

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

\_\_\_\_\_

DEANDRE TYSHUN FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001560

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

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1 STATE OF SOUTH CAROLINA ) IN THE COURT OF  
 ) GENERAL SESSIONS  
 2 ) OF THE SEVENTH  
 COUNTY OF SPARTANBURG ) JUDICIAL CIRCUIT  
 3 )  
 )  
 4 )  
 STATE OF SOUTH CAROLINA )  
 5 )  
 Plaintiff, ) TRANSCRIPT OF RECORD  
 6 ) 2016-GS-42-04101  
 vs. )  
 7 )  
 DEANDRE TYSHUN FOSTER, )  
 8 )  
 Defendant. )  
 9 )

---

10

11 April 26, 2017  
 12 Spartanburg, South Carolina

13

14 B E F O R E:

15 HONORABLE J. MARK HAYES, II, Judge.

16

17 A P P E A R A N C E S

18 SPENSER SMITH, ASSISTANT SOLICITOR  
 For The State

19

RICHARD WARDER, ESQUIRE  
 For Defendant

20

21

22

23

24 Julie A. Ashbrook,  
 Circuit Court Reporter  
 Seventh Judicial Circuit

25

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EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED



1 THE DEFENDANT: Yes, sir.

2 THE COURT: And, sir, it is your intent to enter  
3 a plea to the charges that were just announced?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How old are you, sir?

6 THE WITNESS: I'm 21 years old.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: I had went to the 11th grade, but  
9 I just recently got my GED while I was incarcerated.

10 THE COURT: Are you married, single, divorced or  
11 widowed?

12 THE DEFENDANT: No. I am, you know, in a  
13 relationship.

14 MR. WARDER: She's in a -- he's in a committed  
15 relationship.

16 THE DEFENDANT: I'm in a relationship.

17 THE COURT: Do you have children?

18 THE DEFENDANT: Yes, sir. I got a one-year-old  
19 daughter.

20 THE COURT: And prior to being arrested did you  
21 have a job outside the home?

22 THE DEFENDANT: Yes, sir, I did.

23 THE COURT: What were you doing?

24 THE DEFENDANT: I was working at Taco Bell at  
25 first and then Popeyes.

1 THE COURT: And where?

2 THE DEFENDANT: Popeyes.

3 THE COURT: Military?

4 THE DEFENDANT: No, sir.

5 THE COURT: How long have you been in jail on  
6 these charges?

7 THE DEFENDANT: A year, going on -- it'll be 13  
8 months on the first.

9 THE COURT: About 395 days?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Within the last 24 hours have you  
12 consumed any kind of a substance that is adversely or  
13 negatively affecting your ability to understand what  
14 we're doing today?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you -- in the past have you ever  
17 received any kind of a substance abuse treatment for a  
18 drug or alcohol problem?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you satisfied with the work that  
21 your lawyer has done for you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you feel like you've had enough  
24 time to talk to him about the legal elements of the  
25 charges that you're pleading to, the facts behind the

1 case and any possible defenses you're gonna have?

2 THE DEFENDANT: Yes, sir, I have.

3 THE COURT: Has anybody perhaps come to you and  
4 threatened you in any way or maybe made you any promises  
5 in order to get you to make the decision to enter these  
6 pleas?

7 THE DEFENDANT: No, sir.

8 THE COURT: Am I correct to conclude that your  
9 decision to enter the plea that it is a free and  
10 voluntary decision on your part?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Sir, I need for you to understand  
13 that under the law you are presumed innocent of these  
14 charges and you do have a right to have a jury trial on  
15 these charges. At any jury trial that would take place  
16 it would be the State that has the burden of proof, and  
17 the State would have to convince all 12 members of a  
18 jury that you are, in fact, guilty beyond a reasonable  
19 doubt.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that you have a  
22 right to that jury trial?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you wish to have a jury trial  
25 on either of these charges?

1 THE DEFENDANT: No, sir.

2 THE COURT: Sir, I need for you to understand  
3 that there are other very important constitutional  
4 rights that you are entitled to, but that you have to  
5 give up in order to enter these pleas.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You have to give up your right to  
8 confront or cross-examine the State's witnesses. You  
9 also have to give up your right to present evidence  
10 which you or your lawyer might be able to establish a  
11 defense. And you have to give up your right of  
12 subpoena, as well as you have to give up your right to  
13 remain silent. Do you understand all those rights?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you wish to give up all those  
16 rights?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Mr. Foster, if you would,  
19 please listen to the Solicitor, he's gonna tell us the  
20 facts.

21 MR. SMITH: Your Honor, this incident happened on  
22 April 1st of 2016. Deputies responded to [REDACTED] Simuel  
23 Road in Spartanburg County in reference to a shooting.  
24 The victim stated he and his girlfriend had left her --  
25 his house on Valley Falls Road. Shortly after leaving

1 the house he noticed a car, a dark color car behind him.  
2 He then heard two or three gunshots and realized that  
3 the back window of his car had been shot out. His  
4 girlfriend's face was grazed by one of the bullets.

5 The deputy, fortunately enough, happened to be  
6 sitting on Lone Oak Road and Valley Falls Road when he  
7 heard automatic gun fire nearby. He saw a small sedan  
8 speeding away at a high rate of speed and attempted a  
9 traffic stop. A high-speed chase ensued.

10 During the chase he saw a firearm thrown out of  
11 the driver's side and there was also one thrown out of  
12 the passenger's side of the vehicle. The chase ended in  
13 Victoria Garden's Apartment. The backseat passenger,  
14 who plead earlier this week, Tysean Edmondson, jumped  
15 out of the back of the car. The driver and the  
16 passenger stayed in the car. The driver was identified  
17 as Douglas Jones, and the passenger was the defendant  
18 who's before you here today, Mr. DeAndre Foster.

19 The driver had an AR-15 round in his front  
20 pocket. Inside the car was found an extended magazine  
21 for a .40 caliber pistol, a loaded AR-15 magazine and  
22 another loaded pistol magazine. They retraced the  
23 chase. An AR-15 was found on the side of the road and  
24 then thrown out of the vehicle. Another pistol was  
25 recovered on the side of the road and a Milliken's

1 grounds crew brought in a second pistol the following  
2 day that they had found on their property while doing  
3 maintenance.

4 All three individuals came back with gunshot  
5 residue on them to varying degrees. This defendant did  
6 admit to having a gun on him. Mr. Edmondson claimed the  
7 .9 millimeter. I believe Mr. Foster had the .40-calibur  
8 pistol. Mr. Foster admitted prior to the GSR that he  
9 would bail, his story was that he had been shooting the  
10 guns with a relative earlier in the day, but he did not  
11 know when because he was on too much Xanax and didn't  
12 remember.

13 Information came in from various people. And  
14 during the course of the investigation this entire  
15 incident had arose over a car being keyed. Douglas  
16 Jones, the driver of the car, dated a girl who lived  
17 with a female victim in this case. At some point their  
18 living relationship went south and there was some  
19 dispute between these girls.

20 The girl's car -- Douglas Jones' girlfriend's car  
21 was keyed by somebody. It was believed that the victim  
22 had something to do with this, so this was retaliation  
23 for a car being keyed. Your Honor, I'd like to hand up  
24 some pictures. I don't know where the person went to  
25 show that the back window is shot out, but you can

1 see ---

2 MR. WARDER: I swore I gave it back.

3 MR. SMITH: Yeah, it doesn't matter. But, Your  
4 Honor, it's basically a miracle this wasn't a murder.  
5 The bullet actually grazed -- one bullet grazed her  
6 head. Another one went through her hair and kind of  
7 created like a bird's nest type thing.

8 Mr. Foster had the strongest indication that he  
9 had -- was maybe the shooter because of the amount of  
10 GSR on him. Also the fact that he wasn't the driver.  
11 He did speak with law enforcement. He was adamant that  
12 he wasn't the shooter and the shooter was the back  
13 passenger. He refused to name who the back passenger  
14 was, even though it was apparent to law enforcement.  
15 Really everybody in this case kind of just decided to  
16 say they didn't do it, but they didn't want to give any  
17 other information about what happened.

18 Your Honor, this is Investigator Mike Walsh from  
19 the sheriff's office. He would like to address the  
20 Court, as far as sentencing, if you want to accept the  
21 plea or not. But we would like to be heard on  
22 sentencing.

23 THE COURT: Mr. Foster, do you believe that as  
24 the Solicitor stated the facts to me that he is  
25 substantially correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And, sir, do you understand that on  
3 these charges that I am not bound by a recommendation  
4 made by the State and that on these charges I could  
5 sentence you up to 20 years each on these charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And, sir, do you understand that each  
8 of these charges that they are classified as both a  
9 violent and also as a serious offense under the law?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And, sir, you have been able to talk  
12 to your lawyer as to the consequences and ramifications  
13 of these offenses being classified as both violent and  
14 serious?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Understanding the possible sentences  
17 I could impose, as well as those two classifications and  
18 ramifications of those two classifications, you still  
19 desire to proceed with the plea?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: In regards to both of these charges  
22 of assault and battery of a high and aggravated nature,  
23 are you guilty of both of these charges?

24 THE DEFENDANT: Yes, sir, I am.

25 THE COURT: Have all of your answers to my

1 questions today and -- have all your answers been  
2 truthful?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Discovery has been shared with the  
5 defense?

6 MR. SMITH: It has, Your Honor.

7 THE COURT: Prior record?

8 MR. SMITH: He doesn't have one.

9 THE COURT: And did the -- before I hear from the  
10 officer, anything from the victim?

11 MR. SMITH: The victim just wanted us to  
12 prosecute this case, Your Honor. The only one that she  
13 -- Mr. Clay, the male that was in the vehicle, he  
14 doesn't know any of these people. He only knew them  
15 through the -- he had just started dating this girl.  
16 The female victim knew Douglas Jones. She doesn't  
17 really know Mr. Foster or Mr. Edmondson. I'm not sure  
18 why they got involved with this, what their relationship  
19 with Mr. Jones is or what organizations or I'm not sure  
20 why they're involved. But she doesn't know any better  
21 than Mr. Jones, but they all wanted the maximum sentence  
22 on this, Your Honor.

23 The solicitor's office is asking for the maximum  
24 in this, Your Honor. Tysean Edmondson plead earlier  
25 this week in front of Judge Verdin. He got 16 years.

1 As far as comparing culpability with this person,  
2 there's a little bit more evidence and it would make a  
3 little bit more sense for him to be the shooter.

4 THE COURT: For who?

5 MR. SMITH: For Mr. Foster to be the shooter.  
6 Given the GSR, Mr. Edmondson, the backseat passenger,  
7 only had one particle of it, where he has all three  
8 indicators. As far as -- another differentiation, Mr.  
9 Edmondson was out on bond for a pistol charge and then  
10 he did run from the car, where Mr. Foster stayed, but  
11 that's really -- and they both had no prior record, so  
12 there's not much differentiation between them. None of  
13 them cooperated with law enforcement to any meaningful  
14 degree.

15 THE COURT: All right, thank you. And, sir, I'm  
16 sure you are aware, but I do have to let you know we are  
17 making a recording of everything that happens here.  
18 Please speak up loud enough so that both the court  
19 reporter and I can hear you. If you'll just start by  
20 giving us your full name.

21 INVESTIGATOR WALSH: Sure. Michael Walsh. I'm  
22 an investigator with the violent crime unit of the  
23 Spartanburg County Sheriff's Office in Spartanburg,  
24 South Carolina. On behalf of my department I would  
25 concur with the Solicitor's recommendation on this,

1 requesting maximum penalties. And as I stated yesterday  
2 in the previous plea, Spartanburg has earned itself kind  
3 of a poor reputation for being a violent county and a  
4 violent place to live. The defendants involved in this  
5 case has done nothing to disprove that and done  
6 everything to help that notion. It's unfortunate.

7           However, we are very fortunate that this event  
8 did not end in a murder. It very easily could have.  
9 I've worked several murders up to today's date. This is  
10 a very lucky victim who sustained at least one gunshot  
11 to the head. There was also a driver in that vehicle  
12 who was also being actively shot at. God knows what  
13 could have happened if he was hit and crashed.

14           It was not too terribly late in the evening.  
15 There were other vehicles in the roadway. It could have  
16 ended much more tragically than somebody being  
17 discharged, you know, two days later out of the hospital  
18 with just a grazing wound to her head.

19           Also, with that being said, one of our deputies  
20 did sustain a substantial injury during the pursuit of  
21 the backseat passenger and required him to be out of  
22 work for several weeks. But, as I said, we are going to  
23 request the maximum penalties on this as I do believe  
24 they are dangerous people that we do not need on our  
25 streets at this time.

1 THE COURT: Thank you, sir.

2 INVESTIGATOR WALSH: Thank you.

3 THE COURT: Yes, sir.

4 MR. WARDER: Your Honor, may it please the Court.  
5 I'd like to start off by telling Your Honor that my  
6 client's mother, grandmother and his girlfriend and  
7 mother of his child is here today. My client has held  
8 jobs, three different jobs in fast food. He was  
9 accepting responsibility as a father. He now has a  
10 one-year-old child. He was really changed. His  
11 girlfriend had made a big difference in his life. He  
12 hadn't been going to church. His girlfriend is very  
13 religious. He began to go with her.

14 THE DEFENDANT: Yes, sir.

15 MR. WARDER: My client fortunately doesn't have a  
16 long bad drug history. Although there was some pills  
17 taken that day, he's never used crack cocaine or meth.  
18 He does have -- use some marijuana on a regular basis  
19 and very, very infrequently. I think all of that helped  
20 predict the probability that he can get completely away  
21 from drugs.

22 Your Honor, my client had played football when he  
23 was -- he started in high school. He changed and  
24 started running with people that were not so much into  
25 the sports. And after talking to my client, I sincerely

1 believe that these individuals alone wouldn't run. I  
2 know my client, if he was alone, wouldn't have ever got  
3 involved in that. And I don't know how friendship comes  
4 out where you do something you know is wrong, but my  
5 client did. He did something that he knew was wrong  
6 that day. And the consequences of that will obviously  
7 unfold.

8 My client has been in jail over a year. He  
9 certainly has had plenty of time to think about it. In  
10 fact, probably there wasn't a day that went by that he  
11 didn't at least contemplate how he got there and what  
12 his fait was in the future.

13 However, while he's in jail, his grandmother, his  
14 mother, and his fiance, his baby's mother, all had to  
15 contemplate the loss of him and how that would affect  
16 their lives and their relationship. I don't think  
17 there's any doubt that his mother and his grandmother  
18 will be there for him no matter what Your Honor does.  
19 They love him. They know he's got potential, and I  
20 think he does.

21 Obviously this is a severe case, and my client  
22 has got a chance to contemplate how much worse things  
23 could have turned out than what they did. You know,  
24 it's hard to imagine when you, when you get into trouble  
25 this serious how you can do it. And it's one of those

1 things when you contemplate, when you sit, when you  
2 really think about it, your heart stops. It's almost  
3 like really sit and contemplate. It makes your heart  
4 stop. It's almost like how did that happen, and it did  
5 happen.

6 But I would urge Your Honor to consider some sort  
7 of split that would have some kind of probation to  
8 follow whatever sentence because I think that he can  
9 change. And I think that if he got out when the  
10 sentence is done that probation would be a good  
11 indicator and it would help him.

12 You know in Federal Court we ask for that magical  
13 mythical sentence that's short enough to meet the needs  
14 of rehabilitation and the ministrations of judges, but  
15 not so long that punitive and is beyond that period of  
16 time. I would ask in this case, Your Honor, to find a  
17 sentence that is sufficient but not longer than we need.  
18 I would urge Your Honor to consider a sentence that's  
19 short.

20 I know the reasons and I understand the logic for  
21 asking for a severe sentence. And the reason is that  
22 the belief that he won't rehabilitate or he's not got  
23 the wherewithal to make a good life. And I think I  
24 represent a man who does and I urge you to be lenient.

25 THE COURT: Mr. Foster, do you agree with the

1 statements that were just made by your attorney?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Foster, is there anything else  
4 that you would like to say or want me to know or  
5 consider?

6 THE DEFENDANT: I would like to know -- I would  
7 really like to let you know that I'm sorry for  
8 everything that happened that went on. If I could take  
9 it back, I would. And if the defendants were here I  
10 would apologize to them and everything. But I just,  
11 like I say, I'm not a bad person. I'm not a menace.  
12 I'm not -- I never got in trouble. It's just something  
13 that I just got into that I wish I could take back but I  
14 can't. You know, I can only learn from it.

15 And I would just like to tell you that I got my  
16 GED while I was in school -- I mean, while I was in jail  
17 and everything. And I just, you know what I'm saying, I  
18 would like to apologize to my family and everything like  
19 that. You know what I'm saying?

20 I just hope that you can just, you know, give me  
21 a chance. And for, you know, kind of a way to go out  
22 with this debt and just give me a chance to prove  
23 myself, just, you know, to everybody. I'm not a bad  
24 person. All this is making me change. I'm not a bad  
25 person. And I'd just like to say that.

1 THE COURT: Thank you, Mr. Foster.

2 All right. I'll find that there is a substantial  
3 factual basis for the plea. On these cases, these will  
4 be concurrent sentencing, a like sentence under each.  
5 The sentence of the Court will be a 20-year sentence at  
6 the State Department of Corrections. He'll receive  
7 credit for the 395 days. Good luck to you, sir.

8 MR. SMITH: Thank you, Your Honor.

9 (Whereupon, hearing concluded at 3:29 p.m.)

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11

--- THIS ENDS REQUESTED TRANSCRIPT ---

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## 1 COURT REPORTER CERTIFICATE

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I, the undersigned Julie A. Ashbrook, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the General Sessions Court for Spartanburg County, South Carolina, on the 26th day of April, 2016.

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

*s/Julie A. Ashbrook.*  
Julie A. Ashbrook  
Circuit Court Reporter  
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of Spartanburg )  
 )  
DeAndre Tyshun Foster )  
372302 )  
 Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

2018CP4200612

v.

State of South Carolina )  
 )  
 )  
 )  
 )

APPLICATION FOR  
 POST-CONVICTION RELIEF

**INSTRUCTIONS TO 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 Spartanburg County Detention Center

2. Name and location of Court which imposed sentence \_\_\_\_\_

3. Name(s) of co-defendant(s) (if any) Douglas Jones, Tyseon Edmonson

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2016GS4204101 - Assault & Battery High & Aggravated

FILED  
 2018 FEB 20 AM 10:08  
 CLERK OF COURT

(b) 2016GS4204100 - Assault + Battery <sup>High 23</sup> <sub>Aggravated</sub>  
(c) \_\_\_\_\_

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

(a) 4-1-16  
(b) 4-1-16  
(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

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

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

NO

8. If you answered Ayes@ to (7), list:

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

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

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

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

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) I was told I was making an appeal but I never went or told to go

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Counsel Failed to make motion
- (b) Ineffective Assistance of Counsel
- (c) Counsel Failed to inform of potential defense

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? 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 Ayes@ to any part of (12), list with respect to each petition, motion or application:

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

2019 FEB 20 AM 8:55  
 CLERK OF COURT

iv. N/A

(c) the disposition thereof:

i. \_\_\_\_\_

ii. N/A

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

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. N/A

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

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. N/A

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

iv. \_\_\_\_\_

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

N/A

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. N/A

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

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

i. \_\_\_\_\_

ii. N/A

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

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

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

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? \_\_\_\_\_
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Richard Werder - Criminal Defense  
Attorney 15 Primrose St, Greenville, SC
  - ii. 29601
  - iii. \_\_\_\_\_

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

- i. Caulty Plea
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

2010 FEB 20 AM 8:55

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

Reduce sentencing time / NEW TRIAL

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Spartanburg )

VERIFICATION

I, DeAndre Foster, 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.

DeAndre Foster

SWORN to and subscribed before me this 12 day of February, 2018.

[Signature] (L.S.)  
Notary Public

My Commission Expires: 9/10/2026

2018 FEB 20 AM 8:55  
M. HORN PIENKNEY

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

I, DeAndre Tyson Foster, 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.

DeAndre Foster  
Applicant

SWORN or affirmed to and subscribed before me this  
1d day of February, 2008.

[Signature]  
Notary Public

My Commission Expires: 9/16/2008

2008 FEB 20 AM 8:55  
M. HOFFMAN

DeAndre T. Foster #372302

Broad River Correctional Institute  
Montecello 181

4460 Broad River Rd.

Columbia, SC 29210

Hope Bradley

PO Box 3483

Spartanburg, SC 29304-3483

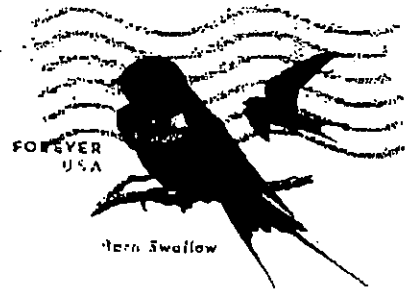
COLUMBIA, SC 29210

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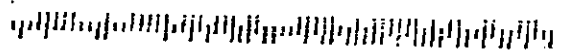
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29304-348383



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
DeAndre T. Foster,	)	Case No.: 2018-CP-42-00612
S.C.D.C. No. 372302,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

In response to the application for post-conviction relief filed by DeAndre T. Foster (Applicant) on February 20, 2018, Respondent would show this Court:

**I.**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the July 2016 term of the Spartanburg County Grand Jury for attempted murder (2016-GS-42-04101), attempted murder and possession of a weapon during a deadly crime (2016-GS-42-04100 & -04100A), and discharge of a firearm into a vehicle (2006-GS-42-04102). Richard H. Warder, Esquire, represented Applicant. Assistant Solicitor Spenser H. Holloran of the Seventh Circuit Solicitor’s Office, prosecuted the case.

On April 26, 2017, Applicant appeared in the Spartanburg County Court of General Sessions before the Honorable J. Mark Hayes, II, circuit court judge, where he pled guilty to two counts of the lesser included offenses of assault and battery of a high and aggravated nature (ABHAN). The remaining charges were dismissed. Judge Hayes sentenced Applicant to imprisonment for Concurrent terms of twenty years on each of the ABHAN charges.

Applicant filed a timely notice of appeal challenging his guilty plea and sentences. By order dated July 12, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation for his appeal. The Remittitur was issued on July 28, 2017.

## II.

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

1. "Counsel failed to make motion"
2. "Ineffective assistance of counsel"
3. "Counsel failed to inform of potential defense"

Applicant requests relief in the form of "reduce sentencing time/new trial."

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

## III.

Respondent interprets all three of Applicant's allegations to be concerning ineffective assistance of counsel, and will accordingly address them as such. Applicant's allegations of ineffective assistance of counsel are without merit.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. 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, 466 U.S. 668. First, an 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 an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

#### IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

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

V.

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

VI.

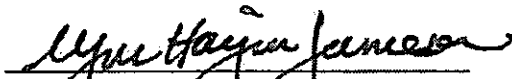
WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

April 23, 2018

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 DEANDRE TYSHUN FOSTER, )  
 S.C.D.C. #372305, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )

---

IN THE COURT OF COMMON PLEAS


2018-CP-42-00612

AFFIDAVIT OF SERVICE BY MAIL

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

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

DATED this the 24<sup>th</sup> day of April, 2018.

  
 \_\_\_\_\_  
 Lindsey McCoy, Legal Assistant  
 For Respondent

1	STATE OF SOUTH CAROLINA	}	COURT OF GENERAL SESSIONS
2	<u>COUNTY OF SPARTANBURG</u>	}	

4	DeANDRE T. FOSTER,	}	TRANSCRIPT
5	APPLICANT,	}	OF
6	vs.	}	RECORD
7	STATE OF SOUTH CAROLINA,	}	2018-CP-42-612
8	<u>DEFENDANT.</u>	}	

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June 21<sup>st</sup>, 2018  
Spartanburg, South Carolina

**B E F O R E:**

THE HONORABLE GRACE GILCHRIST KNIE, Judge.

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

RODNEY W. RICHEY  
ESQ.  
Attorney for the Applicant

JORDAN A. COX  
ASSISTANT ATTORNEY GENERAL  
Attorney for the State

PAMELA E. GREEN  
Circuit Court Reporter  
Seventh Judicial Circuit

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## P R O C E E D I N G S

1  
2  
3 THE COURT: Okay. Okay. Madam Court Reporter, we're  
4 now moving to the matter of DeAndre T. Foster. Civil Action  
5 Number 2018-612. Represented by Mr. Richey, and the State  
6 by Mr. Cox.

7 Okay. Mr. Cox.

8 MR. COX: Yes, Your Honor.

9 May it please the Court.

10 Before you is Mr. DeAndre T. Foster. He is represented  
11 by Mr. Rodney Richey.

12 We're here on Mr. Foster's Application for  
13 Post-Conviction Relief, which was filed on February 20<sup>th</sup>,  
14 2018. The Applicant was indicted by the Spartanburg County  
15 Grand Jury in July of 2016 for the following charges:

16 Attempted murder, possession of a weapon during the  
17 commission of a violent crime, and discharge of a firearm  
18 into a vehicle.

19 On April 26<sup>th</sup>, 2017, the Applicant appeared before the  
20 Honorable Mark Hayes in the Spartanburg County Court of  
21 General Sessions. He pled guilty to the lesser charges of  
22 two counts of assault and battery of a high and aggravated  
23 nature. Judge Hayes sentenced the Applicant to two  
24 concurrent terms of 20 years. All the other charges were  
25 dismissed.

1           The Applicant was represented by Mr. Richard Warder,  
2 Esquire, and Mr. Spenser Smith of the Seventh Circuit  
3 Solicitor's Office prosecuting the case. Applicant did  
4 appeal his guilty plea and sentence on July 12<sup>th</sup>, and,  
5 on -- excuse me. And on July 12<sup>th</sup>, 2017, the South Carolina  
6 Court of Appeals dismissed the appeal by order for failure  
7 to provide a sufficient explanation. This was pursuant to  
8 Rule 203(d)(1)(b)(iv) of the South Carolina Appellate Court  
9 Rules.

10           The State, we made our return to the PCR Application on  
11 April 23<sup>rd</sup>, 2018. And, with that, I will turn it over to  
12 Mr. Richey to present his specific allegations.

13           THE COURT: Okay. Yes, sir.

14           MR. RICHEY: we -- my client, he failed to investigate  
15 the case, failed to discuss a plea offer with him, and  
16 failed to inform him of any defenses he has in the matter.

17           THE COURT: All right. Mr. Richey, are you ready to  
18 call your first witness?

19           MR. RICHEY: we'd call Mr. Warder.

20           THE COURT: Okay. Good afternoon, Mr. Warder.

21           THE WITNESS: Good afternoon, Your Honor.

22           THE COURT: Sir, if you will raise your right-hand.

23                                RICHARD WARDER, being first duly  
24 sworn, testified as follows:

25           THE COURT: Thank you, sir. Please be seated. Make

Richard warder - Direct examination  
by Mr. Richey

1 yourself comfortable.

2 THE WITNESS: But for the proceedings over here, I'd  
3 make myself very comfortable.

4 DIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q Sir, would you state your name please?

7 A Richard Warder.

8 Q And, Mr. Warder, are you an attorney in, in Greenville?

9 A I am, sir.

10 Q And you practice criminal law.

11 Is that correct?

12 A I do.

13 Q And you had the -- did you have occasion to represent  
14 Mr. Foster?

15 A I did.

16 Q And, and were they on the charges as outlined by the  
17 Attorney General?

18 A Yes, they were.

19 Q Okay. Was this case a trial or a guilty plea?

20 A It ended up a guilty plea.

21 Q Okay. Can you briefly tell me what investigation you  
22 done -- let me just say this.

23 This was, this was over an alleged shooting, correct?

24 A Yes, sir.

25 Q It was a gentleman driving the car, and, at some point,

1 shots were fired, I'm being real brief, shots were fired.

2 The cops stopped and, and people in the car got charged.

3 Is that a real --?

4 A That's right. The, the, the police saw the car fleeing  
5 the scene.

6 Q Right.

7 A They stopped it. My client remained in the passenger  
8 seat at the -- initially. The driver remained in the  
9 driver's seat. The rear seat passenger took off running. I  
10 think he got away, and the dog come out and found him.  
11 Numerous guns were found in the car, ammunition, extra  
12 clips. Police witnessed a long gun thrown out. They  
13 recovered -- yeah, I think it was a -- I don't think there's  
14 any -- I think there was a AR-15 rather than an AK, but,  
15 anyways, one of the -- an AK-47 or AR-15. There was  
16 pistols. My client stated that he had the 9-millimeter I  
17 think or the -- but he had one pistol, and the driver had  
18 another one.

19 Q Okay. Was, was there -- was there -- there was gun  
20 powder residue on all the folks in the car, correct?

21 Do you remember the testimony on that?

22 A Yeah, I do. I think, I think my, my client, DeAndre,  
23 had the most primer residue, and, and -- on him, but I'm not  
24 sure about that.

25 Q And, and he denied doing any shooting, correct?

Richard warder - Direct examination  
by Mr. Richey

1 He denied that allegation?

2 well, let me phrase it this---

3 A I think he did deny it that night. He said he'd shot  
4 earlier in the day I think.

5 Q Right.

6 He denied the, the shooting that was the center or was  
7 around what happened, correct?

8 A Yes, said his shooting took place---

9 Q Right.

10 A ---earlier in the day.

11 Q And so did he ever ask you to -- for a jury trial?

12 A I think that we -- it was a trial. I mean I don't  
13 remember he said I specifically want a jury trial, but I --  
14 but it was a -- he wanted a plea deal all along is what he  
15 wanted. He wanted some -- me to work something out.

16 Q Okay.

17 A His -- and we eventually did.

18 Q And, and let me ask you, in the plea transcript, it  
19 refers -- I think they designated him as the shooter in this  
20 incident.

21 Do you know -- can you tell me, through your  
22 investigation, why was he deemed the shooter?

23 Do you recall?

24 A I think it was amount and the facts that -- it seems to  
25 me he had all the three elements of, of different types of

1 gun type residue, and one of them was with primer. And I  
2 think it makes -- it's the most direct and travels the  
3 least. I think there's other metal, metal particles that  
4 travel farther and can get on you easier. But he had the  
5 one that might of indicated he had a gun in his hand.

6 Q Is, is that why -- is that why his sentence was lesser  
7 than some of the other parties in the case?

8 Do you know anything?

9 A I'm not sure. I -- my client got 20 years, and I think  
10 there was a six -- somebody got 16 years.

11 Q Okay. What---

12 A And I'm not sure what the third guy got.

13 Q Okay. Can you tell me what investigation that you've  
14 done in terms of this case?

15 A Well, outside of, outside of getting -- go over the  
16 discovery and discuss it with my client, that, that kind of  
17 contained it because most of the facts -- it wasn't a lot of  
18 facts in dispute. My client certainly could verify some and  
19 some he, he didn't. But the people that were there were the  
20 people in the cars -- the two car loads.

21 Q Uh-huh. (Affirmative).

22 A The -- one was the victim's car, and there was a driver  
23 and a, a passenger. They'd given statements. My client  
24 didn't dispute his presence, didn't dispute he had a gun,  
25 didn't dispute he was in the car, you know, the -- from my

Richard warder - Direct examination  
by Mr. Richey

1 client, I gained most of the investigation I needed from  
2 the, the --.

3 Q Was that -- so, was there, was there anyway in this  
4 case that he could have taken this case to a jury trial and  
5 got a favorable result?

6 A Well, the answer is always yes, it's, it's possible.  
7 You know, it could of been tried. It was -- it was a risk.  
8 It -- it's one that, that if the jury chose to believe that  
9 he didn't know and participate in the planning or the  
10 shooting or going there when it all broke out, and he hadn't  
11 armed himself for this shooting, just had a gun, and I mean  
12 it would be possible for them to come back with, I guess, a  
13 not guilty verdict.

14 Q And did you discuss with them any possible defenses  
15 that he -- that he has?

16 A We discussed a version of the facts. I wasn't -- there  
17 wasn't any unique possible or there wasn't -- this wasn't a  
18 good case of self-defense or anything like that.

19 Q Okay. Do you believe he understood his talks with you?

20 A Yes, sir, I found him to be very intelligent in the  
21 sense of street wise.

22 Q And, and, and this guilty plea, do, do you recall  
23 telling Mr. Foster that he will receive a ten year sentence?

24 A No, never was told he would receive any sentence. I  
25 told him that I didn't think that he would come out better

Richard Warder - Direct examination .  
by Mr. Richey

1 than.

2 Q Say that again. I'm sorry. I didn't hear. I'm sorry.

3 A I think he'd come out better than at a trial.

4 Q Okay. Okay. So, there was no mention of any potential  
5 sentence?

6 Just, just that you could get, is that correct?

7 A Well, we -- yeah, that -- we, we talked about the  
8 sentencing range, but yeah.

9 Q But -- okay. Thank you. Answer any questions they may  
10 have.

11 THE COURT: Okay. Answer any questions that Mr. Cox  
12 may have.

13 MR. COX: Thank you, Your Honor.

14 May it please the Court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. COX:

18 Q Morning, Mr. Warder, or afternoon.

19 A Yes.

20 Q This case, your client wanted a guilty plea the entire  
21 time, correct?

22 A Yes.

23 Q And you worked towards getting him a plea offer from  
24 the solicitor's office?

25 A Yes, we, we worked towards that. We kind of tried to

Richard Warder - Cross-examination  
by Mr. Cox

1 evaluate the case to make sure that there was no -- nothing  
2 that went -- could raise a defense that might, might be  
3 better in that. But yeah, we were, essentially, working for  
4 a plea deal all the time.

5 Q Now, he was originally facing two counts of attempted  
6 murder, correct?

7 A Yes.

8 Q So, he was facing, at least on those two charges, up to  
9 60 years?

10 A Yes.

11 Q And you explained that to your client?

12 A Yes.

13 Q Okay. But with the plea that he took, that was a  
14 recommendation from the State, correct?

15 A Yes, I think the State had, had given us 20 years, and  
16 they recommended it as concurrent, and then they would drop  
17 the weapons charge, possession of a weapon during a violent  
18 crime.

19 Q And because there was a recommendation or recommended  
20 sentence, the -- you explained to your client the Judge was  
21 not bound by the terms of those recommendations?

22 A Right.

23 Q He would only consider it?

24 A Right.

25 Q And you explained that to your client?

1 A Yes.

2 Q But Judge Hayes went along with the recommendation,  
3 right?

4 A Yes.

5 Q And your client did get two concurrent terms of 20  
6 years?

7 A Yes.

8 Q You stated, in your investigation, you got most of your  
9 information from your client?

10 A Yes.

11 Q That's because he was not denying he was at the scene?

12 A No.

13 Q He was not denying that he was in the car?

14 A No.

15 Q He was not denying that, at some point during the day,  
16 he had shot a gun?

17 A That's, that's correct.

18 Q And you discussed with your client any potential  
19 defenses that you could of put on during a trial?

20 A Yes.

21 Q And---

22 A We discussed the facts and how they relate to law, yes.

23 Q And, during his guilty plea, Judge Hayes asked him if  
24 you discussed any possible defenses for his case, correct?

25 A I think -- yeah, I think that's in the transcript.

Richard Warder - Cross-examination  
by Mr. Cox

1 Q And your client answered that yes, you had?

2 A Yes.

3 Q During that guilty plea, Judge Hayes asked your client  
4 if he was satisfied with your representation of him, right?

5 A Yes.

6 Q And your client, Mr. Foster, responded that yes, he  
7 was?

8 A Yes.

9 MR. COX: All right. Your Honor, just a moment.

10 (Pause.)

11 Q In other words, were there any other plea offers from  
12 the State for his case that you can recall?

13 A I'm unsure.

14 Q Had there been, would you have shared those with your  
15 client?

16 A I'm certain that I conveyed everything, thing to him.  
17 I wanted him to -- you know, he wanted a plea offer. I, I  
18 felt the case should be a plea.

19 Q And it was his intent, throughout your representation  
20 of him, to enter a guilty plea?

21 A To get a plea deal. If he hadn't -- if they hadn't  
22 offered, then he wouldn't of, wouldn't of pled. He wanted,  
23 wanted to come out as good as he could.

24 MR. COX: All right. Thank you, Your Honor. No  
25 further questions.

1 THE COURT: Okay. Mr. Richey, any redirect?

2 MR. RICHEY: No other questions.

3 THE COURT: Okay. Can Mr. Warder be excused?

4 MR. RICHEY: without objection.

5 MR. COX: Yes, Your Honor.

6 THE COURT: Okay. Thank you, Mr. Warder.

7 THE WITNESS: Thank you, Your Honor.

8 MR. RICHEY: we call Ms. Valentine.

9 THE COURT: Good afternoon, ma'am.

10 THE WITNESS: Good afternoon.

11 THE COURT: If you'll raise your right-hand for me  
12 please.

13 TANYA VALENTINE, being first duly  
14 sworn, testified as follows:

15 THE COURT: Okay. Thank you. Please be seated.

16 THE WITNESS: Okay.

17 THE COURT: Answer Mr. Richey's questions.

18 THE WITNESS: Yes, ma'am.

19 DIRECT EXAMINATION

20 BY MR. RICHEY:

21 Q Ma'am---

22 THE COURT: If you don't mind, please state your name  
23 and spell your last name.

24 THE WITNESS: It's Valentine. V-A-L-E-N-T-I-N-E.

25 THE COURT: And what's your first name?

Tanya Valentine - Direct examination  
by Mr. Richey

1 THE WITNESS: Tanya. T-A-N-Y-A.

2 THE COURT: Thank you.

3 THE WITNESS: You welcome.

4 Q Ma'am, do you know Mr. Foster?

5 A Yes, sir.

6 Q And how do you know him?

7 A That's my son.

8 Q And were you at the Court proceedings the day when he  
9 pled guilty?

10 A Yes, sir.

11 Q And did you have an opportunity to talk to Mr. Warder  
12 that day?

13 A I did.

14 Q And what type of sentence did Mr. Warder tell you your  
15 son was gonna receive?

16 A Well---

17 MR. COX: Objection, Your Honor. This question calls  
18 for hearsay.

19 MR. RICHEY: I'll rephrase it.

20 THE COURT: Well -- yes, sir. Thank you.

21 Q Based, based off -- don't tell me what he said.

22 Based off the, the conversation you had with Mr.

23 Warder, what did you believe that his sentence would be?

24 A At least ten years.

25 Q Okay. Did you believe it to be more than that?

1 A No.

2 Q Okay. And, and your belief was based off conversations  
3 you had with his attorney?

4 Your, your belief was based off the conversations you  
5 had with his lawyer?

6 A Yes, sir.

7 Q Okay. And, and, and is that why you felt it was proper  
8 for your son to plead guilty?

9 A Yes.

10 Q Okay. Thank you, ma'am. Answer any questions the  
11 Attorney General may have for you.

12 THE COURT: Okay. Mr. Cox.

13 MR. COX: Just, just one moment, Your Honor.

14 (Pause.)

15 MR. COX: Your Honor, we, we have no questions for this  
16 witness, and we don't object to her being excused.

17 THE COURT: Okay. Thank you, Ms. Valentine.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you for being here, ma'am. You can  
20 stay or you're free to go.

21 THE WITNESS: Okay.

22 THE COURT: Mr. Richey.

23 MR. RICHEY: Call Ms. Forney.

24 THE COURT: Good afternoon, ma'am.

25 THE WITNESS: Good afternoon.

Sandra Forney - Direct examination  
by Mr. Richey

1 THE COURT: If you'll raise your right-hand for me.

2 SANDRA FORNEY, being first duly  
3 sworn, testified as follows:

4 THE COURT: Don't fall back.

5 Okay. Thank you, ma'am. You can put your hand down,  
6 and if you will take a seat.

7 (Witness complies.)

8 THE COURT: If you will state your name clearly, and  
9 spell your last name.

10 THE WITNESS: Sandra Forney. F-O-R-N-E-Y.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q Ms. Forney, do you know Mr. Foster?

14 A Yes, I do.

15 Q And how do you know Mr. Foster?

16 A That's my grandson.

17 Q And were you with him on the day of his Court date?

18 A Yes, I was.

19 Q And were you, were you involved in any conversations he  
20 had with Mr. Warder?

21 A Yes, I was.

22 Q And based off those conversations, what do you believe  
23 Mr. Foster's sentence was going to be?

24 A Ten years.

25 Q And did you advise him to accept that?

Sandra Forney - Direct examination  
by Mr. Richey

1 A I didn't -- we were not able to talk to him. I only  
2 talked with Mr. Warden -- Warden.

3 Q Okay.

4 A And when he told me, I asked---

5 MR. COX: Objection---

6 Q No, you can't tell us what he told you.

7 MR. COX: ---Your Honor.

8 A Okay.

9 Q I'm just saying, based off your conversations with him,  
10 do you believe the sentence was gonna be ten years?

11 A Yes.

12 Q Okay. Thank you. Answer any questions the Attorney  
13 General may have.

14 THE COURT: Mr. Cox.

15 Stay -- just stay for one second. Let's make sure.

16 MR. COX: Your Honor, I -- we have no questions for  
17 this witness.

18 THE COURT: Okay. Ms. Forney, thank you, ma'am.

19 Any objection to Ms. Forney being excused?

20 MR. RICHEY: No, ma'am. No, ma'am.

21 MR. COX: No, Your Honor.

22 THE COURT: Okay. Ma'am, you are free to go or you can  
23 stay if that's your wish.

24 MR. RICHEY: We call Mr. Foster.

25 THE COURT: Okay. Mr. Foster, sir?

DeAndre Foster - Direct examination  
by Mr. Richey

1 THE WITNESS: Ma'am, how you doing?

2 THE COURT: I'm fine.

3 Before you take a seat --

4 THE WITNESS: Yes, ma'am.

5 THE COURT: -- do you swear to tell the truth?

6 THE WITNESS: Yes, ma'am, I do.

7 DeANDRE FOSTER, being first duly  
8 sworn, testified as follows:

9 THE COURT: All right. Thank you, sir. Be careful.  
10 Take your time. Make yourself comfortable.

11 All right.

12 THE WITNESS: Before we start on that, I want to say  
13 good afternoon, everybody.

14 THE COURT: Thank you. Thank you, sir.

15 Okay. Mr. Richey.

16 MR. RICHEY: Thank you.

17 DIRECT EXAMINATION

18 BY MR. RICHEY:

19 Q Sir, would you state your name please?

20 A DeAndre Foster.

21 Q And, Mr. Foster, are you currently in the Department of  
22 Corrections?

23 A Yes, sir, I am.

24 Q And what are you in the Department of Corrections for?

25 A For attempted -- for two charges of assault and battery

1 high and aggravated nature.

2 Q And, and who represented you?

3 A Richard warder.

4 Q And was Mr. warder retained or appointed?

5 A Yeah, he was retained from my mother.

6 Q Okay. And did you have an opportunity to discuss your  
7 case with him?

8 A Very few times, but it ain't like he was -- we never  
9 investigated. Like I always told him, I'm like, look, if  
10 you can get me a good plea deal, I would take that because  
11 my association. Not because I pulled the trigger. You know  
12 what I'm saying?

13 That was the first. And then, then it came to the  
14 point it was time to go to Court, and it was zero to twenty.  
15 And I told him I wasn't trying to get that charge cause  
16 I'm -- trying to take that charge cause I now get anywhere  
17 from twenty, zero to twenty. And I wanted to go to trial.  
18 And he said well, if you go, if you know what you facing,  
19 you can get all the max. I said yeah, I receive that, but  
20 I'd rather take the change cause I have no evidence against  
21 me in my case.

22 Q Okay. Let me try to break some of this down into  
23 pieces here.

24 okay?

25 A Uh-huh. (Affirmative.)

DeAndre Foster - Direct examination  
by Mr. Richey

1 Q So, you did talk to him about your case?

2 A Yeah.

3 Q Did you talk to him about the facts of your case?

4 A Yes, sir.

5 Q And did y'all talk about any defenses that you would  
6 against these charges?

7 A I tried to bring up defenses, but it's like --.

8 Q What defense did you try to bring up?

9 A Like I told him that I never pulled a weapon.

10 Q Uh-huh. (Affirmative).

11 A Never pulled the trigger, but I did tell him, in front  
12 of the investigation (sic), that I did pull the weapon  
13 before from the time before. Not during the shooting, but  
14 before the shooting, and that's the reason why the GSR could  
15 be on my hands and stuff like that. But he never brought  
16 that up in trial or nothing like that.

17 Q Okay. In terms, in terms of the case and the sentence,  
18 now you pled and you've read this transcript, right?

19 A Uh-huh. (Affirmative).

20 Q And, and you understand, on this transcript, it says  
21 there's not a recommendation for time, correct?

22 A Uh-huh. (Affirmative).

23 Q It's just concurrent.

24 A Yeah.

25 Q Okay. But did you believe you were gonna get a

1 different sentence?

2 A Of course I did. That's the reason why I took the  
3 plea.

4 Q What, what did you plead -- believe the sentence would  
5 be?

6 A Ten years.

7 Q Okay. And what did you base that off of?

8 A From what my law -- my attorney told me cause I have no  
9 information about what the solicitor said or anything. The  
10 only thing I believed -- the only thing I knew is what he  
11 was telling me.

12 Q Well, well, tell me -- answer this question.

13 When you were in the courtroom and the judge, when they  
14 told the judge it's only concurrent time, why didn't -- why  
15 didn't you say something to the judge like hey, it's a ten  
16 year deal here, right?

17 A Okay. At first, like, like I was saying before --

18 Q Right.

19 A -- like I was young at the time. Like I was 19 years  
20 old at the time. My first time being incarcerated.

21 Q All right.

22 A I didn't know nothing. You know, I ain't had no  
23 knowledge of no law or anything like that. You know what  
24 I'm saying?

25 So, I was just like yeah, and I'm just going on cause I

DeAndre Foster - Direct examination  
by Mr. Richey

1 thought I was gonna receive a ten year plea, and I was  
2 satisfied with him at first if he can get me ten years.  
3 Yeah, I was satisfied. I was going with him. But if he  
4 didn't get me ten years, it just seemed like everything went  
5 downhill that -- he didn't never -- never come, came and  
6 talked to me after I got sentenced, file for an appeal, or  
7 reconsideration, or nothing like that.

8 Q Well, let me, let me ask you this.

9 When, when, when you -- when you did not get the ten  
10 years, did you make any effort to contact him?

11 A Oh, plenty of times. My mother had to go up there and  
12 tell him to file for a direct appeal. I tried to call. No  
13 answers. All -- you know, I tried a whole bunch of stuff.

14 Q The -- there were, there were other codefendants,  
15 right?

16 A Yeah, other co---

17 Q Correct?

18 And, and do you know what their sentences were?

19 A One -- okay. One has 16. I had went to Court with  
20 him.

21 Q Right.

22 A That was one of the reasons why I didn't want to take  
23 the plea cause I seen him get 16 years.

24 Q Uh-huh. (Affirmative).

25 A So, when I told Mr. Richard Warder that, that night he

1 came to see me in the county, I told him I did not want to  
2 take the plea because I seen my codefendant receive 16  
3 years. And he brought the plea. said okay, we'll, we'll go  
4 to Court tomorrow. We'll talk tomorrow. And he brought the  
5 plea again.

6 I kept screaming I want a trial. You know what I'm  
7 saying?

8 And then when he, when he came, he was like okay, we  
9 can get you the ten years. He said if you don't take the  
10 plea, I can try to get you these ten years and maybe I can  
11 get you ten years. So, I was like you can get me ten years.  
12 He was like yeah.

13 So, I was like can you go talk to my mother please? Go  
14 talk to my mother, my grandma, and he came back. I said  
15 what my mother say? He said if you get -- if I get you  
16 these ten years, take the plea. I said so, can you get me?  
17 He said I'm pretty much I can. And that's why I -- the  
18 whole purpose of me taking a plea.

19 Q Did he say he definitely can get you ten years?

20 A Yeah, he said that.

21 Q He didn't say I'm gonna try --

22 A No.

23 Q -- or maybe I---

24 A He was---

25 Q He said I---

DeAndre Foster - Direct examination  
by Mr. Richey

1 A ---like a guarantee like I can get you ten years. That  
2 sound like guarantee me.

3 Q And had you known that you were not gonna get ten  
4 years, would you had asked for a trial?

5 A Yeah, I'd asked for a trial.

6 Q You went to jury trial?

7 A Yeah, I would of went to jury trial after that if I  
8 wasn't never -- if I knew I wasn't gonna get the ten, I  
9 would of took it to trial or at least tried to get a better  
10 plea, you know, or something like that.

11 Q Okay. And, and so you don't believe that Mr. Warder  
12 effectively tried to help you do---

13 A Yeah.

14 Q ---this case?

15 A True.

16 Q Okay. Thank you. Answer any questions the Attorney  
17 General will have for you please.

18 THE COURT: Okay. Just remain seated, sir, and---

19 THE WITNESS: Okay.

20 THE COURT: ---answer Mr. Cox's questions.

21 Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. COX:

24 Q Good afternoon, Mr. Foster.

25 A How you doing?

1 Q I'm good. How are you?

2 Mr. Foster, you pled guilty in front of Judge Mark  
3 Hayes on April 26<sup>th</sup> of last year, right?

4 A Yes, sir.

5 Q And, during that plea proceeding, the Judge asked you a  
6 bunch of questions, right, and that was---

7 A Yes, sir.

8 Q That was before he accepted your plea?

9 A Yes, sir.

10 Q He went over a lot of material with you?

11 A Yes, sir.

12 Q And you remember answering those questions?

13 A I remember a few, yeah.

14 Q Yeah.

15 A I remember a few of the questions. I had to go back in  
16 the transcripts, transcript to see how it went -- you know,  
17 what I was asked.

18 Q But you remember being placed under oath?

19 A Yes, sir. Yes, sir. Yes, sir.

20 Q You remember being told to tell the truth?

21 A Yes, sir.

22 Q And you also remember, at the very end before Judge  
23 Hayes accepted your guilty plea --

24 A Yes, sir.

25 Q -- he asked you if you had been truthful during your

DeAndre Foster - Cross-examination  
by Mr. Cox

1 answers to his questions?

2 A Yeah, I remember that, yes, sir.

3 Q You remember you told him yes, you had?

4 A Yes, sir.

5 Q Okay. I want to talk to you a little bit about some of  
6 those questions he asked you.

7 Okay?

8 A Okay.

9 Q Judge Hayes asked you if you understood that the plea  
10 deal from the State was a recommendation, correct?

11 A I mean I -- yeah, I, I'm pretty sure he brought that  
12 up, but that don't mean I really understand what it was was  
13 really going on at the time, you know.

14 Q So, you -- are you saying you don't -- you, at that  
15 time when you pled guilty, you did not understand that it  
16 was a recommendation of 20 years concurrent?

17 A I, I know it was a zero to twenty. I didn't know if it  
18 was like it was gonna be a 20 year mark like a 20 year  
19 sentence. I ain't -- it was never like a zero to 20. I  
20 knew that.

21 Q But you understood that it was possible the Judge was  
22 going to give you---

23 A Yeah. Yeah, I -- yeah.

24 Q ---that sentence of zero to twenty?

25 A Yeah.

DeAndre Foster - Cross-examination  
by Mr. Cox

1 Q And you knew that going into the plea proceedings?

2 A I knew that, but until my lawyer told me he say he'll  
3 give me ten years.

4 Q All right. Do you remember signing what's called a  
5 sentencing sheet?

6 A Yeah.

7 Q You -- it was the paperwork---

8 A Yes, sir.

9 Q ---that had your charges and, and---

10 A Yes, sir. Yeah.

11 Q And it had the information for the assault and battery  
12 charges that you were pleading to?

13 A Yes, sir.

14 Q Right?

15 Do you remember signing where it said that it was a  
16 recommendation of 20 years?

17 A No.

18 MR. COX: Okay. Your Honor, if I could have just one  
19 moment?

20 THE COURT: Yes, sir.

21 (Pause.)

22 Q Mr. Foster, during that same plea proceeding, the  
23 prosecutor was also answering some questions from the Judge?

24 A Yeah.

25 Q They -- the prosecutor was also making some statements?

DeAndre Foster - Cross-examination  
by Mr. Cox

1 A Yes, sir.

2 Q Do you remember being asked if you agreed with those  
3 statements?

4 A Yes, sir, I did.

5 Q Okay.

6 A But I didn't -- it's like I didn't want to agree to it.  
7 It's just like I was like had to agree to it. Like from the  
8 time, it's like they was planting all this stuff on me, but  
9 I'm just like going with the flow at the time cause I'm  
10 thinking I'm getting ten years. I didn't want to do  
11 anything to mess that up.

12 So, that's the reason why I was like yes, yes, that's  
13 right, and he -- and I was just trying to get my ten.  
14 That's all. I was trying to get my ten years, and I was  
15 just wasn't trying to do anything to mess that up. And that  
16 why -- so, I really, at the point in time I was going with  
17 it just saying -- I was like yes, sir, I understand that,  
18 and too much at the time. I'm young. I ain't know nothing,  
19 nothing about the law. I just, just heard ten years, and  
20 hopefully I was gonna get that, and try to get home to my  
21 little girl.

22 Q Do you remember the solicitor informing the judge that  
23 it was the State's recommendation that you get 20 years for  
24 each of those charges?

25 A I mean I knew that when I was -- already done signed

1 the plea by then, but I didn't know that when I was -- like  
2 it was talking to Richard Warder. I didn't know I was  
3 getting -- it was a recommended 20. I did not know that.

4 I know I could of got 20 years. I didn't know it was  
5 recommended. That was never brought up. It's a lot of  
6 things that was brought up about the plea. I never knew I  
7 would be in the strike system. I never, I never knew a lot  
8 of things about the plea.

9 Q The strike system, you're referring to the violent and  
10 serious crimes?

11 A Yeah, violent and serious. Yeah, strike system.

12 Q Okay. But Judge Hayes asked you if you understood that  
13 these charges were violent and serious, correct?

14 A Yeah, I understand, I understand that he asked---

15 Q So, you---

16 A ---me that.

17 Q So, you did understand that pleading guilty to these  
18 charges, you were subject to violent and serious  
19 classification?

20 A I didn't -- I, I knew it would be a violent charge, but  
21 I never knew nothing about the strike system. Like if I  
22 took this plea, I have a first strike. I never knew nothing  
23 like that.

24 Q Mr. Foster, is it your testimony here today that you  
25 did not understand that assault and battery of a high and

DeAndre Foster - Cross-examination  
by Mr. Cox

1 aggravated nature carried a violent and serious  
2 classification?

3 A I mean I thought -- I was just trying to get assault  
4 charge. Like I said, I didn't know too much of anything at  
5 the time. I really didn't. I'm just telling you what my,  
6 my lawyer told me at the time about a ten year sentence, and  
7 I knew -- and that's what I was really trying to get, the  
8 ten years.

9 MR. COX: Just a moment, Your Honor.

10 THE COURT: Yes, sir.

11 (Pause.)

12 Q Mr. Foster, you are alleging here today that Mr. warder  
13 did not investigate---

14 A Yes. Yes, sir.

15 Q ---your case?

16 Correct?

17 A Yes, sir.

18 Q But Judge Hayes, at your guilty plea, asked you if your  
19 attorney discussed the elements of the crimes with you,  
20 correct?

21 A I mean I -- the charges at the time. Like he discussed  
22 the charges, but --.

23 Q Yeah.

24 He, he discussed what you were being charged with?

25 A Yeah.

DeAndre Foster - Cross-examination  
by Mr. Cox

1 Q He---

2 A True.

3 Q ---discussed what the State had to prove in order to --  
4 the elements of that crime?

5 A Hu huh. (Negative).

6 He never told me that.

7 Q But Judge Hayes asked you if he did, right?

8 A Yeah, I'm pretty sure he did, probably did.

9 Q And you told him yes, he did.

10 A I guess I did at the time. Like I say, it was so much  
11 going on at the time. I'm just trying to go through with  
12 it. I'm not my -- I was trying to go through with it so  
13 much at the time. I was young at the time. I keep bringing  
14 that up. No knowledge of the law. And I had no knowledge.  
15 I had to come down -- I went to SCDC to fight for my  
16 law, and then go to the law library every day to try to come  
17 home. And I had no knowledge of that.

18 Q Mr. Foster, what additional investigation did you want  
19 Mr. Warder to do?

20 A To prove that I didn't shoot no -- I didn't pull the  
21 trigger or I was not the shooter. I was like guilty by  
22 association. That was my point of taking the plea. Not  
23 being a shooter or nothing.

24 That's why I wanted to take the ten year charge -- try  
25 to get the ten years. I never said I was the shooter. I

DeAndre Foster - Cross-examination  
by Mr. COX

1 never said I was gonna -- I pulled this gun at this time. I  
2 did admit I shot before the shooting, but I never did that.

3 If he'd of investigated that, he'd of seen that I --  
4 they didn't have no witnesses to say my name in the  
5 statements. I got proof of that. I don't have no witness  
6 saying my name. Nobody testifying saying I shot this.  
7 Nobody seen that. They seeing gun shot. They seen guns  
8 thrown out the driver's side window. None. Nothing on me  
9 like that. If I'd of went to trial, I'm pretty sure I  
10 wouldn't of got 20 years. I don't have nothing on me beside  
11 the GSR kit.

12 Q Have you done any investigation before this hearing  
13 today that would -- in order to prove those claims?

14 A Yeah.

15 Like, like what, like what is you -- like what type of  
16 claims?

17 Like I got paper. Like this is in the paper. Like my  
18 motion of discovery.

19 Q Well, you're, you're suggesting that your attorney, Mr.  
20 warder, did not properly investigate your charges.

21 A Yeah. Yeah.

22 Q Correct?

23 A Yes, sir.

24 Q Have you done any investigation of your own?

25 A Yes, sir. Yes, sir.

1 Q For your charges?

2 A Yes, sir.

3 Q Okay. And what was that investigation?

4 A Like I had, I had seen like I was being accused of a  
5 lot of things that I wasn't trying to be accused of. Like  
6 I -- they say I was -- like one of the officers had got  
7 hurt. Like the solicitor brought that one of the officers  
8 got hurt in the running. That didn't have nothing to do  
9 with me.

10 And they tried to say I had the most gunshot, but they  
11 never did brought up that everybody had gunshot powder on  
12 me. I had the most. And I'm the only person that told them  
13 that I did that, you know, and I -- it's, it's like a whole  
14 bunch of stuff that's going on that I've been accused of.

15 And it's like my lawyer never did try to explain fact  
16 of my defense. Like my client never done this or nothing.  
17 He was just trying to make it seem like I was just ready to  
18 take everything and go on with it. And that was not part of  
19 the deal.

20 Q Mr. Foster, do you remember telling Judge Hayes that  
21 the decision to enter a guilty plea was your own?

22 A No, sir, I don't remember that.

23 Q You, you don't remember that---

24 A No, sir.

25 Q ---or you did not say that?

DeAndre Foster - Cross-examination  
by Mr. Cox

1 A No, sir, I don't remember that. I ain't never did -- I  
2 ain't saying I never said it. I just don't remember that.

3 Q Okay. But you were under oath at the plea proceeding,  
4 correct?

5 A Uh-huh. (Affirmative).

6 Q And do you remember -- so, you, you don't remember  
7 Judge Hayes asking you---

8 A I don't remember that at the time. He probably did.  
9 I'm not saying I didn't say it, but I just don't remember  
10 that.

11 Q Okay. But if it was -- if it's in the---

12 A In the transcript, yes.

13 Q ---transcript, then---

14 A Yeah, definitely. Yeah.

15 Q And if it's in there, that would of been the truth?

16 A Yeah, that would of been true.

17 MR. COX: Your Honor, just for your reference, I'm  
18 referring to---

19 THE COURT: Yes, sir, I've reviewed the transcript.

20 MR. COX: Yes, ma'am.

21 THE COURT: Thank you.

22 MR. COX: Yes, Your Honor.

23 Q Okay. Mr. Foster, do you remember, at the very end of  
24 your plea proceeding, Judge Hayes asked you if you had  
25 anything else to say to him before he sentenced you?

1 A Yes, sir.

2 Q And you said you were sorry for everything that  
3 happened, right?

4 A Yes, sir.

5 Q And you said, if I could take it back, I would.

6 A Yes, sir.

7 Q Right?

8 Your Honor, I have no further questions for the  
9 witness.

10 THE COURT: Any redirect, Mr. Richey?

11 MR. RICHEY: No other questions.

12 THE COURT: Okay. Thank you, sir. You may step down.  
13 Okay. Watch your step. All right.

14 MR. RICHEY: No other witnesses, Your Honor.

15 THE COURT: Okay. Mr. Cox.

16 MR. COX: Your Honor, the State has no witnesses to  
17 call at this time.

18 THE COURT: Okay. Anything else?

19 MR. RICHEY: No, ma'am.

20 MR. COX: No, Your Honor.

21 THE COURT: All right. Anything else?

22 No?

23 Okay.

24 MR. COX: Your Honor, we would reserve any kind of  
25 final argument for potential or possible proposed order.

1 THE COURT: Okay. I, I certainly will not oppose  
2 you-all sending any summary of your position to me.  
3 However, I am not requesting a proposed order at this point.

4 MR. COX: Okay.

5 THE COURT: Let me just direct this communication to  
6 everyone, but that would include Mr. Foster because he's new  
7 to this proceeding -- this type of proceeding.

8 I take these matters under advisement, sir, so that I  
9 can review everything very carefully. And I usually rule in  
10 the order that I hear the cases each week. And you're here  
11 kind of towards the end of the week. So, it's gonna take a  
12 little longer, but, but please understand that I will give  
13 every consideration to the arguments---

14 THE APPLICANT: Please do.

15 THE COURT: ---that you have made.

16 THE APPLICANT: Please.

17 THE COURT: Okay?

18 THE APPLICANT: Please do.

19 THE COURT: And, and so, with that, I, I will give  
20 counsel ten days to submit anything additional that they  
21 would like to submit.

22 Okay. And so this hearing is concluded, and,  
23 Mr. Foster, I wish you the best of luck, sir.

24 THE APPLICANT: Thank you.

25 MR. COX: Thank you, Your Honor.

1 THE COURT: All right. And, Mr. Richey, someone -- no.  
2 You need to speak with the grandmother of your client.

3 MR. RICHEY: Yeah, Your Honor.

4 MS. FORNEY: I was gonna ask you a question.

5 THE COURT: Yes, ma'am, I understand that. That's just  
6 not appropriate for you to ask me directly. I'm sorry.

7 MS. FORNEY: Okay. Thank you.

8 THE COURT: Okay.

9

10 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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## C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 21<sup>st</sup> day of June, 2018.

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

September 26<sup>th</sup>, 2018



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA )  
 COUNTY OF SPARTANBURG )  
 )  
 DeAndre Tyshun Foster, #372302 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SEVENTH JUDICIAL CIRCUIT

2018-CP-42-0612

**ORDER OF DISMISSAL**

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 SPARTANBURG COUNTY  
 2018 AUG 21 AM 9:29  
 M. HOPE BLACKLEY

This matter comes before the Court by way of an application for post-conviction relief filed on February 20, 2018, by Mr. DeAndre T. Foster (Applicant). Respondent made its Return on or about April 23, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on June 21, 2018, at the Spartanburg County Courthouse in Spartanburg, South Carolina.

Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Jordan A. Cox, Esquire, of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Applicant also called his mother, Tanya Valentine, and his grandmother as witnesses. Applicant's plea attorney, Mr. Richard Warder, Esquire, testified at the hearing. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies the application.

**PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the July 2016 term of the Spartanburg County Grand Jury for attempted murder (2016-GS-42-04101), attempted murder and possession of a weapon during a deadly crime (2016-GS-42-04100 & -04100A), and discharge of a firearm into a vehicle (2006-GS-42-04102). Richard H. Warder, Esquire,

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represented Applicant. Assistant Solicitor Spenser H. Holloran of the Seventh Circuit Solicitor's Office, prosecuted the case.

On April 26, 2017, Applicant appeared in the Spartanburg County Court of General Sessions before the Honorable J. Mark Hayes, II, circuit court judge, where he pled guilty to two counts of the lesser included offenses of assault and battery of a high and aggravated nature (ABHAN). The remaining charges were dismissed. Judge Hayes sentenced Applicant to imprisonment for Concurrent terms of twenty years on each of the ABHAN charges.

Applicant filed a timely notice of appeal challenging his guilty plea and sentences. By order dated July 12, 2017, the South Carolina Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation for his appeal. The Remittitur was issued on July 28, 2017.

#### FACTUAL HISTORY

On April 1, 2016, Applicant was the front seat passenger in a dark colored vehicle traveling on Valley Falls Rd., Spartanburg County, South Carolina. At the same time and place, another vehicle pulled out of a driveway and began traveling away from Applicant's vehicle. Applicant's vehicle approached the rear of the second vehicle and multiple shots were fired into the second vehicle. The passenger of the second vehicle was grazed in her face by a bullet fired from Applicant's vehicle. The incident was related to a personal matter between the victim's and one of the passengers in Applicant's vehicle.

A nearby deputy with the Spartanburg County Sheriff's Department immediately began pursuing Applicant's vehicle and attempted a traffic stop. Applicant's vehicle fled and the deputy pursued. Firearms were thrown from the vehicle, including from the passenger-side window where Applicant was seated. The chase ended at an apartment complex nearby and Applicant remained

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with the vehicle. Within the vehicle, two .40 caliber magazines, a loaded AR-15 magazine, and one AR-15 round were recovered from the vehicle. After retracing the route of the chase, deputies recovered an AR-15 rifle and a pistol. A second pistol was recovered later. Applicant was found with gun residue and claimed to have been armed with the .40 caliber pistol.

### ALLEGATIONS

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

1. Ineffective Assistance of Counsel
  - a. "Counsel failed to make motion"
  - b. "Ineffective assistance of counsel"
  - c. "Counsel failed to inform of potential defense"

At the evidentiary hearing, PCR Counsel informed the Court that Applicant would be proceeding on the following allegations:

1. "Failure to investigate"
2. "Failed to inform of defenses"
3. "Failed to present plea offers"

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The additional allegations were a continuation of Applicant's original allegation of ineffective assistance of counsel. Applicant requests relief in the form of "reduce sentencing time/new trial."

### SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

*Richard Warder, Esq.*

Richard H. Warder, Esquire, testified at the evidentiary hearing. Mr. Warder represented Applicant during his guilty plea. Mr. Warder testified that the case against Applicant was strong. Mr. Warder testified that there was no question of identification or whether Applicant had fired a pistol at some point during the day. Mr. Warder testified that Applicant tested positive for gunshot residue, but claimed that he had fired a gun earlier in the day. Mr. Warder testified that Applicant

*R*

wanted to enter a guilty plea from the start of his representation. Mr. Warder testified that Applicant was facing sixty years, but the judge sentenced Applicant to the recommendation by the Solicitor's office.

Mr. Warder testified that he received all of the information about the case from the Applicant. Since there was no denying that Applicant was present at the scene and gunshot residue was found on Applicant, Mr. Warder testified that there was not much left to investigate. Mr. Warder testified that he reviewed all discovery with Applicant and discussed any possible defenses he may have at trial, but Applicant was clear that he wanted a plea deal. Mr. Warder testified that he never promised Applicant anything in regards to his sentence and that he explained to Applicant that even though the State was recommending a twenty year sentence, the judge did not have to accept it. Mr. Warder did not remember any other plea offers from the State besides twenty years, but Mr. Warder testified that he communicated all offers to Applicant.

*Applicant's Mother and Grandmother*

Applicant called his mother and grandmother as witnesses on his behalf. Both testified individually, that they were present for Applicant's guilty plea. Applicant's grandmother and mother both testified that it was their belief Applicant was going to receive a ten year sentence.

*Applicant*

Applicant testified that he asked his attorney to get him the best deal possible. Applicant testified that Mr. Warder told him the offer was for twenty years. Applicant discussed the facts of his case and "tried to bring up defense that he never pulled the trigger, but did shoot earlier." Applicant wanted ten years and testified that he didn't want to plea, because his co-defendant received a lesser sentence than twenty years. Applicant testified that Mr. Warder guaranteed him a ten year sentence.

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Applicant admitted that he was placed under oath prior to entering his guilty plea. Applicant testified that Judge Hayes asked him if he understood he could get twenty years, even though the recommendation was for “up to twenty.” Applicant testified that even though he said he agreed with the Solicitor’s recitation of the facts, he “had to go with the flow and didn’t want to mess it up.” Applicant testified that he hoped to get ten years, but he knew he could get up to twenty. Applicant testified that he remembered saying “sorry for everything that happened; would take it all back if I could” at the plea proceeding.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

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

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*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, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant



decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Lockhart, 474 U.S. 52 (1985).

After careful review of the entire record, including the testimony presented at evidentiary hearing, based on the standard discussed above, this Court finds Applicant is unable to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

*"Counsel failed to investigate"*

Applicant alleges his attorney failed to investigate his case. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other

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defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”). 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)).

During the evidentiary hearing, Applicant’s trial counsel testified credibly and in detail that he received most of his information for the case from Applicant. There was nothing left to investigate, as Applicant was at the scene of the crime and tested positive for gunshot residue. Mr. Warder testified that it was Applicant’s wish to enter a guilty plea and to receive an offer from the State. Applicant has failed to present any evidence of further investigation that Mr. Warder would have been able to perform and in what way would that investigation would have benefitted his defense. Applicant has failed to meet his burden of proof and the allegation is denied and dismissed with prejudice.

*“Failed to inform of defenses and failure to present plea offers”*

Applicant alleges that it was ineffective assistance of counsel when his attorney failed to inform him of any defenses and failed to present plea offers to him. These allegations contradict the record and the testimony presented at the evidentiary hearing. Applicant admitted during his testimony that he was aware of the plea offer from the State for a recommended sentence. Applicant admitted he understood that recommendation would be for up to twenty years of imprisonment for his charges. Applicant admitted that he wanted a ten year sentence and was just trying to get the best deal possible.

Mr. Warder testified at the hearing credibly and in detail as to the facts surrounding Applicant’s case. It is clear from the record that Applicant was at the scene of the crime, possessed

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a firearm, and had fired the weapon that was recovered by police. Applicant admitted during his guilty plea to the facts as presented by the Solicitor, which included Applicant being involved in the shooting. Mr. Warder testified that he informed Applicant of the plea offer of twenty years and would have informed Applicant of any other offers, had there been any made.

Applicant had failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

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**CONCLUSION**

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 20 day of August

  
 GRACE G. KNIE  
 Presiding Judge  
 Seventh Judicial Circuit

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 , South Carolina

# Spartanburg County

Spartanburg County Court House  
180 Magnolia Street  
P. O Box 3483  
Spartanburg, SC 29304-3483

Phone (864) 596-2591  
Fax (864) 596-2239



**M. Hope Blackley**  
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

McConde Tophum Jotel  
Applicant # 372302

7<sup>TH</sup> JUDICIAL CIRCUIT

CASE # 2018 CP 42-612

VS  
State  
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the Order Dismissal  
In this action dated 8-20 2018 on 8-21-18

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Wegan Jancuons  
Rocky Ridge  
\_\_\_\_\_  
\_\_\_\_\_

8-21-18  
(Date)

Carrie Seay  
(Signature)

WITNESSES

1. SENTENCE MADE

Spartanburg County Sheriff's Office

2. CARD PULLED

3. INDEXED

4. CHECKED WARRANTS

5. CHECKED SIGNATURE

6. ASSESSMENT AND FINE CARD MADE

COMPUTER

8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

COUNT ONE: 2016A4210201111

COUNT TWO: 2016A4210201121

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury Date:

JUL 22 2016

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 16-GS-42-4100

The State of South Carolina  
County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 25 2016

TERM

THE STATE  
vs.

DEANDRE TYSHUN FOSTER

Indictment for  
ATTEMPTED MURDER AND POSSESSION  
OF A WEAPON DURING VIOLENT CRIME

SC Code: 16-3-0029; 16-23-490

CDR Code: 3410; 549

Class FEL-A; FEL-F

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY

2016 JUL 26 AM 10:56

M. HOPE BLACKLEY

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

Compare  
Wolk Assoc Court 2  
Blane Smith  
C1 #18217

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

## INDICTMENT

At a Court of General Sessions, convened on JUL 22 2016 the  
 Grand Jurors of Spartanburg County present upon their oath:

**COUNT ONE: ATTEMPTED MURDER**

That Deandre Tyshun Foster, did in Spartanburg County on or about April 1, 2016, with malice aforethought attempt to kill Savanna Thompson, by shooting the victim with a firearm, with the intent to kill the said victim, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**COUNT TWO: POSSESSION OF A WEAPON DURING A VIOLENT CRIME**

That Deandre Tyshun Foster, did in Spartanburg County on or about April 1, 2016, possess or visibly display a firearm during the commission of a violent crime, to-wit: ATTEMPTED MURDER, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
 ASSISTANT SOLICITOR

WITNESSES

Spartanburg Sheriff's Office

*Jimmy W. Owens*

ARREST WARRANT NUMBER

2016A4210201123

ACTION OF GRAND JURY

**True Bill**

Foreperson of Grand Jury  
Date:

JUL 22 2016

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO

**16-GS-42-4102**

The State of South Carolina

County of Spartanburg

*Barry Barnette, Solicitor*

COURT OF GENERAL SESSIONS

JUL 25 2016

TERM

THE STATE  
vs.

DEANDRE TYSHUN FOSTER

Indictment for

DISCHARGING FIREARM  
AT OR INTO A VEHICLE

SC Code: 16-23-440(B)  
CDR Code: 2907  
Class FELIE

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*Walter Plosser*  
*James Smith*

4/26/17

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

INDICTMENT

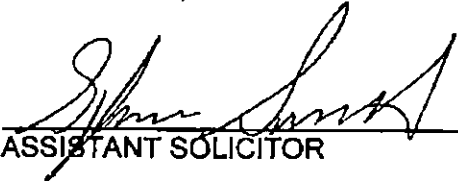
JUL 22 2016

At a Court of General Sessions, convened on \_\_\_\_\_, the  
Grand Jurors of Spartanburg County present upon their oath:

**DISCHARGING A FIREARM AT OR INTO A VEHICLE**

That Deandre Tyshun Foster did in Spartanburg County on or about April 1, 2016 discharge or cause to be discharged unlawfully a firearm at or into a vehicle while it was occupied by Savanna Thompson and Aaron Clay, in violation of §16-23-440(B) of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

WITNESSES

SENTENCE MADE  
 Spartanburg County Sheriff's Office *date*  
 3. CARD FILLED  
 4. INDEXED *James W. Davis*  
 5. CHECKED WARRANTS  
 6. CHECKED SIGNATURE  
 7. ASSESSMENT AND FINE CARD MADE *Complete*  
 ATTORNEY'S COPY

ARREST WARRANT NUMBER

2016A4210201115

ACTION OF GRAND JURY

*True Bill*

Foreperson of Grand Jury  
Date:

JUL 22 2016

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. **16 GS-42-4101**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 25 2016

TERM

THE STATE  
vs.

DEANDRE TYSHUN FOSTER

Indictment for  
ATTEMPTED MURDER

SC Code: 16-3-4029  
CDR Code: 3410  
Class FEL-A

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