I have talked with him about the fact that he can come
9 back and testify against that person. If any of those choose
10 to go to trial, then he could come back and testify. And if
11 the solicitors were to secure a conviction, then based upon
12 that as well.

13 As far as this case, Your Honor, I have gone over with
14 him the affidavit of a guilty plea. He knows that this is a
15 most serious offense and so it is a strike of the two-strike
16 rule. So if he gets in any further trouble of any magnitude,
17 then it is a possibility of his spending the rest of his life
18 in prison. Whether or not that be a most serious or a serious
19 or the right combination, then he could very well spend the
20 rest of his life in prison.

21 We talked about the fact that, whatever sentence that you
22 choose to impose today, that he should count on doing at least
23 85 percent, if not 100 percent, of it based upon whatever his
24 actions are and what the Department of Corrections does as
25 well.

1 And so this is not something that he's undertaking
2 lightly. We've been in negotiations for a great period of
3 time now and I've spoken with law enforcement about this and
4 Mr. Jepertinger. At one point, the offer was for a 15-year
5 sentence. That was based upon the circumstances at that time,
6 but in speaking with law enforcement, they are okay with the
7 sentence being handed down possibly in the 15 to 20 range
8 based upon his cooperation and the fact that he did have this
9 other case.

10 And I understand that the solicitor has offered a cap of
11 25. I have discussed that with my client and he knows it's up
12 to you in your discretion, Your Honor.

13 I would ask if you would consider though, based upon all
14 of the information and his lack of a prior record, if you
15 would consider something less than that 25, possibly in that
16 15 to 20 range.

17 I can't make it any better, but I can try and make it
18 better from here on out for my client. I think that's what he
19 would ask and would like to do as well, Your Honor.

20 SENTENCE

21 THE COURT: The sentence of the Court is 24 years. I'm
22 going to give him 362 days credit.

23 MS. PARROTT: Thank you, Your Honor.

24 (WHEREUPON, the proceedings ended at 11:13 a.m.)

25 --- END REQUESTED TRANSCRIPT ---

1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 14, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Florence County, South Carolina, on the
13 9th day of June, 2014.

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

16
17 Krystal J. Smith

18 Court Reporter

19
20 Florence, South Carolina

21 June 12, 2017
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCECharles J. Davis #326311
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015 CP 21 518

APPLICATION FOR

POST-CONVICTION RELIEF

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 Broad River Correctional Institution
4460 Broad River Rd. Columbia, SC 29210
2. Name and location of Court which imposed sentence General Sessions Court
M.S.C.E. 180 North Irby Street - Florence - SC 29501
3. Name(s) of co-defendant(s) (if any) Brittany Griffin
4. The indictment number or numbers (if known) upon which and the offenses for which

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CLERK OF COURT
FLORENCE COUNTY
SOUTH CAROLINA

sentence was imposed:

- (a) 2013-01-21-01345
 (b) _____
 (c) _____

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

- (a) 2014-09-01
 (b) 10/1/2014
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty /
 (b) after a plea of not guilty N/A
 (c) after a plea of nolo contendere N/A

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

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

- (a) the name of each Court to which you appealed:
 i. 2014-09-01
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. 10/1/2014
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. 10/1/2014
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N/A

- ii. N/A
- iii. N/A

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

- (a) N/A
- (b) N/A
- (c) N/A

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

- (a) ineffective assistance of counsel; and guilty plea
- (b) was misleading by counsel and neither voluntarily made.
- (c) Defective Affidavit

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

- (a) See Strickland v. Washington, 466 U.S. 668, 101 S.Ct. 2052 (1984)
See Hill v. Lockhart - 474 U.S. 52, 106 S.Ct. 266 (1985)
- (b) See Baykin v. Alabama - 395 U.S. 238, 243 89 S.Ct. 1709 (1969)
- (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. N/A
- ii. N/A

- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been 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. N/A
- ii. N/A

- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (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? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
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. Karen Parrott
Public Defender office
- ii. 180 N. Erby Street, Box MSC-N
Florence, SC 29501
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea And Sentencing
Direct Appeal

- ii. X
- iii. X

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

Vacate unlawful conviction and sentence
And Demand for a new trial, and/or any other
Just Relief.

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

NO

FILED
 2015 FEB 23 PM 1:39
 CONNIE REEL-SHEARIN
 CCRP & GS
 FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

Charles Davis

I, A, 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.

Charles J Davis # 326311

SWORN to and subscribed before me this 19th
 day of February, 2015.

Richard P. [Signature] (L.S.)
 Notary Public

My Commission Expires: Nov. 14 2024

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

Charles Davis

I, A, 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.

Charles J Davis # 326311
Applicant

SWORN or affirmed to and subscribed before me this
19th day of February, 2015.

[Signature]
Notary Public

My Commission Expires: Nov. 14 2024

FILED
2015 FEB 23 PM 1:39
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA) IN the court of
 County of Florence) Common Pleas
 Charles J. Davis #326311) Indictment # 2013-01345
 Applicant) Memorandum
 V.) OF
 State of South Carolina) Application For P.R.

FILED
 2013 FEB 23 PM 1:39
 CORNELL SHEPARD
 CLERK OF COURT
 FLORENCE COUNTY, SC

(I)

In his application for (P.C.R.), Applicant asserts he is being held unlawfully on the following grounds:

- 10-(A) Ineffective assistance of counsel; and Guilty
- 10-(B) Plea was misleading and neither voluntary made.
- 10-(C) Defective Affidavit.

In Support of his allegations, Applicant respectfully asserts the (Sixth) Amendment of the Federal Constitution that provides "(I)N all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense." The guarantee of counsel, however, cannot be satisfied by mere formal appointment. In Avery v Alabama - 308 U.S. at 444 - S.Ct 321 (1940). To be sure, "The right to counsel is the right to [the] effective assistance of counsel. See McMann v Richardson 397-U.S. at 759 - S.Ct. 1441 (1970) --

Said Another way;

The (Sixth) amendment right to counsel protects

the integrity of the adversarial system of criminal Justice by ensuring that (ALL) persons accused of a Crime have access to effective assistance of counsel for their defense. The right is grounded in the presumed inability of a defendant to make informed choices about the preparation and conduct of his defense. State v. Quattlebaum - 327 SE^{2d} at 105 - (2000).

In the instant case, applicant was denied right to the effective assistance of counsel. Perhaps more precisely, rather, applicant was denied the effective assistance of counsel that is to be considered a fundamental component of the "due process of Law", that is guaranteed by the fourteenth (14th) amendment, to defendants in criminal courts of the United States. See GIDEON V. Wainwright - 372 U.S. at 335 S.Ct. 729 - (1963) CF - FARETTA V. CALIFORNIA - 442 - U.S. at 806 - S.Ct. 2525 (1975). (The assistance of counsel clause "Supplements the other rights that are fundamental and necessary to accord a full defense.")

In South Carolina the P.C.R. act (§§ 17-27-10 To 160) provides an adequate corrective process "For challenging the validity of the conviction or sentence", S.C. Code Ann. §§ 17-27-20(b) (Supp 2001). See also, Finkley v. State - 273 SE^{2d} 447 (1979) also, Case v Nebraska - 381 - U.S. at 336 S.Ct 1486 (1965).

IN a P.C.R proceeding, the applicant bears the burden of proving the allegations in his ~~application~~ ^{application}.

(Rule 71.1 of the S.C.R.C.P. - See BUTLER V STATE 286 SE^{2d} at 441 (1985)).

When an application for P.C.R alleges ineffective assistance of counsel as a ground for relief applicant must show both: 1) Counsel failed to render reasonably effective assistance under prevailing professional norms, and 2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington - 466 U.S. at 668 S.Ct. 2032 (1984). Also Judge V. STATE 321 SE^{2d} at 554 (1996). In Hill v. Lockhart 474 U.S. at 52 S.Ct. 366 (1985) the court held that the two prong standard adopted in Strickland applies to guilty plea challenges based on ineffective assistance of counsel. See also Alexander V STATE 303 SE^{2d} at 484 (1991). IN order to satisfy the second, or "Prejudice" requirement, however, the applicant must show that there is a reasonable probability that, but for counsel's errors, he could not have pleaded guilty and would have insisted on going to Trial. Never the less, the ("Prejudicial") determination involves the concepts of reliability and fairness. See Lockhart V. Fretwell 506 U.S. at 364 (1993) (The Benchmark of the right of counsel is the fairness of the adversary proceedings).

III

The applicant respectfully submits that the

allegations set forth in 10(a) and 10(b) of his application for PCR raise factual issues that are not conclusively refuted by record. Moreover, the allegations of ineffective assistance of counsel set forth a prima facie violation of the Applicant's fundamental constitutional rights. See CLAYTON V. STATE 301 SE^{2d} at 133 (1983). The Applicant would further submit that, among other things, he can meet the requisite burden of proof to overcome the attached presumption that counsel rendered effective assistance, provided, however that this court will appoint competent counsel and preserve his right to amend this application with specificity in advance of an evidentiary hearing. S.C. Code ANN §§ 17-27-60 and 17-27-90 (Supp 2001)

IV

Wherefore, Applicant prays this court will allow him an adequate opportunity to present his claims by convening an evidentiary hearing to fully resolve the stated issues. See SHARPER V STATE 279 SE^{2d} at 247 (1983)

Respectfully Submitted

Charles J. Davis

IN THE STATE OF SOUTH) In the court of Common
 CAROLINA) Pleas
 County of Florence) Indictment # 2013-GS-21-01345
 Charles J. Davis # 326311)
 Applicant) RE: Rule 59(e)
 V.) State rules of
 STATE) Procedures.

2015 FEB 23 PM 1:40
 CONNIE REEL-SHEARER
 DECP & GS
 FLORENCE COUNTY, SC

FILED

I respectfully submit this (Rule 59(e)) Civil Rules of procedures, S.C. Code ANN §(17.27.80) (2003).

I respectfully request that this honorable court please make specific finding of fact and state expressly its conclusions of law relating to each issue in the applicant's Post Conviction Relief application. Please see Bryson v. STATE 493 SE^{2d} 500 (1997); In more recent cases of Humbert v. State 548 SE^{2d} AT 862 (2001) The Supreme court did not over look the failure to file a rule 59(e) motion to preserve one issue not specifically addressed in a P.C.R. order. IN (Humbert) it did not over rule the proceeding court's order to file a rule 59(e). The Applicant is a lay person to the law and is doing his very best to provide and Honor all standing law. In this motion of Rule 59(e) of the civil procedures of South Carolina the Applicant does file this rule 59(e) motion.

Respectfully Submitted

Date: 2/17/15

Charles J. Davis

Charles J Davis #326311
 Broad River Corr Inst
 4460 Broad River Rd
 Columbia, SC 29210

Feb 17, 2015

2015 FEB 23 PM 1:40
 CONNIE REEL SHEARMAN
 LLP & GS
 FLORENCE COUNTY, SC

FILED

Clerk of Court
 City County Complex
 180 N. Irby Street
 Florence, SC 29501

DEAR Clerk:

Can you please stamp, Time and File enclosure
 P.C.R Application, Memorandum in Support of PCR Application
 and Rule 59. Can you also send me a copy. Thank
 you and have a blessed day.

Respectfully Submitted,
 Charles J Davis

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
	)	
Charles J. Davis, #353719,	)	Case No.: 2015-CP-21-0578
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR A
v.	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed by Charles J. Davis (Applicant) on February 23, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In October 2013, the Florence County Grand Jury indicted Applicant for armed robbery, first-degree burglary, attempted murder, and possession of a weapon during commission of a violent crime (2013-GS-21-1345). Karen Parrot, Esquire, represented Applicant. Deputy Solicitor John C. Jeperfinger, Esquire, prosecuted the case. On June 9, 2014, Applicant pleaded guilty to attempted murder before the Honorable William H. Seals, Jr. Pursuant to the State's recommendation of a cap of twenty-five years, Judge Seals sentenced Applicant to imprisonment for twenty-four years. The remaining charges against Applicant were dismissed in return for his guilty plea.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide sufficient explanation as required by Rule 203, SCACR, by order filed December 17, 2014. The remittitur was returned to the circuit court on January 6, 2015.

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

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

II.

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea, in that:
 - a. "Guilty plea was misleading by counsel and neither voluntarily made."
3. "Defective Affidavit"

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

III.

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

just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced 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. With respect to guilty plea counsel, Applicant must show 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).

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

IV.

Applicant also asserts his plea was involuntary. 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 pleaded 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 also hereby moves for a more definite statement with regard to Applicant’s allegation of ineffective assistance of counsel, and his third allegation, “Defective Affidavit.” Applicant has failed to set forth any facts to “support each ground” or to explain with any specificity whatsoever the facts upon which these claims are based. The Uniform Post-Conviction Procedure Act requires Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon

which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which these claims are based.

VI.

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

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

December 19, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	
	)	2015-CP-21-0578
	)	
CHARLES J. DAVIS, 353719	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

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

DATED this 19th day of December, 2017.


Judy A. Carey, Legal Assistant
For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-CP-21-00578
	)	
Charles J. Davis,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

January 31, 2018
 Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Lindsey McCallister, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 JANUARY 31, 2018

2 (WHEREUPON, the proceedings began at 2:11 p.m. The
3 applicant was present, along with his counsel of
4 record.)

5 MS. MCCALLISTER: Your Honor, may I approach?

6 THE COURT: Yes. Yes, ma'am. You're recognized.

7 MS. MCCALLISTER: May it please the Court, Your Honor.

8 This is Charles J. Davis versus the State of South Carolina,
9 2015-CP-21-0578.

10 Your Honor, in October of 2013, Mr. Davis was indicted
11 for armed robbery, first-degree burglary, attempted murder,
12 and possession of a weapon during the commission of a violent
13 crime. He was represented by Karen Parrott.

14 And on June 9th, 2014, he pleaded guilty to attempted
15 murder before the Hon. William H. Seals. And pursuant to the
16 State's recommendation of a cap of 25 years, Judge Seals
17 sentenced Mr. Davis to imprisonment, a term of imprisonment
18 for 24 years, and the remaining -- on the attempted murder
19 and the remaining charges against him were dismissed in
20 return for his guilty plea.

21 He filed a timely notice of appeal, and that appeal was
22 dismissed due to his failure to provide sufficient
23 explanation as required by Rule 203. That order was filed on
24 December 17th, 2014. The remittitur was returned to the
25 Circuit Court on January 6th, 2015, and then Mr. Davis filed

1 this post-conviction relief action on February 23rd, 2015.

2 Mr. Davis is represented by Jonathan Waller, and both
3 Mr. Waller and Mr. Davis are present in the courtroom.

4 THE COURT: Mr. Waller, you're recognized.

5 MR. WALLER: Thank you, Your Honor. Your Honor, Mr.
6 Davis filed his application for post-conviction relief. I
7 have filed an amendment to that application.

8 Your Honor, the allegations that we are proceeding under
9 today are allegations that counsel was ineffective for
10 failing to conduct a complete investigation into the facts
11 and circumstances surrounding applicant's case, thus
12 rendering applicant's plea involuntary.

13 Counsel was ineffective --

14 THE COURT: Repeat --

15 MR. WALLER: -- for --

16 THE COURT: Repeat that first one again.

17 MR. WALLER: Failed to conduct a complete investigation
18 --

19 THE COURT: Okay. All right.

20 MR. WALLER: -- rendering the guilty plea involuntary.

21 That counsel was ineffective for failing to adequately
22 prepare for trial, which was imminent, leaving applicant to
23 involuntarily plea just before the trial as he was in fear of
24 proceeding to trial.

25 Counsel was ineffective for erroneously -- erroneously

1 advising applicant to plead guilty to charges that he could
2 not have been convicted of at trial.

3 And finally, that counsel was ineffective for failing to
4 discuss potential defenses with the applicant.

5 THE COURT: All right. You may call your first witness.

6 MR. WALLER: Thank you, Your Honor. I would call
7 Charles Davis.

8 THE COURT: Mr. Davis, come forward. I'd ask you, if
9 you could, to place your left hand on the Bible and raise
10 your right hand as the clerk administers the oath.

11 THE CLERK: Do you swear or affirm to tell the truth,
12 the whole truth, and nothing but the truth, so help you God?

13 THE APPLICANT: Yes, ma'am, I do.

14 THE CLERK: Thank you.

15 THE COURT: Have a seat in the witness chair and pull up
16 real close to that microphone and speak loudly, clearly, and
17 slowly in order that I can hear everything that you -- in
18 order for us to be able to hear everything that you have to
19 say, and let's start with your full name.

20 THE APPLICANT: Charles Jeffrey Davis.

21 THE COURT: Davis?

22 THE APPLICANT: Davis.

23 THE COURT: Spell that last name?

24 THE APPLICANT: D-a-v-i-s.

25 THE COURT: Very good. Yes, sir?

CHARLES J. DAVIS - DIRECT BY MR. WALLER

1 MR. WALLER: Thank you, Your Honor. May it please the
2 Court.

3 CHARLES J. DAVIS, being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WALLER:

7 Q: Good afternoon, Mr. Davis. How are you today?

8 A: I'm doing all right.

9 Q: All right. Mr. Davis, you have filed an application for
10 post-conviction relief; is that right?

11 A: Yes.

12 Q: Okay. And, Mr. Davis, you understand that if your
13 application is granted, because charges were dismissed as
14 part of your guilty plea, that those charges could come back?
15 Do you understand that?

16 A: Yes.

17 Q: Including charges that were from a separate incident?
18 Do you understand that?

19 A: Yes.

20 Q: Okay. Do you still want to go forward today?

21 A: Yes.

22 Q: Okay. I just had to make sure that we're clear on that.
23 The incident that you ultimately pled guilty to, the set
24 of charges that you ultimately pled guilty to the one count
25 of attempted murder, who was your lawyer on that charge?

CHARLES J. DAVIS - DIRECT BY MR. WALLER

- 1 A: Karen Parrott.
- 2 Q: All right. How did she come to be your lawyer?
- 3 A: I guess she was appointed to me by the Public Defender's
- 4 Office.
- 5 Q: Okay. And you had two sets of charges. Which one were
- 6 you arrested on first?
- 7 A: The other set.
- 8 Q: The other set?
- 9 A: The case that was dropped.
- 10 Q: Okay. How long after you were arrested on this set of
- 11 charges did you meet with Ms. Parrott?
- 12 A: A minute. I mean I went a while without even having a
- 13 public defender or knowing who my public defender was.
- 14 Q: Okay. So you were -- you were in the detention center?
- 15 A: Yes.
- 16 Q: Okay. Did you have a bond?
- 17 A: Yes.
- 18 Q: Okay. Were you not able to make it?
- 19 A: No.
- 20 Q: Okay. So you were in there for a little while you said
- 21 without knowing who your attorney was?
- 22 A: Yes.
- 23 Q: Do you remember how long?
- 24 A: It been probably about a couple months.
- 25 Q: Okay. And ultimately, you learned that Ms. Parrott was

CHARLES J. DAVIS - DIRECT BY MR. WALLER

1 your attorney?

2 A: Yes.

3 Q: Okay. When you and Ms. Parrott were finally able to
4 meet, what did y'all talk about?

5 A: Just -- I mean just basically my case. Like, I
6 basically been saying something about, like, how are my
7 charges be charged, like, based on this incident, how the --
8 on the warrant how they said the incident went down. And I
9 was basically speaking on her about that. Like, how the
10 charges in -- in the -- in the statement on the warrant is
11 basically a lie about how the incident happened.

12 Q: Okay. And just so the judge is clear, the allegations
13 were that there was a knock on a -- on a door of a home and a
14 young lady answered the door and was shot; is that correct?

15 A: Yes.

16 Q: Okay. And you were alleged to have been the one that
17 committed that?

18 A: Yes.

19 Q: Okay. So you were charged with -- with attempted
20 murder?

21 A: Attempted murder, armed robbery.

22 Q: Armed robbery?

23 A: And burglary.

24 Q: And burglary first? Okay. Did you and Ms. Parrott have
25 a chance to discuss each of those three charges?

CHARLES J. DAVIS - DIRECT BY MR. WALLER

- 1 A: Yes.
- 2 Q: Okay. What did y'all talk about as far as the burglary
3 charge goes?
- 4 A: I mean -- I mean based on -- like, the only thing she
5 kept telling me was, like, I need to plead guilty or I'm
6 going to get 130 plus life, like, stuff like that.
- 7 Q: Okay. Let me back up just one second. As far as the
8 burglary charge goes, did y'all talk about what the State
9 would have to prove in order for you to be found guilty of
10 that charge?
- 11 A: No.
- 12 Q: Okay. Did y'all ever discuss any potential defenses to
13 that charge?
- 14 A: I mean -- I mean, like -- like -- like -- like, the
15 first time I spoke to her, I know she said she was going to
16 speak to an investigator about the first-degree burglary and
17 the armed robbery because it was never supposed to exist.
- 18 Q: Okay. Why was it never supposed to exist?
- 19 A: Because nobody never entered the residence.
- 20 Q: Okay.
- 21 A: Like the -- like the warrant stated.
- 22 Q: Okay. So you maintain that you never entered the
23 residence, never crossed the doorway?
- 24 A: Yes.
- 25 Q: Okay. So did y'all discuss that, that you never -- that

CHARLES J. DAVIS - DIRECT BY MR. WALLER

1 you never entered the residence?

2 A: Yes.

3 Q: Did you tell her you never -- you never took anything?

4 A: Yes.

5 Q: Okay. What was her response?

6 A: I mean I been still charged with it. I mean, you know,
7 most of nothing had been filed as far as, like, to get them,
8 like, dismissed or, like, get them charges suppressed.

9 Q: Okay.

10 A: It was just --

11 Q: Did you all -- did y'all talk about any defenses you
12 might have to those charges?

13 A: No. The only thing she -- the only thing she kept
14 saying was plead guilty.

15 Q: Okay.

16 A: I need to plead guilty.

17 Q: All right. You ultimately pled guilty to one count of
18 attempted murder?

19 A: Yes.

20 Q: Okay. Had there been previous discussions between you
21 and Ms. Parrott about other plea offers?

22 A: Yes.

23 Q: Okay. What were those discussions and what was the
24 other plea offers?

25 A: Like -- like -- like, I remember the conversation

CHARLES J. DAVIS - DIRECT BY MR. WALLER

1 because they offered me -- I think it was 15 -- what was it?
2 Fifteen years for first-degree burglary and -- first-degree
3 burglary and attempted murder, but like I was telling her,
4 like -- like -- like -- like -- like, based on what I was
5 saying was I'm not about to plead to no first-degree burglary
6 that ain't never exist.

7 So when I told her that, then she left and came back and
8 she said I done got -- she said I got the prosecutor mad. He
9 -- he -- he supposed to send us up with a 25-year negotiated
10 plea. So I turned that down and just, like, I'm ready for a
11 trial.

12 Q: Okay. Did y'all -- when you were talking about the
13 pleading to the burglary, she was talking to you about that
14 was the offer?

15 A: Yes.

16 Q: Did you talk about the fact that you never entered the
17 residence?

18 A: Yes. The whole time, that was my main -- like, my main
19 argument was the lie on the warrant, like, how the warrant --
20 like -- like -- like, as far as how the investigator made the
21 incident sound, like it was a burglary and an armed robbery
22 and stuff like that. I've been screaming that the whole time
23 --

24 Q: Okay.

25 A: -- I was locked up.

CHARLES J. DAVIS - DIRECT BY MR. WALLER

1 Q: What was her response to that?

2 A: I mean I know she kept writing me letters and stuff like
3 that saying, like, I need to plead guilty because if I don't
4 plead guilty, I'm going to get 130 years plus life, stuff
5 like that.

6 Q: Okay. But to a burglary charge also?

7 A: Yeah. Like, she broke down, like, what the burglary
8 carried, what the armed robbery carried, and what the
9 attempted murder carried.

10 Q: Okay.

11 A: And all of them.

12 Q: I may have asked you this earlier, but just to be clear,
13 did y'all discuss any potential defenses, particularly with
14 the armed robbery or the burglary charges?

15 A: No.

16 Q: Okay. Did y'all discuss any potential defenses for the
17 attempted murder charge?

18 A: No. Other than just plead guilty to it, plead guilty.

19 Q: Okay. When -- you ultimately did plead guilty? That's
20 right?

21 A: Yes.

22 Q: Okay. When did -- was a trial scheduled?

23 A: Yes. Like -- yes. Then she came to see me that Friday
24 before the trial to tell me we've got to prepare for a trial.
25 Then she --

CHARLES J. DAVIS - DIRECT BY MR. WALLER

- 1 Q: All right. So she came to see you on a Friday you said?
- 2 A: And said my trial was that following Monday.
- 3 Q: Okay. So the trial was a couple days away?
- 4 A: Yeah.
- 5 Q: Okay. Had y'all talked about a trial at any point
- 6 before that?
- 7 A: Not before that.
- 8 Q: Okay. Had y'all discussed, you know, what would take
- 9 place if you went to trial, how everything would go just in
- 10 the courtroom that day?
- 11 A: Like, basically, like, she was just telling me, like, I
- 12 have no chance to win. That's when she kept talking about
- 13 the 130 plus life.
- 14 Q: Okay.
- 15 A: I would catch, like, something like that.
- 16 Q: Had y'all discussed how -- how a trial would work as far
- 17 as the jury and how that works and witnesses and things like
- 18 that?
- 19 A: No. Because, like -- no, because we sat down and you
- 20 said about preparing for a trial. That's when she came with
- 21 another plea.
- 22 Q: Okay. So that right there she said it was zero -- I
- 23 think it was zero to 25.
- 24 Q: Okay.
- 25 A: And she said she got many reasons to convince the judge

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1 for a lot less than 25.

2 Q: Okay. And that's -- that's the plea that you ultimately
3 took; is that right?

4 A: Yeah. I took that and we ain't talked about trial no
5 more.

6 Q: Okay. Why did you ultimately take that -- that deal?

7 A: Because -- because of the fact that -- I mean I
8 basically lost -- like, lost faith that I could win the trial
9 because the only thing she kept saying was if I don't plead
10 guilty, I'm going to get 130 plus life.

11 Q: Okay.

12 A: So I just felt like I ain't had -- I couldn't win.

13 Q: Prior to making your decision and prior to being that
14 Friday, had you planned to go to trial?

15 A: Yes.

16 Q: Did you want to go to trial?

17 A: I mean I wanted to get them -- the first-degree burglary
18 and the armed robbery off me that wasn't supposed to exist.

19 Q: So you wanted to go to trial certainly to contest those
20 two charges?

21 A: Yes.

22 Q: At a minimum?

23 A: Yes.

24 Q: Okay. When you and Ms. Parrott met, did y'all talk
25 about any investigation that she was going to do into the

CHARLES J. DAVIS - DIRECT BY MR. WALLER

1 facts of your case?

2 A: Yes.

3 Q: Okay. What -- what did she do?

4 A: I mean I -- I mean I -- I mean I asked her to go speak
5 to the investigator that opened my case and to try to get the
6 charges thrown out and just investigate. You see what I'm
7 saying?

8 Q: Okay. You mentioned a few minutes ago that she told you
9 there were many reasons she had to try to convince the judge
10 not to give you 25 years?

11 A: Yeah. She said she's got many reasons to convince the
12 judge to give me a lot less than 25.

13 Q: Okay. Do you know what -- what those reasons were?

14 A: No.

15 Q: You don't know? Okay. When y'all met, did you ask her
16 to -- other than talking to that investigator, did you ask
17 her to conduct any investigation?

18 A: To who?

19 Q: Did you ask her to talk to anybody else?

20 A: No.

21 Q: Okay.

22 A: Just the investigator.

23 Q: Did you give her any information that might have helped
24 her defend you?

25 A: Yes.

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1 Q: Okay. What did -- what did you tell her?

2 A: I mean I basically, like -- I basically just, like,
3 broke -- like, broke down what happened. Like, basically,
4 saying, like, I ain't never entered -- like, nobody never
5 entered the residence. So stuff like that.

6 Q: Okay. So your biggest argument was with the armed
7 robbery and the burglary charge?

8 A: Yes.

9 Q: But you were charged with all three?

10 A: Yes, all three.

11 Q: Okay. And y'all did not talk about any defenses or
12 anything like that?

13 A: I mean if you -- if you read my motion of discovery,
14 like, I filed mostly everything, like, as far as how to get
15 them charges thrown out. I did all that myself.

16 Q: Okay.

17 A: Like, it was like I was on my own, like, trying to fight
18 my own case.

19 Q: Okay. How many times do you think you met with Ms.
20 Parrott?

21 A: Probably about -- probably about three times. Two --
22 about two.

23 Q: Two or three times?

24 A: Two or three times.

25 Q: Okay. And how long were you in the detention center

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1 prior to pleading guilty?

2 A: I mean I -- I mean I had to force them to violate my
3 parole just so I could get down the road into a law library.

4 Q: Okay.

5 A: So I -- I probably been in the county jail for about --
6 probably about a couple of months.

7 Q: Okay. But then you weren't -- before you pled guilty,
8 you weren't in the --

9 A: No.

10 Q: -- detention center? You were in SCDC?

11 A: I was at Allendale.

12 Q: Okay.

13 A: Allendale Correctional Institution.

14 Q: Okay. On a -- on a parole violation?

15 A: Yes.

16 Q: Okay. When you went to Allendale, were you at Allendale
17 the whole time you were at SCDC?

18 A: Yeah.

19 Q: Prior to being convicted?

20 A: I spent my time at -- yes. I spent my time at
21 Allendale.

22 Q: Okay. How many times did you meet with Ms. Parrott
23 while you were in Allendale?

24 A: None.

25 Q: Okay. The couple months before you went to Allendale,

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1 that's when you met with her two or three times?

2 A: I met her about two times -- like, one or two times
3 before I went to Allendale and then the last time when they
4 called me -- called me because -- called me to the county
5 jail to go to court.

6 Q: Okay. And that was the Friday?

7 A: That Friday.

8 Q: Did you ultimately end up pleading guilty?

9 A: Yes.

10 Q: Okay. Mr. Davis, you testified a few minutes ago that
11 you wanted to go to trial, at least on two of the three
12 charges. What changed your mind?

13 A: I mean -- I mean that day when she came to see me that
14 Friday and it was, like -- like, basically, like, I had no
15 chance of winning. That I needed -- that I'm -- that I'm
16 going to catch all this time and she got many reasons to
17 convince the judge to a lot less than the zero to 25, a lot
18 less than 25.

19 Q: Okay.

20 A: Something less.

21 Q: Had you seen a full copy of your discovery at any point?

22 A: Oh, that's another thing. Like, I -- like, I asked her,
23 like, can I get a copy of my motion of discovery and she told
24 me she don't have -- like, she don't have my full discovery.
25 She's got -- like, she'd just send me what she have as she

CHARLES J. DAVIS - DIRECT BY MR. WALLER

1 get it.

2 Q: Okay. So she was sending you more stuff, but she didn't
3 have a complete copy yet?

4 A: Yes.

5 Q: Okay.

6 A: Then she said that that Friday when we was about to --
7 so I asked her how you prepare for a trial when you don't got
8 my full motion of discovery. So how can you be preparing for
9 a trial?

10 Q: Okay. So two days before the trial, she still didn't
11 have complete discovery?

12 A: No. She had it after I plead guilty because I tried to
13 get it to file my -- my post-conviction relief.

14 Q: Okay. And you never saw a complete copy?

15 A: No. I ain't never saw a complete copy.

16 Q: Mr. Davis, I've asked you all the questions that I have.
17 Is there anything you think I've left out the judge needs to
18 be aware of Ms. Parrott's representation of you?

19 A: No.

20 MR. WALLER: Okay. Please answer any questions Ms.
21 McCallister has.

22 THE COURT: Ms. McCallister, you're recognized. Cross-
23 examination.

24 MS. MCCALLISTER: Thank you, Your Honor.

25 CROSS-EXAMINATION

CHARLES J. DAVIS - CROSS BY MS. MCCALLISTER

1 BY MS. MCCALLISTER:

2 Q: Okay. Mr. Davis, I just want to get the background
3 straight here. So you had two separate sets of charges;
4 correct?

5 A: Yes.

6 Q: Two different indictment numbers?

7 A: Yes.

8 Q: Okay. And Ms. Parrott was representing you on both sets
9 of charges; correct?

10 A: Yes.

11 Q: And they were resolved at the same time; correct?

12 A: Yes.

13 Q: And that was in this plea that you eventually accepted;
14 correct?

15 A: Yes.

16 Q: And so one set of charges was just completely dismissed?

17 A: Yes.

18 Q: You never pled guilty to anything on that indictment?

19 A: No.

20 Q: And on this indictment that we're here today on, the
21 only charge that you pleaded guilty to was attempted murder?

22 A: Yes.

23 Q: Is that correct?

24 A: Yes.

25 Q: Okay. And you've talked a little bit about how you felt

CHARLES J. DAVIS - CROSS BY MS. MCCALLISTER

1 like you -- the burglary and the armed robbery were incorrect
2 charges and you didn't enter the house and I think I'm clear
3 on that.

4 A: Yes.

5 Q: Did you -- in terms of the attempted murder, did you
6 talk with Ms. Parrott about any potential defenses to the
7 attempted murder charge?

8 A: No.

9 Q: Okay. Did you, in fact, give a statement to law
10 enforcement regarding that charge, regarding the attempted
11 murder?

12 A: Yes.

13 Q: And you admitted your involvement in the shooting;
14 correct?

15 A: Yes.

16 Q: Okay. So you didn't -- you didn't deny the shooting
17 part; correct?

18 A: Yes.

19 Q: You only denied whether you had ever entered the house?

20 A: Yes.

21 Q: The residence?

22 A: Yes.

23 Q: Okay. And you actually cooperated kind of in the case;
24 right?

25 A: Yes.

CHARLES J. DAVIS - CROSS BY MS. MCCALLISTER

1 Q: Okay. Okay. And do you recall the day of the plea
2 coming into the courtroom and standing in front of the judge
3 and having some conversation back and forth?
4 A: Say that one more time?
5 Q: Do you recall the day of the plea being in the courtroom
6 and talking back and forth with the judge?
7 A: Yes.
8 Q: And you were sworn and you were put under oath; correct?
9 A: Yes.
10 Q: Okay. And while you were under oath, you told the judge
11 that you wanted to accept this plea agreement; correct?
12 A: Yes.
13 Q: Okay. And you told the judge that you understood all of
14 the rights that you were giving up; correct?
15 A: I don't remember. I don't remember that. I know he --
16 I know, like, at the beginning of -- I know I ain't really
17 been asked too many questions as far as, like, the judge
18 asking me too many questions.
19 Q: Okay. Do you remember the judge telling you that you
20 didn't have to plead guilty and you could have a trial if you
21 wanted one?
22 A: Yes.
23 Q: Okay. And you told him you wanted to plead guilty?
24 A: Yes.
25 Q: Okay. And you told him that you were satisfied with Ms.

CHARLES J. DAVIS - CROSS BY MS. MCCALLISTER

1 Parrott and that she had done everything you had asked her to
2 do; is that right?

3 A: I would assume so, yes.

4 Q: Okay. And you told the judge that no one had threatened
5 you or made you any kind of promises or pressured you into
6 taking the plea agreement? It was your own decision?

7 A: I don't remember the judge -- like I was telling my
8 attorney, I don't remember the judge asking me any -- like,
9 any questions, like, directly. I know he made a statement,
10 like, at the beginning -- at the beginning of the court term
11 to everybody.

12 Q: Okay.

13 A: You see what I'm saying? But as far as asking me direct
14 questions, I don't remember him asking me direct questions.

15 Q: Okay. So you don't remember being asked if anyone had
16 threatened you or promised you anything to get you to plead
17 guilty?

18 A: No.

19 Q: So you don't know -- you don't know what you said to
20 that question?

21 A: I didn't know. He asked me how -- how do I plead. I
22 understand -- like, do I understand the plea, and I said yes.

23 Q: Okay. So you did understand why you were there and what
24 you were doing?

25 A: Yes.

CHARLES J. DAVIS - CROSS BY MS. MCCALLISTER

1 Q: And you wanted to do it?

2 A: Yes.

3 Q: Okay.

4 MS. MCCALLISTER: I beg the Court's indulgence for a
5 moment.

6 BY MS. MCCALLISTER:

7 Q: Do you recall writing a letter to Ms. Parrott after your
8 guilty plea had taken place?

9 A: Yes.

10 Q: Okay. Did you write her a letter telling her how -- how
11 much you appreciated her work on the case for you?

12 A: I don't remember. I remember writing her trying to get
13 a copy of my motion of discovery, but I don't remember --

14 Q: Okay.

15 A: -- the exact -- what the exact -- exactly what the
16 letter said.

17 MS. MCCALLISTER: May I approach, Your Honor?

18 THE COURT: Yes.

19 BY MS. MCCALLISTER:

20 Q: Can you tell me if this is the letter that you wrote to
21 Ms. Parrott? You can take it if you want to.

22 A: Yes.

23 Q: Yes? That's -- that's your letter?

24 A: Yes.

25 Q: And that's your signature on the bottom right there?

CHARLES J. DAVIS - CROSS BY MS. MCCALLISTER

1 A: Yes.

2 Q: Is that right? Okay. And could -- could you read this
3 letter for me right here? Just start at the very beginning,
4 the first couple sentences.

5 A: How are you doing? First and foremost, I would like to
6 thank you for everything you've done for me. I know you did
7 your best and gave me nothing but good right. I know it
8 surprised you as much as it surprised me that the judge gave
9 me 24. I have to accept it, but that do not mean I'm not
10 going to fight it. He tell the plan was doing all that fake
11 crying, no tears. I believe my case is based on lies and
12 coverups. Can you please send me my whole Rule 5?

13 Q: Okay.

14 A: You only sending -- you only been sending me bits and
15 pieces. I really just want everything on the Ettelle Bland
16 -- the Ettelle Bland case. A post-conviction relief
17 application is what I'm going to do. Again, I thank you for
18 everything you've done for me. Thank you and have a blessed
19 day.

20 Q: Okay. So you were asking for your Rule 5 and you say
21 that you want a PCR application, but you thanked her and you
22 said that you know she did her best; correct?

23 A: Yes.

24 Q: And that you know that it surprised her just as much as
25 it surprised you, the sentence that you received; correct?

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1 A: Yes. Because I remember, like, what she was telling me.
2 Like, if I -- that she's got many reasons to convince him to
3 give me a lot less than what they offered me.

4 Q: Okay.

5 MS. MCCALLISTER: Your Honor, I would move this into
6 evidence.

7 THE COURT: Any objection to the letter being introduced
8 into evidence?

9 MR. WALLER: No objection, Your Honor.

10 THE COURT: All right. It's into evidence as State's
11 Exhibit 1.

12 (WHEREUPON, State's Exhibit Number 1, a letter, was
13 admitted into evidence.)

14 THE COURT: Any further -- anything further?

15 MS. MCCALLISTER: I think that's all I have, Your Honor.

16 THE COURT: All right. Any redirect?

17 MR. WALLER: Just very briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. WALLER:

20 Q: Mr. Davis, the -- the letter you just read, it asked for
21 a complete copy of your Rule 5; is that right?

22 A: Yes.

23 Q: And you said you didn't -- you never had a complete
24 copy?

25 A: No.

CHARLES J. DAVIS - REDIRECT BY MR. WALLER

1 Q: You said that she had only been sending you bits and
2 pieces?

3 A: Yes.

4 Q: Okay. You also asked for a PCR application?

5 A: Yes.

6 Q: Okay. Ms. McCallister asked you about discussing or
7 contesting your involvement in the shooting. Okay? And that
8 you did not -- in giving your statement to law enforcement,
9 you didn't contest your involvement in the shooting; is that
10 right?

11 A: Yes.

12 Q: Okay. Did you and Ms. Parrott ever discuss any
13 potential defenses, even though you didn't contest your
14 involvement in the shooting?

15 A: No.

16 Q: Okay.

17 MR. WALLER: Nothing further, Your Honor.

18 THE COURT: All right. All right. You may have a seat.

19 We're going to take a break for just about five minutes.

20 I've got somebody -- I've got to sign some things out there.

21 We'll be back momentarily.

22 (WHEREUPON, there was a break in the proceedings from
23 2:36 p.m. until 2:53 p.m., after which the proceedings
24 resumed as follows.)

25 THE COURT: You may call your next witness.

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 MR. WALLER: Nothing further from the applicant, Your
2 Honor.

3 THE COURT: You're recognized now.

4 MS. MCCALLISTER: Thank you, Your Honor. The State
5 calls Karen Parrott.

6 THE COURT: Ms. Parrott, please come forward. I'm going
7 to ask you, if you could, to place your left hand on the
8 Bible and raise your right hand as the clerk administers the
9 oath.

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

12 THE WITNESS: I do.

13 THE CLERK: Thank you.

14 THE COURT: Have a seat in the witness chair. Pull up
15 real close to that microphone and speak loudly, clearly, and
16 slowly, and start with your full name.

17 THE WITNESS: It's Karen Elizabeth Parrott, P-a-r-r-o-t-
18 t.

19 KAREN PARROTT, being first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. MCCALLISTER:

23 Q: Ms. Parrott, were you retained or appointed on this
24 case?

25 A: I was appointed.

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1 Q: Okay. And do you know approximately when you were
2 appointed?

3 A: The information we have is that his application was
4 approved by Judge Timmons on June the 12th, he was interviewed
5 by Mr. McKenzie, who is an investigator in our office, on
6 June the 19th, and then the case went forward from there.

7 Q: And did you represent him on both sets of charges?

8 A: Yes.

9 Q: Okay. And do you have -- do you keep a record or a log
10 of how many -- approximately how many times you might've met
11 with Mr. Davis before the plea?

12 A: I have general notes. I met with him the first time, I
13 believe, on July the 19th of 2013. So about a month after he
14 was interviewed by Mr. McKenzie. And then I sent him his
15 discovery on September the 13th on both of his cases that I
16 had. I believe I sent some more on October the 1st of 2013,
17 by a note that I have here.

18 And then his parole was revoked in October of 2016. So
19 he went then -- I mean October 16th of 2013 and so then he
20 went on to the Department of Corrections.

21 Q: Okay.

22 A: But he was brought back in January of 2014 to court for
23 me to talk with him then. He was also brought back on April
24 the 9th of 2014 and I talked with him at court then. And then
25 he was brought back on June the 6th in preparation for either

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1 his plea or his trial, and his trial date was to be June the
2 16th, not three days later but 10 days later.

3 Q: Okay. Okay. And during these -- during these meetings
4 -- well, let me back up. You said that you sent discovery to
5 him on September 13th and October 1st, 2013; correct?

6 A: Yes.

7 Q: Okay. And is that because you -- is that how you
8 received it? Do you receive it in pieces?

9 A: Yes.

10 Q: Okay.

11 A: Whenever we get discovery from the solicitors -- and it
12 depends on how -- how much the case is, but you may get just
13 a little bit, you may get an incident report and then
14 supplements follow or in this kind of case where this is an
15 ongoing investigation and it's multiple cases, one being from
16 the Sheriff's Office and one being from the Florence Police
17 Department, so you've even got two different entities from
18 law enforcement sending information, I got information along
19 and along.

20 Q: Okay. Did you send him everything that you received?

21 A: I believe so except for the compact disks with
22 statements because he would not have any way to play those.

23 Q: Okay.

24 A: And I even wrote that to him in a letter on June the 30th
25 of 2014 when he had written me again asking for a -- asking

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1 me for a copy of everything. When I wrote him then, I said
2 enclosed please find a copy of the discovery received in your
3 case. Obviously, I have not sent the CDs, as you would not
4 be able to play them. As you noted in your letter, I am sure
5 you have almost all, if not all, of the information contained
6 in this copy as I forwarded it to you as I received it, which
7 is why you got it piecemeal.

8 Q: Okay. So you did respond to that request that you
9 received after the plea and sent him another copy?

10 A: Yes.

11 Q: Okay. Okay. And so during the course of your
12 representation of Mr. Davis and these meetings that you've --
13 that you've enumerated here, did you discuss all the charges
14 at one time? And then were you discussing all of the cases
15 together or do you recall if you specifically had discussions
16 maybe about one incident, the incident that he ended up
17 pleading guilty to?

18 A: Whenever he was interviewed -- and let me go back. On
19 the other charge where it was an armed robbery and burglary
20 and attempted murder where it was a drug dealer that was
21 being done, that was the Florence Police Department one.
22 That was an application that was approved on April the 23rd,
23 and he was interviewed by Thomas McKenzie on May the 2nd. He
24 told Mr. McKenzie then on that case and then later on the
25 other case what -- what his stance was on each one.

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1 Q: Okay.

2 A: And in both cases, he had cooperated with law
3 enforcement and gave statements admitting his involvement, as
4 well as others' involvement.

5 Q: Okay. So the -- the first set of charges you've said
6 was in reference to a drug deal or involved a drug deal or a
7 drug dealer; is that right?

8 A: It was a burglary at a drug dealer's house where they
9 went in and were robbing the safe.

10 Q: Okay. And that was the first set that you were
11 appointed on?

12 A: Right.

13 Q: And then was he in jail when you were appointed on the
14 second set?

15 A: Correct.

16 Q: Okay. So the second set involved the attempted murder
17 of the victim that he ultimately pleaded guilty to?

18 A: Correct.

19 Q: And were those incidents related in some way?

20 A: No.

21 Q: Okay.

22 A: They happened one day and then the next day, but as far
23 as I was ever able to determine or information given to me,
24 they were -- they were not, and they were done with two
25 different sets because the burglary and robbery in the drug

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1 dealer was done with his two brothers, and the attempted
2 murder where the woman was shot four times in the face or
3 about the head and neck, face, was done with three other
4 people that were part of his gangs -- his gangs.

5 Q: Okay. Okay. And can you explain kind of the course of
6 the plea offers that the State made and how those
7 negotiations played out?

8 A: He -- whenever he first came in, he actually had already
9 admitted to the fact that he had done -- that he had shot her
10 four times and that it was a hit that was ordered out of New
11 York because they were scared that this woman, who was the
12 girlfriend/wife of his, I guess, OG, his higher gang member
13 -- they were scared that she was going to testify against him
14 or hem him up and so they had gotten in touch with another
15 higher gang member up in New York who had sent out saying
16 this guy -- that she's supposed to be killed.

17 So whenever that happened, he got word through another
18 person, who was actually another one of the -- one of the
19 four that was arrested here, that they were supposed to --
20 they were supposed to shoot her and kill her. And so that's
21 what they went and did.

22 Q: Okay.

23 A: But they didn't kill her. They just shot her four
24 times.

25 Q: Okay. So -- I'm sorry. I think I asked a bad question.

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1 So on that -- on that -- on that incident, that's the
2 attempted murder that he eventually pleaded guilty to?

3 A: Right.

4 Q: Okay. But there was a series of plea offers before he
5 accepted that final plea; correct?

6 A: Right.

7 Q: Okay.

8 A: Okay. Let me find it. He had an offer for 15 years to
9 plead to the attempted murder on this case that he actually
10 did plead to, and he had one count of armed robbery that he
11 would plead to on the other case. He came to court. He said
12 he did not want to take that offer, that he wanted to hire a
13 private attorney. That in turn then made the prosecutor very
14 upset and so they jerked that offer and came back saying that
15 they weren't going to -- they weren't even sure that they
16 were going to be giving any offers at that point because it
17 was Jeperfinger and he gets mad and he takes offers off the
18 table.

19 So at that point, I wrote Mr. Davis on May the 5th and
20 told him the prosecutor's offer of a negotiated 15 years
21 concurrent for a plea to armed robbery and attempted murder
22 has now been withdrawn after your turning it down on April
23 the 9th. The solicitor was able to get in touch with and
24 interview Ettelle Bland on Friday, April the 11th. He then
25 informed me that he would not be able to make any offer on

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1 your case and that he plans to try your case in the June
2 term.

3 As such, you now face 10 years to 30 years, violent, no
4 suspended sentence, no parole, most serious on each of the
5 two armed robbery charges, zero to 30 years on each of the
6 two attempted murder charges, which violent and most serious,
7 no parole, no probation, no suspended sentence, 15 to life on
8 each of the two burglary first charges, which are violent and
9 most serious and no parole, and zero to 5 years on each of
10 the two possessions of a weapon during a crime of violence.
11 In sum, you face a possible sentence of life plus 130 years
12 if you're convicted of all of the charges and the judge runs
13 all of the counts consecutively.

14 Since that appearance in court, I have talked with your
15 mother and she seems to suggest that you did not wish to go
16 to trial but did want to plead guilty. If that is, in fact,
17 the case, I need you to let me know as soon as possible. I
18 do not know if I can get the solicitor to -- solicitor to
19 offer anything like the 15 years that was on the table for
20 only the two counts, but I may be able to get some offer and
21 possibly concurrent so that all the charges run together.

22 And as I said, that was May the 5th of 2014 and sent to
23 his -- Allendale Correctional, where he was.

24 Q: Okay. And did he respond to that letter saying --

25 A: He did.

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 Q: Okay.

2 A: He wrote me then on May the 13th saying that he had
3 gotten my letter. He told me he does not want to go to
4 trial. He just didn't want to talk in front of the other
5 inmates. He was trying to ask about a motion, but still
6 didn't mean for that to be led into a trial conversation with
7 that.

8 He said something again about hiring a private lawyer or
9 getting his family to do that. He thought the 15 years was
10 throwing his life away. And again, he went back to he just
11 didn't want to talk in front of the other inmates.

12 Q: Okay.

13 A: And so at that point, I said, well, so from here trial
14 or plea, and he said I don't -- he doesn't want a trial. I
15 will see what kind of -- and I told him I would see what kind
16 of offer, if any, I can get. His brothers got 10. So it's
17 not going to be that when you've shot someone four times in
18 the face and now Ettelle Bland has cooperated. So that's why
19 it's no offer currently, but I'll see about getting another
20 offer.

21 And I turned around and left a voicemail for Jepertinger
22 at 11:01 a.m. asking for an offer and saying that there had
23 been a miscommunication, basically, that had led to the
24 problems with -- with what had happened at court.

25 Q: Okay.

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1 A: Jepertinger came to see me in my office on May the 20th,
2 and he said at that point he could do attempted murder and
3 armed robbery and just leave it open and he would drop all
4 the other counts. I asked for 20 years. He said he would
5 talk to the victim. He said that he would have to see if she
6 was okay with that. She now lives out of state. But he
7 wasn't sure because she had been shot four times.

8 So I then wrote him again on May the 20th, and it's
9 basically just that conversation, but I did warn him. He
10 would agree to this as negotiated so that the judge could not
11 sentence you to anything more than 25 years, but he also
12 cannot go any lower than that. Mr. Jepertinger said he is
13 not going to do it as a recommendation. So it's 25 years if
14 you want that offer.

15 He also warned that he's not going to take kindly to any
16 waffling on doing the plea, meaning if you say you're going
17 to do it but then change your mind, I do believe he'll push
18 for consecutive time. And I do not tell you that to pressure
19 you but more as a warning because he has a temper and when he
20 gets upset about a case, he pushes for harsher penalties.

21 I know you wanted to talk with him and see about getting
22 a lower sentence, but after working with him for 11 years and
23 knowing him the way I do, he's not going to go lower than the
24 25 that he's offered with the victim's consent, and I really
25 had to push him to consider doing any offer. Please let me

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 know as soon as possible if you will accept this offer, as he
2 is looking at your case for a June trial.

3 So on May the 27th, I got a phone call from Mr. Davis
4 that he had gotten my letter, saying that he didn't
5 understand it, and I told him that, you know, what wasn't
6 there to get because at this point it was 25 years.

7 Q: Okay. Negotiated --

8 A: Yes.

9 Q: -- 25 years? Okay.

10 A: And again, he was upset, saying that that would be
11 throwing his life away, and I told him that the problem was
12 that the victim would be testifying. And that if he had shot
13 Archie, which was his OG and the person that, you know,
14 Ettelle was supposed to be turning on, then it might be a
15 different story, but whenever he shot this woman who's not
16 part of all of this, that that made it a different kind of
17 case.

18 Q: Okay. And so then at what point were you able to -- to
19 get the offer of just a cap of 25?

20 A: On June the 5th.

21 Q: Okay.

22 A: Actually, June the 4th, but I wrote Mr. Davis on June the
23 5th and I told him then that I met again with Mr. Jepertinger
24 yesterday. Tyrone Porter, the investigator on your case, was
25 also present. So this investigator that he had wanted me to

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1 talk to was present and part of this negotiation in going
2 over any of the facts that were still left out there or any
3 questions about this case.

4 I discussed with both of them your denial of ever having
5 entered the house or robbed Mrs. Bland. In reviewing the
6 pictures and discussing where the bullet fragments and holes
7 were in relation to the back door, it might be possible that
8 you were standing on the landing at the back entrance stairs
9 when you fired the gun.

10 Based upon that, I asked again of Mr. Jepertinger to
11 consider a lesser sentence, and he told me that he could not
12 offer the negotiated 15, but what he could do was offer a 25-
13 year cap to one count of attempted murder instead of a
14 negotiated 25 years, and all of the rest of the other charges
15 on this case, as well as the charges on the other case, would
16 be dismissed.

17 Q: Okay. So -- and that is the offer that you said you
18 wrote to Mr. Davis on June 5th?

19 A: Right.

20 Q: And then he -- that's the offer that he ultimately
21 accepted?

22 A: Right.

23 Q: Okay.

24 A: And I sent that one. I've got a note that I sent it to
25 Allendale and to Effingham because I expected him to be in

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 Effingham that next day. And so that was on that Thursday.

2 I actually went to the jail on that Friday, on June the 6th,
3 and met with Mr. Davis.

4 Q: Okay. And the purpose of that meeting was?

5 A: Was to let him -- in case that letter somehow had not
6 gotten to him either at Allendale -- obviously, I had just
7 mailed it the next -- the day previously. I didn't expect it
8 to have gotten to him there, but in case he didn't get it at
9 Effingham, then to go ahead so he could have all that
10 information and, if not, then to allow us a full nine or so
11 days more before he -- before his case started.

12 Q: Okay. So the -- the investigator that was referenced,
13 Mr. Porter, that was the person that Mr. Davis was wanting
14 you to contact to see about dropping the other -- the charges
15 that he contested; is that right?

16 A: On the case with Ettelle Bland, yes.

17 Q: Okay. And -- and that investigator was present and
18 participated in the negotiation of the plea offer that Mr.
19 Davis ultimately accepted?

20 A: Correct.

21 Q: And that plea offer included dropping the charges that
22 he wanted -- that Mr. Davis wanted dropped?

23 A: Yes.

24 Q: Okay. In addition to the entire second -- or I guess it
25 would be technically the first indictment?

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 A: Right.

2 Q: Okay. And when you met in person with Mr. Davis on June
3 6th, what did he say about that -- about the offer?

4 A: That he would accept it.

5 Q: Okay. And then ultimately, the plea agreement was
6 entered on the following Monday?

7 A: Correct.

8 Q: But if he had chosen not to accept it, trial would not
9 have started on that Monday?

10 A: It would have started a week later. It would have been
11 on June the 16th.

12 Q: Okay. In terms of an investigation, other than Mr.
13 Porter, was there anybody that he asked you to investigate or
14 contact as a witness or defense?

15 A: Not really. Because he had given not only the first
16 statement. At first, he acted like he didn't -- he didn't
17 know anything whenever he was first contacted by law
18 enforcement, but again, he was being first contacted by a
19 different law enforcement agency. He had already given up
20 his two brothers on that, robbing the drug dealer.

21 Then he got picked up or they added these charges to it
22 and while he didn't know anything at first, then he met with
23 law enforcement and gave them a full statement and then
24 actually met with other members of law enforcement, the FBI.
25 ATF I think even wanted -- was at least looking at talking

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 with him at one point.

2 He wanted me to contact Florence Police Department about
3 some other cases and was willing to testify on another murder
4 that was out there and had been -- had actually met with the
5 solicitor as well on that case. So I mean he asked me to
6 contact multiple members of law enforcement that I contacted
7 on his behalf to try and mitigate everything for him here.

8 Q: Okay. And in terms of your preparation for trial, if he
9 had turned down this offer that was given in June, were you
10 -- were you preparing the case for trial at that time or what
11 was --

12 A: He had literally never told me that he wanted to go to
13 trial --

14 Q: Okay.

15 A: -- except for whenever he walked out on the offer, and
16 that's the reason why I sent that letter in May saying if
17 this is what you want, then you need to tell me that this is
18 what you want, but it came back that, no, he did not want to
19 go to trial. So at no point was he telling me to go to
20 trial. Everything he asked me to do was in mitigation for
21 his culpability in this case.

22 Q: Okay. If he had turned down that offer, would you have
23 been prepared to go to trial on June 16th?

24 A: Yes.

25 Q: Okay. In terms of preparing this case, was there any

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 kind of complicated forensic evidence or expert's testimony
2 or anything like that to get prepared?

3 A: No.

4 Q: Okay. And you were aware during the plea negotiations
5 of who the witness-- potential witnesses might be for the
6 State?

7 A: Yes. Because Ms. Bland was cooperating with law
8 enforcement at that point. She actually came to not only his
9 but every other person's plea that was involved here.

10 Q: Okay.

11 A: Archie Lee. She came to every other plea that was in --
12 that was his, as well as what was involved here. So they had
13 full cooperation from the victim and her friend, who had
14 actually been the one who ordered the hit or who had gotten
15 the hit ordered on her, but she never believed that story.

16 Q: Okay.

17 A: She never believed that her husband, as it were,
18 actually tried to get her killed.

19 Q: Okay. And in terms of a defense on these charges, did
20 you see any defense to the attempted murder that Mr. Davis
21 ultimately pleaded guilty to?

22 A: The only thing that he had said was that basically he
23 had done it out of duress, that he had been ordered to do the
24 hit or something would be happening to him. And because of
25 the gang structure, that would be something, but the problem

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 with that also is you can't really get that kind -- you are
2 not going to have a gang member come into court and admit
3 that, yeah, if he hadn't killed her, then I would have killed
4 him.

5 Q: Okay. And he -- so but he still never denied that he
6 was the shooter or that he shot Ms. Bland?

7 A: No.

8 Q: Okay.

9 A: He always admitted that he had shot her four times.

10 Q: Okay.

11 A: He was one of two people that actually went up to the
12 house. The other two stayed in the car.

13 Q: Okay. And did you discuss all of this with him, the
14 potential defenses that he might have, the pros and cons of
15 those defenses?

16 A: Yes.

17 Q: Okay. Whose decision was it to accept this guilty plea
18 offer?

19 A: His.

20 Q: Okay.

21 A: And I did an affidavit of the defendant for a guilty
22 plea as well, and he signed that.

23 Q: Okay. Do you have that in your file?

24 A: I do. It was signed by him and dated June the 9th of
25 2014.

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 Q: Okay.

2 MS. MCCALLISTER: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes.

5 MS. MCCALLISTER: Thank you.

6 BY MS. MCCALLISTER:

7 Q: And you signed it as the witness; is that correct?

8 A: Yes.

9 Q: Is that your signature?

10 A: It is.

11 Q: And did you -- you -- did you fill this out?

12 A: I did.

13 Q: Okay.

14 A: I ask my clients the questions as I'm filling it out.

15 Q: Okay.

16 A: And mark the appropriate answers as they tell them to
17 me.

18 Q: Okay. And then you have him sign it at the -- at the
19 end?

20 A: Yes.

21 Q: And you witnessed it?

22 A: Right.

23 Q: Okay.

24 MS. MCCALLISTER: Your Honor, the State would move to
25 admit the guilty plea affidavit as State's Exhibit 1.

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 MR. WALLER: No objection, Your Honor.

2 THE COURT: It's into evidence.

3 (WHEREUPON, State's Exhibit Number 2, guilty plea

4 affidavit, was admitted into evidence.)

5 MS. MCCALLISTER: Thank you.

6 THE COURT: Is that 1 or 2?

7 THE COURT REPORTER: 2.

8 THE COURT: 2.

9 MS. MCCALLISTER: Oh, I'm sorry, 2. I did the letter,

10 didn't I?

11 THE COURT: See the way I can count. I've seen those a

12 time or two. I know exactly what it is.

13 BY MS. MCCALLISTER:

14 Q: And in the -- in the guilty plea affidavit that you

15 prepared with Mr. Davis, it -- what did it state

16 specifically?

17 A: That he was pleading guilty to attempted murder for a

18 cap of 25 years --

19 Q: Okay.

20 A: -- because he had shot Ettelle Bland four times.

21 Q: Okay.

22 MS. MCCALLISTER: I beg the Court's indulgence for just

23 a moment.

24 BY MS. MCCALLISTER:

25 Q: Okay. And then once Mr. Davis ultimately did go into

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 court and accept the guilty plea, in terms of arguing for a
2 sentence for him, do you recall what -- what you discussed
3 with him about what your argument might be in terms of the
4 sentence -- sentencing?

5 A: Yes. I mean I had talked with him about the fact. I
6 had even talked with law enforcement and they were okay with
7 a sentence in the 15- to 20-year range. So even though the
8 solicitor was not necessarily okay with making that
9 recommendation based on his victim, law enforcement was okay
10 with that.

11 I presented that to the judge. I talked with the fact
12 that -- to him about the fact that he had cooperated with law
13 enforcement and given multiple interviews and multiple pieces
14 of information on multiple cases, and that even I had talked
15 with his probation agent or his parole agent at the time,
16 Mrs. Anderson, and she had said nothing but good things about
17 him as well.

18 And so I was asking the judge to consider everything
19 that he had done to try and make up for the act because while
20 you could not make this woman whole again or not make her a
21 victim of a crime any longer, he had done a lot of things
22 that a person in his -- in his shoes would not have to do to
23 try and help make things better, even if it couldn't be on
24 this case, then on others.

25 Q: Okay. So you did -- did you feel that you had a fairly

KAREN PARROTT - DIRECT BY MS. MCCALLISTER

1 robust case in terms of, like, a mitigation or a sentencing
2 recommendation?

3 A: Yes. I mean particularly when I get law enforcement who
4 says that they are okay with the 15 to 20.

5 Q: Okay.

6 MS. MCCALLISTER: Your Honor, I think that's all the
7 questions I have.

8 THE COURT: Mr. Waller?

9 MR. WALLER: Just briefly, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WALLER:

12 Q: Ms. Parrott, you testified that your meeting with him on
13 the Friday was 10 days trial to prior to his trial being
14 scheduled?

15 A: Right.

16 Q: And that you would have been ready for trial at that
17 point, but as of the day of the meeting you had not finished
18 your preparation; is that right?

19 A: That's correct.

20 Q: Okay. What had you done to that point?

21 A: I had reviewed all of the evidence that had come in. I
22 had been in contact with the other members' attorneys about
23 what was going on with those cases. I had met with law
24 enforcement and gone over all of the evidence and had also
25 met with the solicitor and gone over everything so that there

KAREN PARROTT - CROSS BY MR. WALLER

1 was -- I mean I had no further questions for the investigator
2 on this case. They weren't calling the other case, but they
3 were -- the only one that they were going to call was going
4 to be this case with Ms. Bland as the victim.

5 Q: Okay. You testified that Mr. Davis had never expressed
6 a desire to go to trial to you?

7 A: Correct.

8 Q: Okay. He had, however, rejected multiple offers at that
9 point; is that right?

10 A: Yes. He had rejected the 15 -- well, he had rejected
11 the 15-year offer and then I sent him the other offers as
12 they happened. And he was upset about the fact that it was
13 going to be so much of his life that was gone and he wanted
14 the 15 back, but I couldn't get it back.

15 Q: Okay. So he had rejected the 15-year and a negotiated
16 25?

17 A: Correct.

18 Q: Okay. The 15-year offer was an offer of attempted
19 murder on the case that he ultimately pled and then an armed
20 robbery charge you said to the other case?

21 A: Correct.

22 Q: Was that made clear? Did he understand that it was one
23 from each case?

24 A: Yes. I've got the plea sheets in front of me that are
25 signed by Mr. Jepertinger and by me.

KAREN PARROTT - CROSS BY MR. WALLER

1 Q: Okay.

2 MR. WALLER: I beg the Court's indulgence for one
3 second.

4 THE COURT: Yes.

5 MR. WALLER: Nothing further.

6 Thank you, Ms. Parrott.

7 THE COURT: You may step down.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Anything further from the State?

10 MS. MCCALLISTER: No, Your Honor.

11 THE COURT: All right. Mr. Waller, you're recognized.

12 MR. WALLER: Thank you, Your Honor. I would just ask
13 that you consider the testimony and consider the application
14 or the amendments that were filed. We'll stand on those
15 amendments. I think they were pretty detailed.

16 THE COURT: Very good. All right.

17 Ms. McCallister?

18 MS. MCCALLISTER: Your Honor, I'll just -- I would ask
19 that you review the transcript. I think the plea colloquy
20 was very thorough and indicates that this was entered into
21 freely and voluntarily, that he understood which charges he
22 was pleading to and how much time he could possibly receive.

23 FINDINGS AND RULING

24 THE COURT: Very good. I've had an opportunity to
25 review the plea transcript and I do -- and I've obviously

1 paid attention to the testimony that's transpired here today.

2 I do indeed find that Ms. Parrott adequately
3 investigated this case and she followed the directions of her
4 client in trying to focus her efforts on getting a plea,
5 which was his directive to her to work out a plea.

6 That he didn't want a trial, that he admitted his
7 involvement, but he wanted to focus her time -- wanted Ms.
8 Parrott to focus her time on mitigation and working out a
9 plea. She did all of those things, and it did not work out
10 the way the defendant wanted it to -- wanted it to.

11 The plea transcript makes it clear that he understood
12 what his rights were. He understood what the charges were.

13 The plea checklist talks about the waiver of all of his
14 important constitutional rights and what his potential
15 exposure was.

16 I do indeed find that she was prepared for trial. She
17 had gone over the discovery. She had spoken with law
18 enforcement. She had spoken with the co-defendants and with
19 the co-defendants' attorneys.

20 She had her strategy together. She had 10 days left to
21 prepare in the event he didn't take these -- take this plea
22 arrangement and, as a matter of fact, regardless of what type
23 case it is or the seriousness of it or the length of it,
24 typically most of the preparation is done days before trial
25 anyway. I mean it's all you do.

1 I think that she was adequately prepared for trial. I
2 do feel that she advised him of the charges and the elements
3 and potential defenses, and I think it's important for the
4 order to reflect the plea colloquy and the checklist.

5 And I'm going to deny the -- deny the application on
6 those grounds.

7 And, Ms. McCallister, I'm going to ask that you prepare
8 that order, send it to Mr. Waller, and communicate with him
9 before you send it to me to make sure that he doesn't have
10 any objections or questions with regard to the content of the
11 order.

12 Thank you very much. Good luck. Good luck to you --

13 MS. MCCALLISTER: Thank you, Your Honor.

14 MR. WALLER: Thank you, Your Honor.

15 THE COURT: -- Mr. Davis.

16 (WHEREUPON, the proceedings ended at 3:24 p.m.)

17

18 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Charles J. Davis, #326311,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-21-0578

ORDER OF DISMISSAL

2018 OCT 18 AM 11:13
DORIS FOLLOS O'BRYEN
C.C.P. & G.S.
FLORENCE COUNTY, SC

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed by Charles J. Davis (Applicant) on February 23, 2015. Respondent made its Return and Motion for a More Definite Statement on December 19, 2017. An evidentiary hearing into the matter was convened on January 31, 2018, at the Florence County Courthouse before the undersigned. Jonathan Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Karen Parrott, Applicant's plea counsel, testified on behalf of Respondent. This Court also had before it a copy of the records of the Florence County Clerk of Court, Applicant's appellate records, records from the South Carolina Department of Corrections, the application, Respondent's Return, and the plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In October 2013, the Florence County Grand Jury indicted Applicant in two separate, multi-count indictments for armed robbery, first-degree burglary, attempted murder, and possession of a weapon during commission of a

violent crime (2013-GS-21-1091, -1345). The charges arose from two separate, unrelated incidents. In case -1091, Applicant and several codefendants attempted to rob a local drug dealer. The second case was a gang-related hit on a witness who was preparing to testify against a ranking gang member. Karen Parrot, Esquire, (Counsel) represented Applicant. Deputy Solicitor John C. Jcperntinger, Esquire, prosecuted the case on behalf of the State. On June 9, 2014, Applicant pleaded guilty to attempted murder from indictment -1345 before the Honorable William H. Seals, Jr. Pursuant to the State's recommendation of a cap of twenty-five years, Judge Seals sentenced Applicant to imprisonment for twenty-four years. The remaining charges from both indictments were dismissed in return for his guilty plea.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide sufficient explanation as required by Rule 203, SCACR, by order filed December 17, 2014. The remittitur was returned to the circuit court on January 6, 2015.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea, in that:
 - a. "Guilty plea was misleading by counsel and neither voluntarily made."
 - b. "Defective Affidavit"

Applicant, through Counsel notified Respondent of additional allegations via email on January 23, 2018, in response to the State's Motion for a More Definite Statement. Applicant alleged:

1. As to representation rendered by Karen Parrott, Esquire:

- a. Counsel was ineffective for failing to conduct a complete investigation into the facts and circumstances surrounding Applicant's case, rendering Applicant's plea involuntary.
- b. Counsel was ineffective for failing to adequately prepare for trial, leading Applicant to involuntarily plead guilty just before trial as he was in fear of proceeding to trial with unprepared counsel.
- c. Counsel was ineffective for erroneously advising Applicant to plead guilty to charges that he could not have been convicted of at trial.
- d. Counsel was ineffective for failing to discuss potential defenses with Applicant.

At the evidentiary hearing, counsel for Applicant informed the Court he intended to proceed only on the amended allegations. Therefore, the extent the allegations in Applicant's original application raise separate issues not alleged in his more detailed statement submitted to Respondent on January 23, 2018, those allegations are hereby deemed abandoned and are denied and dismissed.

SUMMARY OF TESTIMONY

Applicant testified he was arrested on two distinct sets of charges, which were unrelated to each other. Applicant testified he was in jail for several months before he learned Counsel had been appointed to represent him in both cases. According to Applicant, he informed Counsel the statements set forth in the arrest warrant for the second set of charges were not true and directed Counsel to speak to Investigator Porter about it. Applicant testified he told Counsel he had not entered the residence or taken anything from it during the second attempted murder, but Counsel never indicated this could be a potential defense. Applicant testified Counsel never discussed the State's evidence with him and would only say he needed to plead guilty.

Applicant further testified Counsel conveyed a fifteen year offer to him, but he rejected it because he did not want to plead guilty to a crime – the armed robbery – he alleged had never occurred. Applicant testified Counsel visited him the Friday before trial was scheduled to begin,

and they had never discussed trial before that time. According to Applicant, Counsel advised him he had no chance of winning and could receive a life sentence plus 130 years. Applicant testified Counsel did not explain trial procedures to him, but instead presented him the plea offer of a cap of twenty-five years, which Applicant agreed to accept. Applicant testified he accepted the offer because he had lost faith he could win at trial, and Counsel told him she had many reasons that would convince the judge to sentence him to something less than twenty-five years. Applicant further testified he planned on going to trial and wanted to contest the burglary and armed robbery charges.

Applicant also testified Counsel did not have full discovery, even the Friday before trial began. However, Applicant acknowledged he did not give Counsel any witnesses or leads to investigate other than directing her to contact Investigator Porter about whether he had actually entered the home during the second attempted murder. On cross-examination, Applicant acknowledged he ultimately pleaded guilty only to the attempted murder charge, to which he admitted his involvement and cooperated with law enforcement. Applicant also acknowledged he told the plea judge he was satisfied with Counsel's representation and further sent her a letter after the plea thanking her for doing the best she could for him.

Counsel testified she was appointed to Applicant's case on June 12, 2013, and she sent an investigator to interview Applicant on June 19th. Counsel further testified the attempted murder to which Applicant ultimately pleaded guilty was a hit on a witness who was going testify against a gang member. According to Counsel, Applicant admitted his involvement in this shooting to law enforcement and to the investigator sent from her office. Counsel further testified she first met personally with Applicant on July 19th, at which time she had not received discovery. Counsel

testified she sent discovery to Applicant on September 13th and October 1st, as the two cases were being investigated by different entities, so she did not receive everything at once. Counsel testified she sent Applicant everything she received except CDs containing statements because he was not able to play them in jail. Counsel further testified she met with Applicant when he was transported to court for various hearings in October 2013, January 2014, and March 2014, and at the jail to prepare for trial on June 6, 2014. Counsel testified Applicant's trial was scheduled to start on June 16, 2014.

Counsel explained the first offer from the State was for a negotiated sentence of fifteen years, concurrent, on one count of attempted murder and one count of armed robbery. According to Counsel, Applicant rejected the offer and informed Counsel he wanted to retain private counsel. Counsel testified the State withdrew the offer after Applicant rejected it, so she wrote Applicant a letter on May 5, 2014, laying out the charges against him, the possible sentences, and urging him to let her know if she should continue negotiations. Counsel testified Applicant responded to that letter saying he did not want to go to trial, but he felt fifteen years was "throwing his life away," and he directed her to try to obtain another plea offer.

Counsel further testified, after receiving Applicant's response, she contacted the solicitor on May 20 to request another offer. Counsel testified she asked for twenty years, but after speaking with the victim, the lowest the solicitor would agree to offer was twenty-five years as a negotiated sentence. Counsel testified she wrote another letter to Applicant the same day detailing her conversation with the solicitor and informing him the case would be set for trial in June if Applicant did not want to accept the offer. According to Counsel, in between the time of the first and second offers, the victim began cooperating with law enforcement and agreed to testify at trial

and was pushing for a significant sentence. Counsel testified she was able to convince the State to modify the offer to a cap of twenty-five years with dismissal of all charges except the attempted murder on June 4th. Counsel testified Investigator Porter was part of that final negotiation in addition to the solicitor, and they discussed the potential defense that Applicant had not made entry into the home. Counsel testified she wrote Applicant a letter explaining that offer on June 5, but she then decided to meet with Applicant in person on June 6 to convey the offer because she was concerned her letter would not be received timely.

Counsel further testified the attempted murder to which Applicant ultimately pleaded guilty was a hit on a witness who was going to testify against a gang member in a drug case. According to Counsel, Applicant admitted his involvement in this case to law enforcement and to the investigator sent from her office. Counsel testified Applicant did not give her anything to investigate other than talking to Investigator Porter. Counsel also testified Applicant indicated his willingness to cooperate and testify in other cases, and she contacted multiple members of law enforcement in order to prepare for mitigation. Counsel testified her defense to the attempted murder charge would have been duress as it was ordered by another gang member who would not have testified at trial. She testified Applicant always admitted to the shooting, and they discussed the pros and cons of using this defense. According to Counsel, she felt this was a robust case in terms of potential for mitigation because Applicant cooperated with law enforcement on multiple cases, and the officers were comfortable with a sentence of fifteen to twenty years, all of which was presented to the judge at the plea hearing.

Counsel testified Applicant never told her he wanted to go to trial, although she would have been prepared for one. According to Counsel, this was not a difficult case to prepare as there were

no forensics or expert witness, and she was aware of all potential witnesses for the state. Counsel testified it was solely Applicant's decision to plead guilty, and she filled out the plea checklist with him explaining the terms of the plea, which Applicant then signed on June 9, 2014.

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 PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements 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. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985).

This Court finds Applicant has failed to prove Counsel's performance was deficient in any way. Counsel and her investigator investigated to the extent Applicant directed and spoke with the law enforcement officer Applicant requested she contact. Counsel met with Applicant numerous times, reviewed discovery with him, and discussed potential defenses to these charges. This Court finds credible Counsel's testimony she discussed the possibility of a defense to the second armed robbery/burglary charges based on whether or not Applicant actually entered the home, and Counsel in fact used this argument during plea negotiations to obtain a more favorable offer for Applicant. Applicant directed Counsel to work out a plea agreement and to focus on mitigation, which Counsel did.

This Court also finds credible Counsel's explanation as to the series of offers made by the State and the circumstances surrounding each offer. This Court finds Applicant rejected the initial offer of fifteen years because he thought the sentence was too harsh and because he planned to hire

a private attorney, and the State withdrew that offer after he rejected it. However, as Counsel explained, the victim of the attempted murder thereafter began cooperating with law enforcement, and the Solicitor's Office was constrained by the victim's wishes when making further offers. Counsel testified she next conveyed a negotiated plea of twenty-five years to the armed robbery and the attempted murder, which Applicant rejected. Finally, Counsel testified she negotiated a plea only to the attempted murder charge with a cap of twenty-five years in order to allow her to make arguments in mitigation. This Court finds credible Counsel's testimony the investigator Applicant directed her to speak with was present during this negotiation, and she raised the issue of whether there was evidence in the armed robbery case to show Applicant had entered the home. Importantly, it was after this final negotiation with Porter present that the solicitor agreed to drop those charges.

Applicant testified he accepted this last offer only because he had given up hope he could succeed at trial with Counsel as his attorney, but this Court finds this testimony is not credible. Rather, this Court finds Applicant chose to plead guilty in order to avoid possibly being sentenced to life without parole plus 130 years and because the victim's cooperation with law enforcement changed the posture of the case. This Court finds applicant understood his rights and options, the charges against him, and his potential exposure. The Court further finds Counsel had plenty of time to prepare for trial had Applicant refused the plea offer, and she had reviewed discovery and spoken with law enforcement as Applicant directed.

Finally, this Court has also reviewed the transcript and finds the plea colloquy is determinative as to all of Applicant's issues, and the decision to plead guilty was freely and voluntarily made, as evidenced by the pre-plea checklist and affidavit Applicant executed with Counsel and the plea colloquy itself. Although Counsel's mitigation presentation did not work out

the way Applicant hoped, Applicant testified he wanted the armed robbery/burglary charges in the second case dismissed, which Counsel ultimately accomplished, and he pleaded guilty only to the attempted murder. During the guilty plea, Applicant testified he understood the agreement for the State to drop all the remaining charges and the recommendation of a cap of twenty-five years. See Tr. pp. 5-6. The plea judge also explained the possible sentencing range for each charge and Applicant's total possible sentence, and Applicant indicated he understood. See Tr. pp. 5-6. Applicant testified during the plea he was satisfied with Counsel's services and agreed she had done everything he asked of her. See Tr. pp. 6-7. 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)). This Court finds Applicant failed to present any such reason in this case.

Accordingly, these allegations are denied and dismissed.

CONCLUSION

For all the foregoing reasons, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

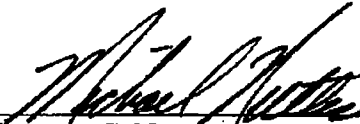
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-

conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.


MICHAEL G. NETTLES
Presiding Circuit Court Judge
Twelfth Judicial Circuit

Oct 18, 2018

FILED

2018 OCT 18 AM 11:14

BORIS POULOS CLERK
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR

ARMED ROBBERY,
BURGLARY FIRST DEGREE,
ATTEMPTED MURDER
AND
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on OCTOBER 3, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

That CHARLES JEFFERY DAVIS did in Florence County on or about April 21, 2013, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Etell Romaine Bland from or in the immediate presence of Etell Romaine Bland with intent to deprive Etell Romaine Bland of possession of cash by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That CHARLES JEFFERY DAVIS did in Florence County on or about April 21, 2013, enter the dwelling of Etell Romaine Bland located at 2242 Snookim Lane, Lot #4 in Florence, S.C, without consent and with the intent to commit a crime therein and when he entered he was either armed with a deadly weapon, or caused physical injury to Etell Romaine Bland, who was not a participant in the crime or the entry happened in the night time, in violation of Section 16-11-0311, Code of Laws of South Carolina, 1976, as amended.

COUNT THREE - ATTEMPTED MURDER

That CHARLES JEFFERY DAVIS did in Florence County, on or about April 21, 2013, with malice aforethought shoot Etell Romaine Bland multiple times with the intent to kill said Etell Romaine Bland, causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ARMED ROBBERY, BURGLARY FIRST DEGREE, ATTEMPTED MURDER AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, WITH THE AFORESAID NAMES(S) OF CHARLES JEFFERY DAVIS SHOWN THEREON:

COUNT FOUR- POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

That CHARLES JEFFERY DAVIS did in Florence County, on or about April 21, 2013, possess a handgun, during the commission or attempted commission of a violent crime to wit: Burglary First Degree or Armed Robbery or Attempted Murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Tyrone Porter Florence County Sheriff

DOCKET NO. 2013-GS-21-01345

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

OCTOBER TERM 2013

THE STATE

vs.

CHARLES JEFFERY DAVIS

John C. Jepertinger

ARREST WARRANT NUMBER

2013A2110200768 2013A2110200769

2013A2110200770 2013A2110200771

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 12/3/13

VERDICT

Indictment for

ARMED ROBBERY,
BURGLARY FIRST DEGREE,
ATTEMPTED MURDER

AND

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

Foreperson of Petit Jury

Date:

FILED

2013 OCT -3 AM 11:11

CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

ATTEMPTED MURDER
(TWO COUNTS)

AND

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on JANUARY 8, 2015 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE-ATTEMPTED MURDER

That DONTELLE DEMETRIUS CANNON did in Florence County, on or about October 2, 2014, with malice aforethought attempt to murder Darwin Ham, Sr. by shooting him repeatedly with a handgun, causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

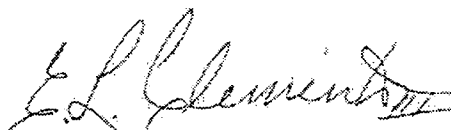
COUNT TWO-ATTEMPTED MURDER

That DONTELLE DEMETRIUS CANNON did in Florence County, on or about October 2, 2014, with malice aforethought attempt to murder Jimmy King, by shooting him with a handgun, causing great bodily injury and substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

**COUNT THREE - POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

That DONTELLE DEMETRIUS CANNON did in Florence County, on or about October 2, 2014; possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime to wit: Attempted Murder; in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Ashley Anderson Florence Police Department

DOCKET NO. 2015-GS-21-00048

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

THE STATE

vs.

DONTELLE DEMETRIUS CANNON

John C Jeperfinger

ARREST WARRANT NUMBER

2014A2120201425 2014A2120201426

2014A2120201427

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 1-8-15

VERDICT

Indictment for

ATTEMPTED MURDER

(TWO COUNTS)

AND

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

Foreperson of Petit Jury

Date