

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Grace Gilchrist Knie, Circuit Court Judge

JENNIFER LYNN DALE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000062

APPENDIX

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RECEIVED

Aug 12 2020

S.C. SUPREME COURT

INDEX

INDEX	i
TRANSCRIPT OF GUILTY PLEA HEARING HELD JANUARY 24, 2018.....	1
GUILTY PLEA AFFIDAVIT.....	18
APPLICATION FOR POST-CONVICTION RELIEF	24
RETURN AND MOTION FOR MORE DEFINITE STATEMENT	31
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD NOVEMBER 13, 2019	42
ORDER OF DISMISSAL	104
INDICTMENTS, SENTENCING SHEETS, AND ARREST WARRANTS	124

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK) 2018-GS-46-0243;
) 0243 (A) ; 0244

STATE OF SOUTH CAROLINA)
)
vs.) TRANSCRIPT OF RECORD
)
JENNIFER LYNN DALE)
)
JANUARY 24, 2018
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE DANIEL HALL

APPEARANCES:

MARINA HAMILTON, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEY FOR THE STATE

GEOFFRY M. DUNN, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES: DIRECT CROSS RE-DIRECT RE-CROSS

(NO TESTIMONY TAKEN)

E X H I B I T S

DESCRIPTION:

ID.

EV.

NO EXHIBITS

1 THE COURT - All right, solicitor.

2 MS. HAMILTON - Thank you, Your Honor. This is
3 Jennifer Lynn Dale. She is appearing today with her
4 appointed counsel, Mr. Geoff Dunn. The Defendant's
5 pleading guilty today on true bill indictments for
6 possession of a weapon during the commission of a violent
7 crime, attempted armed robbery and burglary second degree
8 violent. Actually, I don't know if that one has been true
9 billed. It might actually -- I have it listed as true
10 billed. This is a negotiated eight-year plea. She has
11 served 80 days in jail.

12 THE COURT - All right, thank you.

13 MS. HAMILTON - Oh, and, Your Honor, we have
14 complied with the Victim's Rights Act.

15 THE COURT - Is the victim present?

16 MS. HAMILTON - No, Your Honor.

17 THE COURT - All right, Mr. Dunn, do you represent
18 Jennifer Dale on these charges?

19 MR. DUNN - I do, Your Honor.

20 THE COURT - How does she indicate she wishes to
21 plead?

22 MR. DUNN - Guilty.

23 THE COURT - Ms. Dale, I need to talk to you a
24 little bit and get some basic information from you. How
25 old are you?

1 MS. DALE - 26.

2 THE COURT - All right, you need to speak up so I
3 can hear you, and the court reporter has to take down
4 everything you and I say.

5 How old are you?

6 MS. DALE - 26.

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

8 MS. DALE - 9th grade.

9 THE COURT - Have you ever been treated for any
10 mental or emotional disability?

11 MS. DALE - No, Your Honor.

12 THE COURT - Do you understand what you're doing
13 here?

14 MS. DALE - Yes, Your Honor.

15 THE COURT - Ms. Dale, I need to talk to you about
16 these three charges -- or three -- that you have pending.
17 Indictment 2018-GS-46-00244 is a true bill indictment.
18 You're originally indicted for armed robbery. The armed
19 robbery indictment alleges that on or about June the 18th,
20 2017 here in York County you did, while armed with a deadly
21 weapon, by force, threats, intimidation you did take goods
22 or money from a Marquavian Hardy. The State and your
23 lawyer have negotiated a plea to attempted armed robbery.
24 That charge carries -- that 20? -- carries up to 20 years.
25 It's a violent, most serious offense. The significance of

1 that is is that if you enter a plea today you will have a
2 conviction for a violent most serious offense. That will
3 affect your status in the department of corrections. In
4 addition, we have what's called the three strikes rule in
5 South Carolina where if you are convicted of two most
6 serious offenses or three serious or a combination of
7 serious or most serious offenses, on that second most
8 serious offense or that third serious offense the State
9 could seek a life without parole. We call that the three
10 strikes law. This is one strike. In addition, not only
11 will your status in the department of corrections be
12 affected, but your parole eligibility would be affected
13 because of your plea to this charge. Do you understand
14 that?

15 MS. DALE - Yes, Your Honor.

16 THE COURT - How do you plead to attempted armed
17 robbery?

18 MS. DALE - Guilty.

19 THE COURT - Indictment 2018-GS-46-0243 is what we
20 call a two-count indictment. Count one alleges that on or
21 about June the 18th, 2017 here in York County you did enter
22 a dwelling that belonged to Ricky Dale without consent, and
23 you entered in the nighttime while armed with a deadly
24 weapon. You were indicted for -- on a true indictment,
25 burglary first degree, however, the State and your lawyer

1 have negotiated a plea to burglary second degree violent.
2 It is also a violent and serious offense. Do you
3 understand what you're charged with and the potential
4 penalty which is up to 15 years on that charge? How do you
5 plead to that charge?

6 MS. DALE - Guilty, Your Honor.

7 THE COURT - Count two is Indictment 2018-GS-46-
8 243(A); that count on that indictment is for possession of
9 a weapon during the commission of a violent crime. The
10 indictment alleges that on or about June the 18th of last
11 year, while in the commission of a violent crime, burglary
12 first degree, you did possess a weapon. You can get up to
13 five years for that charge. Do you understand what you're
14 charged with and the potential penalty on that?

15 MS. DALE - Yes, Your Honor.

16 THE COURT - How do you plead to that charge?

17 MS. DALE - Guilty, Your Honor.

18 THE COURT - Let me talk to you a little bit about
19 your rights in a jury trial. See, nobody can force you to
20 plead guilty and make you plead guilty, and I'm going to
21 talk to you about your rights in a jury trial and it does
22 appear that you and Mr. Dunn have been over those rights
23 and I'm getting ready to go over with you on this form, a
24 plea waiver form that would be made part of the record. It
25 indicates that you've signed it and dated it today, that

1 you understood the rights that are in this form and you're
2 giving them up in order to plead guilty. Is that correct?

3 MS. DALE - Yes, Your Honor.

4 THE COURT - Did you understand the rights that
5 you initialed in this form that you've went over with Mr.
6 Dunn?

7 MS. DALE - Yes, Your Honor.

8 THE COURT - All right, and one of those rights is
9 a right to a jury trial. Nobody can force you to plead
10 guilty or make you plead guilty. You -- anytime you're
11 charged with an offense, you have a right to a trial by a
12 jury. You can maintain your innocence or you could simply
13 ask for a trial. What that means is the State would then
14 have to bring their witnesses here in the courtroom; you'd
15 be present in the courtroom; you'd be able to see and hear
16 those witnesses and what their testimony is, and your
17 lawyer could cross examine them on your behalf. That's
18 called the right to confrontation. At trial you'd have a
19 right to remain silent. That means you wouldn't have to
20 say anything about the facts in the case, because the
21 burden would be on the State to prove to 12 jurors your
22 guilt of these crimes with their evidence beyond a
23 reasonable doubt. You could present a defense if you
24 wished, but you would not be required to. If you exercise
25 that right to remain silent, the Court would instruct the

1 jury and tell the jury that they're not even to consider
2 that in determining whether you're guilty or not guilty.
3 The Court would instruct them that they'd have to find --
4 to find you guilty, the State would have to prove your
5 guilt beyond a reasonable doubt with their evidence, and,
6 in fact, 12 jurors have to all unanimously agree that you
7 were guilty and the State had met their burden before you
8 could be found guilty. Those are some of your basic rights
9 in a jury trial. Do you understand those rights?

10 MS. DALE - Yes, Your Honor.

11 THE COURT - Is it your desire today to give up
12 those rights and go forward with this plea?

13 MS. DALE - Yes, Your Honor.

14 THE COURT - Let me talk to you a little bit about
15 your representation by Mr. Dunn, your lawyer. Have you had
16 plenty of time to discuss this case with him?

17 MS. DALE - Yes, Your Honor.

18 THE COURT - Included in that -- often -- has he
19 gone over what we call discovery or sometimes folks say
20 their motion, which would mean incident report, case
21 summary, statements, by individuals -- could be co-
22 defendants, other reports? Has he been over -- provided
23 you with those and been over those with you?

24 MS. DALE - Yes, Your Honor.

1 THE COURT - Do you have any complaints about Mr.
2 Dunn and the way he's represented you?

3 MS. DALE - No, Your Honor.

4 THE COURT - Are you pleading guilty to these
5 three charges of your own free will?

6 MS. DALE - Yes, Your Honor.

7 THE COURT - Are you pleading guilty to these
8 three charges because you, in fact, are guilty of these
9 three charges?

10 MS. DALE - Yes, Your Honor.

11 THE COURT - This is a negotiated sentence. Your
12 lawyer and the solicitor have negotiated an eight-year
13 sentence in the department of corrections, which means that
14 if I agree with the negotiation, I would give you no more
15 or no less. If I disagree with the negotiation, you would
16 be allowed to withdraw your plea. Do you understand that?

17 MS. DALE - Yes, Your Honor.

18 (WHEREUPON, DEFENDANT IS CRYING)

19 THE COURT - Let's give her some kleenex.

20 (WHEREUPON, CLERK COMPLIES)

21 THE COURT - All right, let's do this. Are you
22 more comfortable sitting down, Ms. Dale?

23 MS. DALE - I'm all right.

24 THE COURT - You all right standing up? All
25 right.

1 (WHEREUPON, NO RESPONSE)

2 THE COURT - I find the decision of this defendant
3 to enter her plea to these three charges to be freely,
4 voluntarily and intelligently made with the advice of a
5 competent attorney with whom she says she's satisfied.

6 Ms. Dale, you have a right to an appeal. If I
7 make an error or if you disagree with the sentence, you
8 have a right to an appeal. That does not necessarily mean
9 it would all be heard all over again, but it means that a
10 higher court would review what this Court does. That's
11 what an appeal is. If you want -- if you exercise your
12 appeal, you'd have to file your appeal within ten days from
13 today. Normally, you'd start that process by notifying
14 your attorney. Again, that's a right that you have. Do
15 you understand that right?

16 MS. DALE - Yes, Your Honor.

17 THE COURT - What I'm going to do is listen to the
18 solicitor tell me what happened, and then I'll come back to
19 Mr. Dunn, your lawyer, and hear from him.

20 Solicitor?

21 MS. HAMILTON - Thank you, Your Honor. On June
22 18th of 2017 at [REDACTED] Bowling Green Drive, in the early
23 morning hours the defendant, along with her three co-
24 defendants broke into that residence without the permission
25 of the residents, Jada Horne and Maquavian Hardy. Most of

1 the suspects were armed with shotguns including the
2 defendant. The defendant had driven all of her co-
3 defendants to this residence with the purpose of retrieving
4 a gun they believed they had the right to, specifically,
5 Mr. Pendergrass, one of her co-defendants. Once in that
6 residence one of them -- they all -- (sic) co-defendants
7 assaulted a 12 year-old who was living at the home. After
8 figuring out that the 12 year-old was not, in fact, the
9 intended target, Ms. Dale then took that 12 year-old to the
10 mother's room. The mother of that 12 year-old stated that
11 the intended target, Mr. Hardy, did this to himself. At
12 that time the mother stated that she saw a shotgun in the
13 defendant's hand. While in that home, two of the male co-
14 defendants, according to the victim, Hardy, had a gun to
15 him and took three hundred and forty dollars out of his
16 pants pocket during this break-in. This is kind of a hand
17 of one/hand of all case, Your Honor, but we do have a
18 cooperating co-defendant in this case who would state that
19 she did help initiate the idea to get this done.

20 THE COURT - All right, any prior record?

21 MS. HAMILTON - She has a 2009 breaking and
22 entering into an auto, and she also has a juvenile record.

23 THE COURT - And has the State complied with the
24 Victim's Rights Act?

1 MS. HAMILTON - We have, Your Honor. The 12 year-
2 old is in school and unable to attend these hearings.

3 THE COURT - The 12 year-old's mother was in the
4 house. Is that right?

5 MS. HAMILTON - Yes, she was, Your Honor. She ---

6 THE COURT - And she's been contacted.

7 MS. HAMILTON - --- does not wish to be present --
8 -

9 THE COURT - Okay, all right.

10 MS. HAMILTON - --- and does not have custody of
11 the 12 year-old at this time due to this incident.

12 THE COURT - Okay. All right, Mr. Dunn, I'll be
13 glad to hear from you.

14 MR. DUNN - May it please the Court, Your Honor.
15 Your Honor, I'm appointed to represent Ms. Dale. She is 26
16 years old. She has an eight-grade education.

17 MS. DALE - 9th.

18 MR. DUNN - She dropped out of school in the 9th
19 grade. She's got four children that are young age and who
20 as a result of this will have -- of her going to prison
21 will have to live with her parents. And her family is
22 present in the Court. They are in the back row of the --
23 of my side of the gallery. Your Honor, this is -- I think
24 at the end of the day what we have here is -- is what went
25 down is not necessarily what was discussed with her and her

1 co-defendants. It's our -- it's her position and our
2 position that the co-defendants escalated something that --
3 it was already a bad situation but the co-defendants made
4 it worse and, unfortunately, brought weapons to it. While
5 she was not involved with the assaulting of that 12 year-
6 old, one of the co-defendants did that. Once she saw what
7 happened, she did stop it; she then took that child to her
8 mom and -- to his mother and tried to mitigate that part of
9 the involvement as much of -- that part of the incident as
10 much as possible. Your Honor, quite frankly, I think that
11 just meeting and talking with her for the last seven or
12 eight months that I've had her as a client, I just -- I
13 never get the feeling that this went down as an armed
14 robbery or it wasn't planned as an armed robbery, but
15 that's what ended up happening, and we're thankful that she
16 doesn't have to face the armed robbery which carries a
17 mandatory minimum time and thankful she doesn't have to
18 face the burglary first which carries a mandatory minimum
19 time. We would ask that you go along with the negotiations
20 and allow her to get her -- do her time and move on.

21 THE COURT - All right, thank you.

22 MS. HAMILTON - Your Honor, I do want to put on
23 the record that we're dismissing charges so that that's on
24 the record.

1 THE COURT - All right, let's put that on the
2 record.

3 MS. HAMILTON - We are dismissing at the
4 conclusion of this plea two counts of attempted murder, two
5 counts of kidnapping and discharging a firearm into a
6 dwelling.

7 THE COURT - All right, thank you.

8 Ms. Dale, anything you want to say?

9 MS. DALE - I'm just sorry. It wasn't supposed to
10 happen like it did, and I mean I can't take nothing bad.

11 THE COURT - All right, thank you. I'm going to
12 follow the negotiation. How many days -- I'm sorry -- was
13 she ---

14 MR. DUNN - She did 80 days, Your Honor.

15 THE COURT - 80?

16 MR. DUNN - Yes, sir.

17 THE COURT - Indictment 2018-GS-46-0244, Jennifer
18 Lynn Dale having pled guilty to attempted armed robbery,
19 the sentence of the Court is that she be committed to the
20 department of corrections for eight years, concurrent,
21 credit for 80 days, 2018-GS-46-0243, burglary second degree
22 violent, the sentence is she be committed to the department
23 of corrections for eight years, concurrent, credit for 80
24 days, 2018-GS-46-0243(A), possession of a weapon during the
25 commission of a violent crime, sentence is she be committed

1 to the department of corrections for a determinate term of
2 five years, concurrent, credit for 80 days. Thank you.

3 MR. DUNN - Thank you, Your Honor.

4 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 16 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Jennifer Lynn Dale as taken by me in The Court of General Sessions for the Sixteenth Judicial Circuit on January 24, 2018, and provided by me this the 12th day of March, 2018.

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

/S/ SHIRLEY BROOM

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

PLEA WAIVER FORM

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

CERTIFIED TRUE COPY

2018 OCT 16 AM 9:15

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

vs.

JLD = defendant's initials requiredJennifer Lynn Dale,
Defendant.Total Time Served (days) 80 days (6/21-9/8)

I want to plead guilty, no contest, or enter a plea under N.C. v. Alford to the charges listed below. I understand that the minimum and maximum penalties as well as some of the collateral consequences for the charges to which I am pleading are listed below:

True billed ☒ Waiver ☐Indictment #: 2018-GS-46-00243(A) CDR: 0549 Statute #: 16-23-0490Original Charge: Possession Of A Weapon During The Commission Of A Violent CrimeJLDPleading To: Possession Of A Weapon During The Commission Of A Violent CrimeMisdemeanor ☐ Felony ☒

Penalty: MM 5 years

☒ Non-Violent ☐ Violent ☐ Serious ☐ Most Serious ☐ No Parole ☐ Sex Offender
Registry

☐ Mandatory GPS ☐ Increased Punishment for Future Offenses ☐ Murder Day for Day
True billed ☒ Waiver ☐Indictment #: 2018-GS-46-00244 CDR: 0026 Statute #: 16-11-0330(B)Original Charge: Armed RobberyJLDPleading To: Attempted Armed RobberyMisdemeanor ☐ Felony ☒

Penalty: NMT 20 years

☐ Non-Violent ☒ Violent ☐ Serious ☒ Most Serious ☒ No Parole ☐ Sex Offender
Registry

☐ Mandatory GPS ☒ Increased Punishment for Future Offenses ☐ Murder Day for Day

True billed ☒ Waiver ☐Indictment #: 2018-GS-46-00243 CDR: 0086Statute #: 16-11-0312(B)Original Charge: Burglary, First DegreeSLDPleading To: Burglary, Second Degree, (Violent)Misdemeanor ☐ Felony ☒

Penalty: NMT 15 years

☐ Non-Violent ☒ Violent ☒ Serious ☐ Most Serious ☒ No Parole ☐ Sex Offender

Registry

☐ Mandatory GPS ☒ Increased Punishment for Future Offenses ☐ Murder Day for DayList **General Sessions** Charges Being Dismissed: Attempted Murder (2 cts), Kidnapping (2 cts), Discharging a FA into a DwellingList Pending **General Sessions** Charges not being resolved: Click here to enter text.

List Prior Convictions: 2009 - B&E Auto

Juvenile RAP:

2008 - RSG; B&E MV (2 cts)

2007 - PL; Malicious Injury to PP

2005 - Shoplifting

YOA: ☐ Eligible ☒ Ineligible due to: ☐ Age ☒ Offense ☐ Other: Click here to enter text.Currently on Probation? ☐ Yes ☒ No Is this plea a violation of the probation? ☐ Yes ☐ NoSLD I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea:

Type of Plea	☒ Guilty	☐ N.C. v. Alford	☐ Nolo
	☐ Recommendation	☒ Negotiated	☐ Without Recommendation

SLD State is recommending or the negotiation is: 8 yearsSLD This plea is not the product of any other promises or any threats whatsoever, except as indicated below:SLD I understand that, upon entering a plea under N.C. vs. Alford, I will be treated as being guilty whether

or not I admit that I am in fact guilty.

☐ I understand that a no contest plea is treated by the Court the same as a plea of guilty.

☐ The Solicitor is making a recommendation to the judge, as listed above. I understand the Judge is not required to accept the recommendation given by the Solicitor and the Judge may accept it, may go below the recommendation, or may go above the recommendation.

☒ JLD This plea is a negotiated plea and the negotiation is listed above. I understand the Judge may refuse to accept the negotiation and that if the Judge refuses, the plea will not go forward.

☐ This plea is without negotiation and I understand I could receive from the minimum to the maximum sentence on each charge to which I am pleading guilty and that those sentences could also be run consecutive to other.

☒ JLD I am not currently under the influence of any intoxicants, drugs, or narcotics.

☐ I currently DO take the following prescribed medications:

☒ JLD I am entering my plea today freely, voluntarily, knowingly, and intelligently.

☐ I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer, or the court will appoint a lawyer for me if I cannot afford one. I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself. Understanding this, I give up this right.

☒ JLD I understand that I have the right to plead not guilty and be tried by a jury, and that I am presumed innocent until such time as the jury is convinced of my guilty beyond a reasonable doubt. Understanding this, I give up that right.

☒ JLD I understand I have the right to have the Court issue subpoenas to bring my witnesses and evidence to a trial at no cost to me. Understanding this, I give up that right.

☒ JLD I understand I have the right to testify or remain silent at trial. Understanding this, I give up this right.

☒ JLD My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

☒ JLD I understand that I have the right to remain silent, that is, the right against self-incrimination. Understanding this, I give up this right.

☒ JLD I understand that in a jury trial I have the right to see and hear all witnesses called to testify against me and to confront, cross-examine, and question them.

☒ JLD I give up, for each of the charges listed above, my right to a jury trial, my right to a bench trial (trial by

Judge with no jury), my right to confront and cross examine witnesses, my right to remain silent and ²¹not incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf.

☒ I understand that by my pleading to each charge, I am waiving all defenses, including, but not limited to the right to challenge any evidence the State may have used in its case against me and the voluntariness of any statements made to law enforcement.

☒ I understand that upon my conviction I may be ordered to pay restitution to any persons directly and proximately injured as a result of my commission of these crimes and that a civil judgement in favor of each person may be docketed against me and will be a lien against any real estate I own now or may own in the future.

☒ I understand that if I am not a citizen of the United States, my plea of guilty, no contest, or my plea under N.C. v. Alford may result in my deportation, exclusion from re-entry to the United States, and denial of naturalization and amnesty.

☒ I understand that I have 10 days within which to appeal this guilty plea.

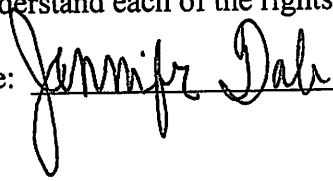
☒ I understand that I am pleading guilty, no contest, or under N.C. v. Alford to the charges shown above.

☒ I now personally plead ☒ guilty; ☐ under N.C. v. Alford; ☐ no contest to the charges above.

Acknowledgement

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, the effects of any prior convictions and enhancements, have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Defendant's Signature: _____



Date: _____

1-24-18

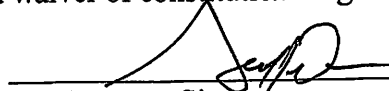
Defense Counsel's Statement

I, the attorney for the defendant in the above entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges, all discovery provided by the State, and possible defenses with the defendant and the consequences of the plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his or her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Print Name: _____

Geoffrey Dunn

Attorney Signature



Bar #

72541

Date: _____

24 Jan 18

Circle One: PD

Retained

Appointed

Judge's Confirmation

Upon consideration of the record, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor and the contents of this plea and waiver form, the undersigned finds that:

1. There is a factual basis for the entry of the plea,
2. The defendant is satisfied with his/her lawyer's legal services,
3. The defendant is competent to stand trial, and
4. The plea is the informed choice of the defendant and is made freely, voluntarily, knowingly, and intelligently.

The defendant's plea is hereby accepted by the Court.

Judge's Signature

Judge's Code: _____ Date: _____

FILED RECEIVED
FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

JENNIFER L. DALE #375190)

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

v.)

State of South Carolina)

2018 OCT 15 PM 2:10 IN THE COURT OF COMMON PLEAS

DAVID HAMILTON
C.C.P. & CS
YORK COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Leath Correctional Institution
2. Name and location of Court which imposed sentence York County Court of General Sessions, 2 Congress St., York, SC 29745
3. Name(s) of co-defendant(s) (if any) Pendergrass, Keywan Dye, Darrin Adams
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-46-0243 - Burglary 2nd Degree
 - (b) 2018-GS-46-0243A - Firearms Provision
 - (c) 2018-GS-46-0244 - Attempted Armed Robbery
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 24, 2018 - 8 years concurrent

- (b) January 24, 2018 - 5 years concurrent
- (c) January 24, 2018 - 8 years concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Defense attorney refused to file Direct Appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 - (b) Involuntary Guilty Plea
 - (c) _____
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? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

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

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____

- (c) your sentencing? yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Geoffery Dunn, Esq., PO Box 1029, Rock Hill, SC 29731
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea and Sentencing
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
New Trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

)

)

County of Greenwood

)

VERIFICATION

I, Jennifer L. Dale, 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.

Jennifer Dale

SWORN to and subscribed before me this 1
day of October, 2018.

Lis Dell

Notary Public

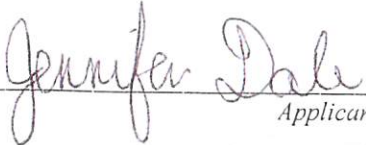
(L.S.)

My Commission Expires: 7/5/28

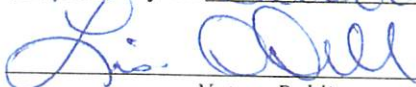
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jennifer L. Dale, 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.


Applicant

SWORN or affirmed to and subscribed before me this
1 day of October, 2018.


Notary Public

My Commission Expires: 7/5/28

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS,
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Jennifer Lynn Dale, #375190,	)	Case No.: 2018-CP-46-3142
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR A
v.	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The State (Respondent), making its Return to the application for post-conviction relief filed on October 15, 2018, would respectfully show this Court:

I. Procedural History

Jennifer Lynn Dale (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During the January 18, 2018 term, the York County Grand Jury indicted Applicant for burglary, first degree (2018-GS-46-00243), possession of a weapon during the commission of a violent crime (2018-GS-46-00243A), and armed robbery (2018-GS-46-00244). Geoffrey Dunn, Esquire, represented Applicant. Assistant Solicitor Marina Hamilton of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On January 24, 2018, Applicant pled guilty before the Honorable Daniel D. Hall to the lesser included offenses of attempted armed robbery and burglary, second offense; Applicant also pled guilty as indicted to possession of a weapon during the commission of a violent crime. Pursuant to negotiations between the State and Applicant, Judge Hall sentenced Applicant to eight years imprisonment for attempted armed robbery, eight years concurrent imprisonment for burglary in the second degree, and five years concurrent imprisonment for possession of a weapon during the commission of a violent crime. Applicant did not appeal her conviction.

II. Factual History

On June 18, 2017, Applicant drove three individuals, who would later become her co-defendants, to a residence on Bowling Green Drive in York County. (GP Tr. 11.) Applicant and her co-defendants broke into the residence armed with shotguns to retrieve a gun from one of the residents. (GP Tr. 11-12.) Once inside, the co-defendants assaulted a twelve year-old child living at the home. (GP Tr. 12.) Once the group realized the child was not the intended target, Applicant took him to his mother's room while still armed with a shotgun. (GP Tr. 12.) Two co-defendants, also armed with guns, took \$340 from the pants of one of the residents during the incident. (GP Tr. 12.) A cooperating co-defendant told the State Applicant helped initiate the idea to "get this done." (GP Tr. 12.)

III. Allegations Raised and Relief Sought

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

In requested relief, Applicant asks for the Court for a new trial.

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

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant claims that she was denied effective assistance of counsel during her plea. However, Applicant has not alleged any specific grounds in support of her allegation that would allow Respondent to draft a response.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test as Applicant has failed to provide any specific allegations to support her claims of ineffective assistance of counsel. 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).

V. Responses to Allegations of Involuntary Guilty Plea

Applicant also asserts her plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his or her plea and the charges against the defendant. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the

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

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. The Court went through an extensive colloquy with Applicant prior to accepting her guilty plea. Specifically, Applicant was asked by the Court if she desired to give up her right to a jury trial and go forward with the plea in this case. Applicant responded “Yes, your Honor” (GP Tr. 9.) When the Court asked Applicant “Are you pleading guilty to these three charges because you, in fact, are guilty of these three charges?” the Applicant again responded “Yes, your Honor” (GP Tr. 10). However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. Motion for a More Definite Statement

Applicant has provided a general allegation of ineffective assistance of counsel in the post-conviction relief application. Applicant has failed to set forth any specific facts regarding the allegation that would allow a response to be drafted. The Uniform Post-Conviction

Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Because Applicant has retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the post-conviction relief hearing. Therefore, Respondent requests that Applicant be required to amend her application to set forth specific grounds on which she is seeking post-conviction relief.

VII. Request for Applicant to Amend Application

WHEREFORE, Respondent requests Applicant, through her counsel, amend her application for Post-Conviction Relief within thirty days. Failure to appropriately amend her application will result in Respondent seeking to dismiss the application for failure to state a claim upon which relief can be granted.

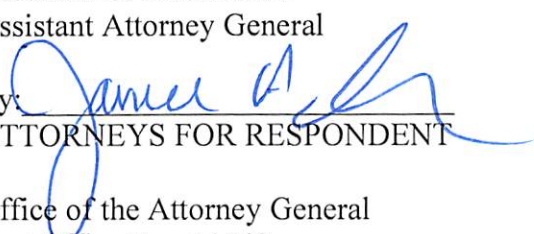
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

12/18, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2018-CP-46-3142
	)	
JENNIFER LYNN DALE, #375190,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

DATED this the 18th day of December, 2018.

Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
JENNIFER LYNN DALE #375190	)	DOCKET NO.: 2018-CP-46-3142
	)	
Applicant,	)	
	)	
v.	)	AMENDMENT TO POST-CONVICTION
	)	RELIEF APPLICATION
STATE OF SOUTH CAROLINA,	)	
	)	
<u>Respondent.</u>	)	

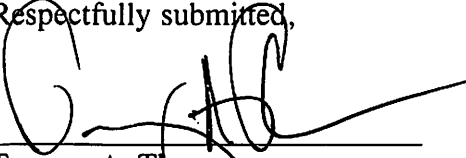
The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his original Post Conviction Relief Application. The Applicant re-alleges those grounds contained in the original Application for Post Conviction Relief as if fully repeated herein.

1. That Defense Counsel failed to take into consideration the fact that the Applicant was living at her father's residence and had the right to be there thus mitigating the issue of Burglary.
2. That the Applicant was not involved in the incident. That she was forced to drive the Co-Defendant's to the location of the incident. That these issues of defense and/or mitigation were not taken into consideration by Defense Counsel.
3. That Defense Counsel was ineffective in not consulting the Defendant regarding the evidence against her or evaluating the evidence that the State had in her case.
4. That Defense Counsel was ineffective in not fully advising the Applicant regarding her guilty plea. The Applicant did not understand why she was entering into the plea. She believed that she had viable defenses.

- a. That Defense Counsel was ineffective in his failure to speak with the Applicant's Father regarding ownership of the house and her right to be there.
- b. That Defense Counsel was ineffective in not properly investigating the case and the Applicant's involvement in this case.
- c. That the Applicant had witnesses to speak in her favor. These witnesses were not called by Defense counsel;
- d. That the Applicant was charged with Possession of a Weapon when no weapon was found.

That Applicant reserves the right to amend the Application as may become necessary.

Respectfully submitted,



Tommy A. Thomas
Attorney for Applicant

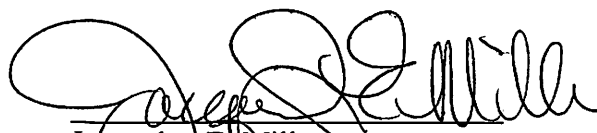
October 28, 2019

STATE OF SOUTH CAROLINA) IN THE COUNT OF COMMON PLEAS
COUNTY OF YORK) DOCKET NO.: 2018-CP-46-3142

JENNIFER LYNN DALE #375190)
Applicant,) CERTIFICATE OF SERVICE
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of AN Amendment to Post-Conviction relief Application by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Brianna Schill, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Tommy A. Thomas, Esq.
Attorney at Law
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

October 28, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-42-3142

JENNIFER LYNN DALE)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

NOVEMBER 13, 2019
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE GRACE GILCHRIST KNIE

APPEARANCES:

BRIANNA L. SCHILL, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

TOMMY A. THOMAS, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Jennifer Dale				
By Mr. Thomas	8			
By Ms. Schill		26		
By Mr. Thomas			32	
By Ms. Schill				35
By Mr. Thomas	36			
Ricky Lee Dale				
By Mr. Thomas	37			
Geoffry Dunn				
By Ms. Schill	45			
By Mr. Thomas		53		
By Ms. Schill			57	

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
(NO EXHIBITS)			

1 THE COURT - It's my understanding that the first
2 matter before me in this term for post conviction relief
3 hearings is the matter of Jennifer Lynn Dale, D-a-l-e. It
4 is civil action number 18-CP-46-3142. It's my
5 understanding that Ms. Dale is present -- good morning,
6 ma'am ---

7 MS. DALE - Good morning.

8 THE COURT - --- along with Tommy A. Thomas, ---

9 MR. THOMAS - Yes, ma'am.

10 THE COURT - --- counsel for her. Brianna Schill
11 is ---

12 MS. SCHILL - Yes, Your Honor.

13 THE COURT - --- here, and we have one anticipated
14 witness, Mr. Dunn. Okay. And so if you all are ready to
15 proceed, I have the original application. I have a return
16 and a motion for more definite and certain, and then I have
17 an amendment to the PCR application, and it looks like that
18 was on October the 28th. And so are there any initial
19 matters? Has everybody reviewed all of the documents?
20 Counsel?

21 MS. SCHILL -Yes, Your Honor.

22 MR. THOMAS - Yes, ma'am.

23 THE COURT - Okay. Are you ready to proceed?

24 MR. THOMAS - Yes, ma'am.

1 THE COURT - Okay. I am happy for you all to
2 proceed. Thank you.

3 MS. SCHILL - Thank you, Your Honor. I'll just
4 give you a little bit of the procedural background.
5 Jennifer Lynn Dale is presently confined in the South
6 Carolina Department of Corrections pursuant to orders of
7 commitment of the York County Clerk of Court. During the
8 January 2018 term, the York County Grand Jury indicted
9 applicant for first degree burglary, possession of a weapon
10 during the commission of a violent crime and armed robbery.
11 Geoffry Dunn, Esquire, represented applicant. Assistant
12 Solicitor Marina Hamilton of the Sixteenth Circuit
13 Solicitor's Office prosecuted the case. On January 24th,
14 2018 applicant pled guilty before the Honorable Daniel D.
15 Hall to the lesser included offenses of attempted armed
16 robbery and burglary second offense. Applicant also pled
17 guilty as indicted to possession of a weapon during the
18 commission of a violent crime. Pursuant to negotiations
19 between the State and applicant, Judge Hall sentenced
20 applicant to eight years imprisonment for attempted armed
21 robbery and eight years concurrent imprisonment for
22 burglary second degree and five years concurrent
23 imprisonment for possession of a weapon during the
24 commission of a violent crime. Applicant did not appeal
25 her conviction.

1 And, Your Honor, just for the record, two counts
2 of attempted murder, two counts of kidnapping and one count
3 of discharging a firearm into a dwelling were dismissed as
4 well. Applicant filed this PCR application on October
5 15th, 2018 and on October 28th, 2019 applicant served upon
6 our office an amended PCR application alleging the
7 following -- and bear with me, Your Honor, I'm going to
8 read them just for the record as is stated in the amended
9 application ---

10 THE COURT - Yes, ma'am, I have that. I can
11 follow along.

12 MS. SCHILL - Okay. The first allegation is that
13 defense counsel failed to take into consideration the fact
14 that the applicant was living at her father's residence and
15 had the right to be there, thus mitigating the issue of
16 burglary. The second application is that the application
17 was not involved in the incident, that she was forced to
18 drive the co-defendants to the location of the incident,
19 that -- these issues of defense and/or mitigation were not
20 taken into consideration by defense counsel. The third
21 allegation is that defense counsel was ineffective in not
22 consulting the defendant regarding the evidence against her
23 or evaluating the evidence that the State had in her case.
24 The fourth allegation is that defense counsel was
25 ineffective in not fully advising the applicant regarding

1 her guilty plea. The applicant did not understand why she
2 was entering into the plea; she believed she had viable
3 defenses. The next allegation is defense counsel was
4 ineffective in his failure to speak with the applicant's
5 father regarding ownership of the house and her right to be
6 there. The sixth allegation is defense counsel was
7 ineffective in not properly investigating the case and the
8 applicant's involvement in the case. The next allegation
9 is that the applicant had witnesses to speak in her favor.
10 These witnesses were not called by defense counsel. And
11 the final allegation is that the applicant was charged with
12 possession of a weapon when no weapon was found.

13 As Your Honor stated, applicant is present today
14 and represented by Mr. Tommy Thomas, Esquire.

15 THE COURT - Okay. Thank you. Okay, Mr. Thomas?

16 MR. THOMAS - Yes, ma'am. May it please the
17 Court.

18 THE COURT - Yes, sir.

19 MR. THOMAS - Your Honor, if it please the Court,
20 we'd call Jennifer Dale to the stand.

21 THE COURT - Okay. At this time, ma'am, I need
22 for you to come forward; take your time, and you'll be
23 seated over here to my right and you'll be sworn by our
24 clerk.

JENNIFER LYNN DALE - DIRECT BY MR. THOMAS

8

1 JENNIFER LYNN DALE, AFTER BEING FIRST DULY SWORN,
2 TESTIFIES AS FOLLOWS -

3 DEPUTY CLERK - Thank you. Please be seated.

4 THE COURT - Ma'am, if you'll state your full
5 name, please.

6 MS. DALE - Jennifer Lynn Dale.

7 THE COURT - And spell your last.

8 MS. DALE - D-a-l-e.

9 THE COURT - Okay, thank you.

10 All right, Mr. Thomas?

11 MR. THOMAS - Your Honor, if it please the Court.

12 DIRECT EXAMINATION

13 BY MR. THOMAS -

14 Q Jennifer, you are currently incarcerated?

15 A Yes, sir.

16 Q And where are you being housed?

17 A Griffin Camille Graham.

18 Q Okay. In Columbia.

19 A Yes, sir.

20 Q And you are serving time for what?

21 A Burglary second, attempted armed robbery and
22 possession of a weapon.

23 Q Okay. And you have a total sentence of what?

24 A Eight years.

25 Q Eight years. And what's your max-out date?

1 A 2024 of August.

2 Q Yes, ma'am. And you've been serving time since when?

3 A January the 26th.

4 Q Of what?

5 A Of 2018.

6 Q 2018. Okay. And you have filed a application for
7 post conviction relief?

8 A Yes, sir.

9 Q And you're asking that your conviction be set aside?

10 A Yes, sir.

11 Q Now, you understand, and we've talked about this, that
12 should the Court grant your request, that your conviction
13 would be set aside and that you would -- could be either
14 tried or end up with a plea or charges dismissed, you would
15 be back where you where when you started this.

16 A Yes, sir.

17 Q Okay. Do you understand that there are certain risk
18 associated with that?

19 A Yes, sir.

20 Q And that it's possible that if you went to trial, you
21 could get more time.

22 A Yes, sir.

23 Q And you understand that risk?

24 A Yes, sir.

25 Q And you're willing to accept that.

1 A Yes.

2 Q Do you wish to go forward today?

3 A Yes, sir.

4 Q Okay. Let me ask you this. Tell us a little bit
5 about -- because none of us were there when all this
6 happened -- tell us a little bit about what they said was
7 alleged that happened in this case.

8 A That a man was grazed in the head by -- by a gun and
9 he was robbed in my house.

10 Q Now, um -- and we talked about that. That was the
11 home that you were living in?

12 A Yes, sir.

13 Q And who owned that home?

14 A Ricky Dale.

15 Q And who is Ricky Dale?

16 A My father.

17 Q Okay. So you were staying in your father's home.

18 A Yes, sir.

19 Q All right. And there were allegations that there was
20 some sort of burglary and robbery that occurred in this
21 home?

22 A Yes, sir.

23 Q Okay. And you knew the people that were in the home -

24 --

25 A Yes, sir.

1 Q --- because you were living with them.

2 A Yes, sir.

3 Q Now, when were you arrested? Do you remember roughly
4 when?

5 A I want to say on Father's Day of 2018.

6 Q Okay. Now, did you make bond or did you -- did you
7 remain in the detention center?

8 A They denied my bond and then I went up for a bond
9 hearing and got bond.

10 Q Okay. So how long were you in the detention center?

11 A Three months.

12 Q Did that help or hurt or have any impact on the
13 ability of you to see your lawyer?

14 A A little.

15 Q Okay. And did you retain counsel or did you have
16 someone appointed to represent you?

17 A I had someone appoint. (sic)

18 Q Okay. And who was that individual that was appointed?

19 A Geoffry Dunn.

20 Q All right. Is he in the public defender's office or
21 was he ---

22 A He's a pro bono.

23 Q Okay. All right. And you had co-defendants. Is that
24 correct?

25 A Yes, sir.

1 Q How many co-defendants did you have?

2 A Three.

3 Q And who were they?

4 A Kejuan Dye, Denareay Pendergrass and Darron Adams.

5 Q And did they receive time as well?

6 A Two of them did, one of them didn't.

7 Q And how much time did the other two co-defendants

8 receive?

9 A One of them got the same time I got; the other one
10 took a trial.

11 Q Okay. And what -- do you know what he received?

12 A No, sir.

13 Q You don't. Okay. And you say the third one didn't
14 get any time at all?

15 A None.

16 Q Okay. Now, what was your relationship to these co-
17 defendants, if any?

18 A One of them was a boyfriend at the time, but he was
19 abusive.

20 Q Now, who was that boyfriend? What was his name?

21 A Denareay Pendergrass.

22 Q I'm sorry?

23 A Denareay Pendergrass.

24 Q Okay. Mr. Pendergrass. And how long had you known
25 Mr. Pendergrass?

1 A For about six, seven months.

2 Q Okay. Now, this allegedly was all over -- was it Mr.
3 Pendergrass trying to retrieve a pistol or something?

4 A Yes, sir.

5 Q And what was the story behind that?

6 A It was drug-related.

7 Q Okay. With Mr. Pendergrass.

8 A Yes.

9 Q And not you.

10 A Yes, sir.

11 Q Okay. So it wasn't your pistol that anybody was
12 trying to get back.

13 A No, sir.

14 Q All right. So let me ask you this, let's -- let's
15 talk about -- you were -- you had counsel that was
16 appointed to represent you, and then you were in the county
17 jail. How many times did meet with your attorney when you
18 were in the county jail? Do you remember?

19 A I met with him one time and it was on the phone in the
20 county jail.

21 Q In the county jail. And then after you got out and
22 was on bond, did you get an opportunity to meet with him
23 then?

24 A I met with him when I had to go to Court for my bond
25 hearings, ---

1 Q Okay.

2 A --- to report back to Court.

3 Q All right. Did you ever go to his office?

4 A One time.

5 Q One time. All right. And how much time did you spend
6 with him when you went to his office?

7 A Probably about 15, 20 minutes.

8 Q Was that closer or further away from -- we're talking
9 about a kind of a time --

10 A It was closer, very close.

11 Q Closer to your trial date.

12 A Yes, sir.

13 Q Okay. And what did you do with counsel, with your
14 attorney to prepare this case for either a plea or for
15 trial?

16 A Nothing. I called him and kept asking him if I could
17 get a second plea and they kept telling me no.

18 Q All right. And so during this period of time, did you
19 sit down with him and go over -- and I'll use the legal
20 term -- discovery? Do you know what that is?

21 A No, sir.

22 Q Okay. Did you ever sit down with him and go over the
23 State's evidence, the evidence that they had against you
24 that he would've had in his possession?

25 A No, sir.

1 Q All right. Did you ever really know what kind of case
2 that they had, whether weak, strong or otherwise, that they
3 had against you?

4 A No, sir.

5 Q Okay. And did you -- what was your position? What
6 did you tell him that you wanted to do?

7 A I wanted to do the endorsement (sic) which I was
8 scared for life.

9 Q Okay, but you wanted to go -- you wanted to take this
10 case to trial?

11 A I -- yes.

12 Q And did you believe that you had defenses to these
13 charges that you had?

14 A Yes.

15 MR. THOMAS - Your Honor, if I could beg the
16 Court's indulgence just for a second.

17 THE COURT - Yes, sir. Take your time.

18 MR. THOMAS - Yes, ma'am.

19 Q So during these times that you were meeting with him
20 or spoke to him on the phone, how did he tell you that he
21 was going to represent you?

22 A He really didn't say, sir.

23 Q Okay. Did you talk to him and tell him your side of
24 the story?

25 A Yes, sir.

1 Q And what was -- just kind of briefly, tell us a little
2 bit about what your side of the story was.

3 A That I was abused, and I was forced to drive them to
4 the pla -- to the -- my residence and play a part in it, I
5 was forced, I abused, so I -- I was scared for my life.

6 Q Okay. So we're talking about Mr. Pendergrass?

7 A Yes, sir.

8 Q And was he the main person involved in this crime?

9 A You can say so.

10 Q Okay. And let's talk about this now. Then your
11 relationship with Mr. Pendergrass was what?

12 A That was my boyfriend at the time.

13 Q Okay. Now, you said that he was abusive. How was he
14 abusive to you?

15 A He beat me in front of my child and made me ---

16 (WHEREUPON, WITNESS CRYING)

17 A I was basically dead on the floor in front of my
18 child.

19 Q Take your time. I know this is painful for you.

20 A I had used the bathroom on myself in front of my
21 child, and I guess it wasn't my time to go, so God brought
22 me back to life and he was still beating me and I had to
23 get away some way and my child's to help (sic) me get away.

24 Q How old is your child?

25 A He -- he'll be nine.

1 Q Okay. So you said that he tried -- he attempted to
2 strangle you?

3 A Yes, sir.

4 Q And was there any reason for this or purpose ---

5 A He was just abusive and he was on drugs read bad.

6 Q Okay. And this occurred in front of your child?

7 A Yes, sir.

8 Q And were there other instances of abuse?

9 A It was multiple incidents. My father had called the
10 police and wanted me to press charges and like a typical
11 female, I didn't press no charges.

12 Q Why didn't you leave him?

13 A Because I was scared for my life.

14 Q Did he ---

15 A He told me if I would leave him, he would kill me and
16 my family.

17 Q He threatened your family as well?

18 A Yes, sir.

19 Q Okay. And this has been going on for how many months?

20 A For about a good four months.

21 Q Okay. And this is kind of what led up to this
22 incident that occurred at your home?

23 A Yes, sir.

1 Q And you said when we first started that you were
2 forced to drive him and the other co-defendants to your
3 residence?

4 A It was either that or I was going to be dead.

5 Q Okay. And that's what you understood, was that this -
6 - that you had no choice in this.

7 A Yes, sir.

8 Q Did you, in fact, drive him to your residence?

9 A Yes, I did.

10 Q Okay. And did you discuss these situations with your
11 attorney?

12 A Yes, I did.

13 Q You told him that you were forced to drive these guys
14 over there?

15 A Yes, sir.

16 Q And you told him that this was your -- your residence?

17 A Yes, sir.

18 Q Okay. And so is that why you wanted to take this case
19 to trial?

20 A Yes, sir. And I have good believings (sic) that I
21 would get -- get off with it.

22 Q Okay. That you would be found not guilty.

23 A Yes, sir.

24 Q Now, a gun, you pled guilty to possession of a weapon
25 during the commission of a violent crime.

1 A Yes, sir.

2 Q Did you have a weapon?

3 A No, sir.

4 Q Do you own a weapon?

5 A No, sir.

6 Q Were you ever given a weapon that night?

7 A No, sir.

8 Q Okay. Did they ever find a weapon that allegedly
9 belonged to you or that you used in this incident?

10 A No, sir.

11 Q Okay. Did you discuss that fact with your attorney?

12 A Yes, sir.

13 Q And what became of that? I mean what kind of theory
14 of what I call a theory of defense. Did any kind of theory
15 of defense develop as a result of this?

16 A No, sir.

17 Q Did he ever tell you how he was going to handle your
18 case?

19 A No, sir.

20 Q What did he tell you?

21 A Basically I had to take a plea or go to trial. That
22 was about it.

23 Q Okay. So -- but you said that you wanted to go to
24 trial.

25 A Yes, but I was scared.

1 Q Okay. And based upon the information and the advice
2 that he got -- that you got from him, what did you decide
3 to do?

4 A Take my plead. (sic)

5 Q To take the plea. Even though you wanted to go to
6 trial.

7 A Yes.

8 Q I wanted to ask you about the plea offers. Were there
9 ever -- or how many plea offers were there during the
10 period of time that you were being represented?

11 A I got one plead. (sic)

12 Q Okay. So there were no other -- there were not
13 multiple -- more than one plea offer that was -- that was
14 given to you.

15 A No, sir.

16 Q The only plea offer that you received was the
17 negotiated plea?

18 A Yes, sir.

19 Q And that's what you ended up pleading to.

20 A Yes, sir.

21 Q And did you have an opportunity to sit down with your
22 lawyer and talk to him about what a negotiated plea was?

23 A No, sir.

24 Q Did you understand what a negotiated plea is?

25 A No, sir.

1 Q All right. Do you know what one is today?

2 A Kinda, sorta.

3 Q What is -- what do you -- what do you think it is
4 today?

5 A Um, that it was either -- it was a no -- it was eight
6 years and then eight years and then five, so it was
7 negotiated into just a smaller sentence than what it is.

8 Q Okay. Did you understand that that was what you would
9 get, in other words, that the Judge had the option to
10 either accept it and give you eight years or let you stand
11 down from your plea?

12 A Yes, sir.

13 Q Okay. Now, we talked a little bit about you living
14 with your dad. Did you have a right to be in that house?

15 A Yes, sir.

16 Q Okay. And who else was in that home?

17 A My four children, my sister, Amber, my sister, Ashley,
18 my brother, Charles, and the guy that was, um, assaulted.

19 Q Okay. And this gentleman was assaulted by whom?

20 A Denareay Pendergrass.

21 Q Your boyfriend.

22 A Yes.

23 Q Okay. Now, your children were living in the home?

24 A Yes, sir.

1 Q Okay. You didn't have any reason why you couldn't be
2 in that home, did you?

3 A No, sir.

4 Q Now, we talked about that you were forced to drive to
5 the location, to drive them to the location.

6 A Yes, sir.

7 Q Okay. And you didn't do this with your own free will.

8 A No, sir.

9 Q Were you involved in this crime?

10 A No, sir.

11 Q You didn't have a -- I say a beef -- you didn't have
12 any kind of dispute or anything with this gentleman, the
13 victim of this crime.

14 A No, sir.

15 Q You had no reason to want to participate or assault
16 him ---

17 A No, sir.

18 Q --- or rob him? Now, you stated that you really
19 didn't have any full understanding of the evidence that was
20 -- that they had against you?

21 A Yes, sir.

22 Q And do you feel like that you were fully informed
23 about your guilty plea?

24 A No, sir.

1 Q Okay. And you and I talked about this at some length.
2 You really felt like that you had defenses to this, to
3 these charges.

4 A Yes, sir.

5 Q And did the -- your attorney, did he have an
6 opportunity to speak with your da -- or did he take the
7 opportunity to speak with your dad?

8 A Not that I know of, sir.

9 Q And your dad was in the courtroom?

10 A Yes, sir.

11 Q Okay. When you did the plea, ---

12 A Yes, sir.

13 Q --- turned into the plea. Did anybody speak on your
14 behalf at the plea?

15 A No, sir.

16 Q Just you.

17 A Yes, sir.

18 Q Okay. And you think this case could've been handled
19 better or could've been investigated more thoroughly?

20 A Yes, sir.

21 Q Did you talk to him about any other witnesses who
22 could've been at the -- at the location or witnesses in
23 regards to the abusive behavior of Mr. Pendergrass?

24 A Yes, sir.

1 Q And do you know if your attorney ever spoke with those
2 other individuals about this?

3 A Yes, sir.

4 Q Did he?

5 A No, sir.

6 Q Okay. And -- and then again about the gun, you never
7 had a -- you didn't have a gun in your possession or one
8 was never found. Is that correct?

9 A No, sir.

10 Q Now, we talked about this, uh, about your plea, and do
11 you feel like your plea was freely and voluntarily given?

12 A Yes, sir.

13 Q You feel like that you freely gave your plea with the
14 understanding of what you were doing.

15 A No, sir.

16 Q Okay. All right. Because you and I had spoken about
17 this. And do you feel like you had all the facts that you
18 needed to be able to enter into this plea?

19 A No, sir.

20 Q And a matter of fact, you didn't really want to enter
21 into the plea.

22 A Correct.

23 Q Okay. Um, Jennifer, this is a pretty short hearing.

24 I know that this is your day in Court, and you've been
25 waiting for this for a long time, and I ask this not

1 because I think that I might have left something out or
2 that I have forgotten something, but I want to give you the
3 opportunity to bring to the attention of the Court anything
4 that I may have forgotten to bring to the Court's
5 attention. This is kinda your opportunity. Is there
6 anything else that you feel like the Judge should know
7 about this case?

8 A No, sir, just that I got witness (sic) sitting in the
9 courtroom.

10 Q Okay. All right. About -- and these witnesses would
11 know what?

12 A About the whole crime situation, what happened, who
13 played a part in what and that I was allowed to be in that
14 house.

15 Q Okay. All right. And you're asking for your
16 conviction to be set aside and that you be granted a new
17 trial.

18 A Yes, sir.

19 MR. THOMAS - Your Honor, I have no further
20 questions.

21 THE COURT - Okay. Thank you. Ma'am, you'll be
22 cross examined if counsel has any questions.

23 Yes, ma'am?

24 MS. SCHILL - Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MS. SCHILL -

2 Q Ms. Dale, how many times did you say you met with Mr.
3 Dunn prior to your plea?

4 A Probably about two or three times.

5 Q In person or over the phone or combination?

6 A Combination.

7 Q And I believe you had testified earlier you did not
8 review discovery with Mr. Dunn? Was that your testimony?

9 A Yes, ma'am.

10 Q Do you recall telling the Court at your plea hearing
11 that Mr. Dunn did review discovery with you?

12 A No, ma'am.

13 Q You don't recall that?

14 A No, ma'am.

15 MS. SCHILL - Your Honor, may I approach the
16 witness?

17 THE COURT - Yes, ma'am.

18 Q I'm just going to give you a copy of your plea
19 transcript. I'm going to direct your attention to page 9
20 starting on line 18 -- excuse me -- 18. The Court says,
21 has he gone over what we call discovery or sometimes folks
22 say their motion, which would be incident report, case
23 summary, statements by individuals, could be co-defendants,
24 other reports? Has he been over, provided you with those
25 and been over those with you? How did you respond?

1 A Yes, Your Honor.

2 Q And do you also recall waiving your constitutional
3 rights at your guilty plea hearing?

4 A No, ma'am.

5 Q Okay, I direct your attention -- gonna go backwards --
6 starts at about page 7, line 18, and it ends about page 9,
7 line 10. I can give you a moment to review it if you'd
8 like.

9 A (WITNESS COMPLIES)

10 Q Do you have a -- you get time to review that?

11 A Yes, ma'am.

12 Q Okay, so do you recall waiving your constitutional
13 rights?

14 A No.

15 Q Okay, but would you agree that it says in your
16 transcript that you did waive your constitutional rights?

17 A Yes, ma'am.

18 Q Okay. And do you recall telling the Judge at your
19 guilty plea hearing that you wanted to plead guilty to each
20 of the charges?

21 A No, ma'am.

22 Q Okay. I guess first we'll start on page 6, line 16,
23 and the Court asked how do you plead to attempted armed
24 robbery. What did you respond?

25 A Guilty.

1 Q Okay. And then on page 7, he talks -- the Judge talks
2 about burglary, and he says, how do you plead to that
3 charge, and on line 6, how did you respond?

4 A Guilty.

5 Q Okay. And then further down on page 7, the Judge
6 starts talking about possession of a weapon during the
7 commission of a violent crime, and the Judge asked, how do
8 you plead guilty -- or how do you plead to that charge, and
9 how did you respond?

10 A Guilty.

11 Q Okay. And do you recall telling the Judge that you
12 were pleading guilty on your own free will?

13 A Yes, ma'am.

14 Q Do you recall telling the Judge at your plea hearing
15 that you were pleading guilty to the three charges because
16 you were, in fact, guilty of the three charges?

17 A No, ma'am.

18 Q Okay. I'm going to direct your attention to page 10
19 of the transcript on line 7; that's where the Court asked,
20 are you pleading guilty to these three charges because you
21 are, in fact, guilty of these three charges. How did you
22 respond?

23 A Yes.

24 Q And do you recall telling the Judge that you had
25 plenty of time to talk to Mr. Dunn about your case?

1 A No, ma'am.

2 Q I'll direct your attention to page 9, lines 14 through
3 17. The Court says, let me talk to you a little bit about
4 your representation by Mr. Dunn, your lawyer. Have you had
5 plenty of time to discuss this case with him, and how did
6 you respond?

7 A Yes.

8 Q And I direct your attention page 10, lines 1 through
9 3. The Judge asked, do you have any complaints about Mr.
10 Dunn and the way he's represented you. How did you
11 respond?

12 A No.

13 Q And I believe you testified earlier that you did not
14 understand what a negotiated sentence was. Am I correct?
15 Was that your testimony?

16 A Yes, ma'am.

17 Q Okay. Do you recall the Judge going over your
18 negotiated sentence during your plea hearing and explaining
19 to you what that meant?

20 A No, ma'am.

21 Q Okay. It's further down on page 10, on line --
22 starting on line 11. The Court says, this is a negotiated
23 sentence, your lawyer and the solicitor have negotiated an
24 eight year sentence in the department of corrections, which
25 means that if I agree with the negotiation, I would give

1 you no more, no less. If I disagree with the negotiation,
2 you would be allowed to withdraw your plea. Do you
3 understand that?

4 A Yes.

5 Q You -- okay. So you would agree you responded yes.

6 A (No response)

7 Q Okay.

8 MS. SCHILL - Beg the Court's indulgence, Your
9 Honor.

10 THE COURT - Yes, ma'am. Take your time.

11 Q Okay. Did you -- do you recall apologizing to the
12 Court during your guilty plea hearing?

13 A No, ma'am.

14 Q Okay, I'm going to direct your attention to page 15,
15 lines 9 and 10. Could you read that for me?

16 A (Witness complies)

17 Q Do you agree that it says, I'm just sorry; it wasn't
18 supposed to happen like it did, and I mean I can't take
19 that bad (sic) which I assume is supposed to say nothing
20 back. Would you agree that's what the transcript says?

21 A Yes, ma'am.

22 Q Okay. And regarding the abuse you previously spoke
23 about from Mr. Pendergrass, did you ever tell anyone else
24 about that abuse other than I believe you testified you
25 told Mr. Dunn, but did you every tell anyone else about it?

1 A No, ma'am.

2 Q Okay. And what about the fact that you -- you allege
3 you were forced to drive the vehicle with your co-
4 defendants and go to the home to commit the crime? Did you
5 tell anyone else that information besides Mr. Dunn?

6 A Yes, ma'am.

7 Q Okay. Could you tell me who you -- you told?

8 A It was -- it was spoke to the Judge whenever I got my
9 bond hearing.

10 Q Okay. What about -- what about closer to when the
11 incident actually happened? Did you tell the police when
12 they arrested you or anything like that?

13 A No.

14 Q And I just want to talk a little bit about the home,
15 because I believe you testified earlier that you lived in
16 that house, so you said your father was the owner of the
17 home? Is that correct?

18 A Yes, ma'am.

19 Q Okay. Was it -- was it that he rented it or did he
20 actually own the home?

21 A He owns the home.

22 Q Okay, so it's in his name?

23 A Yes, ma'am.

24 Q Okay. How often did you stay there?

25 A Every day.

1 Q Every day? So you never lived anywhere else?

2 A No, ma'am.

3 Q You never lived with Mr. Pendergrass?

4 A No, ma'am.

5 Q Did you have a key to the home?

6 A To my father's home?

7 Q Yeah.

8 A Yes, ma'am.

9 Q Okay.

10 MS. SCHILL - Beg the Court's indulgence, Your
11 Honor.

12 THE COURT - Yes, ma'am.

13 MS. SCHILL - That's all the questions I have.

14 Thank you.

15 THE COURT - Anything on re-direct, Mr. Thomas?

16 MR. THOMAS - Yes, ma'am, just one or two.

17 THE COURT - Yes, sir.

18 RE-DIRECT EXAMINATION

19 BY MR. THOMAS -

20 Q Jennifer, counsel asked you about these things in the
21 transcript which the Court had asked you questions. Do you
22 remember that day?

23 A No, ma -- no, sir.

24 Q Okay. Were you nervous that day?

25 A Yes, sir.

1 Q This was a pretty traumatic situation for you. Is
2 that correct?

3 A Yes, sir.

4 Q And did you understand what was going on that day?

5 A No, sir.

6 Q Do you remember answering these questions that the
7 Judge asked you today?

8 A Excuse me?

9 Q Did you -- do you remember answering these questions
10 when you were there?

11 A No, sir.

12 Q Okay. So it was a big blur to you.

13 A Yes, sir.

14 Q Okay. And counsel pointed out on page 15 of the
15 transcript that -- that you did make a statement to the
16 Judge, and you said, I'm just sorry, I -- it wasn't
17 supposed to happen like it did, and I mean I can't take
18 nothing bad (sic), I guess, nothing back. To what you
19 know, what you knew was going on and you were being forced
20 to drive them over there, did you have any idea what was
21 going to happen?

22 A No, sir.

23 Q So that statement is somewhat consistent with your
24 story that you didn't know what was going on.

25 A Yes, sir.

1 Q Because you say, it wasn't supposed to happen like it
2 did.

3 A Yes, sir.

4 Q Okay. And I would assume that you are sorry for what
5 happened.

6 A Yes, sir.

7 Q Because these are people that you know.

8 A (No response)

9 Q Okay. Now, another interesting thing is that I think
10 the Court, and counsel pointed this out, when on page 10 --
11 well, when the Judge is advising you about your
12 constitutional rights and he says ---

13 MR. THOMAS - Your Honor, I'd like to beg the
14 Court's indulgence.

15 THE COURT - Yes, sir.

16 Q I apologize, it's page 6, around lines 12 through 14 -
17 - he's advising you about your rights that you have the
18 right to take this to trial. You remember any of that?

19 A No, sir.

20 Q Okay. And he also says that your parole eligibility
21 would be affected because of your plea. Are you eligible
22 for parole?

23 A No, sir.

24 Q Okay. You're 85 percent?

25 A Yes, sir.

1 Q Okay. So you don't have any parole date?

2 A No, sir.

3 MR. THOMAS - Your Honor, I have no further
4 questions.

5 THE COURT - Okay, thank you. Anything else from
6 this witness before she steps down?

7 MS. SCHILL - Yes, Your Honor, just two brief
8 questions.

9 THE COURT - Okay, understanding that I will let
10 Mr. Thomas ask anything that he feels necessary in
11 response. This is very informal; there's no jury here, and
12 I understand ---

13 MS. SCHILL - Sure.

14 THE COURT - --- this is very important to this
15 young lady.

16 MS. SCHILL - Sure.

17 THE COURT - Yes, ma'am.

18 RE-CROSS EXAMINATION

19 BY MS. SCHILL -

20 Q I believe you just had testified that you said you
21 don't recall giving these answers, because you didn't know
22 what you were doing at your plea, but do you recall telling
23 the Court you understood what you were doing at your guilty
24 plea hearing?

25 A No, ma'am.

1 Q Okay. I'm going to ask you to turn to page 5. Line
2 12 the Court says, do you understand what you're doing
3 here, and how did you respond?

4 A Where would I find this at?

5 Q Page 5, line 12, and your response is on line 14.

6 A Yes, Your Honor.

7 Q Okay. And also do you -- just above that the Court
8 asked, have you ever been treated for any mental or
9 emotional disability, and how did you respond?

10 A No, Your Honor.

11 MS. SCHILL - Okay. That's all the questions I
12 have, Your Honor.

13 THE COURT - Okay. Mr. Thomas, anything in
14 response to those?

15 MR. THOMAS - Just one, Your Honor.

16 THE COURT - Okay.

17 RE-DIRECT EXAMINATION

18 BY MR. THOMAS -

19 Q Jennifer, you said that you knew -- you understood
20 what you were doing there. You understood that this was a
21 plea.

22 A I understood it was a plea.

23 Q Okay. But you didn't fully understand why you were
24 giving this plea.

25 A Yes, sir.

1 Q And you still -- even though you were pleading, you
2 still had -- would have preferred to take this case to
3 trial.

4 A Yes, sir.

5 MR. THOMAS - No further questions, Your Honor.

6 THE COURT - Okay. All right, ma'am, you may step
7 down; watch your step. Just take your time.

8 Anything else, Mr. Thomas?

9 MR. THOMAS - Yes, ma'am, if it please the Court,
10 we would call Jennifer Dale's father to the stand.

11 THE COURT - Okay, thank you.

12 Yes, sir, please come forward. We'll have our
13 clerk swear you in. Okay?

14 RICKY LEE DALE, AFTER BEING FIRST DULY SWORN,
15 TESTIFIES AS FOLLOWS -

16 DEPUTY CLERK - Thank you. Please be seated.

17 THE COURT - Okay, sir, if you would please state
18 your full name, spelling your last.

19 MR. DALE - Ricky Lee Dale, D-a-l-e.

20 THE COURT - Thank you, sir.

21 Mr. Thomas?

22 MR. THOMAS - Your Honor, if it please the Court.

23 DIRECT EXAMINATION

24 BY MR. THOMAS -

25 Q Mr. Dale, you are related to Jennifer Dale?

1 A Yes, that's my daughter.

2 Q Okay. Do you understand that you've been sworn and
3 you're here to tell the truth today?

4 A Yes.

5 Q You're not here to reward anyone or help anyone.

6 A No.

7 Q You intend to tell the truth?

8 A Yes.

9 Q Okay. Mr. Dale, you've heard testimony by your
10 daughter this morning regards to her relationship with Mr.
11 Pendergrass?

12 A Yes.

13 Q Do you have personal knowledge about that
14 relationship?

15 A Yes, I tried to ---

16 Q I'm sorry? You do have personal knowledge of that
17 relationship?

18 A Yes.

19 Q Okay. And to the best of your knowledge, was that an
20 abusive-type relationship?

21 A Yes. I tried to get her to get away from him, but
22 they don't -- kids don't listen to their parents.

23 Q Okay. You didn't think that that was good for her.

24 A No.

1 Q Okay. Were you aware of the incidents that she
2 testified to about the abuse?

3 A Yes.

4 Q Were you aware about the incident where she was
5 strangled by ---

6 A Yes.

7 Q --- Mr. Pendergrass?

8 A He strangled at his grandpaw's house, and I told her
9 to call the cops and have him arrested, and his grandpaw
10 talked her out of it, and then another incident happened.
11 She left in her car to get away from him and he chased her
12 down in a pickup, hit her in the backend of a car with the
13 pickup and was shooting over the top of the car.

14 Q At her.

15 A At her.

16 Q And was this strangulation -- you and I have spoken
17 about it -- was it serious?

18 A Yes.

19 Q How serious was it?

20 A It was -- whenever you get the life choked out of you
21 and you pee on yourself, that's pretty serious.

22 Q And -- and that actually even occurred in front of her
23 eight year old child or seven year old child I guess ---

24 A Well, actually the boy was five years old when this
25 happened.

1 Q Oh, five years old when it happened. And -- so -- so
2 to the best of your understanding, her testimony in regards
3 to the abuse was truthful?

4 A Yes.

5 Q Let me ask you about the home. Was the home -- the
6 home is in your name?

7 A Yes.

8 Q And you own that house?

9 A Yes.

10 Q Was your daughter, Jennifer, was she allowed to be
11 there?

12 A Yes. She had her own key; she could come and go as
13 she pleased when she wanted to. All my kids could.

14 Q Okay. And a matter of fact, you had several members
15 of your family were staying there.

16 A Oh, yeah.

17 Q Okay. And her children were staying there.

18 A Oh, yeah, they was all staying there.

19 Q Okay. You understand that she was charged with
20 burglary, burglarizing that home.

21 A Yes.

22 Q And did you have an opportunity to speak with her
23 attorney about this burglary charge?

24 A Yes, and he said that it was part of the plea.

25 Q Okay, did you talk ---

1 A From the best of my remembrance, it was part of the
2 plea.

3 Q Okay. So was he interested in that as a defense at
4 all?

5 A Yeah and no.

6 Q Did he do anything about it?

7 A No.

8 Q Okay. Did you ---

9 A I asked Mr. Dunn a couple of times when I talked to
10 him on the phone and -- about a plea and he said that she's
11 only offered one plea and she really had it in for her.

12 Q Who had it in for her?

13 A The solicitor, Ms. Hamilton.

14 Q Okay. So it was his suggestion that she accept the
15 plea.

16 A Yes.

17 Q Okay. And did you ever ask him the question how you
18 can burglarize your own home?

19 A Yeah, I have, ---

20 Q Okay

21 A --- but I don't remember what the answer was, but
22 yeah. I couldn't figure it out, you know, how could you,
23 you know, live in the same house and burglarize it. I
24 don't know, I just ---

1 Q To the best of your knowledge, did Jennifer have a
2 gun?

3 A Not that I know of. I don't even own no guns.

4 Q Okay. Did you get an opportunity to talk to Mr. Dunn
5 about the abusive relationship that she had with Mr.
6 Pendergrass?

7 A Yes.

8 Q Okay. And what, if anything, did he say or do in
9 regards to that information?

10 A Nothing that I can recall.

11 Q Okay.

12 A You know, because they -- you know, in South Carolina
13 the hand of one is the hand of all, which I don't -- I
14 don't believe in that law, but ---

15 Q Right. But you talked about her being forced and
16 coerced to take these guys over there.

17 A Right.

18 Q And it was your knowledge, your personal knowledge,
19 that Jennifer had been abused, that she didn't have -- she
20 had no involvement in this crime?

21 A Not that I'm aware of, no.

22 Q Okay. And um -- but despite this information that you
23 gave Mr. Dunn, he still was suggesting that she enter into
24 a plea.

1 A Yes, because she -- he said that Ms. Hamilton wasn't
2 going to budge off of it and that was -- the only plea she
3 was going to give her was that one plea and that was it.
4 It was either take it or leave it and, because she really
5 had it in for her.

6 Q Okay. You were in the courtroom the day of the plea?

7 A Yes.

8 Q Okay. And were you given any opportunity to address
9 the Court?

10 A No, ma'am, sir.

11 Q Okay. And you and I have spoken about this issue in
12 regards to there were other and there are other family
13 members that can tell the same -- or give the Court the
14 same information that you've just given the Court in
15 regards to the threats and the ownership of the home.

16 A Yes.

17 Q Okay. And they could've been available to Mr. Dunn
18 and/or to the Court?

19 A Yes.

20 Q And you're here this morning kind of as the
21 spokesperson for these other individuals as well?

22 A Yes.

23 Q Okay. They're family members.

24 A Right.

1 Q Okay. Mr. Dale, I don't have any other questions. Is
2 there anything else that you feel like may be important to
3 the Court?

4 A I'd like to say, you know, she's got four little
5 babies at home.

6 Q Take your time. I'm sorry.

7 (WHEREUPON, WITNESS CRYING)

8 A And she should be at home raising them instead of me
9 having to do it.

10 MR. THOMAS - Thank you, Mr. Dale.

11 Your Honor, I have no further questions.

12 THE COURT - Thank you, Mr. Thomas.

13 MR. THOMAS - Yes, ma'am.

14 THE COURT - Any cross examination?

15 MS. SCHILL - No, Your Honor.

16 THE COURT - Okay. Thank you, Mr. Dale. Sir, you
17 may step down. Take your time.

18 MR. THOMAS - Your Honor, if it please the Court,
19 that is the applicant's case. That's the applicant's case,
20 Your Honor.

21 THE COURT - Okay, thank you.

22 Ms. Schill?

23 MS. SCHILL - Yes, Your Honor. The State would
24 call Mr. Geoffry Dunn.

25 THE COURT - Okay. Thank you.

1 GEOFFRY DUNN, AFTER BEING FIRST DULY SWORN,
2 TESTIFIES AS FOLLOWS -

3 DEPUTY CLERK - Thank you. Please be seated.

4 THE COURT - Sir, please make yourself
5 comfortable. State your full name and spell your last
6 name.

7 MR. DUNN - My name is Geoffry Dunn. Last name is
8 D-u-n-n.

9 THE COURT - Thank you. Ms. Schill?

10 MS. SCHILL - Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. SCHILL -

13 Q Mr. Dunn, how long have you been practicing law?

14 A Since November of 2004.

15 Q Okay, how much of that has been criminal law?

16 A About 50 percent.

17 Q Okay. How did you come to represent Ms. Dale?

18 A I was appointed to represent her pursuant to a
19 contract I have with the State.

20 Q Okay. How long did you represent her prior to her
21 guilty plea?

22 A I don't remember when I was appointed. I was
23 appointed July the 21st, 2017.

24 Q Do you recall how many times you met with her prior to
25 her guilty plea?

1 A I don't; it was three or four. Talked to her a couple
2 times on the phone.

3 Q Okay.

4 COURT REPORTER - Excuse me just a minute.

5 Judge, may I approach?

6 THE COURT - Yes, ma'am.

7 (WHEREUPON, DISCUSSION IS HELD AT THE BENCH
8 BETWEEN THE COURT AND THE COURT REPORTER WHICH WAS NOT
9 REPORTED)

10 COURT REPORTER - I apologize.

11 THE COURT - Yes, ma'am; I apologize. Please
12 continue.

13 Q Do you recall the facts of Ms. Dale's case?

14 A I believe so.

15 Q Do you mind just giving a brief summary to the Court?

16 A My understanding is on the night of the incident that
17 she along with three co-defendants -- two were adults, and
18 one was a minor -- drove over to the house that she was
19 talking about to retrieve an item -- I think I either
20 learned then or through discovery that it was a gun -- that
21 she drove -- that when they got over to the house, the
22 individual that got attacked or assaulted was a minor
23 child, just based on what the incident report said, that
24 there was -- there was some allegations of gunshots in the
25 house. The child -- the minor child got hit in the head,

1 not by Ms. Dale but by one of the co-defendants and then
2 they left. Talking with Ms. Dale, she never denied driving
3 over there. She had told me that she'd done it under
4 necessity, that her boyfriend made her do it, and then when
5 she got over there, it -- basically the situation turned
6 out a lot worse than what she'd thought it was going to be,
7 and then once the child got attacked, she actually did --
8 took steps to try to mitigate the injuries to the child and
9 took the child away from whoever was assailing the child to
10 a different room and tried to calm the situation down.

11 Q When you say the child was hit, was he with someone's
12 hand or was it ---

13 A My memory is that it was a pistol-whip, but I don't --
14 I mean it's two years ago.

15 Q Okay. So you mentioned discovery regarding a gun.
16 What was -- do you recall what the discovery was that led
17 them to believe that there was a weapon involved?

18 A I think -- just based on the discovery I got from the
19 State between the fact that they were trying to steal a gun
20 and that there was -- the child was being hit in the head
21 with a gun and then there was some allegations of there
22 being gunshot.

23 Q Okay. All right. So back to her allegation regarding
24 Mr. Pendergrass, so you said that she did tell you that she

1 felt she was forced to drive the co-defendants over and
2 engage in the crime? Is that correct?

3 A That's what she told me, yes.

4 Q Okay. Did she ever mention anything about any other
5 prior instances of abuse?

6 A I don't remember. It's very possible she did, not to
7 the level of the emotion that was shown today, because I
8 would've remembered that, but it's possible that either she
9 or Mr. Dale told me about that.

10 Q Okay. Is that something you would've mentioned to the
11 solicitor?

12 A Yes.

13 Q Okay.

14 A And -- I mean I -- Mr. Dale is absolutely correct, the
15 solicitor had it in for her. She had one offer, and that
16 was it. And it was -- there was no negotiations. It was
17 take it or leave it.

18 Q Okay. I know you kind of already spoke about the
19 discovery a little bit, but in case there's anything you
20 missed, can you just describe the evidence the State had
21 against Ms. Dale?

22 A The only other evidence that I think is significant is
23 that the solicitor at some point had told me that there was
24 a co-defendant that was willing to testify. I believe it

1 was probably the minor child. She never would tell me who
2 it was, um, ---

3 Q Okay.

4 A --- just -- and that testimony would've gone to the
5 idea of them forming a plan, a conspiracy of going over --
6 why they went to the house.

7 Q Okay. And do you recall reviewing the discovery with
8 Ms. Dale?

9 A I did. I sent it -- I mailed -- I mailed all the
10 paper discovery to her and then we talked about it and I
11 remember there being a meeting in my office with her and I
12 believe with some of her family members, maybe Mr. Dale,
13 maybe some other folks, maybe a sister or two that were
14 there and we talked about it.

15 Q Okay. Do you -- I heard -- I'm sure you heard a
16 little bit about the issue regarding the home that was
17 involved. Do you recall any legal issues surrounding the
18 allegation?

19 A If I remember serves me correct, I did some research
20 on it, whether or not you could burglarize your own house
21 or -- not necessarily your own house but a house that you
22 had permission to be in, and if my memory serves me, it was
23 either a gray area or one that was possibly not favorable
24 to a defendant if there was other -- if you're going in for
25 bad reasons. Regardless, it was something that she and I

1 discussed. I thought and I still think that, you know, a
2 jury could very well could've cut her lose on the burglary,
3 but she was facing an armed robbery and kidnapping, which,
4 you know, armed robbery carried mandatory minimums that
5 were worse than her offer, and that's what we discussed.
6 So even if we could've win (sic) the burglary, she could
7 still lose the war and get worst time.

8 Q Okay. Did she tell you that, um, she lived in that
9 home full-time or did you have discussions about how -- why
10 she felt she lived in the home?

11 A I don't remember. There was a lot of people living in
12 that house that night. I don't remember if she ever told
13 me where she was staying in at that time, whether she was
14 staying there or with Mr. Pendergrass somewhere else.

15 Q Okay. Did she -- did she ever mention living with Mr.
16 Pendergrass at all?

17 A I don't remember.

18 Q Okay. Could you just talk a little bit about how Ms.
19 Dale's plea offer came about?

20 A Ms. Hamilton made an offer. It was the eight years to
21 the violent burglary second and attempted armed robbery.
22 Despite numerous attempts on my part to try to get her to
23 come off of that number, she would not, and she put a
24 deadline on the offer, which I believe was probably that
25 January term where Ms. Dale pled. I tried numerous times

1 to get to offer her less since she was not as culpable as
2 the other -- in my opinion -- as the other two men, but she
3 didn't care.

4 Q Okay. That was the only plea offer in this case?

5 A Only plea offer.

6 Q Okay. And did you convey this to Ms. Dale in terms of
7 the ---

8 A Yes, I mean -- and to Mr. Dale and to Ms. -- and to
9 Jennifer.

10 Q Okay. Did you guys discuss what a negotiated plea is?

11 A I know I did with her, because we went over all of her
12 paperwork before we came in the courtroom and she signed
13 off on it. I think I did with the family, but it's
14 possible that I did not. I ---

15 Q But you did with the applicant.

16 A I did.

17 Q Did Ms. Dale give you names of any witnesses to speak
18 to that you didn't speak to?

19 A Not that I remember.

20 Q Okay. I'm sure you heard Mr. Dale's testimony. Do
21 you recall talking to Mr. Dale about this prior abuse?

22 A My notes indicate that there was some kind of -- my
23 notes say that Narey (sic) was abuse and had shot at her
24 car before, um, and so if -- if that's the same individual,
25 then, yes, we'd gone over it.

1 Q Okay. Did Ms. Dale ever tell you that she didn't want
2 to plead guilty and that she wanted to take the case to
3 trial?

4 A If my memory serves me, she took both sides. She
5 didn't want to plea; she wanted a better offer. Sometimes
6 when I have clients that are in that position they -- they
7 speak with a lot of bravado about going to trial, but as
8 the time gets closer to having to make the hard decisions,
9 that bravado goes away. If she truly wanted a trial, we
10 would've gone to trial.

11 Q Do you think it was in Ms. Dale's best interest to
12 plead guilty?

13 A Yes, because of the armed robbery, not because of the
14 burglary.

15 Q Okay. Whose decision is it ultimately to decide
16 whether the applicant would plead guilty or go to trial?

17 A Always the client's.

18 MS. SCHILL - Beg the Court's indulgence, Your
19 Honor.

20 THE COURT - Yes, ma'am; take your time.

21 MS. SCHILL - Those are all the questions I have.

22 THE COURT - Okay. Cross examination?

23 MR. THOMAS - Yes, Your Honor. Please the Court.

24 CROSS EXAMINATION

25 BY MR. THOMAS -

1 Q Mr. Dunn, thank you for being here today. I've just
2 got a few questions.

3 A Yes, sir.

4 Q You were talking about the -- the facts as you knew
5 them about what happened, and the fact that, for lack of a
6 better word, I guess she's there, she comes to the rescue
7 of the minor child?

8 A That was what she told me, yes.

9 Q Okay. And I think actually that's somewhat -- I think
10 that's in the transcript as well.

11 A I believe I told the Judge that.

12 Q Yeah, yeah about coming to that -- um, so would --
13 given that, had she -- you know, she's there, she takes
14 actions to stop it, to try to, you know, prevent maybe any
15 further violence that's going in the home. Just wondering
16 how favorable -- would she have made a favorable witness on
17 the stand?

18 A You talking about in a trial -- for trial?

19 Q For trial, yeah.

20 A She might've. I mean it's a trial decision, jury --
21 that's a jury question ---

22 Q Yeah.

23 A --- that's hard for me to answer.

24 Q But that may have been -- that may have presented well
25 to the jury ---

1 A It could have, yes.

2 Q --- in trial. I mean regards that she actually lived
3 in the home and that she did have witnesses and her
4 testimony about the extreme physical abuse that she
5 received from the co-defendant, as well as taking steps
6 during the actual commission of the crime to protect the
7 young victim and stop that -- that violence that was
8 occurring.

9 A It's possible.

10 Q Okay. And the fact that from what I understand, there
11 was never any gun found in her possession nor was a gun --
12 in other words, a gun was never found.

13 A I'm not sure if a gun was ever found. I know one was
14 never alleged to be in her possession.

15 Q Okay. Okay. Which kind of raises another question to
16 me is that if she accepted this plea offer and there was a
17 question about the burglary and the evidence in regards to
18 the gun, wouldn't that or shouldn't that have been an
19 Alford plea to those two, rather than basically pleading
20 guilty to charges that either one had viable defenses or
21 maybe there was no evidence of.

22 A Could've been. I don't know why we -- I do lots of
23 Alford pleas. I don't know why that wasn't considered.

24 Q Okay. I was just curious about that.

25 A No, I -- and it's very possible ---

1 Q Okay. And your testimony was that, you know, she kind
2 of went back and forth in regards to the plea or trial,
3 which is really not that unusual with someone who is
4 somewhat unfamiliar with the system. They'd be afraid.

5 A I -- I find it doesn't really matter if they're
6 familiar with the system or not. Most people don't really
7 want to plead if they don't have to.

8 Q Exactly. And it's generally a pretty traumatic
9 experience in regards to standing up in front of the Court
10 and entering a plea?

11 A I would suppose it is for some folks.

12 Q Okay. All right. In your profession, you run across
13 individuals who don't remember their day in Court, their
14 plea?

15 A Only at PCR times.

16 Q Okay.

17 A Though I will say in Ms. Dale's -- I know what you're
18 -- in Ms. Dale's offense, I mean she was emotional during
19 that plea ---

20 Q Yeah, I know.

21 A She cried during the -- and we had to stop the plea
22 for her.

23 Q Right.

1 A And the reason I ask that is that is that -- and she
2 did testify that she just didn't remember that day, so
3 that's -- and that's possible.

4 A I'm sure.

5 Q Okay.

6 MR. THOMAS - Your Honor, if I could get the
7 Court's indulgence just for a second.

8 THE COURT - Yes, sir.

9 Q Kind of going back to what you were talking about when
10 you said that -- what she had told you was that, um, that
11 she was drove -- had to drive over there, that she was
12 forced to drive, that she actually lived in the home, um,
13 and you said that the situation turned bad, that's pretty
14 much consistent with her story that's been throughout this
15 whole -- even today is consistent with ---

16 A I -- throughout this entire case, our side of the
17 story was different from the State's side of the story.

18 Q Okay. But it -- and it's been consistent ---

19 A And I -- and quite frankly, I believe Ms. Dale.

20 Q Yes, sir.

21 A Whether or not a jury believes it to the point where
22 they cut her lose was always the question, ---

23 Q Right.

24 A --- and that was the discussions that she and I had.

25 Q Okay.

1 MR. THOMAS - Your Honor, if I could beg the
2 Court's indulgence?

3 THE COURT - Yes, sir.

4 MR. THOMAS - Your Honor, if it please the Court,
5 we have no further questions.

6 THE COURT - Okay, thank you.

7 Re-direct?

8 MS. SCHILL - Yes, Your Honor, just briefly.

9 RE-DIRECT EXAMINATION

10 BY MS. SCHILL -

11 Q Did Ms. Dale understand that she could go to trial,
12 have a jury trial?

13 A I believe she did, yes.

14 Q Okay. So you had that discussion with her?

15 A Yes.

16 Q Okay. Did she indicate to you that she wanted to take
17 the plea offer that was given to her, receive a benefit
18 from the plea offer?

19 A That she wanted to take it?

20 Q (No response)

21 A That's sort of coming to the mixed bag. She -- she
22 took it voluntarily. I don't think she ever really wanted
23 to take it, but again, most defendants don't really want to
24 take it if they don't have to.

25 Q Okay. But she -- she didn't say right before ---

1 A No, she never said, I want my trial.

2 Q Yeah, okay.

3 A No, we never had -- that was never -- I mean it was
4 always her decision, ---

5 Q Okay.

6 A --- which is always part of my conversation with them,
7 too. I always make them aware that -- all my clients aware
8 that I am not making them do anything. If they want a
9 trial, we'll go to trial.

10 Q Okay. Did you agree with her decision to take the
11 plea offer?

12 A I think in the -- when you do a risk-analysis on her
13 case, a plea was in her best interest, because she took the
14 mandatory minimum off the table.

15 Q Okay. And Ms. Dale appeared to understand what was
16 going on during her guilty plea hearing?

17 A Yes.

18 Q Okay. When you spoke with her throughout your
19 representation of her, did she ever give you any indication
20 that she didn't understand you or she had any mental issues
21 or anything like that?

22 A No.

23 MS. SCHILL - Okay. Those are all the questions I
24 have.

1 THE COURT - Okay. All right, thank you, sir.

2 You may step down.

3 MR. DUNN - Thank you, Your Honor.

4 THE COURT - May this witness be excused?

5 MR. THOMAS - No objection, Your Honor.

6 MS. SCHILL - Yeah, we ask he be excused.

7 THE COURT - Okay, thank you, sir. You're free to
8 go. Thank you for being here.

9 MS. SCHILL - The State rests, Your Honor.

10 THE COURT - Is there anything else, Mr. Thomas?
11 Anything by way of reply?

12 MR. THOMAS - No, Your Honor.

13 THE COURT - Okay, counsel, do you all want to
14 make a closing summation? I allow counsel to do that in
15 these matters, but it's not required.

16 MR. THOMAS - Your Honor, I normally do not unless
17 it's somewhat of a more complicated case.

18 THE COURT - Yes, sir.

19 MR. THOMAS - I know we don't have a jury here, so
20 -- and I know the Court's very attentive. Unless the
21 attorney general wishes to, I do not see any need for it.

22 MR. SCHILL - I would agree with Mr. Thomas.
23 Unless Your Honor specifically wants one, I think we're
24 okay with that.

1 THE COURT - Okay. And so just to be clear, the
2 documents that I am to consider are those that I have been
3 provided. I have the transcript from Judge Hall's hearing.
4 I have application and amended application. I have
5 sentencing sheets, indictments and a plea waiver form. Is
6 there anything else?

7 MR. THOMAS - Nothing further, Your Honor, only
8 the testimony that's been presented.

9 THE COURT - Okay.

10 MR. THOMAS - Yes, ma'am.

11 THE COURT - All right, and so I will direct these
12 comments to Ms. Dale.

13 Ma'am, I know that you've not been before me
14 before, but I like to review everything even though counsel
15 in this matter has been very thorough. I have been
16 provided the transcript and other documents and I've made
17 notes. My law clerk has been typing notes as well, and so
18 I'm unfortunately not going to rule right now, but you will
19 get a ruling as quickly as possible. I know this is
20 important to your family. I have been watching them and
21 watching you throughout this proceeding, and I can tell
22 that you're a very lucky young lady to have such a caring
23 family, and so I wish you the best of luck, ma'am. Mr.
24 Thomas will be the person that will provide you information
25 regarding my ruling.

1 MS. DALE - Yes, ma'am.

2 THE COURT - All right, thank you all.

3 MR. THOMAS - Thank you, Your Honor.

4 THE COURT - We will be at ease until the next
5 hearing.

6 (END OF TRANSCRIPT)

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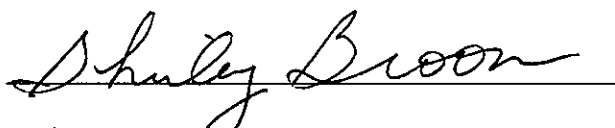
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 61 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Jennifer Lynn Dale vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on November 13, 2019, and provided by me this the 15th day of February, 2020.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Jennifer Lynn Dale, #375190,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS,
SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-46-3142

ORDER OF DISMISSAL

Hearing Date:

Hearing Judge:

Counsel for Applicant:

Counsel for Respondent:

Court Reporter:

November 13th, 2019 at 9:30 a.m.

Grace Gilchrist Knie

Tommy Arthur Thomas

Brianna L. Schill

Shirley G. Broom

This matter was before the court on Wednesday, November 13th, 2019 at 9:30 a.m., in York County, SC, the Sixteenth Judicial Circuit upon Applicant's Application for Post-Conviction Relief filed October 15th, 2018. The Respondent filed a Return on December 18th, 2018 requesting an evidentiary hearing. Attorney Tommy Arthur Thomas, Esq. was present representing the interests of the Applicant. Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office was present representing the interests of the Respondent. Shirley G. Broom was the Court Reporter.

At the hearing, Applicant testified on her own behalf. Geoffrey M. Dunn, Esq., (Trial Counsel) and Applicant's father, Ricky Lee Dale, also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet her requisite burden of proof and denies this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. During the January 18th, 2018 term, the York County Grand Jury indicted Applicant for burglary, first-degree (2018-GS-46-00243), possession of a weapon during the commission of a violent crime (2018-GS-46-00243), and armed robbery (2018-GS-46-00244). Geoffrey M. Dunn (Counsel) represented Applicant. Assistant Solicitor Marina Hamilton (Hamilton) of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On January 24th, 2018, Applicant pled guilty before the Honorable Daniel D. Hall to the lesser-included offenses of attempted armed robbery and second-degree burglary. Applicant also pled guilty as indicted to possession of a weapon during the commission of a violent crime. Hamilton dismissed two counts of attempted murder, two counts of kidnapping, and discharging a firearm into a dwelling under the terms of the plea agreement. Pursuant to negotiations between the State and Applicant, Judge Hall sentenced Applicant to eight years' imprisonment for attempted armed robbery, eight years' concurrent imprisonment for burglary in the second degree, and five years' concurrent imprisonment for possession of a weapon during the commission of a violent crime. Applicant did not appeal her conviction or sentence.

FACTUAL HISTORY

On June 18th, 2017, Applicant drove three individuals, who would later become her co-defendants, to a residence. (GP Tr. 11.) Applicant and her co-defendants broke into the residence armed with shotguns to retrieve a gun from one of the residents. (GP Tr. 11-12.) Once inside, the co-defendants assaulted a twelve-year-old child living at the home. (GP Tr. 12.) Once the group realized the child was not the intended target, Applicant took him to his mother's room while still armed with a shotgun. (GP Tr. 12.) Two co-defendants, also armed with guns, took \$340 from

the pants of one of the residents during the incident. (GP Tr. 12.) A cooperating co-defendant told the State that Applicant helped initiate the idea to “get this done.” (GP Tr. 12.)

ALLEGATIONS RAISED

In her original application for post-conviction relief, Applicant alleged that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

On October 28th, 2019, Applicant filed an amended application alleging the following claims:

1. That Defense Counsel failed to take into consideration the fact that the Applicant was living at her father’s residence and had the right to be there, thus mitigating the issue of Burglary;
2. That the Applicant was not involved in the incident. That she was forced to drive the Co-Defendant’s to the location of the incident. That these issues of defense and/or mitigation were not taken into consideration by Defense Counsel;
3. That Defense Counsel was ineffective in not consulting the Defendant regarding the evidence against her or evaluating the evidence that the State had in her case;
4. That Defense Counsel was ineffective in not fully advising the Applicant regarding her guilty plea. The Applicant did not understand why she was entering into the plea. She believed that she had viable defenses;
5. That Defense Counsel was ineffective in his failure to speak with the Applicant’s Father regarding ownership of the house and her right to be there;
6. That Defense Counsel was ineffective in not properly investigating the case and the Applicant’s involvement in this case;
7. That the Applicant had witnesses to speak in her favor. These witnesses were not called by Defense counsel;
8. That the Applicant was charged with Possession of a Weapon when no weapon was found.

An evidentiary hearing was held on November 13th, 2019. At the outset of the hearing, PCR Counsel indicated Applicant would be going forward on the allegations set forth in Applicant’s amended application.

SUMMARY OF PCR TESTIMONY

Applicant's Testimony

Applicant testified her charges arose from an incident in which a man was robbed inside the home of her father, Ricky Lee Dale (Dale). Applicant testified she knew the individuals inside the home because she was also living in Dale's home. Applicant testified the incident occurred because her boyfriend at the time and co-defendant, Pendergrass, was trying to retrieve a pistol from an individual inside Dale's home.

Applicant testified she spoke to Counsel several times over the phone, but she only met with Counsel in-person one time prior to her guilty plea hearing. Applicant testified the in-person meeting lasted fifteen-to-twenty minutes. Applicant testified she did not review discovery with Counsel.

Applicant testified she told Counsel she wanted to go to trial because she believed she had viable defenses. Applicant testified she told Counsel her side of the story: that she was previously abused by Pendergrass and that she was afraid of him. Applicant further testified she told Counsel that Pendergrass forced her to drive the co-defendants to Dale's home and partake in the crime. Applicant testified she had to drive her and her co-defendants to Dale's home to commit the armed robbery or she was "going to be dead." Applicant testified that on a previous occasion, Pendergrass beat her in front of her child, and Pendergrass tried to strangle her. Applicant also testified there were multiple other instances of abuse leading up to the robbery at Dale's home. Applicant testified her father called the police to report the abuse, but she did not press charges.

Applicant also testified she discussed with Counsel the fact that she lived in Dale's home. Applicant testified this would provide her a defense to her charges. Applicant testified she lived in Dale's home, along with her four children, her siblings, and the twelve-year old victim who was

injured during the underlying crime. Applicant further testified she did not have a dispute with any of the victims in this case, nor did she have any reason to assault or rob anyone in Dale's home.

Applicant testified she did not have a weapon that night and that she did not own a weapon. Applicant testified she discussed this with Counsel, but that Counsel did not discuss any defense with her regarding her weapons charge. Applicant testified that, to her knowledge, Counsel did not discuss Applicant's defenses with Dale.

Applicant testified she wanted to go to trial, but decided to plead guilty based on Counsel's advice. Applicant testified the only plea offer she received was the negotiated plea offer she ultimately accepted. Applicant testified she did not understand what a negotiated plea was at the time of her guilty plea. Applicant testified she was the only person who spoke on her behalf at her guilty plea hearing.

On cross-examination, Applicant testified she did not recall telling the plea court she reviewed discovery with Counsel. After reviewing the plea court transcript, Applicant testified she responded affirmatively when the plea court asked her if she reviewed discovery with Counsel. Additionally, after reviewing the plea-hearing transcript, Applicant testified she was explained her constitutional rights and told the plea court she understood she was waiving those rights. Applicant testified she told the plea court she wanted to plead guilty to each of the crimes. Applicant testified she recalled telling the plea court she was pleading guilty of her own free will. Applicant testified she told the plea court she was pleading guilty because she was in fact guilty of the charges. Applicant testified she told the plea court she had enough time to speak with Counsel regarding her case, and that she had no complaints regarding Counsel's representation of her. After reviewing the guilty plea transcript, Applicant testified she told the plea court she understood the

plea court's explanation of what a negotiated sentence means and the sentence she would receive pursuant to her negotiated sentence.

Applicant testified she only told Counsel and the judge presiding over her bond hearing that she was forced to drive her co-defendants to the scene of the crime. Applicant testified she did not tell the police upon her arrest. Applicant testified she told the plea court she was not under the influence of drugs or alcohol at the time of her plea hearing. Applicant also testified she was not suffering from mental illness at the time of her plea hearing.

Ricky Lee Dale's Testimony

Dale testified he is Applicant's father, and he has personal knowledge of prior abuse by Pendergrass. Dale testified Pendergrass previously strangled Applicant in front of Applicant's young son. Dale testified the home where the incident occurred is in his name, but Applicant is allowed to be there. Dale testified Applicant had her own key to his home and she could come and go as she pleased.

Dale testified he spoke with Counsel regarding Applicant's defenses. Dale testified that when he and Counsel specifically discussed the defense as it relates to the burglary charge, Counsel told him it was "part of the plea." Dale testified to the best of his knowledge Applicant did not have a gun on the night of the incident, and that she did not have a gun, generally.

Counsel's Testimony

Counsel testified he has been practicing law since November 2004, and half of his practice as an attorney has been in criminal law. Counsel testified he met with Applicant in person three-to-four times and also talked to her a few times by phone. Counsel testified she mailed all discovery to Applicant and reviewed the discovery with her.

Counsel testified Applicant never denied driving her co-defendants to the home where the crime occurred. Counsel testified Applicant told him the situation turned out worse than she believed it was going to be, and that Applicant took steps to protect the twelve-year old victim after he was attacked. Counsel testified Applicant told him she was forced to drive the co-defendants and assist with the crime; however, Counsel testified Applicant did not show as much emotion as she did during her testimony at the PCR hearing when she initially told Counsel this. Counsel testified the alleged abuse and coercion is something he would have told the solicitor during plea negotiations.

Counsel testified the State's discovery regarding the presence of a gun consisted of the report that a twelve-year old was "pistol-whipped," as well as a report that gunshots were heard. Counsel testified the State had a co-defendant who was willing to testify against Applicant and testify to the fact that she helped plan the crime.

Counsel testified he researched the issue of whether you can burglarize your own home, and the results were either a "gray area" or not favorable to Applicant. Counsel testified he was concerned because even if he could prove to a jury that Applicant lived in Dale's home, she still arguably arrived at the home for the purpose of committing a crime. Counsel further testified Applicant was still facing other charges, including armed robbery, which he was concerned about as the robbery charge would not be covered by this defense. Counsel testified the mandatory minimums Applicant was facing were worse than Applicant's plea offer. Counsel testified he could not recall whether Applicant lived with Pendergrass at any relevant point.

Regarding Applicant's plea offer history, Counsel testified Hamilton only made one offer to Applicant, which was the plea offer Applicant ultimately accepted. Counsel testified he attempted to get a more favorable plea offer from Hamilton, however, she would not agree to offer

a better plea bargain. Counsel testified he discussed the terms of the plea offer with Applicant and her family. Counsel testified Applicant appeared to understand their discussion regarding the plea offer. Counsel testified he spoke with all witnesses that Applicant identified.

Counsel testified if Applicant ultimately wanted to go to trial, he would have taken her case to trial. Counsel testified it is always ultimately the client's decision to plead guilty or to proceed to trial.

On cross examination, Counsel testified Applicant seemed upset during her plea hearing. Counsel testified he personally believed Applicant's story that she suffered abuse and was forced to partake in the crime, but the issue was ultimately whether the jury would believe Applicant's story.

On re-direct, Counsel testified she understood she could ultimately go to trial if she wanted to. Counsel testified that based on a benefit-risk analysis, he believed it was in Applicant's best interest to plead guilty. Counsel testified Applicant appeared to understand what was going on during the plea hearing.

APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.

The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* (quoting *Strickland*, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

Involuntary Guilty Plea

In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. *Id.* In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, an applicant’s right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* (citing *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975)); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the plea transcript, and Applicant’s records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

- 1. Counsel failed to take into consideration the fact that the Applicant was living in her father's residence and had the right to be there thus mitigating the issue of Burglary; and Counsel was Ineffective in his failure to speak with the Applicant's father regarding ownership of the house and her right to be there.*

Applicant alleges Counsel was ineffective for failing to assert a defense that she lived in the home where the crime occurred.

As stated above, Counsel testified he researched the issue of whether you can burglarize our own home, and his results were that it was either a legal "gray area" or not favorable to Applicant's case. Counsel testified he was concerned because even if he could prove to a jury that Applicant lived in Dale's home, she still arguably arrived at the home for the purpose of committing a crime. Counsel further testified she was still facing other charges, including armed robbery, which he was concerned about. Counsel testified the mandatory minimums Applicant was facing were worse than Applicant's plea offer. Counsel testified he could not recall whether Applicant lived with Pendergrass at any relevant point. Counsel testified he discussed this defense with Applicant as well as Dale. Counsel also testified this possible defense is something he would have discussed with the solicitor when negotiating her plea.

Applicant testified she did not believe Counsel discussed the fact that she lived at Dale's house with Dale. Applicant also testified she believed this defense would have resulted in an acquittal. Dale testified he discussed Applicant's potential defense with Counsel.

This Court finds Counsel and Dale's testimony on this issue credible, while also finding Applicant's testimony not credible. This Court further finds Applicant has failed to establish how Counsel was deficient in any way regarding Applicant's possible defense to the burglary charge. Counsel discussed this possible defense with Applicant and Dale, and Applicant waived her constitutional right to assert this defense at trial by pleading guilty. Also, Counsel credibly testified he researched this issue and his results were not necessarily favorable to Applicant's case. Counsel

also credibly testified it was likely he discussed this potential defense with Hamilton during plea negotiations. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Based on the standard set forth above, this Court finds Applicant has failed to meet her requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice. Accordingly, this allegation is denied and dismissed with prejudice.

2. *Failure to use prior abuse and coercion by co-defendant Pendergrass as defense/mitigation.*

Applicant alleges Counsel was ineffective for failing to use the alleged prior instances of abuse, as well as Applicant's argument that she was coerced to partake in the crime as a defense or in mitigation.

As stated above, Counsel testified Applicant never denied driving her co-defendants to the home where the crime occurred. Counsel testified Applicant told him the situation turned out worse than she believed it was going to be, and Applicant took steps to protect the twelve year old victim after he was attacked. Counsel testified Applicant told him she was forced to drive the co-defendants and assist with the crime, however Counsel testified Applicant did not show as much emotion as she did during her testimony at the PCR hearing. Counsel testified the alleged abuse and coercion is something he would have told Hamilton during plea negotiations.

Applicant testified she told Counsel she wanted to go to trial because she believed she had viable defenses. Applicant testified she told Counsel her side of the story: that she was previously abused by Pendergrass and that she was afraid of him. Applicant further testified she told Counsel

that Pendergrass forced her to drive the co-defendants to Dale's home and partake in the crime. Applicant testified she had to drive her and her co-defendants to Dale's home to commit the armed robbery or she was "going to be dead." Applicant testified on a previous occasion, Pendergrass beat her in front of her child, and Pendergrass tried to strangle her. Applicant also testified there were multiple other instances of abuse leading up to the robbery at Dale's home. Applicant testified her father called the police to report the abuse, but she did not press charges.

This Court finds Counsel's testimony on this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding the coercion and prior abuse allegedly sustained by Applicant. Counsel testified Applicant informed him she believed she had a defense based on the alleged coercion and prior instances of abuse. Counsel testified this was information he likely used when discussing Applicant's case with Assistant Solicitor Hamilton. Applicant ultimately chose to waive her constitutional right to assert such a defense at trial by pleading guilty.

Furthermore, to the extent Applicant argues Counsel was deficient for failing to mention this defense as mitigation at her guilty plea hearing, this argument is equally without merit. Applicant's plea was a negotiated plea, therefore, the plea court could either accept the plea and sentence as negotiated, or alternatively, reject the plea and allow Applicant to proceed to trial. Accordingly, this alleged mitigation would not have influenced Applicant's sentence.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Additionally, as previously discussed, this alleged mitigation would not have influenced the sentence, as Applicant's plea was a negotiated plea. Based on the standard set forth

above, this Court finds Applicant has failed to meet her requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice. Accordingly, this allegation is denied and dismissed with prejudice.

3. *Failure to Investigate*

Failure to Investigate, Generally

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Failure to Investigate Applicant’s Case

Applicant alleges Counsel was ineffective for failing to sufficiently investigate Applicant’s case.

As mentioned above, Counsel testified he reviewed the evidence the State had against Applicant, including but not limited to, witness statements and incident reports. Counsel also testified he contacted all witnesses that Applicant requested he contact. Applicant testified she generally did not think Counsel did an adequate job at investigating his case.

This Court finds Counsel’s testimony on this issue credible, while also finding Applicant’s testimony not credible. Counsel credibly testified he investigated Applicant’s case. Additionally,

Applicant has not provided any testimony or evidence showing Counsel would have uncovered any additional evidence by way of additional investigation. Accordingly, Counsel was not deficient.

This Court further finds Applicant failed to meet his burden of proof as to prejudice, which requires Applicant to show this Court what further information Counsel would have uncovered through additional investigation. Moreover, Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Accordingly, this allegation is denied and dismissed with prejudice.

4. Failure to Review Discovery with Applicant

Applicant asserts Counsel was ineffective for failing to review the State's evidence with Applicant.

Counsel testified he mailed all discovery to Applicant and reviewed the discovery with her. Applicant testified she did not review discovery with Counsel. Applicant testified she did not recall telling the plea court she reviewed discovery with Applicant. However, after reviewing the plea transcript, Applicant acknowledged she told the plea court she reviewed discovery with Counsel.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony on this issue not credible. This Court finds Applicant has failed to establish how Counsel was deficient in any way regarding Counsel's review of discovery with Applicant. The credible testimony shows Counsel reviewed discovery with Applicant. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Based on the standard set forth above, this Court finds Applicant has failed to meet

her requisite burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

5. *Failure to Call Witnesses*

Applicant alleges Counsel was ineffective for failing to call witnesses to speak on her behalf.

Counsel testified he spoke with every witnesses Applicant asked him to speak to, including Dale. Applicant testified she did not believe Counsel ever spoke to Dale regarding her possible defense and mitigating factors. Dale testified he spoke with Counsel regarding Applicant's possible defenses.

This Court finds Counsel and Dale's testimony on this issue credible, while also finding Applicant's testimony not credible. This Court further finds Applicant has failed to establish how Counsel was deficient in any way regarding Applicant's witnesses. Counsel credibly testified he spoke with all of the witnesses identified by Applicant. Dale also testified he spoke to Counsel, contrary to Applicant's assertion. To the extent applicant argues Counsel was deficient for failing to call Applicant's witnesses in mitigation, this argument is equally without merit. As previously discussed, Applicant's plea was a negotiated plea, and therefore, character witnesses would not have affected Applicant's sentence. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Moreover, as previously discussed, these witnesses would not have changed the outcome of Applicant's guilty plea due to the fact that Applicant's plea was a negotiated plea. Based on the standard set forth above, this Court finds Applicant has failed to meet her requisite

burden of establishing constitutional ineffectiveness of Counsel and, therefore, this allegation is denied and dismissed with prejudice.

6. *Failure to Argue that Applicant Did Not Have a Gun*

Applicant alleges Counsel was ineffective for failing to argue that she should not have been charged with possession of a weapon because she did not have a gun on the night of the crime.

Counsel testified the State's discovery regarding the presence of a gun consisted of the report that a twelve-year old was "pistol-whipped," as well as a report by witnesses that gunshots were heard. Counsel testified the State had a co-defendant who was willing to testify against Applicant and testify to the fact that she helped plan the crime. Applicant testified she did not have a gun in her possession on the night of the crime, nor did she generally own a gun.

This Court finds Counsel's testimony on this issue very credible, while also finding Applicant's testimony not credible. This Court further finds Applicant has failed to establish how Counsel was deficient in any way regarding Applicant's alleged defense to the possession of a weapon charge. As Counsel credibly testified, the State had evidence to support its argument that a gun was involved in this case, but the issue was up to whether the jury would believe the State's theory or Applicant's defense theory. Additionally, as Hamilton mentioned during Applicant's plea hearing, this was a hand-of-one, hand-of-all case. (GP Tr. 12). Furthermore, Applicant waived his right to pursue this defense at trial by pleading guilty. Accordingly, Counsel was not deficient.

Applicant has also failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant has failed to credibly show there is a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59; *Roscoe*, 345 S.C. at 16, 20. Applicant ultimately chose to plead guilty, thereby waiving any possible

defenses to the charges, and received a substantial benefit by pleading guilty. Accordingly, this allegation is denied and dismissed with prejudice.

Involuntary Guilty Plea

Applicant alleges her plea was involuntary because her plea offer was not adequately explained to her, and because she did not understand why she was entering a plea.

Counsel testified he discussed the terms of the plea offer with Applicant and her family. Counsel testified Applicant appeared to understand their discussion regarding the guilty plea. Applicant testified she did not understand the terms of her plea agreement, nor did she understand what it meant to enter a negotiated plea. Applicant initially testified she did not recall the plea court explaining to her what a negotiated sentence is. However, after reviewing the transcript, Applicant testified the plea transcript indicates she told the plea court she understood the court's explanation of a negotiated plea.

This Court finds the testimony of Counsel as to this allegation very credible, while also finding Applicant's testimony not credible. This Court finds Applicant's plea was entered freely and voluntarily. The credible testimony shows Applicant wanted to plead guilty and received a great benefit in accepting the State's plea offer. Counsel credibly testified he discussed the terms of Applicant's plea agreement with Applicant. Applicant testified at her plea hearing that she was not suffering from any mental disability. (GP Tr. 5). Applicant testified at her plea hearing that she was pleading guilty on her own free will. (GP Tr. 10). Additionally, the plea court advised Applicant as to the meaning of a negotiated sentence, and Applicant indicated she understood the plea court's explanation. (GP Tr. 10). Based on the standard set forth above, this Court finds Applicant has failed to meet her requisite burden of establishing that her plea was not entered freely and voluntarily. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Counsel was not deficient in any manner regarding his performance before or during trial, nor was Applicant prejudiced by Counsel's representation. Furthermore, the record and the PCR testimony show Applicant freely and voluntarily entered his plea. Accordingly, all allegations are denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED.



GRACE GILCHRIST KNIE
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

December 4th, 2019
Spartanburg, SC



COUNTY OF YORK

STATE VS.

JENNIFER LYNN DALE

AKA:

Race: White

Sex: F

Age: 26

DOB:

SS#:

Address: Bowling Green Drive

City, State, Zip: Clover, SC 29710

DL#

SID# SC01895087

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

INDICTMENT/CASE#: 2018-GS-46-00243

A/W: 2018-GS-46-00243

Date of Offense: 06/18/2017

S.C. Code #: 16-11-0312(B)

CDR Code #: 0086

SENTENCE SHEET

TO: Burglary, Second Degree, (Violent)

In violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

CONVICTED OF or

☒ PLEADS☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC w/minor 1st or Lewd Act)☐ §17-25-45

The charge is:

☐ As indicted,☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☒ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Marina B. Hamilton, Assistant Solicitor 80383 SC Bar #

Jennifer Dale, Defendant

Attorney for Defendant 72541 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$_____ Beginning _____

\$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge:

Judge Bar ID:

Sentence Date:

Judge Code:

1-24-18

Clerk of Court/Deputy Clerk:

Court Reporter:

SCCA/217 (07/2016)

David Hamilton

Shirley Broom

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$125

COUNTY OF YORK

STATE VS.

JENNIFER LYNN DALE

INDICTMENT/CASE#: 2018-GS-46-00243(A)

A/W: 2017A4610100561

Date of Offense: 06/18/2017

S.C. Code §: 16-23-0490

CDR Code #: 0549

AKA:

Race: White Sex: F Age: 26

DOB: SS#: 2018 OCT 16 AM 9:14

Address: Bowling Green Drive

City, State, Zip: Clover, SC 29710

DL# SID# SC01895087

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Possession Of A Weapon During The Commission Of A Violent Crime

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

SENTENCE SHEET

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

ATTEST:

Marina B. Hamilton, Assistant Solicitor 80383 SC Bar #

Jennife Dale Defendant

Attorney for Defendant 72541 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

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

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 125

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: Shirley Broom

SCCA/217 (07/2016)

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: _____

Judge Code: 2753

1-24-18

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2018 OCT 16 AM 9:15

INDICTMENT

At a Court of General Sessions, convened on January 18, 2018, the Grand Jurors of York County present upon their oath:

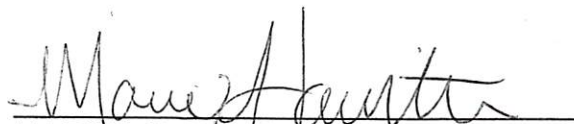
COUNT ONE - BURGLARY, FIRST DEGREE

The defendant, Jennifer Lynn Dale, did on or about June 18, 2017, in York County, South Carolina, enter a dwelling belonging to Ricky Dale without consent and with intent to commit a crime therein. The defendant while in the dwelling displayed what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm and/or was armed with a deadly weapon. The defendant entered or remained in the residence in the nighttime hours. All in violation of 16-11-0311, Code of Laws of South Carolina (1976, as amended).

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

The defendant, Jennifer Lynn Dale, did on or about June 18, 2017, in York County, South Carolina, while committing the violent crime of Burglary 1st Degree, possess a weapon. All in violation of 16-23-0490, *South Carolina Code of Laws* (1976, as amended).

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


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

YCSO / Hager

ARREST WARRANT NUMBER

COUNT ONE 2018-GS-46-00243
COUNT TWO 2017A4610100561

**ACTION OF GRAND JURY
TRUE BILL**

McBarron
Foreperson of Grand Jury
Date: 1-18-18

VERDICT

Foreperson of Petit Jury
Date:

count one is DIR IND
**DOCKET NO. 2018-GS-46-00243
2018-GS-46-00243 (A)**

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 18, TERM 2018

THE STATE

VS.

JENNIFER LYNN DALE

INDICTMENT FOR

**COUNT ONE - BURGLARY, FIRST
DEGREE**

SC Code: § 16-11-0311
CDR Code: 0079

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

SC Code: § 16-23-0490
CDR Code: 0549

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

Defendant

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

Possession of Weapon

Burglary 2nd Violent

Jennifer Dale
Defendant

Witness:

Charles Court
C.C.C. PLS. AND G.S.
Spec. J.

ARREST WARRANT

2017A4610100561

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE

against

Jennifer Lynn Dale

Address: Regal Oaks Ln

Clover, SC 29710-

Phone: SSN:

Sex: F Race: W Height: 5 5 Weight: 130

DL State: SC DL #:

DOB: Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: Mark E Motz - S00174

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

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Jennifer Lynn Dale on 7-3-17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant Mark E Motz

being duly sworn deposes and says that defendant Jennifer Lynn Dale

did within this county and state on or about 6/18/2017

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York

in the following particulars:

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

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

The defendant did willfully and unlawfully violate the laws of South Carolina by possessing a firearm and then discharging it into a dwelling while committing the crime of Attempted Murder and Kidnapping against the victim (Marquavin Hardy). This occurred on 6/18/17 at the address of 1222 Bowling Green Dr., Clover, SC; County of York. Probable cause based on police investigation witness statements and co-defendant statements.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address 1675 York Highway

York, SC 29745-

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/18/2017 defendant Jennifer Lynn Dale

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

☒ County/ ☐ Municipality of York) as set forth below:

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

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

Sworn to and subscribed before me

on 6/30/2017

Signature of Issuing Judge (L.S.)

Lynne Horton Benfield

Judge Code: 5806

Judge's Address Moss Justice Center

York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

128

FILED-RECEIVED

2017 JUL 11 AM 11:18

DAVID HAMILTON
C.C.C.P. & S.S.
YORK COUNTY, SC

0549

CERTIFIED TRUE COPY
2018 OCT 16 AM 9:14
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

COUNTY OF YORK

STATE VS.

JENNIFER LYNN DALE

INDICTMENT/CASE#: 2018-GS-46-00244
 A/W: 2017A4610201166
 Date of Offense: 06/18/2017
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

AKA: _____
 Race: White Sex: F Age: 26
 DOB: _____ SS#: _____
 Address: _____ Bowling Green Drive
 City, State, Zip: Clover, SC 29710
 DL# _____ SID# SC01895087

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Attempted Armed Robbery

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Marina Hamilton 80383
 Marina B. Hamilton, Assistant Solicitor SC Bar #

Jennifer Dale
 Defendant

[Signature] 72541
 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing
 Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 125

Clerk of Court/Deputy Clerk: *David Hamilton*

Court Reporter: *Shirley Broom*

SCCA/217 (07/2016)

☐ Ordered PTUP _____
 _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

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

Presiding Judge: *David O. Hill*

Judge Bar ID: _____ Judge Code: 2753

Sentence Date: 1-24-18

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2018 OCT 16 AM 9:14 INDICTMENT

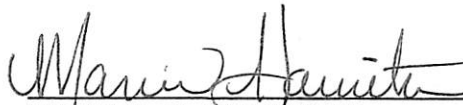
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on January 18, 2018, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

The defendant, Jennifer Lynn Dale, did on or about June 18, 2017, in York County, South Carolina, while alleging either by action or words that the defendant was armed with a deadly weapon take by means of force, threats, or intimidation, goods or monies described as money from the person or presence of Marquavin Javon Hardy. All in violation of 16-11-0330(A) of the *South Carolina Code of Laws* (1976, as amended).

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


MARINA B. HAMILTON
ASSISTANT SOLICITOR

WITNESSES

YCSO

Witnessing Officer: T.Hager

ARREST WARRANT NUMBER

2017A4610201166

ACTION OF GRAND JURY
TRUE BILL

Mal Barrett
Foreperson of Grand Jury
Date: 1-18-18

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-46-00244

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 18, TERM 2018

THE STATE

VS.

JENNIFER LYNN DALE

INDICTMENT FOR

ARMED ROBBERY

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

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

Defendant

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

Attended Armed Robbery

Jennifer Dale
Defendant

Witness:

Children Court
C.C.C. PLS. AND G.S. Special

ARREST WARRANT

2017A4610201166

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

THE STATE
against

2017-21703

Jennifer Lynn Dale

Address: Bowling Green Dr
Clover, SC 29710-9666Phone: SSN
Sex: F Race: W Height: 5 5 Weight: 130DL State: SC DL #: DOB: Agency ORI #: SC0460000

Prosecuting Agency: York County Sheriff

Prosecuting Officer: Mark E Motz - S00174

Offense: Robbery / Armed Robbery, robbery while armed or
allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Jennifer Lynn Dale
on 7/31/17

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

York County General Sessions
1675 York Hwy
York, SC 29745

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Personally appeared before me the affiant Mark E Motzbeing duly sworn deposes and says that defendant Jennifer Lynn Daledid violate this county and state on or about 6/18/2017State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of York)

in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on June 18, 2017, at 1222 Bowling Green Dr., in the County of York, the defendant Jennifer Lynn Dale, willfully and
unlawfully violated the South Carolina Code of Law by committing the act of Robbery and attempted burglary while armed with a
deadly weapon on victim Marquavin Hardy. Defendant did this while armed with a firearm and then stealing \$370 cash. Probable
cause is based on police investigation, victims' statements, and recovery of evidence.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

York

Affiant's Address 1675- 2A York Hwy
York, SC 29745-Affiant's Telephone (803)628-3103

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/18/2017 defendant Jennifer Lynn Dale

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

☒ County/ ☐ Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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

Sworn to and subscribed before me

on 6/18/2017

Signature of Issuing Judge

Chisa Johnson Putman

Judge Code: 7353Judge's Address Moss Justice Center (Bond Court)
York, SC 29745-Judge's Telephone (803)628-3095Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

132

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